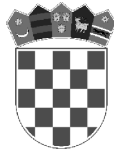

REPUBLIC OF CROATIA
Ombudsman

REPORT ON THE PERFORMANCE OF ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM FOR 2018

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Dear readers,

What you have before you is the 7th Report on the Performance of Activities of the National Preventive Mechanism containing an analysis and assessment of the human rights situation of persons deprived of liberty, as well as 30 recommendations aimed at strengthening their protection from torture and other cruel, inhuman or degrading treatment or punishment.

In preparing this Report, along with data collected during 43 visits to places accommodating persons deprived of liberty or those with restricted freedom of movement, we also used data athered in processing 357 individual complaints, as well as many other sources of information about the treatment of persons deprived of liberty, such as court decisions, documents by relevant international bodies and organisations, and media reports.

In 2018, we found no instances of treatment that would amount to torture during our visits to prisons and penal institutions, police stations and detention units, psychiatric institutions, homes for the elderly and infirm, and a reception centre for foreigners. However, we did detect some that could amount to inhuman or degrading treatment or constitute a violation of constitutional and legal rights.

Systematic problems that we have been pointing out for years remain present in the prison system. Appropriate health care is still insufficiently available and, despite some steps forward noted, accommodation conditions remain inadequate. For instance, only one room is equipped with a toilet in the Prison Hospital, while prisoners from other rooms use the shared facilities, scarce in number. As a result, as many as 40 prisoners are forced to share two toilets, one of which is clogged more often than not. Another reason for concern is a shortage of prison staff, which adversely affects the implementation of prisoners' individual programmes, the level of respect for their rights, and safety.

Unprofessional and unethical conduct by police officers and excessive use of force in applying the means of coercion remain the most common reasons for complaining, which is particularly concerning given the lack of effective investigations. Accommodation conditions in the police system continue to be inadequate, with rooms in some police stations without the supply of fresh air and natural or artificial light, keeping persons deprived of liberty in complete darkness. Despite our recommendations, a civilian police oversight mechanism was still not established in 2018.

Accommodation conditions are a problem in psychiatric institutions, while some of them fail to ensure basic privacy to patients. As a rule, patients accompanied by police officers and brought to the Psychiatric Clinic of the Split Clinical Hospital Centre are restrained in the course of several days and nights, even when they are asleep, which is justified by shortages of medical staff and alarm systems and switches. During their admission and accommodation, persons with mental disorders are not informed enough about all medical procedures, and are dissatisfied with legal guardians assigned to them, who should be more active in protecting their rights.

Inadequate accommodation conditions and the shortage of staff, to which we also pointed in earlier years, remain a problem in homes for the elderly and infirm, which adversely affects the quality of services provided and respecting the rights of their users.

Complaints pertaining to police treatment of irregular migrants continue to concern, particularly those related to the use of force and returns over the green border without conducting any legally prescribed procedures. So much the more since effective official investigation, which should lead to finding and sanctioning those responsible, is still lacking. By unlawfully withholding access to cases and information about the treatment of illegal migrants, the Ministry of the Interior prevented the Ombudswoman from doing her work, which we reported to the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), the European Committee for the Prevention of Torture (CPT) and the UN Committee against Torture (CAT).

This Report is primarily intended for the professional and general public, persons working on a daily basis with persons deprived of liberty or those with restricted freedom of movement, and officials who can directly influence the level of respect for their rights. It is also intended for persons accommodated in prisons and penal institutions, police stations and detention units, psychiatric institutions, homes for the elderly and infirm, reception centres for foreigners, and all other places they cannot voluntarily leave, as well as their family members and all other persons interested in the status and respect of human rights of persons deprived of liberty.

I believe that the Report before you will contribute to the fight against torture and other cruel, inhuman or degrading treatment or punishment, strengthening the respect of constitutional and legal rights, and the fight against impunity.

Lora Vidović,
Ombudswoman

1. PERSONS DEPRIVED OF LIBERTY AND THE FUNCTIONING OF THE NATIONAL PREVENTIVE MECHANISM

1.1. THE PRISON SYSTEM

Respect of dignity and prevention of torture and other forms of ill-treatment represent universal principles of treatment of persons deprived of liberty (PDL). These two principles form the basis of our work on cases covering the prison system. While considering the filed complaints, the Ombudswoman protects their human rights and freedoms and safeguards the rule of law – and this goes beyond mere application of legal norms and encompasses the rule of justice and protection of all members of society – whereas preventive visits of penal institutions and issuing of recommendations strengthens protection against torture and other acts of cruel, inhuman, or degrading treatment or punishment.

In 2018, we acted in 169 cases involving violation of rights of persons deprived of liberty within the prison system, carried out 47 field investigative procedures and visited six penal institutions.

1.1.1. COMPLAINTS FILED BY PERSONS DEPRIVED OF LIBERTY IN THE PRISON SYSTEM

„...The worst thing was to accept the fact that I was locked behind the bars and that my freedom was taken away from me and that life goes on, but without me...

“I am sending you this letter because I want to charge criminal charges. I was beaten by a judicial policeman and I want to denounce him. That’s why I am scared when it comes to my future stay in this prison. I was beaten simply because I rang him (...) at 4 am; I wanted to complain to the superior about my roommate because he was so noisy, rattling and banging in the cell, drinking his coffee. And this superior..., the minute he opened the door, he grabbed me by the jaw, he pushed me against the wardrobe and started punching me all over my body. I don’t really know why. I didn’t’t say anything. I couldn’t’t say anything. He wouldn’t’t let me. I know that he’s not allowed to hit me unless I refuse to do what I am told or I strike at him. His shift is notorious for hitting and threatening prisoners. This scares me. That is why I got in touch with you. I want to denounce him because I don’t feel safe and because I was beaten by a judicial policeman... If you fail to act, I will send my complaint to the USKOK (Office for the Suppression of Organized Crime and Corruption) and I will turn to the media...

Although prisoners contact us for a number of reasons, ranging from psychological and/or physical ill-treatment to sending pleas to let them see their pets in prison, most of the complaints deal with

healthcare and treatment by officers of the security and treatment departments. Also, they are dissatisfied with inappropriate accommodation conditions, options of transfers to other prisons and benefits they may be granted.

REQUEST

„... I am asking you to help me because I haven't been contacted by my dentist for the last 3-4 months. I cannot eat because I don't have teeth in the upper jaw. I have five front mandibular teeth so I have to swallow my food. This hurts my stomach on a daily basis so I have to take antacids. I can't eat like this anymore, I can't live like this anymore. This is ruining my stomach and my health. Please, give me the approval to get dental prostheses for the upper and lower jaw so that I can eat and live normally. This is not a life. This is torture. I desperately need prosthesis. I cannot eat pureed foods because it makes me sick and it gives me an urge to vomit. Please, let the dentist call me so that I can have these five teeth pulled out. I keep writing to him, but he's not calling me. Yet, he calls all the other prisoners but he keeps ignoring me. I am urging you to help me because I have no one else to turn to. I have told the treatment officer about this. I mean, everyone in the state prison knows about my problem, but no one cares. I just want to eat like a normal person and I want to lead a normal life, just like all the other prisoners. That's all I'm asking. Mrs. Lora Vidović, I cannot stand this any longer. I am desperate."

In addition, they still complain about the fact that they were not referred to physical therapy or about the waiting times for referral to treatment, inappropriate dental care and, generally, failure to act in line with the recommendations of specialist doctors. To a smaller degree, they complain about not being called to undergo a check up by the prison physician, although they requested it.

A prisoner was recommended a shoulder surgery due to the injury he had sustained during the arrest procedure. He was not referred to the surgery given the complex post-surgery treatment, not available within the prison system. Classified as a high risk prisoner, he is not allowed a interruption of serving a prison sentence to undergo treatment. He said that the physician had advised him to strengthen the shoulder girdle muscles, go to the gym and take whey proteins before the surgery that would, in all probability, be performed only after his release. Yet, he is not allowed to do any of these things for security reasons. That's why he thinks that "apart from being sentenced to prison, he has to go through daily pains".

In several penal institutions, e.g. in Rijeka and Glina, prisoners complain about having to wait too long for dental checkups. For instance, a prisoner claims he was taken to a dentist two months after making such a request. The dentist told him he had come too late and that he had to have his tooth pulled out. Yet, this was not done because he had not been subjected to dental X-ray. Given the constant pain, he cannot chew food. Since he is not offered a knife when the food is being served, he has to tear foods and swallow it as such.

Difficulties occur in terms of prisoners' right to healthcare with prisoners who are deprived of their legal capacity, when making decisions about treatment. The reason for this is the fact that, as a rule, prison physicians and legal guardians (if non-family members) rarely communicate, although good communication is crucial in these cases. The same applies to legal guardians' involvement in using legal remedies available to prisoners.

They still complain about inappropriate vehicles used for transport. For instance, a prisoner with hip injury was forced to sit on a metal bench in the back of the vehicle, without the seat belt. Since his hands were tied, he couldn't use them to support his body. When taken from Split to Dubrovnik, he had to press against the other side of the vehicle by using his legs simply to maintain balance. This had caused serious strain to his hip so he was injected painkillers for the subsequent three days.

As a rule, prisoners do not complain about waiting times to talk to the treatment official, but they are dissatisfied with follow-up activities conducted too late or in an inappropriate manner. Some of their complaints revolved around difficulties in sending money to family members through the prison system and assistance in obtaining residency to be issued an ID. Several prisoners complained that privileges in terms of getting outside of high-security state prisons had not been granted to them despite meeting the necessary conditions laid down in the Execution of Prison Sentence Act (EPSA) and the performance evaluation of implementation of individual programmes of execution of prison sentence. Even though privileges as such do not constitute rights, but incentives available to prisoners in line with the conditions set down in the EPSA and the Ordinance on Prisoners' Privileges, and following the completion of the performance evaluation of implementation of individual programmes of execution of prison sentence, we have analysed specific cases to determine whether all prisoners had been treated on an equal footing in terms of being able to enjoy the privileges. To ensure transparency when making decisions about privileges, our recommendation is that the head of prison issues a t written decision specifying the matter. Some penal institutions apply this practice.

> **Illiterate prisoners have difficulties in using judicial remedies because they need to submit a written request to talk to the head of prison in order to file a complaint orally. This leads to an absurd situation in which other prisoners or even judicial policemen write such requests on their behalf.**

Some of the complaints touched upon the need to protect prisoners' and their family members' personal data in a more effective manner. For instance, personal details (name and address) of a prisoner's wife had been available to all the prisoners for a period of several days simply because the notice board included minutes of the meeting of the expert team, detailing the approval of a prisoner's request to have his belongings sent to his home address. Although the prisoner had asked for prompt removal of the details from the notice board, this was done only several days later. In addition, illiterate prisoners have difficulties in using legal remedies because they need to submit a written request to talk to the head of prison in order to file a complaint orally. This leads to an absurd situation in which other prisoners or even judicial police officer write such requests on their behalf. These prisoners (few in number) should be visited by the treatment staff on a regular basis. Also,

they should be informed about possibilities of filing complaints orally to the head of prison and, upon their request, provide them a pre-prepared, tailor made form to submit an oral complaint.

Prisoners are also dissatisfied with high costs of phone calls that have remained the same despite any potential discounts on the telecommunications market. They are forced to pay high charges because there is no other way to phone someone outside of the prison.

Since prisoners' rights do not include freedom to choose the prison where they will be sent, in all the complaints referring to this matter, we took action only if we deemed that the place where the sentence was served negatively affected some of their rights. For example, a female prisoner serving her prison sentence in the Požega State Prison got in touch with us. This prison is the only penal institution accommodating female prisoners with sentences of more than six months. The prisoner complained that her family that lived in Dubrovnik was unable to visit her. By referring to the ECtHR case law, that has repeatedly stated that inability or difficulties in maintaining family contact due to distance between the prison and home address represented breach of the Article 8 of the ECHR, we have issued a recommendation to the Central Office of the Prison System and Probation Directorate (COPSPD) proposing a consideration to refer the prisoner to a penal institution closer to her family. Transfer to a different prison was also recommended in the case of a prisoner who had served a sentence in the same penal institution for the previous 24 years because we thought that change of penal environment after so much time could have a positive impact on fulfilling a purpose of serving a sentence. Neither of our proposals in terms of these two cases was taken into account by the COPSPD. Instead, the Office made a short reference to provisions of the EPSA on who submits the proposal for transfer and who makes the accompanying decisions. This approach is inappropriate to both the prisoner and the Ombudswoman's office.

Even though, according to the 2017 Report on the Conditions and Work in State and County Prisons and Juvenile Correctional Institutions, we have seen a constant decrease in fights among prisoners since 2014, last year we recorded an increased number of complaints about prison violence. In addition, we took action in response to media reports.

The penal institution considered that failure to report sexual abuse and potential injuries received by the prisoner, that is, his belated report lodged several months later, proved the fact that he was manipulating them. Such an approach is contrary to numerous science and expert-based perspectives and research that point to reluctance on the part of victims of sexual abuse to report the event and this makes the actual number of victims much higher.

Regardless of the underlying cause, i.e. whether the increase in the number of complains could be explained by a spike in violence within the prison system or increased willingness to file complaints about it, prison violence still represents a problem that calls for continuous, systematic and comprehensive action. Prisoners do not report the fact that they are victims of violence or they report it too late

because of shame, fear of revenge, lack of trust in the system, scarce information about protection measures or for other reasons. In this setting, their vulnerability to violence, i.e. physical or psychological distress, simply continues. In case of a complaint filed by a prisoner who claimed to have been exposed to sexual abuse, the penal institution informed us that his failure to report the incident and potential injuries, that is, his belated report lodged several months later, proved the fact that he was manipulating them. Such an approach is contrary to numerous scientific and expert-based perspectives and research that point to reluctance on the part of victims of sexual abuse to report the event and this makes the actual number of victims much higher. We have indicated this fact to the penal institution. Also, persons with psychological or intellectual disabilities are more subject to different forms or abuse or manipulation. This is especially true if they are in financial difficulties. For this reason, we have recommended to the COPSPD to adopt the rule on treatment of this vulnerable group that would improve their safety and ensure respect of their fundamental human rights and freedoms during their stay in the prison system. Our recommendation has been taken into account. Although preventive measures, such as early detection of potential victims of prison violence and analysis of factors that may affect the risk of abuse (e.g. the choice of penal institution, work engagement, increased security supervision etc.), cannot solve the problem, they represent a step in the right direction.

1.1.2. NPM ACTIVITIES IN THE PRISON SYSTEM

In 2018, we visited the county prisons in Pula and Karlovac, Glina and Lepoglava state prisons, Zagreb Prison Hospital and Požega State and County Prison[1] without prior notice. The visits to the Prison Hospital in Zagreb and Požega State and County Prison were regular, whereas the purpose of other visits was to establish the level of implementation of warnings and recommendations issued after the previous visits. We issued 85 recommendations and warnings with the aim to promote prevention of torture and other acts of cruel, inhuman, or degrading treatment or punishment. The final evaluation of their implementation will be made after we receive all the necessary feedback. If, during the visits, we realized that the certain recommendations and warnings had not been implemented, they were highlighted once again in the individual reports.

Warnings to COPSPD	Recommendations to COPSPD	Warnings to the penal institution	Recommendations to the penal institution	Recommendation to the MH
10	19	17	38	1

[1] Throughout the report, the term "Požega State and County Prison" has been used because the visit had taken place place in July 2018, i.e. before it was divided into two separate penal institutions (1 October 2018).

Accommodation conditions

According to records of the COPSPD, as of 31 December 2018, in high security units in 10 out of 14 prisons, the occupancy rate stood at 100% or more. As in 2017, the highest occupancy rate was recorded in the Osijek Prison (a staggering 161%).

The majority of the visited institutions in high security units could not meet the set spatial standard (4m2). Many prisoners voiced their concern over this. Furthermore, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) lays down a threshold of 6m2 as a minimum standard for personal living space in prison establishments. This rule is taken into account in the Pula County Prison and the Lepoglava State Prison, for instance. The situation is aggravated by the fact that lavatories are not completely separated from the rest of the room in some penal institutions. This is the case with the county prisons in Karlovac, Pula and Požega. Prisoners pointed out to the scale of the problem. The lack of privacy when having to go to toilet, bad odours that spread to the rest of the room, even during meal time, degrades them.

Only one room is equipped with a toilet in the Prison Hospital. Prisoners who are accommodated in other rooms have to use shared facilities scarce in number. At times, as many as 40 prisoners are forced to share two toilets. More often than not, one is clogged. Urinal bottles are placed underneath all beds in shared cells for men, even if this has no medical justification. The majority of them were not emptied.

Overcrowding has a negative effect on many aspects of prison life. For example, in this setting, it is difficult to separate smokers from non-smokers or certain categories of prisoners. Given the lack of space and large number of persons with mental disorders, patients suffering from somatic illnesses are grouped together with mental health patients without somatic symptoms. This arrangement makes any treatment options rather difficult.

Even though penal institutions, larger ones in particular, purchase clothes and shoes for prisoners, during our visits, prisoners complained about the fact that they had not been equipped with these items in line with the Ordinance on Underwear, Clothes, Shoes and Bed Linen for Prisoners. Also, they say that the existing clothes and shoes are all worn out because they are not replaced with new items after the set deadline. A prisoner in the Lepoglava State Prison said that he had been wearing working shoes too big for him that he had inherited from another prisoner. In addition, very many of them were not provided with duvet covers. Some of them used their own. Just few of them said that the penal institution had secured one for them, although this was a requirement laid down in the Ordinance.

Treatment work with prisoners

The penal institutions we visited lacked treatment officials. The shortage was most severely felt in the Glina and Lepoglava state prisons. The situation became worse compared to 2017. Despite the fact that three officials were employed in Glina, the prison still needs more of them because four officials had taken long sick leaves. Currently employed officials have to step in to replace their colleagues who are absent. At times, they have to cover groups up to 100 prisoners and this makes any form of systematic work completely impossible. They are obliged to respect deadlines in terms of prisoner-related administrative tasks so they cannot work inside wards as much as necessary. Unsurprisingly, some prisoners pointed to the lack of treatment officials as the main reason for their limited availability in an anonymous survey. As a rule, prisoners talk to treatment officials at their request only. Usually, these meetings are very short. Accordingly, in the first three months of 2018, treatment officials recorded an increased number of disciplinary breaches of prisoners. This can be accounted for by the fact that treatment groups have become larger in size and that the officials cannot physically be present in wards as they used to be.

Compared to 2017, in 2018, in the Lepoglava State Prison, fewer officials were engaged on the implementation of individual programmes of execution of prison sentence. In that respect, at least five new persons have to be employed to ensure smooth work. For this reason, the size of treatment groups increased to cover approximately 44 prisoners (an increase of seven prisoners compared to 2017). Since this penal institution, inter alia, accommodates prisoners serving long prison sentences, high-risk prisoners and recidivists in its high security unit, i.e. highly demanding and complex in terms of treatment work, it is urgent to ensure sufficient number of treatment officials with the right competences: psychologists, social pedagogues and social workers.

Despite shortages of experts, additional efforts have been made to step up treatment activities in the ward under increased security supervision in the Lepoglava State Prison and the ward accommodating drug addicts in the Glina State Prison.

Also, insufficient space in wards for treatment officials’ work with prisoners remains a problem. The Zagreb Prison Hospital lacks adequate premise for treatment work with persons deprived of liberty and special rooms for leisure activities. In addition, no one among treatment officials within the treatment department, except the head, has his/her own room., so officials and prisoners talk in corridors, in the hospital ambulance or sitting room, if empty. These conditions make their work much harder. The Karlovac County Prison is a good case in point: a premise for treatment work located in the ward was turned into a room for accommodation of persons deprived of liberty. The treatment official is thus constrained to talk to prisoners in the dining room used by judicial policemen. Such a practice is indeed unacceptable.

Foreign citizens who do not speak Croatian account for a significant number of detainees in the Karlovac County Prison. Treatment officials have adapted their work accordingly. These prisoners do not have to submit a written request if they need to talk to the treatment official. All they have to do is to inform the judicial policeman about it and the treatment official is summoned upon request. Also, the official sometimes visits the room where foreign citizens are kept on his own initiative to check whether he needs to intervene. This practice could be a good model that others might follow.

Some of the prisoners are still very dissasified with the procedure of making decisions about privileges. They question its impartiality and they do not understand why prisoners with the same level of performance do not enjoy the same privileges.

Although there is no systematic solution to the problem regarding the completion of primary education on the part of prisoners, the Glina State Prison could be a role model. This prison, in cooperation with the adult education institution Karlovac Public Open University (POUKA), has stepped up activities in terms of their primary education. The programme is financed by the MSE. Travel costs are borne by POUKA. Six prisoners that we talked to were satisfied with the programme. They were not happy with the fact that lessons took place once a week only.

Staff at the Karlovac County Prison is very much engaged to motivate detained juveniles to continue education. For instance, in 2018, one of them completed primary and started secondary education programme while detained for three months.

Some of the prisoners are still very dissatisfied with the procedure of making decisions about privileges. They question its impartiality and they do not understand why prisoners with similar performance evaluation of implementation of individual programmes of execution of prison sentence do not enjoy the same privileges. Some penal institutions do not adopt written decisions on the type and scope of privileges. This is the case with the Glina and Lepoglava state prisons. In the Požega State and County Prison, at the level of the Treatment Department, the head adopts three written decisions on the performance evaluation of implementation of individual programmes of execution of prison sentence for female prisoners. The decisions pertain to the three types of different security levels (high, medium and low) at the department with individual evaluations of implementation of individual programmes of execution of prison sentence for all female prisoners and relevant privileges they can obtain. A treatment official orally informs each female prisoner about this.

Healthcare

As indicated in our previous reports, systematic problems in terms of prisoners' healthcare still represent a problem.

Neither the Požega State and County Prison nor the Pula County Prison made provisions for administration of therapy by healthcare practitioners (nurses/medical technicians) only. Big efforts have been made in the Pula County Prison to change this, but due to changes in working hours and given the existing number of employees, they administer therapy on all days apart from Saturday evening and Sunday, when this is done by judicial policemen. This is also the case with the Požega State and County Prison, where judicial policemen administer therapy over the weekends and on holidays.

In line with our recommendation, to ensure privacy during a psychiatric examination in the Pula County Prison, a special room with glass windows has been set to allow for visual monitoring, without having to ensure physical presence of the judicial policeman inside the room.

Judicial policewoman is not present during medical examination of female prisoners conducted in the Požega State and County Prison, but she attends all the examinations and small scale surgeries in health facilities outside the prison. Female prisoners are particularly disturbed by the fact that she remains inside the room during gynaecological examination. This practice is unacceptable and amounts to degrading treatment.

A judicial policewoman is not present during medical examination of female prisoners conducted in the Požega State and County Prison, but she attends all the examinations and small scale surgeries in health facilities outside the prison. Female prisoners are particularly disturbed by the fact that she remains inside the room during gynaecological examination. This practice is unacceptable and amounts to degrading treatment. Privacy must be maintained for female patients during medical examinations. Presence of a judicial policewoman must be ensured only upon the physician's request.

On her field visits to the Pula County Prison, a psychiatrist does not check upon all the prisoners who requested examination, but only those deemed as urgent according to the prison physician. Rather than focusing on each patient for ten minutes only, the psychiatrist examines as many patients as she can, taking into account professional guidelines on the duration of examination.

After talking to persons deprived of liberty, we realized that there was still huge interest for psychiatric examinations, especially in case of those who had been incarcerated for the first time and who had problems adapting to the new environment. Yet, they stated that the psychiatrist was not readily available. This was true of the Karlovac County Prison and Požega State and County Prison.

The Zagreb Prison Hospital has experienced severe shortages of healthcare staff. The current situation is alarming due to the number of specialists, psychiatrists in particular, who have left. Out of eight previously engaged, only one has remained. Two external specialists have been engaged on the basis of a temporary service contract.

The Zagreb Prison Hospital has experienced severe shortages of healthcare staff due to the number of specialists who have left. The current situation is alarming, especially in terms of the number of employed psychiatrists.

Physicians are available round the clock. One is always on call after the regular working hours (7.30-15.30) and is in charge of taking care of all the hospital patients. Physicians on call may be different specialists. Regardless of their specialisation, they are in charge of all the urgent cases, based on the severity of condition. For instance, if a surgeon is on call, he/she is required to take care of a psychiatric patient with acute condition, intervene in case of an epileptic seizure or drug withdrawal episode. By the same token, a psychiatrist will face similar problems when having to intervene if a patient has a condition that pertains to the branch of internal medicine (blood sugar regulation, small open wound that needs stitching etc.). There are also problems in terms of technical equipment, available space for examinations and interventions and continuous medical training on emergency and invasive medicine that all physicians on call have to undergo.

Work arrangements also partially account for the shortages of physicians because they combine regular working hours (8 hours) and shifts (12-hour working day, 24-hour break, 12-hour night shift, 24-hour break). A random selection of physicians' working hours shows that some of them are not engaged during regular hours over a course of couple of days. Since the work with hospitalised patients can only be performed during regular hours, physicians do not maintain continuity in interaction with patients. Plus, this practice results in longer hospital stays. It remains unclear whether this type of work organization meets the criteria of medical profession.

Faced with shortages of doctors, institutions cannot ensure smooth work with patients in line with medical standards even if the existing staff works overtime. For instance, in the public healthcare sector, a psychiatrist covers 10 hospital patients. In case of the Prison Hospital, one psychiatrist, and two who work partially to assist him, work for some 130 hours a month and are in charge of over 80 patients. This practice is unacceptable.

Given the specific nature of the prison population, one can say that physicians work under special working conditions. Availability of doctors in the Prison Hospital may be improved only partially by relying on overtime arrangements. However, this solution should only be temporary. To solve the problem in the long run, more physicians should be employed.

Maintenance of order and security

According to records of the COPSPD, 1,931 special measures for maintenance of order and security were implemented last year. Means of coercion were applied in 56 cases. This represents a 16% increase compared to 2017

	2014.	2015.	2016.	2017.	2018.
No. of PDL (*as of 31 December*)	3763	3306	3079	3190	3239
Special measures	1968	1769	1775	1656	1931
Means of coercion	59	53	57	46	56

Even though these figures are not always indicative of higher repression in the prison system, once again, they do point to the lack of uniform procedures that we have been highlighting for a number of years now. For example, a special measure involving accommodation in the specially secured room free of dangerous objects was applied on 32 accounts. The measure was not applied at all in two largest penal institutions (Zagreb County Prison and Lepoglava State Prison), whose joint capacity amounts to 1,149 prisoners. On the other hand, it was applied in as many as nine cases in the Šibenik County Prison (capacity of 119 persons). Furthermore, large differences were observed between two largest high-security state prisons in terms of the measure "isolation from other prisoners". The measure was implemented in 187 cases in the Glina State Prison, twice as much as in the Lepoglava State Prison (94 cases).

Inconsistent criteria of application and/or implementation of measures that additionally violate prisoners' rights and freedoms have multiple negative effects because they produce feelings of injustice and arbitrariness, as indicated in our previous reports. The problem is even worse if this situation occurs in the same penal institution. For example, the Treatment Department in the Požega State and County Prison for female prisoners includes just one room for isolation. The room size does not exceed 8.52 m2. If the measure is applied for several prisoners at the same time, some of them stay in a solitary confinement room (3.92 m2 in size) in much worse conditions and this puts them in an unequal position.

Even though in previous years we pointed to irregular medical supervision when implementing special measures and referring prisoners to solitary confinement rooms, the problem has remained. For example, in Pula County Prison solitary confinement is interrupted on Fridays or Saturdays. Prisoners are then referred back to the solitary confinement room on Mondays because medical supervision cannot be provided over the weekends. The same applies to the Glina State Prison. Solitary confinement for shorter periods of time is usually employed on working days to ensure medical supervision. Also, the problem occurs in the Požega State and County Prison and Lepoglava State Prison.

Since in our 2017 Report we pointed to an increase in implementation of the severest special measure – isolation – and lack of frequent and detailed assessment of its implementation, the fact

that it was not implemented at all in 2018, is a positive sign. This is not to say that it should be abolished altogether, but rather, to keep in mind the necessity and purpose of its implementation.

Since there is no list of persons who underwent thorough searches, some prisoners are more likely to be subject to searches compared to others for no apparent reason. It is clear that these searches must be conducted in certain cases, but treatment of this kind seems to be arbitrary and this is a worrying sign because it intrudes upon a person's privacy and sense of dignity.

Female prisoners in the Požega State and County Prison warned us about the unclear criteria applied when conducting thorough searches of prisoners after work, which is not being applied to all but to some randomly selected. Since there is no list of persons who underwent thorough searches, some prisoners are more likely to be subject to searches compared to others, for no apparent reason. It is clear that these searches must be conducted in certain cases, but treatment of this kind seems to be arbitrary and this is a worrying sign because it intrudes upon a person's privacy and sense of dignity. To make things worse, institutions do not keep records on conducted searches. Rather, a written record about removal is compiled if prohibited items or substances were found during searches. This practice contravenes the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela rules) that require appropriate records of searches, in particular, strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.

During our visit to the Zagreb Prison Hospital, we found out that a pepper spray with allowed harmless substances (coercive measure) had been used against a detainee an hour after he had been admitted to the acute psychiatric ward. The report submitted to the court, *inter alia*, stated that he had refused his therapy and judicial policeman's order to go to the ambulance At the same time, the report indicated that he had used swear words, insulted the officials and waved his hands in the air shouting: "I don't want any medications". Even though the use of coercive measures was in line with regulations, it ran counter to international rules. In accordance with the opinion of the UN Committee against Torture, member states are required to take measures to further restrict the use of pepper spray and prohibit its use, *inter alia*, on persons with mental disabilities (CAT/C/DNK/6-7, 2016). The fact that the guideline on the use of the pepper spray was issued in November 2018 can be considered a step in the right direction, since we have been calling for a clearer definition of the criteria on its use for a number of years now.

We paid special attention to instances of restraint during our visit to the Zagreb Prison Hospital. The EPSA and CPA do not contain provisions on restraint measures. Also, its use may not be based on the Act on Persons with Mental Disorders (APMA). The Zagreb Prison Hospital has tried to bridge this gap by issuing the operating procedure for application of coercive measure but adoption of this procedure remains unlawful since it deals with coercion. In addition, a lack of space and shortages of psychiatrists and nurses/medical technicians make it more difficult for the staff to carry out the restraint procedure similarly as it is conducted in psychiatric hospitals. For example, although the procedure states that restrained persons should not be among other people, i.e., they should be

isolated in a special room with increased supervision, this condition cannot be met. The Zagreb Prison Hospital is equipped with just one single bed room with video surveillance. In other words, as a rule, restrained persons stay in their rooms and this is risky in terms of safety, but may also amount to degrading treatment for the affected individual. Furthermore, regular or appropriate monitoring of restrained persons cannot be carried out due to the shortage of healthcare staff (no more than two nurses work afternoon and night shifts, plus, very often, a psychiatrist is not present). According to the available information, a doctor makes a decision on the restraint, taking into account medical criteria. The initiative often comes from the security department officials because they spend most time with persons deprived of liberty. On the other hand, one gets the impression that judicial policemen do more than just initiate the process: they influence largerly when the restraint procedure should begin or end and this is absolutely unacceptable. We have already warned the Zagreb Prison Hospital about putting adult diapers on restrained persons who do not suffer from incontinence. The CPT has done the same.

A doctor makes a decision on the restraint, taking into account medical criteria. The initiative often comes from the security department staff because they spend most time with persons deprived of liberty. On the other hand, one gets the impression that judicial policemen do more than just initiate the process: they have a say in when the restraint procedure should begin or end and this is absolutely unacceptable.

The majority of persons deprived of liberty that we talked to during our visits or that filled in anonymous surveys had a positive opinion about judicial policemen's conduct. However, as was the case previous years, they added that some individuals did not behave in a professional manner and that they humiliated them. They speak very reluctantly about prison violence. On the other hand, surveys point to a problem in that respect. For instance, as much as 57% of surveyed female prisoners serving their sentence in high-security ward of the Treatment Department in Požega State and County Prison stated that they had been attacked or threatened by other prisoners. Also, additional 19% of them said they had been threatened. In the case of the Lepoglava State Prison, 48% of surveyed prisoners said they had been exposed to physical violence and/or threats by other prisoners.

Judicial protection

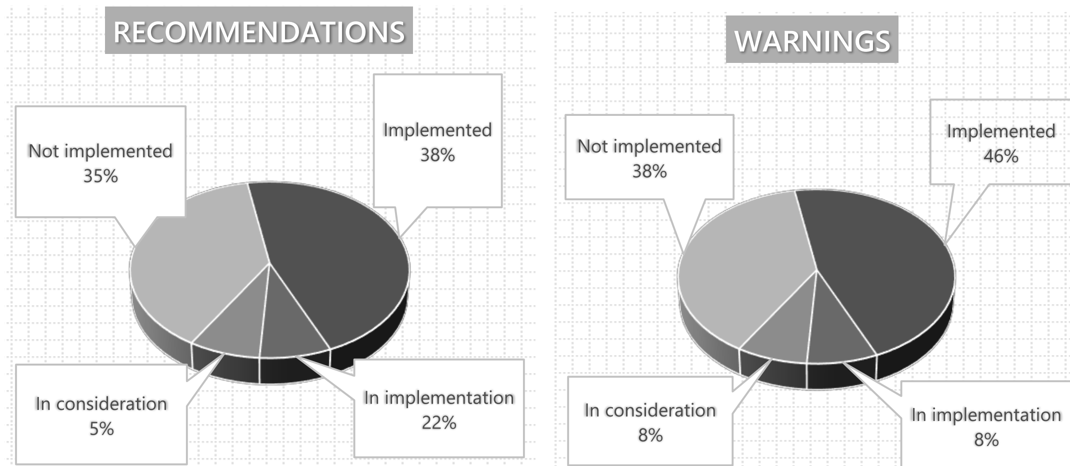
According to records of the COPSPD, in 2018, the number of complaints filed to the heads of prisons amounted to 479, which represents a 16% decrease compared to 2017. The Lepoglava State Prison accounted for the majority of complaints (54%). In some penal institutions, not a single complaint was filed. This comes as a surprise because this was a case with the Osijek County Prison, continuously rated among most crowded institutions. Prisoners on remand (1,041 of them in the prison system as of 31 December 2018) filed only 37 complaints in 2018. Such a small figure leads us to conclude that they distrust this legal remedy, i.e. they think that it cannot help them to protect their rights. The fact that they are not familiar with legal protection mechanisms only makes things worse. That is why we have repeatedly been emphasising to the COPSPD how important it is to draft a letter of detainees' rights of and translate it into foreign languages but this has not been done yet. Even though prisoners were mostly familiar with the right to file complaint, the survey respondents often indicated that they had not done that because they thought that would cause additional problems, rather than solve, which is unacceptable.

Although positive steps were observed in certain penal institutions (e.g. the Lepoglava and Glina state prisons) in terms of complaints handling, as a rule, complaints were still being addressed in a very superficial manner, without explaining the facts that the decision is based on.

Prisoners are still dissatisfied with executing judges' conduct and state that they issue decisions on the basis of penal institutions' reports only. According to records of the COPSPD, in 2018, only 53 requests for judicial protection were assessed as justified and this may also account for dissatisfaction. In all cases but one, the subject matter involved the breach of right to accommodation in line with human dignity and health standards. One request dealt with right to access medical records. Judicial protection was granted to 51 prisoners serving their sentence at the Lepoglava State Prison, one prisoner at the Pula County Prison and one at the Varaždin County Prison, respectively. Also, despite their obligations from the EPSA and CPA, relevant judges irregularly visit the prison population.

Implementation of NPM Recommendations and Cooperation with COPSPD and Penal Institutions

During our follow-up visits to the Pula and Karlovac county prisons and Glina and Lepoglava state prisons, we evaluated to what degree our previous warnings and recommendations had been implemented. Of the 16 warnings, five were issued to the COPSPD and 11 to penal institutions. Generally, over half of the recommendations were implemented or are in the process of implementation. As it was the case previous years, warnings that required significant allocation of funds, cooperation among different line institutions or legal amendments were not adopted. Penal institutions adopted 60% of warnings and the COPSPD 55%.



Of the total of 77 recommendations, 17 were issued to the MJ (i.e. to the COPSPD) and 60 to penal institutions. Almost two thirds were adopted or are in the process of implementation, but many of them have not been addressed yet and we highlighted this after the follow-up visits. Some of our recommendations focusing on strengthening the rights of persons deprived of liberty that do not call for significant investments, e.g. drafting a letter of rights of detainees, have not been dealt with and this is definitely a bad thing.

In terms of submission of reports within stipulated deadlines, we can say that our cooperation with the COPSPD and penal institutions is rather good. On the other hand, contrary to the set practice, some reports were very formal. Also, rather than informing the Ombudswoman about the actions taken without delay, these reports question or even deny the findings resulting from the visits (e.g. report of the Zagreb Prison Hospital) and this contravenes the Act on National Preventive Mechanism for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ANPM).

Of the nine recommendations from the 2017 Report, seven were adopted or are in the process of implementation and this is positive sign, but since these recommendations deal with increased protection of rights and freedoms and prevention of inhuman or degrading treatment, it is crucial to step up their implementation.

Last year, we held a presentation about the authorities of the Ombudswoman on the 32nd basic course for officers of the security department employed in state and county prisons of the Prison System and Probation Directorate. By taking into consideration the importance of continuous training of judicial policemen, the following topics were highlighted: human rights of persons deprived of liberty, Article 3 of the ECHR and ECtHR case law in cases addressing violations of rights of persons deprived of liberty in the prison system. Also, the presentation included recommendations and warnings regarding the work of judicial police, good and bad practice examples and communication skills when dealing with the prison population that may decrease the use of repression.

1.1.3. ASSESSMENT OF THE SITUATION IN THE PRISON SYSTEM

As indicated in detail in our previous reports, systematic problems in terms of prisoners' healthcare provision that may lead to violation of their rights still represented a problem in 2018.

Faced with shortages of physicians, some institutions cannot ensure continuous healthcare and they try to tackle this problem in the short run by concluding temporary service contracts. Eight county and state prisons have employed doctors. One institution engages a doctor who is employed in another penal institution whereas the other 14 rely on temporary service contracts. In that respect, the Lepoglava State Prison may serve as an example: apart from one employed doctor, a continuous engagement of another specialist with a temporary service contract has helped the Prison to cut the number of complaints about waiting time to see a doctor. Also, in 2018, this prison concluded temporary service contracts with a physiatrist and physical rehabilitation therapist. This has also reduced dissatisfaction among prisoners.

The current employment plans in the majority of penal institutions do not include sufficient staff and such situation does not allow for 16-hour availability of healthcare professionals (e.g. three nurses/technicians in the Pula County Prison). This has to be changed. In the meanwhile, by relying on the existing workforce, therapy distribution has to be ensured throughout the week, i.e. by concluding temporary service contracts, paying overtime etc. so as to avoid situations in which it is administered by judicial policemen.

Demand for psychiatric examinations exceeds possibilities to arrange them, which leads to dissatisfaction among prison population. Psychiatric care cannot be provided to all prisoners who need it, so certain conditions have to be met, e.g. additional psychiatrists could be engaged, the number of contracted hours should be increased etc.

Frequently, it takes several days for a prison to get important information about a detainee's medical history (including information about, for example, suicide attempts during detention and subsequent admission to hospital). Sometimes, a prison obtains this information from the judgement only. Poor communication of this sort makes treatment planning and assessment of risk behaviour for prisoners on remand rather difficult and this practice is indeed unacceptable.

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In our previous annual reports, we have constantly been indicating how necessary it was to legally regulate healthcare services in the prison system. In this context, we welcome the provisions of the new Healthcare Act that came into force on 1 January 2019 stipulating that the Zagreb Prison Hospital fell within the competence of the MJ and that the Hospital had a status of healthcare institution providing healthcare to persons deprived of liberty within the MJ's competence and all of the following services: pharmacy, sanitary epidemiological healthcare and in-patient treatment. The Act also lays down the provisions on healthcare departments at the level of state and county prisons that provide primary healthcare services to persons deprived of liberty in line with a general act adopted by the CHIF with previous approval by the MH. However, it is unacceptable that norms and standards in terms of space, equipment and the staff in the Zagreb Prison Hospital are set by the Justice Minister with previous approval by the Health Minister since the supervision over prisoners' healthcare is performed by the MH). Since these norms and standards have to be adopted no later than six months since its entry into force, we will pay special attention to them in 2019 because they have to be harmonized with the norms and standards regulating in-patient treatment in healthcare institutions for non-prison population to ensure prisoners' rights to healthcare whose quality and scope are regulated in the public healthcare sector for persons with mandatory healthcare insurance.

Not all prisoners are allowed to complete primary education at the level of the entire prison system. Until the problem is systematically resolved, a temporary solution might be considered: to transfer temporarily all the prisoners who want to complete primary education to those penal institutions organizing relevant programmes.

Given that phone calls to family are one of the ways in which a prisoner enjoys his right to contact with the outside world and taking into account prisoners' complaints about their price, matching those prices with market prices could be considered.

Vehicles without seatbelts are still being used for transport of prisoners, a practice that runs counter to the CPT standards on transport of persons deprived of liberty (CPT/Inf(2018)24) and in breach of the Road Safety Act and that directly increases a risk of injury.

One of the most pressing problems in the prison system regards the insufficient number of officials and this directly affects implementation of individual programmes of execution of prison sentence, level of respect of their rights and safety. Reduction in the number of employees in the state administration bodies should not apply to employment in penal institutions. In that respect, the

decision on the ban of new employment of state officials in state administration bodies should not apply in these cases.

Accommodation of several prisoners in rooms with no lavatories or with lavatories that are not completely separated from the rest of the room is contrary to the CPT standards and represents a form of degrading treatment. Even though spatial adaptations come at a cost, the fact that they are not in place must not result in inappropriate accommodation of the prison population.

Despite certain improvements, accommodation conditions, whose compliance with legal and international standards, contrary to the COPSPD's letter on implementation of recommendations from the 2017 Report, is assessed by analysing several criteria, not just prison occupancy and the set spatial standard of 4m2, still remain inappropriate. The situation is made more difficult by the fact that many penal institutions are located in old derelict buildings with a status of cultural monuments (e.g. Karlovac and Pula county prisons). A special permit must be obtained by the MC for any potential construction works and the price of works is much higher than market price. Accommodation of several prisoners in rooms with no lavatories or with lavatories that are not completely separated from the rest of the room is contrary to the CPT standards and represents a form of degrading treatment. Even though spatial adaptations come at a cost, the fact that they are not in place must not result in inappropriate accommodation of the prison population.

Inconsistencies still remain a challenge, as we have been pointing out for a number of years now. Lack of clear rules and expected treatment often causes dissatisfaction and feelings of injustice that have negative impact on fulfilling a purpose of serving a sentence. Although positive steps cannot be expected without previous adoption of new EPSA, this Act has not been adopted yet. Also, provisions of the CPA regulating detention procedure have not been amended either. This puts prisoners on remand in a more difficult position compared to prisoners.

Legal protection is still not effective enough. Once again, complaints handling boils down to quotations from regulations only, without explaining the facts that the decision is based on. The Decision of the Constitutional Court U-III-530/2017 of 2018 showed that this treatment was present not just among heads of penal institutions and the COPSPD, but also courts. The Decision found the breach of right from the Article 25 (1) of the Constitution of the RC in terms of procedure because courts failed to provide sufficient and relevant reasons and they did not protect constitutional right of the applicant to serve prison sentence in the conditions regulated by appropriate standards. The situation will remain unsatisfactory until this is changed and prison population is familiar with their rights and protection mechanisms that they can use without fear of possible repercussions.

Prisons should be a safe place, but this is not the case, given the number of complaints about prison violence. Although prison officials take measures to protect the victim and determine the circumstances of the incident after receiving notifications about alleged violent episodes, it is not sufficient to act in a reactive manner. One must not forget that, in its case law dealing with prison

violence, the ECtHR established that member states had a duty, in line with positive obligations from the Article 3 of ECHR, to take appropriate preventive measures to protect physical and psychological integrity and well-being of persons deprived of liberty. In accordance with the ECtHR case law, failure to take these measures represents breach of rights enshrined in the Articles 2 and 3 of the ECHR. Since the state has to protect life and safety of each prisoner and ensure that no one, neither prisoners serving their sentence nor officials or other prisoners, are subject to torture or inhuman or degrading treatment, National Plan against Prison Violence should be developed. The Plan should take into account the recommendations from the CPT's 2018 Report for Croatia (§31).

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We think that our cooperation with the COPSPD in 2018 was good, but there is still room for improvement, in particular in terms of implementation of our proposals, recommendations and warnings and submission of complete data. Questioning established facts and recommendations (e.g. regarding diapers put on restrained persons in the Prison Hospital, even though the subsequent CPT's 2018 Report for Croatia pointed to the same problem) does not improve cooperation or result in better respect for the rights of persons deprived of liberty.

1.2. THE POLICE SYSTEM

1.2.1. PROTECTION OF CITIZENS' RIGHTS, INCLUDING PERSONS DEPRIVED OF LIBERTY, IN POLICE TREATMENT

Complaints to the Ombudswoman

„After, let's say, two hours, I started complaining about stomach ache because I had been sitting on a chair leaning against my stomach. I was asking them to get me at least a sofa or something and they said the only thing I could get is an ambulance."

n 2018, the Ombudswoman acted in 152 cases regarding police treatment on the basis of citizens' complaints and on her own initiative. The complaints mostly dealt with omissions in the proceeding, unprofessional and unethical treatment of citizens and, as in previous years, a significant number of complaints addressed overstepping of authority in procedures involving the use of force and resulting in deprivation of liberty.

Despite earlier recommendations and warnings that in procedures involving the use of force and resulting in deprivation of liberty, police officers had to pay special attention to protect dignity of the affected person and that they should use force only proportionately and to the degree necessary to put under control persons who acted violently and/or in an agitated manner, the complaints received and investigative procedures that we carried out, clearly show that this was still not the case.

One case in particular stood out – an eight months' pregnant woman was subject to physical force who stated that she was slapped by a police officer, when carrying out the relevant procedure. The MI assessed that the use of instrument of restraint was lawful and justified. The County Police Administrationconcluded that the applicant should have assumed responsibility for her action, stating that she had exposed herself because she had failed to listen to the officers' orders, refused to give her personal data and caused disruption of public order and peace so the officers had been forced to use instrument of restraint and bring her in to the police station to ascertain her identify. On the other hand, in accordance with the Act on Police Tasks and Authorities (APTA), a person shall not be brought in and apprehended if he/she has reduced mobility on account of illness, age or pregnancy or if there is justified assumption that his/her health would thus be undermined. In addition, in accordance with the Ordinance on Conduct of Police Officers, force can be applied on a woman visibly pregnant in a very careful manner and subject to previous consultation with a physician, so the lawfulness of the bringing-in procedure, couple of hours of detention and use of means of restraint is questionable.

Furthermore, even though, in terms of persons with mental disorders, regulations lay down the obligation of special approach and attention, it has been noticed that certain police officers had treated them contrary to these proclaimed principles. For instance, a complaint regarding the overstepping of authority stated that police officers reacted after receiving a call from an old lady claiming that her neighbour was ruining the façade of her house with an axe. While conducting field work, they talked to the applicant who warned them that the man in question was actually a person with mental disorders. Soon enough, they realized that this was true once they found him in the street with an axe in his hand, threatening to kill them. Then, he locked himself inside his house, threatening violence. The situation escalated once he attacked the police officers who had used coercive measures against him: a spray containing irritating substance, physical force and restraint instruments. The proceedings have shown that, even though they knew that the man was a person with mental disorders, police officers acted contrary to the relevant Instruction on Police Treatment when Bringing in a Person with Mental Disorders to a Psychiatric Institution that requires, in case of

risk that a person with mental disorders might seriously and directly endanger his/her or someone else's life, health or safety, requesting healthcare staff to come to the scene and take necessary actions.

In that respect, the MI was sent recommendations on the need to consistently apply regulations on treatment of police officers and their further training to treat persons with mental disorders with due attention, by taking into consideration proportionality, graduality and other principles when exercising police authority. Yet, five months later, from the media was visible that our recommendations had not been considered sufficiently, since the same person almost repeated the entire incident, caused explosion and fire in his own house by activating a gas cylinder due to which he sustained severe burns, after which he climbed the roof and inflicted injuries to two policemen with a billhook.

In our earlier reports, we have warned the relevant institutions that police officers had not been educated enough about human rights and performance of police tasks and exercise of authority in terms of treatment of vulnerable groups in particular. Also, we highlighted how important it was to ensure comprehensive training for them. Despite the order of the General Police Directorate on continuous trainings for all police officers in the form of supplementary in-house training and short courses with a special emphasis on treatment of vulnerable groups, it is worrying that these trainings were not organized in 2018.

> **Installation of video surveillance in all premises of police stations in which persons deprived of liberty were accommodated or located would mean an additional protection measure against their abuse, as well as additional protection for police officers in cases of unfounded allegations of physical or psychological abuse or inhuman treatment.**

In addition, we received complaints about abuse during detention in police stations. Even though the ECtHR case law states that a state should provide firm arguments and evidence showing that the alleged abuse did not occur, complaints often raise doubts about treatment of police officers. It was not possible unequivocally determine whether they acted in a lawful and professional manner during detention in police stations and this brings into question the effectiveness of investigation. Installation of video surveillance in all premises of police stations in which persons deprived of liberty were accommodated or located would be an additional protection measure against their abuse, as well as additional protection for police officers in cases of unfounded allegations of physical or psychological ill-treatmant or inhuman treatment.

Furthermore, by taking into account the ECtHR case law regarding complaints about police violence, apart from internal control, it is necessary to carry out independent investigation by an independent external body. In these cases, the state attorney's office should look into allegations of inhuman treatment rather than base their actions on police documents only. For example, in its decision in the Štitić v. Croatia (2018) case, the ECtHR found that there had been no effective investigation

because the state attorney's office and court had not put sufficient efforts and based their actions on the statements given by the police officers. In addition, in the decision in the V.D. v. Croatia (2011), the Court found that there had been no effective investigation since the investigation had been based on police activities and evidence obtained by them, so in line with this Decision, the competent State Attorney's Office repeated the investigation. In its new Decision in the V.D. (no. 2) v. Croatia (2018), the Court found that the new investigation had been independent since it had been conducted by the state attorney's office, i.e., a body hierarchically and institutionally independent from the police, accused by the applicant for violations of his human rights. In that respect, the state attorney's office had carried out the investigations not relying on the data submitted by the police only and had taken investigatory steps that had been appropriate and effective and that could have clarified the situation and determine responsibility.

Another worrying case stood out – an incident next to the village of Donji Srb in which police officers shot a van carrying migrants, causing severe injuries to two children. Significantly enough, the General Police Directorate and Zadar County Police Administration denied the fact that police officers had known that people had been inside the van. On the other hand, quite contrary,a member of a mobile unit for border surveillance and president of the General Trade Union of the MI spoke out publicly saying that the police officers had known that the van had been used for transport of people. In that respect, it remains questionable whether the use of firearms that had caused severe bodily injuries to two children had been justified. Although the CPA concluded that the use of means of restraint had been justified and lawful, in accordance with the APTA, use of firearms shall not be allowed if it endangers lives of other individuals, unless used as means of defence against attack or elimination of danger. It is therefore of the utmost importance to ensure that, in this case and all the other cases resulting in severe injuries, as an independent body, the state attorney's office carries out effective investigation and looks into the alleged overstepping of police authority.

Another case in point involves a female citizen who turned to ECtHR complaining that the domestic authorities failed to conduct effective investigation of arson in the building she lived in 2005 and threats and harassment that she had been subject in 2010 and 2011, i.e. the general context of these events and their background had not been looked into; rather these events had been treated as isolated incidents (Vojnović v. Croatia, 2018). Regarding the threats and harassment, the ECtHR found that the domestic authorities had not approached the applicant's case effectively and comprehensively, i.e. the police had not questioned several persons whom the applicant considered to be behind the harassment, failed to pursue all the relevant leads which she had brought to their attention and concluded that the domestic authorities failed to understand or investigate the general context of the harassment in an appropriate manner.

Citizens also complain about the problem regarding the filing a criminal charge since, often, police officers refuse to accept them, claiming that the alleged criminal offences are not prosecuted ex officio or that the event does not even have the characteristics of a criminal offence. The justification

for this practice, according to the police, lies in the Article 62 (3) of the APTA stating that a police officer is only obliged to receive a complaint for criminal offence subject to prosecution ex officio. Otherwise, a police officer is obliged to warn the applicant that his/her criminal chargeis not founded and, upon the explicit request of the applicant, he/she will register the details of the charge. On the other hand, the CPA states that the chargecan be lodged to the competent state attorney's office and, if lodged to the police, the police will accept it and forward it without delay. After looking into the charge and performing the necessary checks in the State Attorney's Office Information System (IS), the state attorney may reject the criminal charge with the statement of the reasons for rejection, if it stemms from its contents that the alleged offence is not prosecuted ex officio.

It is clear that the provision of the APTA authorizing a police officer to assess the justifiability of lodging a charge and evaluating whether it concerns an offence prosecuted ex officio is contrary to the role that the CPA confers upon the state attorney. As a result, a police officer may prejudge the state attorney's decision whether a charge that concerns an offence prosecuted ex officio is founded or unfounded. The fact that the police officer may accept the criminal charge "upon the explicit request" of the applicant remains problematic because citizens cannot have the certainty that they may lodge a criminal charge to the police because they are unsure of the necessary degree of "explicitness" to have their charge dealt with. In addition, another element remains questionable – the responsibility of a police officer who assessed that an offence prosecuted ex officio had not been committed or who thought that the applicant's request had not been "explicit" enough so he did not register the details of the charge. Back in our 2013 Report we pointed to a case of a female citizen who had complained that police officers refused to address her charge regarding fraud claiming that the charge had not included any elements of a criminal offence. After we had advised her to contact the competent state attorney's office, her her charge was taken and she was a winning party in the proceedings concluded in 2018. We have registered an increase in the number of similar complaints so it is crucial, in the light of imminent amendments to the CPA, to state in them that only a state attorney may assess whether the charge even if lodged in a police station, concerns an offence prosecuted ex officio, and amend the APTA accordingly.

The Code of Ethics for Police Officers states that, when conducting police tasks, they take measures to ensure that everyone's human rights and fundamental freedoms are guaranteed in an equal manner, irrespective of their other characteristics, and its Annex lists ethical, lawful and professional conduct as values and virtues. In terms of a complaint lodged by a female citizen against a police officer on account of abuse of power since, when making official notes about interviews with witnesses, willingly and on his own initiative, he wrote what they had not said, suggesting that the applicant was a "sick person who needed psychological help", the OSOCC rejected her complaint. On the other hand, the statement of reasons leads us to conclude that, in such cases, a private lawsuit may be filed against the police officer on account of libel. In that sense, we recommended that, when establishing facts and compiling reports, police officers should act in accordance with the APTA, Ordinance on Police Treatment, Code of Ethics for Police Officers, Code of Ethics for Civil Servants and that, when exercising police authority, they respect the dignity, reputation and honour

of each individual, by acting in a professional, unbiased and civilized manner and maintain the reputation of civil service and build trust among citizens.

Oversight of police work

The effective system of civic oversight of police work has not been established yet since the relevant Commissions to handle citizens' complaints in the MI, in accordance with the Police Act (PA), had not been formed.

Given the experience with the functioning of the Commission in 2013 and 2014, during e-consultations on amendments to the PA, we have recommended that complete independence and autonomy of the MI is ensured because only this arrangement ensures independent civic oversight of police work. One can expect the Commission members to be independent and unbiased only if they are not MI employees and only if they are appointed and relieved of duty by the Croatian Parliament. Also, this is a precondition to build trust among citizens in terms of the Commission's work. In that sense, the Council for Civic Oversight of the Intelligence Services whose members are not employed in the intelligence sector may serve as a role model. Also, the Commission has to include enough members to deal with the known problems and ensure that cases are addressed in a timely manner.

In order to ensure professional civic oversight of police work, it is necessary to set down conditions in terms of qualifications of the Commission members, stating, for example, that they have to be legal experts, criminologists etc. This practice would also be modelled on the work of the Council for Civic Oversight of the Intelligence Services. The Commission's independence of the MI and high-quality work would be ensured by laying down that the Commission should be established within the Croatian Parliamentary Committee on Human and National Minority Rights, that it should be independent in its work, that its members are entitled to adequate remuneration and that the Croatian Parliament should ensure premises, equipment and administrative support for its work.

The importance of independent and professional civic oversight is highlighted in the MI's procedure when dealing with citizens' complaints about police treatment in line with the Article 156 of the APA on the basis of which the head of the relevant body should issue a decision. However, the police does not address complaints on the basis of the APA but PA only, although it states that other legal remedies may be used, not just those laid down in the PA so, basically, decisions are not being issued. In this way, courts are not given an opportunity to decide about the disputed conduct and this practice runs counter to legal opinion stating that conduct of police officers may be regulated by provisions on the complaint in the APA.

1.2.2. VISITS TO POLICE STATIONS AND POLICE DETENSION UNITS

In line with mandate of preventing torture and other acts of cruel, inhuman, or degrading treatment, in 2018, the NPM visited 20 police stations within the following County Police Administrations: Zadar, Istria, Primorje-Gorski Kotar, Virovitica-Podravina, Bjelovar-Bilogora and Split-Dalmatia Counties and their. Police Detention Units. The majority of the NPM visits were regular. The visits to the Benkovac, Obrovac and Biograd na Moru police stations were follow-up visits whose aim was to establish the level of implementation of the warnings and recommendations issued after the previous visits. Also, the NPM undertook night visits to the Split Police Station and the police detention unit of the Split-Dalmatia County Police Administration.

As a follow up, 64 recommendations and four warnings were issued. Of this, four recommendations regard follow-up visits whereas six recommendations and two warnings resulted from the above-mentioned night visits.

As a part of regular visits, accommodation and transport conditions were inspected, as well as records on persons deprived of liberty and use ofInstrument of restraint. . As previously, accommodation conditions are not completely in line with the prescribed Standards of premises in which persons deprived of liberty are located ("Standards") and the international standards ("CPT standards") that, in accordance with the ECtHR case law, may amount to inhuman and degrading treatment so the General Police Directorate started refurbishing the premises in the majority of police stations.

Regular visits

Accommodation conditions

Most of the police stations do not meet the CPT standards. For instance, some premises in Pazin and Poreč do not have access to daylight or artificial lighting, which means that persons deprived of liberty are exposed to complete darkness. In addition, some premises do not have ventilation systems in place. The dimensions of these premises is inappropriate, so the size of the relevant room in the Poreč Police Station amounts to a bed size so people inside cannot move at all. Good practice examples include the 3rd Rijeka Police Station, as well as Crikvenica, Pitomača and Grubišno Polje police stations that have clean and neat premises with direct ventilation system and access to daylight and artificial lighting. The majority of police stations have rubber mattresses, pillows and bed linen, but in the case of the Buzet Police Station, mattresses are placed on the floor with no bed base whatsoever.

Many police stations lack or have broken alarm systems so persons deprived of liberty have to wave at the camera to communicate with police officers. For example, these systems are not in place in the 1st, 2nd and 3rd Rijeka police stations. In the case of the Umag Police Station, the alarm switch

was broken. In line with the CPT standards, lack of alarm systems increases the risk of late reaction in certain incidents during detention.

The standards enshrined in the Ordinance on Reception and Treatment of Arrested Person and Detainee and Records of Detainees in Police Detention Units were partially met. For example, the Police Detention Units of the Primorje-Gorski Kotar County Police Administrations have heating and cooling systems in place, direct access to drinking water and appropriate accommodation conditions, but video surveillance also covers a part of the lavatory and this practice is in breach of the Ordinance because it represents an intrusion of privacy. On the other hand, Police Detention Units of the Istria and Virovitica-Podravina County Police Administrations can serve as examples of good practice because their video surveillance systems do not cover lavatories, yet they allow for complete surveillance of the premises in which persons deprived of liberty move, from the entrance to the building to the prison unit.

The Police Detention Unit of the Bjelovar-Bilogora County police administration includes six rooms, one of which has been adapted to persons with disabilities. The size of all rooms is appropriate and they are equipped with a special switch for drinking water that ensures direct water access.

The majority Police Detention Units do not have premises in which a custody officer receives the detained person. They also lack visiting rooms or rooms in which detained persons can talk to their attorneys. In addition, due to insufficient space, some police detention units use premises in police stations and this makes it impossible for the custody officer to monitor how the arrested and detained person are being treated.

Rights of persons deprived of liberty

During the visits, we found two persons deprived of liberty, one of whom was detained in the Primorje-Gorski Kotar. County Police Administrations. The other arrested person was located in the Bjelovar Police Station. The detainee did not complain about the way police officers had treated him, unlike the arrested person who complained about not being served a meal, although the police officers claimed that he had refused one but this was not recorded in writing. By the same token, the Police Detention Units of the Primorje-Gorski Kotar records only meals that were actually eaten so, in one case, the relevant data for a person deprived of liberty for over 19 hours was missing.

The majority of police stations have designated funds for foods or else provide lunch boxes. A positive example includes a case of providing a copy of the receipt confirming food purchased attached to the report on treatment in a criminal or misdemeanour case. However, Buje, Umag and Labin police stations do not have designated funds for meals, contrary to the CPT standards setting down a rule that food, including at least one complete meal, must be ensured at the right time, so, in line with our recommendation, the General Police Directorate submitted an order to collect advance payment at the cash desk of the police directorate to provide meals to persons deprived of liberty.

During our visits we also inspected the records. Despite our recommendation, in some cases, certain parts of the report on treatment of arrested person had still not been filled in. The same applied to the data on time of release/handing over to the court or other body because the Report on arrest and brining in to the police detention unit is delivered to other competent bodies before the person is handed over so it is rather difficult to record the exact timeline. Even though the template of the Report on arrest and brining in to the police detention unitcovers all types of treatment of arrested person, the columns should be adapted to the course of the entire procedure.

Despite earlier recommendations, records keeping is still not uniform, so some stations keep them in electronic format, others keep written records. For instance, the Pazin police station only keeps electronic records, but the data they contain is insufficient for the NPM to perform its tasks.

Orders about accommodation of a person under the influence of alcohol are regularly filled in. Also, the majority of police stations call a doctor before they detain an intoxicated person.

Contrary to the Ordinance, some police detention units still do not monitor how detainees are being treated. On the other hand, staff at the police detention unit of the Bjelovar-Bilogora County police administration fill in the form for each detainee stating the supervision time, first and last name of the detainee, his/her status and the signature of the police officer in charge and this represents a good practice example.

Night visits

In 2018, we visited the Split police stations and the Police Detention unit of the Split-Dalmatia County twice during the night to evaluate treatment of persons deprived of liberty, especially during large-scale events in the city, such as the ULTRA electronic music festival.

The Police Detention Unit of the Split-Dalmatia County includes seven rooms, two of which are not being used due to inappropriate conditions and lack of video surveillance, however, during our visits, these rooms were not locked, which raised doubts about their potential use for detention purposes. For that reason, the General Police Directorate issued an order to lock them without delay to prevent any possibility of their eventual use.

During the visit of the Police Detention Unit of the Split-Dalmatia County, the detained person had no complaints about police treatment, unlike the arrested persons in the 2nd Split police station who complained about police violence during the arrest and interrogation procedures, but, despite these allegations, they had no visible injuries or remarks in the arrest reports.

In accordance with the ECtHR case law, in case of allegations on police ill-treatment, efficient and effective investigation must be carried out to rule out any possibility of inhuman or degrading treatment so the head of the OCC of the Split-Dalmatia Police Administration was issued an

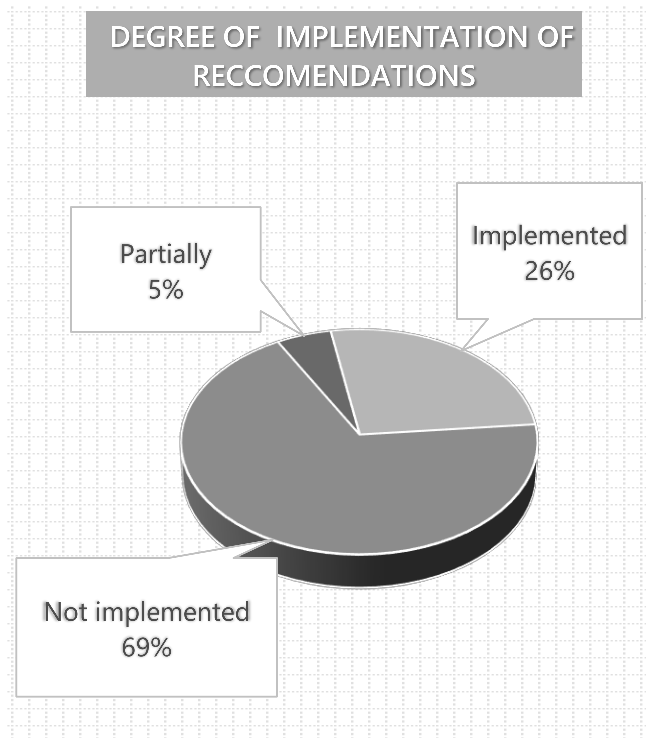
immediate order to look into these allegations. In addition, all police interrogations must be conducted in premises equipped with CCTV cameras as an additional precautionary measure to protect both persons deprived of liberty and police officers in case of unfounded allegations about physical or psychological ill treatmant and inhuman treatment.

Despite the CPT standards and the Ordinance stipulating that rooms should be equipped with means of rest and that persons detained overnight should be provided with a clean mattress and blankets, the detainees were not provided with mattresses (they were sleeping on wooden mats) so we repeated the recommendation about accommodation conditions and the General Police Directorate issued an order to the PA to purchase a sufficient number of mattresses. The lavatory in the 2nd Split Police Station is still covered by video surveillance, yet, corridors and other premises in which persons deprived of liberty move are not. Contrary to the Standards, rooms in which they are accommodated do not have access to drinking water and the alarm systems are not installed. In breach to the order of the General Police Directorate, the 2nd Split Police Station does not dispose of funds to provide meals during the arrest or accommodation until intoxicants stay in the arrested person/detainee's system. Unlike the police station, the police detention unit ensures a meal and this is recorded in writing. Also, during the detention procedure, a police officer monitors the condition of detained persons and controls their movements by video surveillance.

Follow up visits

In 2018, we visited Benkovac, Obrovac and Biograd na Moru police stations to establish the level of implementation of the warnings and recommendations issued after the regular visits in 2014. We realized that the majority of those previously approved by the MI and General Police Directorate had not been implemented, mostly due to insufficient funding for equipment of rooms in line with the standards. Yet, during our follow-up visits, we found out that the recommendations that did not call for significant investment, such as installation of alarm switches in the rooms, had not been taken into account either.

Our recommendation regarding privacy had been implemented so the lavatory space inside the rooms was excluded from the video surveillance system and this is a good practice example. Also, the Zadar Police Administration provides advance payment for purchase of food for persons deprived of liberty and the Benkovac Police Station regularly fills in and keeps the necessary documents. The Biograd na Moru Police Station has premises for detention of appropriate size with all the necessary furniture, but they need to have direct ventilation and alarm systems in place. The same applies to video surveillance in all the premises in which persons deprived of liberty move or are located.



Apart from checking the implementation of our recommendations, during the follow-up visit of the Biograd na Moru Police Station, we also checked the records and we realized that, in some cases, the data on medical therapy was missing, whereas the interpreter's signature was missing if the arrested persons were foreign citizens - these were the signs of incomplete filling in procedure and, possibly, violation of rules. In accordance with the CPA, the arrested person is entitled to translation and interpretation and emergency assistance during detention in a police station; in addition, the CPT highlights that a person deprived of liberty should be informed, immediately and in a language they understand, about the right of access to a lawyer, access to a medical doctor and the right to inform a relative or third party of one's choice about the detention measure.

1.2.3. ASSESSMENT OF THE STATUS OF RESPECT OF RIGHTS OF PERSONS DEPRIVED OF LIBERTY IN THE POLICE SYSTEM

Persons deprived of liberty in police stations and police detension units

Generally speaking, accommodation conditions do not meet the necessary standards so the General Police Directorate commenced small-scale works taking into account the available funding, such as installation of alarm switches, placing concrete floors or changing bed mattresses. For example, alarm switches were installed in rooms for accommodation in the police administrations of the Split-Dalmatia and Primorje-Gorski Kotar Counties, as well as the 1st and 3rd Rijeka police stations, Crikvenica, Opatija, Obrovac and Benkovac police stations and several police stations and police

detention unit we visited previous years. Large-scale adaptations that require significant investments are planned for 2019.

Bearing in mind that video surveillance covering all the premises in which persons deprived of liberty move or are located should be installed in the majority of police stations, the MI reported that they would continue with the upgrade of the existing and installation of a new video surveillance system. In that respect, 32 CCTV cameras were installed in police administrations and 20 in police stations. In line with the 2018 Plan, procurement procedure was launched and 70 new cameras should thus be purchased in 2019. This will also cover playbacks in OCCs so that custody officers could monitor detainees' behaviour. Also, in order to protect privacy, lavatories within rooms in the Primorje-Gorski Kotar County police administration are no longer covered by video surveillance. According to the MI report, to improve work of custody officers, equipment in the Šibenik-Knin and Istria Counties was refurbished and procurement documents for 2019 for the following police administrations were submitted: Split-Dalmatia, Virovitica-Podravina, Šibenik-Knin, Međimurje, Vukovar-Srijem and Brod-Posavina Counties.

Custody officers still perform the tasks of officials of the operations and communications centre (OCC) and this is not a best solution to the problem. Even though the MI considers that custody officers may work in the OCC in parallel, one might wonder how they can supervise treatment of detained persons when they have to perform other tasks.

Some of the police stations do not have designated funds for foods so the General Police Directorate repeated its order to collect advance payment from the police administrations and submit receipts.

The CPT's 2018 Report for Croatia states that the majority of persons deprived of liberty indicated that they had been treated correctly by police officers; however, there were several allegations of physical ill-treatment by police officers at the time of their arrest and while in detention, consistent with the medical evidence. Bearing in mind that these allegations were made also during the NPM visits, efficient and effective investigation should be carried out in line with the ECtHR case law to rule out any possibility of potential abuse or degrading treatment.

1.3. PERSONS WITH MENTAL DISORDERS WITH RESTRICTED FREEDOM OF MOVEMENT

"I am kept in hospital against my will, an institution dealing with human rights has to be informed about this. Someone has to pick me up, how can you force people to stay inside?! I need help because the doctors are keeping me inside against my will, you have to reach out to me and help me. Actually, the court ruled that I should be released from hospital on 20 May 2018 but the doctors want to force me to stay longer. That's impossible! I need you to get me out of here because I have a right to freedom, no one can treat me against my will and lock me inside. Help me!!!"

"I'm not violent, that's not true, I just fight for justice and I don't get it, I don't know how come I ended up in a psychiatric ward. Once there, they gave me therapy for schizophrenia and told me they had to transport me to another psychiatric hospital because their ward was overcrowded. The judge interrogated me while I was restrained, I think that wasn't okay. Plus, I spent 20 days on the island of Rab (location of a psychiatric hospital) where they told me I wasn't aggressive and that there was no need for staying in hospital any more. I think they shouldn't have restrained me, I think they did it simply because the police brought me in."

In 2018, we received 18 complaints by persons with mental disorders that (as previously) addressed their involuntary detention (?) and placement in psychiatric institutions in accordance with the Act on Protection of Persons with Mental Disorders (APPMD). We visited the Psychiatric Clinic of the Split Clinical Hospital Centre and Lopača Psychiatric Hospital (psychiatric institutions)[2].

Despite earlier recommendations, persons with mental disorders who do not have supplemental health insurance plans are still subject to cost sharing during involuntary placement in psychiatric institutions if their diagnosis is not covered by the CHII List of Diagnoses eligible for funding through mandatory health insurance. In accordance with the Act on Mandatory Health Insurance, CHII fully covers the costs of treatment of chronic psychiatric diseases only so the involuntary patients have to take part in cost sharing; yet, they cannot terminate treatment on their own. In addition, despite the recommendations from the 2016 and 2017 Reports on keepings special records on coercive measures that would allow for assessment of the frequency of their use, these records are still non-existent.

On the basis of complaints and the data collected during the visits, we found out that, during their admission andplacement, persons with mental disorders were not informed enough about all the medical procedures. In accordance with the APPMD, a person is voluntarily placed in a psychiatric

[2] In this chapter, the term "psychiatric institution" shall mean a healthcare institution or its unit for specialist or consultation-based treatment in the area of psychiatry.

institution if he/she is placed with an informed consent that forms an integral part of medical documents. Informed consent means giving approval for a certain medical procedure including admission, detention (? zadržavanje) and placement, as well as diagnostic procedure and treatment. However, in their complaints patients highlighted that they did not know why they were being detained (? zadržavanje) and subsequently kept in those institutions involuntarily andduring our visits, some of them said they had signed consent for voluntary placement to be released as soon as possible because they had been told they would otherwise be kept against their will - these are all signs that, during application of a medical procedure, they had not been appropriately informed about it. On the other hand, persons with mental disorders in psychiatric institutions are not informed about their rights from the Article 14 of the APPMD even though a note on information about these rights during the admission procedure is inserted in their medical documents. This is a stressful situation in someone's life, affecting the person's capability to fully understand and memorize his/her rights and the ways to protect them so they need to be informed about them later on through conversation, leaflet or information on notice board.

Furthermore, complaints showed that persons with mental disorders were dissatisfied with attorneys assigned to them by a judicial authority ex officio. They do not devote enough time to them and they do not represent them in a high-quality manner so they are much more satisfied with attorneys they engage on their own. Since, in its judgement in the Čutura v. Croatia (2019) case, the ECtHR found in particular that passive and ineffective legal representation in procedures involving involuntary placement in hospital violates Article 5 of the ECHR, court-appointed lawyers should be more actively engaged in the process and the Croatian Bar Association should highlight the need of a timely and effective engagement of attorneys when defending the rights of persons with mental disorders.

This type of limitation to freedom of movement of voluntary patients violates Article 27 of the Act on the Protection of Patient Rights setting down that a patient can leave a stationary healthcare institution voluntarily. Doctor-approved leaves should apply only if in patient's interest, due to his/her clinical condition only and if the patient gave his/her consent, as recorded in medical documents.

During our visits, we found no evidence of inhuman treatment, but instances of degrading treatment were observed. The Psychiatric Clinic of the Split Clinical Hospital Centre does not have closed wards for treatment of involuntary patients so all wards, including those where voluntary patients were placed, are locked. Patients can leave the wards only if previously approved by a relevant doctor. This type of limitation to freedom of movement of voluntary patients violates Article 27 of the Act on the Protection of Patient Rights setting down that a patient can leave a stationary healthcare institution voluntarily. Doctor-approved leaves should apply only if in patient's interest, due to his/her clinical condition only and if the patient gave his/her consent, as recorded in medical documents. Otherwise, if a patient disagrees to limitations and if limitations are considered necessary due to his/her clinical condition, assessment of criteria for involuntary placement in hospital or placement without consent should be carried out. The term "voluntary consent" means more than admission

to hospital and covers patient's continuous choice that can subsequently be brought into question by changing this choice or a patient’s psychological condition by including new, medical and legal criteria for transfer to involuntary placement or or the one without consent. Quite the opposite, the medical histories we examined, contained no data on voluntary patients’ consent to limitation to freedom of movement.

In our previous reports, we emphasised that the lack of space and technical conditions can have a significant impact on frequency of means used to limit freedom of movement and, subsequently, violation of rights of persons with mental disorders, so, in case of patients who need treatment in closed wards, we recommended to MH not to treat them in institutions that do not have these types of wards. Also, we recommended adoption of a special regulation to stipulate conditions in terms of space, staff and medical-technical equipment that all healthcare institutions or their units for specialist or consultation-based treatment in the area of psychiatry where involuntary patients are treated must comply with. These regulations have not been adopted yet so persons with severe mental disorders are still involuntarily placed in open wards.

Use of means of coercion on persons with mental disorders is allowed in exceptional cases only, in cases of extreme urgency if their or other persons’ health is endangered, only to the extent and in the manner crucial to put an end to the threat and only if non-coercive measures failed to achieve that end.

Use of coercive measures on persons with mental disorders is allowed in exceptional cases only, in cases of extreme urgency if their or other persons’ health is endangered, only to the extent and in the manner crucial to put an end to the threat and only if non-coercive measures failed to achieve that end. In these cases, in line with the Ordinance on Types and Methods of Use Coercive Measures against Persons with Mental Disorders, all patients are entitled to protection from restricted movements or isolation, if unfounded from a medical point of view. Yet, as a rule, patients accompanied by police officers and brought to the Psychiatric Clinic of the Split Clinical Hospital Centre are restrained, sometimes in the course of several days and nights, even when they sleep, to prevent future episodes of aggressive behaviour, justified by shortages of medical staff and alarm systems and switches. In addition, medical documents do not include records on a de-escalation procedure that should have been carried out before resorting to coercive measures, i.e. all the other alternatives were not applied. In line with the ECtHR case law in the Bureš v. Czech Republic (2012), a coercive measure is a serious measure which must always be justified by preventing imminent harm to the patient or the surroundings and must be proportionate to such an aim, so the healthcare staff should be trained in applying de-escalation techniques and treatment of aggressive patients and provisions of the APPMD and Ordinance.

We also observed treatment contrary to the regulations and international standards, as indicated in our earlier reports, so the restraint procedure does not include at least five persons, as set down in the Ordinance. As a rule, persons are restrained in their rooms, with other patients and this practice is risky in terms of safety and may produce feelings of low self esteem and degrade the affected

person. Despite the recommendations from the 2016 and 2017 Reports, special records on coercive measures that would allow for assessment of the frequency of their use were still not kept.

Accommodation conditions in psychiatric institutions we visited were inadequate and contrary to the CPT standards and recommendations, in particular in case of the Lopača Psychiatric Hospital in which, due to the lack of space, after a fire had broken out, patients were placed in old pavilions. Even though some patients were transferred to the psychiatric institutions and new admissions were cancelled, the conditions we observed do not meet those enshrined in the Ordinance on minimum conditions in terms of space, staff and medical-technical equipment necessary to provide healthcare services. For example, rooms do not provide a minimum of privacy to patients, sitting rooms were converted to rooms for accommodation, wardrobes and nightstands are scarce. The number of bathrooms is insufficient. These conditions do not allow for creation of positive therapeutic environment and make treatment and rehabilitation much harder and may amount to degrading treatment. In addition, there were differences among certain wards in the Psychiatric Clinic of the Split Clinical Hospital Centre in terms of accommodation conditions, so the clinical ward of the clinical psychiatry department does not meet the physical and technical standards laid down in the Ordinance.

This leads us to conclude that violation of human rights sometimes result from scarce physical conditions and resources, lack of knowledge about the APPMD and international standards and, at times, due to normative shortcomings. Funding has to be ensured and continuous trainings must be carried out; in particular, appropriate technical conditions for involuntary patients must be provided so that their rights are not unjustifiably curtailed.

1.4. HOMES FOR THE ELDERLY

In 2018, we paid unexpected visits to decentralized homes for the elderly in Rijeka, Beli Manastir and Vis in order to ascertain the level of respect for the human rights of the users, with special attention paid to situations that might constitute limitation of freedom of movement. The visits also focused on two specific issues: health care and nutrition of users. The visits to the homes in Rijeka and Beli Manastir were follow-up visits that aimed to check whether the warnings and recommendations issued during previous visits were implemented. The Home in Rijeka was certainly an example of good practice because numerous changes were implemented since the 2015 visit, which significantly improved the quality of service.

Accommodation applications and contracts are signed by the users, and in some cases by the payers as well, by which the homes complied with the recommendations given during previous visits. Namely, during these visits it was noticed that the accommodation contracts were not signed by the elderly themselves, but by the family members, especially the ones participating in the costs. The consent of the family members cannot replace the consent of the future user, and any case of involuntary accommodation constitutes limitation of freedom of movement without a legal basis.

In general, homes for the elderly provide accommodation services to users suffering from Alzheimer's or dementia, but very rarely report and charge for this service because they do not meet all the requirements for opening specialist wards for accommodating people with dementia, and therefore cannot hire a sufficient number of staff. These users are accommodated together with bedridden or semi-mobile users in the same ward, which is against the Ordinance, according to which people with dementia should be placed in a special accommodation unit with interior that would have a stimulating effect on them.

The lack of staff is still an issue. For example, in Beli Manastir 38% of the nurses and 37% of the caretakers are missing, which makes it difficult to perform everyday tasks. Furthermore, homes for the elderly in general provide accommodation services to users suffering from Alzheimer's or other dementia (middle/moderate stage of disease), but very rarely report and charge for this service because they do not meet all the requirements for opening specialist wards for accommodating people with dementia, and therefore cannot hire a sufficient number of staff. The users with dementia are therefore accommodated in the same ward with immobile or semi-mobile users, which is unacceptable because according to the Ordinance on Minimum Conditions for the Provision of Social Services people with dementia must be provided with one unit accommodating up to 20 users at most, and one bedroom can have up to two beds. It is also necessary to ensure the proper interior design that would have a stimulating effect on them. All this necessarily reflects on the violation of rights of the users, and also makes employees overburdened.

Inadequate accommodation conditions can also impact users' safety. For example, in the Home in Beli Manastir the Stationary Department still has six rooms with four beds on the ground floor, which is not in line with the Ordinance because bedrooms for the users of third level of care can have up to three beds. There is little room between the beds, wheelchair access is difficult, and the users say that when the ambulance arrives this makes ambulance stretcher operation difficult. Although they are equipped with call systems, almost none was functional at the time of the visit. It is of particular concern that bedridden and users with mobility issues were accommodated in the attic rather than on the ground floor, which makes evacuation significantly more difficult.

On the other hand, an example of good practice is the Home in Vis where each floor has warning and emergency exit signs. Emergency call systems (SOS alarms) in the rooms signalise the head nurse's room and show the time of the alarm, user's room and bed number.

Bedridden and users with mobility issues who do not use wheelchair independently, as a rule spend their days in bed, they get up very rarely, and only go out during visits, with the help of family members. One user said that caretakers did not want to put her in a wheelchair because she could not get dressed on her own so she had to ask for help from other mobile users. On the other hand, the employees said that they did not lift the users up because the users did not want it, but during the visit the NPM members did motivate some of them to get up. Therefore all persons, except for those with clear medical contraindications, should be encouraged to get out of bed, which was pointed out to the acting director of the Home in Beli Manastir. Soon after the visit he notified the NPM

representatives that he requested for a plan to be drafted according to which all bedridden and users with mobility issues should be taken out for some fresh air, if their health conditions allowed it, and that the users already spent some time outdoors. None of the users refused it, and they expressed their joy by singing.

Furthermore, it was noticed that the users in the Stacionary Department were served their meals in their room on the bed, although house rules allow them to eat in the dining room, which the majority would gladly do. Following the recommendations, all persons in stationary care in the Home in Beli Manastir are now enabled to eat in the common living room, if they wish to do so. This Home has, after the follow-up visit, implemented most of the recommendations and suggestions in a very short time and it is an example of good collaboration with the institutions we visit.

Based on the insights and analysis of the existing menus, it is obvious that, in most cases, equal diet menus are only used with those users who cannot have standard nutrition, regardless of the health condition in question. The menus should therefore be tailored in line with the doctor's recommendations.

It is furthermore worrying that the users are not provided with physical therapy in line with the Ordinance and regulations regulating the right to physical therapy at home. So, for example, in the Home in Vis, a lady who had broken her hip did not have physical therapy at all. She spent all her days in bed, although she wanted to get out of the bed and go to terrace to get some fresh air, but burdened by their everyday work, the nurses did not have time for that. One user in the Home in Beli Manastir also complained about the lack of physical therapy, because although she had the right to have physical therapy at home five times a week, which is covered by the compulsory health insurance, she did not exercise this right, but had physical therapy with the physical therapist from the Home twice a week. The users to whom the CHIF has granted the right to physical therapy at home have to be able to exercise that right, and the Home should contact a contractual private healthcare professional or institution that provides physical therapy at home.

It is also an unacceptable practice to have employees, for example in the Home in Beli Manastir, bathing two persons at the same time in a common bathroom, without using screens or curtains. Screens or curtains are also not used during the provision of nursing care in shared rooms, and such treatment is humiliating. However, after the warning, the Home has changed such practice.

Homes still have not set up procedures following users' complaints in accordance with the SWA and Ordinance on Social Service Quality Standards, i.e. they do not keep separate records on complaints, actions taken and the resolution of the complaints, which is necessary. Complaints are mainly communicated orally, solved informally and on the spot, and the users are usually informed about the

outcome only orally as well. It is therefore necessary to harmonize the existing internal acts with the SWA and Ordinance on Social Service Quality Standards.

It is furthermore unacceptable that, for example in the Home in Vis, a permanent or temporary residence at the Home address is registered only for those users who are placed in the home by the decision of the SWC, and not for those placed on the basis of a contract, because in accordance with the Residence Act the Homes are obliged to register at the police station the residence of all the persons to whom they provide accommodation services for more than three months.

1.5. APPLICANTS FOR INTERNATIONAL PROTECTION AND IRREGULAR MIGRANTS

"The first time I entered the Republic of Croatia I was pregnant and accompanied by my husband and three underage children. We were walking for 15 – 20 km. Before entering Glina we were stopped by a police vehicle. As soon as the policemen stepped out of the car we asked for asylum and we told them that the children were hungry because they hadn't eaten for two days and had been walking for 10 hours. They told us not to worry, that everything was going to be OK. They took our cell phones, removed the SIM cards and put everything in a plastic bag. After that they called for backup and when it arrived, two cars took us back to the green border with Bosnia and Herzegovina. They left us between two minefields and made us go back to Bosnia and Herzegovina, all the while yelling, dragging and pushing us."

Migrations are a defining factor of our globalizing world, a source of prosperity, innovations and sustainable development. However, in recent years and despite all this, many countries have witnessed the rise of anti-immigration movements, xenophobia and hate speech, as well as strengthening border security measures, whereas protecting human rights of migrants is becoming less important.

Although the 2016 agreement between the EU and TurkeyEU-Turkey statement reduced the number of entries of migrants and applicants for international protection on through the so-called Balkan Route, the route has remained open nonetheless, and migrants still use it to reach the desired destination countries, while the transit countries are trying to stop such movement by strengthening border police capacities. Besides, the EU sought to tackle migration pressure with the permanent quota relocating mechanism, a common list of safe countries, effective return policy for irregular migrants, i.e. the reform of the common European asylum system, as a more adequate response that would prevent secondary movements and provide stronger support to the most affected member states, states of first entry. Although the reform began in 2016 it has not yet been completed because the member states cannot agree, inter alia, on the mechanisms of division of responsibility-sharing and solidarity, inter alia. On the other hand, the existing mechanism of relocation and

transfer resettlement of refugees also proved to be insufficient, and the countries of the so-called Visegrád Group opposed it, which is why the EC launched legal proceedings against the Czech Republic, Hungary and Poland before the European Court of Justice in 2017, which have not yet been completed.

According to the UN data, it is assessed that, since 2017, over 68 million people have been on the move annually due to wars, threats and climate changes. As migration movements cannot be effectively managed only at the national or regional level, the Global Compact for Safe, Orderly and Regular Migration (Marrakech Agreement) was adopted in December 2018. It primarily points to the factors due to which people leave their countries of origin and seeks cooperation between countries, primarily in the region, and then beyond, as well as for flexibility and accessibility of regular migration routes, in order to enable their stay in the destination country in cases when they have to leave the country of origin. Although not legally binding and based on respect for state sovereignty, division of responsibility-sharing, non-discrimination and human rights, it caused disputes controversies among the countries, even some EU members, which did not want to sign it despite the fact that 90% of refugees and other forced migrants in the world remain displaced in their own or neighbouring countries. The Marrakech Agreement explicitly recognizes the role of national human rights institutions, authorized to investigate and monitor complaints about the situations in which migrants are systematically refused or prevented from accessing basic services, etc.

The effectiveness of the investigation on the failure to conduct legal procedures

At the time of reapplication of the Dublin and Eurodac Regulation and aiming to meet the requirements for full Schengen membership as the key strategic objective, the RC decided to reduce the number of migrants and applicants for international protection, increase border police capacity with the aim of stricter state border control, primarily the one with Serbia and then also with Bosnia and Herzegovina. At the same time, the Ombudswoman received complaints about the return of migrants to Serbia and Bosnia and Herzegovina without conducting legal procedures, i.e. initiating the procedures for international protection or issuing measures to ensure the return, accompanied by translation and assessing individual circumstances of the case. Such complaints were followed by the statements in the media and by CSOs.

Especially worrying are the complaints referring to police treatment of migrants apprehended in irregular crossing of the state border or immediately after, which are very similar and usually begin with allegations of crossing the state border, apprehension on the territory by police officers, seeking international protection and ignoring such requests, pushing in the van and even beating, even with batons, taking money and all valuables, destroying cell phones, either by destroying the charging port with a screw driver or by pouring water over it, and returning through the green border, without conducting any legal procedure. However, some of the complaints referred to the treatment in police stations, after which the migrants, even though they had been issued a return decision with a deadline to voluntarily leave the European Economic Area, they were taken to the green border and forcibly returned.

There is also a number of worrying treatments regarding the implementation of return measures, which prevent or significantly hamper the process of applying for international protection. Namely, following the General Police Directorate's order of 15 February 2017, irregular migrants apprehended within the territory are taken to that police station at whose territory they crossed the state border, to define the circumstances of border crossing, previously to the police stations on the border with Serbia, and in 2018 also to the ones with Bosnia and Herzegovina. For example, during the NPM's visit it was found that 594 persons were transported from nine police administrations and 27 police stations to Donji Lapac Police Station in May and June 2018. Also, the same as in previous years, and despite recommendations, the records still do not show whether and which actions were taken, to investigate the circumstances of crossing the state border, which was precisely what the MI emphasized as particularly important. Furthermore, in almost all cases of administrative procedure reviewed during the visit there was no record of the time when irregular migrants were brought in and released from the station, whether they asked for international protection and whether they required medical assistance. In one of the few records that mentioned the time of release from the station, a video record was also reviewed, but this event was not visible at that time, nor immediately before or after. As some persons were transported from remote parts of Croatia, due to the lack of official notes in the record it was not possible to check whether their freedom of movement was limited for more than 24 hours, which is the longest they can be detained in the procedure of issuing the return decision.

Upon completion of the procedure, police stations where the state border has been crossed issue the migrants a return decision with the deadline to leave the EEA within seven days. However, the majority of them cannot do it within the deadline because they do not have identification documents on them and they were returned to a police station/border police station near which there is no public transport, in sparsely populated areas. Additionally, they cannot obtain travel documents or papers because there are no diplomatic or consular missions in the RC. Thus, everything points to the conclusion that the purpose of transporting them to remote and transport-isolated police stations is to remove them from Croatia through the green border. The return decisions issued within such procedure are not recorded in the Register of measures taken towards foreigners, and in order to obtain data on their number and stations from which they were brought one must count individual cases within stations. This makes it difficult to use data on the number of illegal border crossings on a specific part of the state border and subsequent travel routes (which apprehension points might indicate) in monitoring the migration movements through the RC. Therefore, we did not get the data from the MI on the number of migrants to whom such decision was issued, neither for 2018 nor 2017. In addition, the RC did not have an established system of assisted return and only in late 2018 did it sign the Direct Grant Contract for the implementation of the project "Assisted Voluntary Return" with the International Organization for Migration (IOM) within The Asylum, Migration and Integration Fund of the MI. Also, it is not planned to provide the persons in the return process with accommodation, and it is thus difficult for them to fulfil the obligation of leaving the EEA.

Parents of the children injured near Donji Lapac and two other migrants stated that the police officers forcibly dragged them out of the van, beat them and threatened them with firearms. As they started protesting against such treatment, they were, as they claim, beaten with batons and kicked for five to ten minutes until police officers realised that two injured children were in the van. Although they were cold they were not allowed to put on the clothes they had in their bags.

In 2018, there was an instance of using firearms when stopping a van in Donji Srb that was transporting 30 migrants, of which 9 children aged between 3 and 17. Two children were injured in the incident, which we write about in detail in the chapter on police treatment (?). The MI claimed in their statement that nothing suggested that irregular migrants were in the closed part of the van, although the President of the General Union of the MI stated in the media afterwards that at the time of shooting it was known that there were people in the van. This is convincing, given that in this sparsely populated area close to the state border the attention of the increased number of police officers is focused on irregular migrants and traffickers. Following this event, we received complaints from the parents of injured children, as well as from two other migrants whose testimonies were very similar and include allegations about being forcibly taken out of the van right after it was stopped and the driver ran away, after which police officers started hitting them and threatened with firearms as they were on the ground. As they started protesting against such treatment, they were, as they claim, beaten with batons and kicked for five to ten minutes until police officers realised that two injured children were in that van. Although they were cold they were not allowed to put on the clothes they had in their bags. From the documents that the MI provided regarding these complaints it is obvious that no interviews with irregular migrants were conducted and that the investigation into their allegations was based solely on the review of official notes made by police officers and their reports.

In response to other complaints, the MI merely stated that they were inaccurate and missing content, without the data and number of procedures taken to investigate them, often stating that there was the lack of precise data on the time of the events complained about. In doing so the MI, although faced with a number of very serious allegations, did not use technical equipment in eliminating the allegations. They stated that this equipment is used for border surveillance, for example thermal imaging cameras, only to define the place and time of irregular crossings, and recordings are kept only to determine the facts on the places and time of border crossing, as well as for the training of police officers. It is, however, unclear why they are also not used to eliminate the doubt about forceful, and sometimes even violent, conduct of police officers during the returns over the green border.

Also, in the case of the death of little Madina Hussiny, the MI confirmed that the thermal imaging camera recordings were not saved. The Ombudswoman sent all the findings and conclusions made in the course of her investigation to the SAO, in the context of the criminal charges filed by the Hussiny family. Although, according to the media, the decision on the dismissal of the criminal charges was taken, the SAO did not send it to us, despite our request. It thus remains unknown whether when making this decision all the recordings were taken into account, and not only of the mobile thermal vision cameras used for the surveillance of that section of the state border, i.e. the circumstances in which they do not exist. We also do not know whether it took into account the data on the movement and location of police officers by recording signal from their cell phones or other communication devices. We also forwarded the complaint to the SAO, so that he could take action under his jurisdiction, in which we stated that the Ombudswoman could not conduct the investigation as she was denied the direct insight into data, because this prevented her from doing her work, but also because of the suspicion that such conduct prevents a direct, impartial and efficient investigation. It contains, described in a manner similar to the previous ones, information on police treatment of the pregnant woman and her family, with a very detailed description of all the disturbing elements of their journey, date and place of police apprehension, allegations about policemen destroying their cell phones and ignoring their request for international protection, the use of physical force, even about being forced to cross the border between two minefields accompanied by shooting in the air to intimidate them. However, we received no information from the SAO about his decisions on the substance.

The CoE Commissioner for Human Rights and MEPs have requested the RC to conduct an investigation into the alleged collective expulsion of migrants with the use of violence and other criminal offences, where the CoE gives a figure of 2500 migrants in the period between January and October 2018.

Returning migrants to Serbia and Bosnia and Herzegovina without taking into consideration the circumstances of each individual case, and especially disregarding their need for international protection, even when they explicitly ask for it, the use of coercion measures and humiliation of migrants, constitute the violation of their human rights, and can also constitute the violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 4, 18 and 19 (2) of the Charter of Fundamental Rights of the European Union. If such conduct refers to the groups of migrants, the ECtHR also considers it the violations of Article 4 of the Protocol No. 4 along with the ECHR that, the same as the EU Charter in Article 19 prohibits collective expulsion (Čonka v. Belgium, 2002). Precisely the number of return procedures can lead to the qualification "collective", and their systematic and long-term nature additionally confirm that these are not isolated cases. The Council of Europe Commissioner for Human Rights and MEPs have requested the RC to conduct an investigation into the alleged collective expulsion of migrants with the use of violence and other criminal offences, where the Council of Europe gives a figure of 2500 migrants in the period between January and October 2018.

When it comes to conduct that points to the violation of Article 3 of the ECHR, in the case Bojcenko v. Moldavia (2010) the ECtHR has stated that the investigation is imperative, and that it can only be effective if it is carried by a body independent from state officials suspected of using torture or other cruel, inhuman or degrading treatment. Likewise, in the Mađer v. the Republic of Croatia judgement (2011) it stated that it was necessary to conduct an effective official investigation that should identify and punish the responsible ones. Otherwise the general legal ban on torture and inhumane and humiliating treatment and punishment would be ineffective in practice and in some cases the representatives of the state would be enabled to abuse the rights of those under their control without punishment (Labita v. Italy (2010) and Muradova v. Azerbaijan (2009)).

Unlawful withholding of information to the Ombudswoman

During 2018 the MI unlawfully prevented the Ombudswoman from directly accessing the cases and information on treatment of irregular migrants in the MI's Information System, which is also the only source of such information. This happened during visits and investigative procedures pursuant to the Act on the National Preventive Mechanism (NPMA) and Ombudsman Act in Cetingrad, Karlovac, Donji Lapac, Duga Resa, Glina and Gvozd police stations.

The MI unlawfully prevented the Ombudswoman from directly accessing the cases and information on treating irregular migrants , which represents a harsh violation of the Constitution of the RC, OPCAT, the Ombudsman Act and NPM Act.

Withholding concerned exclusively the cases of treatment of irregular migrants, when implementing return measures pursuant to the FA, of applicants in the procedure of expressing intention for international protection. For example, when the NPM was visiting Donji Lapac Police Station in September, the Ombudswoman personally was denied unannounced access to requested data and case files, whereby the deputy chief of the police station, also the only official person she could talk to, said that she was authorized to give one statement only: "Migrant crisis is ongoing and we are proceeding in accordance with the FA and State Border Protection Act". During other visits, the deputy and advisors to the Ombudswoman always had to wait for the "authorized person" (police administration official for illegal migration) to get oral information, access to case files and records of statistical data on, for example, implemented return measures in accordance with the FA, but were not granted insight into the MI's Information System with the records on events, treatment of foreigners and detained apprehended, transported and arrested persons, as well as with the collection of data kept in accordance with Article 204 of the FA. In some cases, not even the Chief of the police station/border police station could give the requested information, or enable access to the administrative procedure case files. In general, they usually had to wait for some time and thus miss the main point of unannounced visits, i.e. the surprise element.

The MI justifies such treatment with the Instruction on the Allocation of Passwords and Response of the IT Department and internal consultations, according to which the employees of the Ombudswoman's Institution, and even the Ombudswoman herself, could not be given direct access

to the Information System, because giving passwords and response to other persons who are not authorized constitutes a serious violation of official duty in accordance with the Police Act.

It is completely unacceptable and unlawful for the MI internal consultations and Instruction on the Allocation of Passwords and Response to constitute the grounds for denying information, since free access to all data on the treatment of persons who are or may be deprived of their liberty, as well as any other information, regardless of their level of confidentiality, by the Ombudswoman and her staff is guaranteed by the Constitution, NPM Act, Ombudsman Act and Data Protection Act.

It is completely unacceptable and unlawful for the internal consultations and Instruction on the Allocation of Passwords and Response to constitute the grounds for denial, and even after the MI was warned multiple times that the RC, having ratified the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), has obliged to enable the NPM, the work of which is performed by the Ombudswoman, unannounced visits to all places where persons deprived of their liberty are kept or who might be deprived of their liberty, as well as access to all information referring to the treatment of such persons, as well as the conditions they are in, and that in accordance with Article 5 of the NPMA, persons performing NPM related tasks shall have free access to all data on the treatment of persons deprived of their liberty. So, precisely OPCAT, NPMA and Act on Protection of Patients' Rights grant the authorization disputed by the MI. Additionally, the DPA guarantees the Ombudswoman the access to classified data within the scope of her activities as well as to other officials and public servants from her office holding a certificate.

Direct data access is of invaluable importance for conducting investigative procedures, as well as for the NPM visits, especially having in mind that the MI already submitted to the Ombudswoman information in the past which turned to be incomplete and/or incorrect which was determined by direct insight into the records of the case, which is something we already reported about. Let us remind, by inspecting individual case files during investigative procedures at a police station, treatment was found that was in contradiction to the MI's previously provided answer, whereas the submitted statistical data on the number of procedures towards irregular migrants showed a significant deviation from the ones determined by a direct insight.

Preventing the Ombudswoman in such a way from performing tasks in line with her mandate constitutes a harsh violation of the Constitution of the RC, OPCAT, DPA, Ombudsman Act and NPMA, about which we notified the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), European Committee for the Prevention of Torture (CPT) and UN Committee Against Torture (CAT).

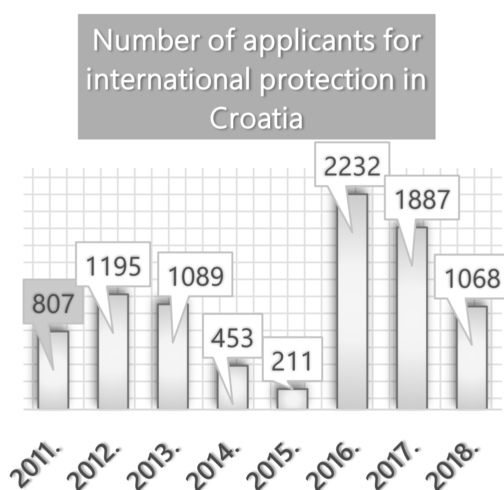
Additionally, the Ordinance on Accommodation in the Reception Centre for Foreigners was adopted in 2018 which, among other things, regulates the relationship between third-country nationals placed in reception centres on one hand, and the Ombudswoman or attorney on the other. For example,

attorneys cannot visit a person placed in a reception centre unless they have the power of attorney for representation, although they ask for a visit precisely so that a person could sign such power of attorney. A two-day advance notice is insisted upon and the time of visit is defined, which can lead to missing deadlines for filing legal remedies. This violates international standards that guarantee third-country nationals the right to unhindered access to an attorney from the very moment the deprivation of liberty occurs, without limitation and censorship, and can also constitute a violation of Article 6 of the ECHR. Also, the attorney communication and visitation regime for third-country nationals, defined by the Ordinance, is even stricter than the prison one. Namely, the Execution of Prison Sentence Act guarantees unsupervised attorney visits, which can be denied only in case of abuse. On the other hand, third-country nationals' freedom of movement is not limited by the enforcement of a criminal or misdemeanour sanction, but their deprivation of liberty is the last measure of ensuring their forced removal and return. Therefore the limitation of their rights and freedoms in reception centres should be in line with the purpose of deprivation of liberty, and not be even stricter than the one within the prison system. Consequently, this Ordinance jeopardizes the constitutional mandate of an attorney.

It is also unclear whether the restricted access to the representatives of humanitarian and other human rights organizations also refers to the Ombudswoman, i.e. NPM, which is why the MI announced that it will urgently amend the disputed provisions.

International protection

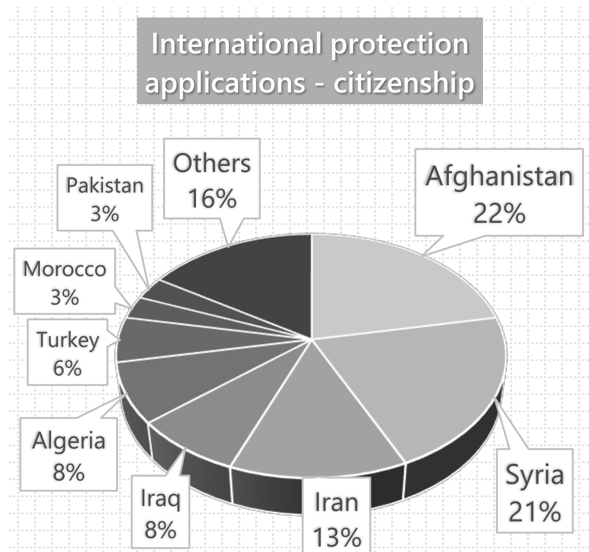
At the time of strengthening the capacities of border police and increasing state border control measures, increasing number of complaints on disabling the access to international protection and on forced return, the RC has recorded a decrease in the number of applicants by 43.4% in 2018 in relation to 2017, whereas their structure regarding their countries of origin, gender and age remained mainly unchanged. The number of suspensions of procedures for international protection is till high due to migrants leaving the Reception Centres for Asylum Seekers and the RC, and this number, similar as in previous years, amounts to 76.4%. The number of procedures that refer to unaccompanied children seeking international protection is also high because they tend to leave the Reception Centres for Asylum Seekers or institutions for education of children and juveniles, and it amounts to as much as 70.3%, whereas no child seeking international protection was granted one. In 2018, 265 international protection applications were approved, of which 240 asylums and 25 subsidiary protections. Of the total number of the approved ones, 246 were issued by the MI's decision, and 19 by the ruling of the Administrative Court. There has also been an increase in the number of decisions



adopted in an expedited procedure for persons for whom it was possible to apply the safe country of origin concept, so in 2018, decisions for 83 of them were made within two months.

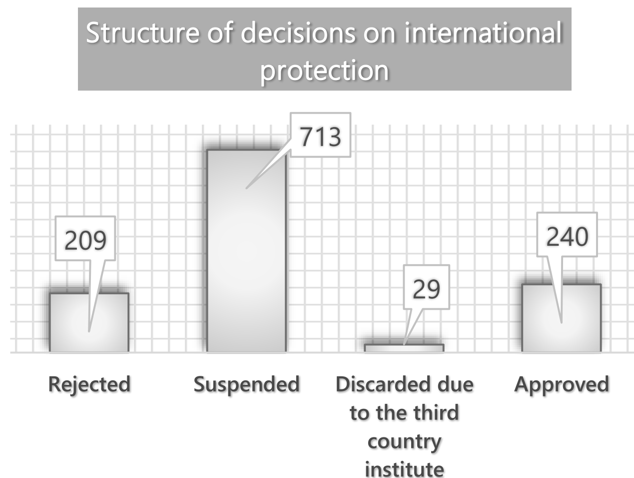
The total number of applicants with a limited freedom of movement accommodated in reception centres for foreigners amounts to 78, and for 15 of them the decision was issued by the MI Administrative and Inspection Affairs Directorate, and for 63 police administration/station, including: 35 decision on the accommodation in Ježevo Reception Centre for Foreigners and 28 for Tovarnik Transit Reception Centre for Foreigners, which does not significantly deviate from the trends of the past years. However, six asylum seekers were issued a measure of independently entering the Reception Centre for Asylum Seekers as an alternative to detention, which happened for the first time, which is certainly an example of good practice.

Also, in 29 cases the application for international protection was rejected due to the implementation of the safe third country concept. This concept was also applied to the family members of the killed girl Madina Hussiny after they were apprehended close to the border with the RC together with another 12-member family, also from Afghanistan, when after multiple attempts and violent returns they managed to apply for international protection. At the time of their apprehension, there was also an CSO volunteer, invited by the members of the family because they did not want to approach police officers on their own, because they were afraid that their request would be rejected again. However, the Misdemeanour Court in Vukovar ruled against him for assisting in illegal border crossing, but this decision is still not final. The submission of this indictment by the MI certainly contributed to increased distrust between the MI and CSO, on which we write more in the section on the role of civil society in the protection and promotion of human rights. All family members, 26 of them, of which 18 children, and even the ones aged three, applied for international protection in the Republic of Croatia and for the purpose of determining their identity their freedom of movement was restricted by a decision and they were placed in Tovarnik Reception Transit Centre for Foreigners.



While conducting the investigative procedure at Vrbanja Police Station, which issued the decision, it was found that the process of restricting the freedom of movement was being conducted in English, which the mother Muslima Hussiny did not understand, whereas the notice of legal aid was issued in accordance with the FA, and not the Act on International and Temporary Protection. Namely, the right to free legal aid when it comes to the limitation of freedom of movement foreseen in the FA differs greatly from the one foreseen by the Act on International and Temporary Protection. For example, the request for free legal aid, after the applicant chooses the provider, is decided upon by

the competent administrative court, and not the MI, whereas the conditions under which it is granted to irregular migrants are stricter. Therefore the MI was warned that the applicant and her children were not provided with access to free legal aid or judicial protection, which is in breach of Article 29 of the Constitution of the RC, Article 5 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 9 of the Directive 2013/33 laying down standards of reception of applicants for international protection. The MI characterized such conduct as a procedural mistake, although the applicants did not receive legal aid on time, so an eight-day deadline for the appeal to administrative court has passed. Additionally, the explanation of the decision that restricted movement to a mother with eight children did not clearly show which procedures were applied during the individual assessment and whether some other measures, which are an alternative to detention, could achieve the same purpose as prescribed by Article 54 (5) of the Act on International and Temporary Protection. Also, according to EU legislation, restriction of the freedom of movement must be the measure of last resort, and only applied after all alternative solutions have been exhausted, unless they cannot be effectively applied (Article 8 (2) of the amended Reception Conditions Directive (2013/33/EU)). Regarding the restriction of the freedom of movement, after the attorney spoke to the ECtHR because was not granted access to her family, a number of temporary measures were adopted which required the family to be granted conditions in accordance with the requirements from Article 3 of the ECHR, which the RC ignored (M.H. et al v. the Republic of Croatia).



Furthermore, the justification for placing these two families in the Tovarnik Reception Transit Centre for Foreigners (RTCF), i.e. to restrict their freedom of movement, was to identify and verify their identity or citizenship, although they all filled out the form no. 6, in which persons without personal documents enter their personal information. Namely, in all administrative procedures in which return decisions are issued with a deadline to leave the EEA, the MI considers that it is sufficient to fill out the form no. 6 in order to determine one's identity. Additionally, the MI thinks that filling out this form suffices in the procedure of issuing a decision regarding independent return, placement in foreigners’ reception centre and readmission to the transit country and even states that the foreigner's true identity can be established only after the country of origin issues a travel document, which is often a very long-lasting process with an uncertain outcome. However, in case of these two families, it decided that filling out the form was not enough.

Also, provision of healthcare in the Trilj and Tovarnik RTCF is organized in such a way that emergency medical assistance is called upon in case of need, without a regular visit of medical team of general/family physicians, although the obligation to perform general medical examination is rooted in the Law on Protection of Population against Communicable Diseases. Additionally, none of the

centres employs psychologists, social or healthcare workers, and having in mind that according to the MI's assessment there were 114 vulnerable persons placed in these centres in 2018, of which 78 children, appropriate health and psychological support should be secured, both by filling vacancies and by agreements with CSOs.

In conclusion, a third year in a row was marked by migrants' complaints, and media and CSOs allegations on the expulsion of migrants by using the means of coercion and neglecting their need for international protection. Preventing the Ombudswoman from efficiently implementing preventive activities for the prevention of torture and other cruel, inhuman or degrading treatment of punishment and investigative procedures following the received complaints, paired with the lack of effective investigation, not only raises suspicion about such procedures, but also eliminates any possibility of their prevention. Although the RC was required to investigate allegations of collective expulsion, one gets the impression that, the same as in previous years, instead of insisting on conducting such an investigation, the EU is insisting on strengthening the control of its external borders and introducing additional mechanisms of externalization of the international protection system, whereas the member states cannot agree on fair and joint relocation and allocation of applicants for international protection, and some of them even refuse to participate in solving the migrant and refugee issue due to strengthening of anti-migrant discourse.

1.6. DOMESTIC AND INTERNATIONAL COOPERATION AND CAPACITIES FOR THE PERFORMANCE OF TASKS OF THE NPM

International Cooperation of the NPM and Marking International Days Međunarodna suradnja NPM-a i obilježavanje međunarodnih dana

In 2018 we actively collaborated at the international level by participating in the meetings of the South-East Europe NPM Network, EU NPM Forum, IPCAN Network, etc., at the invitation of partner NPMs or international organizations. We also actively collaborated with the SPT and CPT, and the NPM's work was presented to the European Regional SPT Team in Geneva.

We contributed to the South-East Europe NPM Network meetings in Podgorica regarding the NPM status in the region and alternatives to deprivation of liberty in the context of migration, and at the EU NPM Forum in Ljubljana on the NPM impact assessment. Within the EU NPM Forum, we also participated at a Conference in Trier on monitoring homes for the elderly. We also participated at the International Conference in Tunisia, on the topic of the role of national bodies in the prevention of torture in the context of overcrowding in places of deprivation of liberty. At the invitation of the Kosovo Ombudsman we participated at the Conference in Priština on the prevention of torture of people with mental disorders deprived of liberty, as well as at the regional meeting in Milan, organised by APT and OSCE-ODIHR, on the cooperation in the context of deprivation of freedom of migrants.

Within the IPCAN network, we participated at the meeting dedicated to the security services' treatment of migrants and asylum seekers, and at the invitation of the CoE we participated at the conference in Sarajevo on the role of national human rights institutions in the Western Balkans in the promotion of human rights and prohibition of discrimination, where we presented our view on police treatment of migrants and access to international protection.

At the end of the year, we took over the presidency of ENNHRI's Asylum and Migration Working Group that focuses on the conditions at the border and migrant detention, as well as on anti-migration rhetoric and reducing the scope of activities of national institutions for human rights due to political pressures and lack of cooperation. The Working Group expressed concern regarding the direction the Council of Europe's "Draft European Rules on the Conditions of Administrative Detention of Migrants" is taking, drafted by the Committee of Experts on Administrative Detention of Migrants (CoE's CJ-DAM) to which the Working Group submitted its statement.

Within the activities of celebrating the International Human Rights Day, the Ombudswoman organized a round table at the Faculty of Law in Osijek, titled "Deprived of Freedom, but Not of Human Rights – the Importance of Cooperation in the Protection of Human Rights", dedicated to persons deprived of freedom and the role of the NPM, at which the representatives of the ministries and institutions gave their views on the importance of the NPM.

We also marked the World Mental Health Day, Day of Persons with Mental Health Disorders, as well as the International Day in Support of Victims of Torture, by publishing content on www.ombudsman.hr.

Capacities of the Office of the Ombudswoman for the performance of tasks of the NPM

In 2018, tasks of the NPM were performed by eight advisors, who also acted on the complaints of persons deprived of liberty. For special activity of the NPM, HRK 153,781.00 were allocated within the Office's budget from the state budget for 2018, which is 10.8% more than in 2017, not including the expenses for employees, and the same amount is ensured for 2019 as well.

2. Recommendations:

Persons deprived of liberty who are in the prison system:

1. To the Ministry of Justice, to adapt accommodation conditions in all penal institutions to comply with legal and international standards;
2. To the Ministry of Justice, to draft a proposal of a new Execution of Prison Sentence Act;
3. To the Ministry of Justice, to draft a proposal of the amendments to the provisions of the Criminal Procedure Act pertaining to execution of remand imprisonment;
4. To the Ministry of Justice, to draft a plan for combating inmate violence;
5. To the Government of the Republic of Croatia, to exclude employment in penal institutions from the Decision on the Ban of New Employment for Civil Servants and Employees in State Administration and Professional Services and Croatian Government Offices.

The police system:

6. To the Ministry of the Interior, to draft a proposal of the amendments to the Police Act, which would ensure an independent and effective civil supervision over police work modelled on the Council for Civilian Oversight of the Security and Intelligence Agencies;
7. To the Ministry of the Interior and General Police Directorate, in accordance with the Criminal Procedure Act, to submit all criminal charges to the State Attorney’s Office to assess whether these are criminal charges prosecuted ex officio;
8. To the Ministry of the Interior, to draft a proposal of the amendments to the Police Affairs and Powers Act, which would bring the provision of Article 63 (3) in conformity with Article 206 (1) of the Criminal Procedure Act, according to which the State Attorney’s Office decides whether to prosecute a reported case ex officio;
9. To the Ministry of the Interior and General Police Directorate, in accordance with the Police Affairs and Powers Act, to treat vulnerable groups with special consideration and to use police powers that are least likely to affect human rights;
10. To the Ministry of the Interior, to use means of restraint only proportionately and when necessary in order to bring violent persons under control;
11. To the General Police Directorate, to use firearms only when they do not threaten the lives of other persons, unless it is the only means of defence from an attack or eliminating the threat;
12. To the State Attorney's Office, to conduct an effective and independent investigation ex officio when there are allegations of potential overstepping of police powers, particularly when these result in severe physical injuries after the use of firearms by police officers;
13. To the Ministry of the Interior and General Police Directorate, to adapt accommodation conditions in facilities for persons deprived of liberty to comply with legal and international standards;

14. To the Ministry of the Interior and General Police Directorate, to establish video surveillance in all premises where persons deprived of liberty are placed, which needs to be accessible to detention supervisors in operation and communication centres;
15. To the General Police Directorate, to ensure funds for meals for persons deprived of liberty and to record whether the person accepted or refused food;
16. To the Ministry of the Interior and General Police Directorate, to thorough investigate all allegations of inhuman and degrading treatment towards persons deprived of liberty, as well as in cases of suspicion of unfounded or excessive use of means of restraint..

Persons with mental disorders with limited freedom of movement:

17. To the Ministry of Health, to adapt accommodation conditions in all psychiatric institutions to comply with legal and international standards;
18. To the Ministry of Health, to systematically organize trainings for healthcare workers on the rights of persons with mental disorders and on the use of coercive measures;
19. To the Croatian Bar Association, to point to the attorneys appointed ex officio to the need for timely and effective engagement in the protection of the rights of persons with mental disorders;
20. To the Ministry of Health and the Ministry of Justice, to draft legislation amendments to ensure that the costs of involuntary detention and involuntary institutionalization in a psychiatric institution are paid from the State Budget;
21. To the Ministry of Health and the Ministry of Justice, for all psychiatric departments to keep records on the use of coercion measures.

Homes for the elderly:

22. To the Ministry of Demographics, Family, Youth and Social Policy, to make an analysis of accommodation conditions in stationary departments of the homes for the elderly;
23. To the counties, and the City of Zagreb, to bring the accommodation conditions in stationary departments of all decentralised homes in conformity with the Ordinance on Minimum Conditions for the Provision of Social Services;
24. To the counties, and the City of Zagreb, in cooperation with the Ministry of Demography, Family, Youth and Social Policy, to conduct an analysis of staffing for all decentralised homes and fill the vacancies if needed;
25. To the counties, and the City of Zagreb, to harmonise internal acts with the Social Welfare Act and Ordinance on Minimum Conditions for the Provision of Social Services, especially regarding procedures of examining complaints.

Applicants for international protection and irregular migrants:

26. To the Ministry of the Interior, to enable access to international protection to all migrants apprehended within the territory of the Republic of Croatia;

27. To the Ministry of the Interior, to ensure that migrants are fully informed on their rights in a language they understand when issuing a return decision;
28. To the Ministry of the Interior, to have in mind the principles laid down by the Foreigners Act and Administrative Procedure Act in the return procedures;
29. To the State Attorney's Office, to conduct an effective investigation into allegations on collective expulsion of migrants;
30. To the Ministry of the Interior, to harmonise the Ordinance on Stay in the Reception Centre for Foreigners with the Constitution and laws of the Republic of Croatia.

CONCLUSION

The international community recognises torture and other cruel, inhuman or degrading treatment or punishment as one of the gravest forms of violation of human dignity, which makes the role of the National Preventive Mechanism particularly important. However, although we are entitled to free and unlimited access to information pertaining to persons deprived of liberty and those with restricted freedom of movement, in line with international instruments and the National Preventive Mechanism Act, we were denied immediate access to cases and information about the treatment of irregular migrants by the Ministry of the Interior this year, which prevented us from doing our work and implementing the mandate we have in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It is therefore necessary to ensure immediate access to information to fulfil our mandate in order to strengthen the protection against torture and other cruel, inhuman or degrading treatment or punishment.

This year again, most problems remained the same as in previous years, such as the inadequate number of staff, including doctors and nurses, insufficient effectiveness of legal instruments, and inappropriate accommodation conditions in places housing persons deprived of liberty.

The shortage of staff in the prison system, psychiatric institutions and the social welfare system adversely affects the treatment of persons deprived of liberty and those with restricted freedom of movement. It leads to deficiencies in implementing prisoners' individual programmes and a lack of information about the medical procedures by persons with mental disorders, and reflects negatively on the quality of services in homes for the elderly and infirm. Providing permanent health care in the prison system is particularly important, including psychiatric care that prisoners need.

Accommodation conditions in the Prison Hospital, police stations, psychiatric institutions and homes for the elderly and infirm are concerning, and should be brought in line with legal and international standards.

As complaints about the police most often pertain to unprofessional and unethical conduct by police officers and excessive use of force in applying the means of coercion, more efficient investigation of these allegations by the police and state attorney is necessary, while establishing a civilian police oversight mechanism is of crucial importance.

The right to privacy is not ensured to all persons with mental disorders, who are also insufficiently informed about their rights. Frequent restraining of persons with mental disorders brought in the company of police officers is concerning, while a lack of records of the application of the means of coercion was noted. Given all the shortcomings mentioned, it is necessary to train medical workers about the rights of persons with mental disorders, and keep records of applying the means of coercion.

In the social welfare system, accommodation conditions need to be adjusted to persons suffering from Alzheimer's or other types of dementia, and adapted conditions ensured for bedridden users. As bedridden or users with mobility issues most often spend their time in bed, and only go out to fresh air during visits by family members, they should be encouraged to get out of bed with

the help of caretakers. To ensure an adequate number of staff, a job structure analysis needs to conducted, especially for decentralised homes, which are under the jurisdiction of counties.

Violent treatment of migrants has been reported again this year, with ineffective investigations into allegations about collective expulsion of migrants by using the means of coercion, a lack of awareness by migrants about their rights, and preventing their access to international protection. It is therefore necessary to implement legally prescribed return procedures and allow access to international protection to those persons who request it.

All of the foregoing is contained in the total of 30 recommendations specified in this Report, the implementation of which would raise the level of human rights protection of persons deprived of liberty and those with restricted freedom of movement in Croatia, as well as the level of rule of law, in accordance with national regulations and international conventions our country has undertaken to abide by.