



REPUBLIC OF CROATIA  
**Ombudsman**

# **REPORT ON THE PERFORMANCE OF THE ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM FOR 2019**

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## INTRODUCTION

Dear readers,

the Report on the Performance of the National Preventive Mechanism for 2019 contains an overview and analysis of the state of human rights of persons deprived of liberty and with restricted freedom of movement, as well as NPM activities focused on preventing torture and other cruel, inhuman or degrading treatment or punishment. Like the previous reports, it is based on data collected through unannounced visits, citizens' complaints and cases opened on our own initiative, and contains 19 recommendations which we addressed to competent bodies for elimination of systemic problems.

Although in 2019 we again observed no practices that might represent torture, we did note practices that might be inhuman or degrading. Hence, it is important to continue to implement well-designed and effective activities in order to avert such practices altogether.

Overcrowding remains a significant problem within the prison system, while the living conditions in many places of detention are still inadequate, in some are degrading, or even dangerous to health. There is still a significant number of complaints regarding the standard of medical care, especially non-referral for specialist examinations or not complying with specialists' recommendations in the course of their medical therapy.

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Some of the reasons we took action during the last year regarding the work of police relate to the unprofessional and unethical conduct towards citizens, overstepping authority when depriving persons of liberty, as well as the ineffectiveness of police investigations. Citizens have continued to draw our attention to the difficulties they encounter when trying to file a criminal charge with the police, an issue which we also raised with the relevant parliamentary committee.

Persons with mental health problems most frequently complained about forced detention and placement in psychiatric care wards, about means of coercion, and accommodation conditions. A common problem in psychiatric institutions is the lack of opportunities to go outside for a walk for patients who suffer not only from psychological, but also physical health problems, and therefore have reduced mobility. It is also worrying that the patients, even those who have been committed voluntarily, are not always adequately informed about the reasons for their commitment, or what their rights are.

The problems we have observed over the last few years in homes for the elderly are also present in those we visited in 2019: staff shortages, inadequate living conditions in stationary departments, admission contracts are sometimes not even signed by the users themselves, but by family members or others who took on the responsibility of paying for the accommodation. Adequate physical activity for users also needs to be provided, and complaints and actions undertaken to resolve them need to be properly registered.

We are still receiving complaints by irregular migrants, as well as reports by civil society and international organisations alleging illegal conduct by police officers towards migrants found within RC territory, ignoring requests for international protection, and pushbacks across the green border. Although only an independent and effective investigation in each individual case can establish whether the complaints are grounded, we have no information whether such investigations have been initiated, and, if so, what their results were. Unfortunately, since June 2018, the Ministry of the Interior has prevented us from accessing cases and information on the treatment of irregular migrants in police stations, which has made it impossible to carry out NPM tasks in this segment.

These are just some of the examples of systematic deficiencies and violations of the rights of persons deprived of their liberty and those with restricted freedom of movement, which we highlight in this Report. It is intended not only for residents and employees of institutions under the jurisdiction of the NPM, but also for the professional, as well as the wider public, including representatives of the legislative, executive and judicial authorities, as well as civil society organisations, the academic community, the media and many others. We believe that the information and recommendations presented here will help to ameliorate the current situation and achieve positive changes needed to permanently improve the human rights and freedoms of each individual, and thus of the society as a whole.

Ombudswoman

Lora Vidović

# 1. PERSONS IN DETENTION AND THE PERFORMANCE OF THE NATIONAL PREVENTIVE MECHANISM

## 1.1. THE PRISON SYSTEM

*"... we live in a room with 8 beds, the parquet flooring is falling apart, you get 1 dl of disinfectant and 1 dl of floor cleaning solution. The toilet and bathroom are falling apart, everything's damp, full of bacteria, the sanitation facility is inhumane, the doors are old and broken, so you can't shower in privacy, but you have to have another prisoner hold the door closed for you. The windows are rotten, cold gets in, we've got two radiators that only half-work, the mattresses are old, full of bacteria, the pillows old and yellow, the blankets we cover ourselves with are only washed once a year, the food is served to us as if we were pigs, and we eat in the same room where we sleep, while the toilets, having no ventilation, stink up the whole room. Plaster is falling over us, and we only get warm water to shower with once a week... Even though we're not so well educated, we're still human beings, we have a right to humane conditions..."*

4 During 2019, we acted in a total of 203 cases, issuing 35 warnings, recommendations and suggestions. In 25 cases, where directly establishing the facts and circumstances was necessary to determine whether the complaints were founded, we conducted field investigations. As in previous years, the most frequent cause for complaint was healthcare, followed by accommodation conditions, prison officers' conduct and use of privileges. Prisoners frequently turn to us due to the ineffectiveness of legal remedies, as well as with requests for help getting transferred, while there have also been many complaints involving problems in multiple areas.

In 2019, the same reasons for complaints regarding medical care that we have written more extensively in previous reports have continued to come our way. There is less and less dissatisfaction over failing to get referrals, or waiting too long to be examined by the prison doctor, while there has been a rise in the number of complaints over not getting referral for specialist examination, or over specialists' recommendations not being followed through.

There are similar reasons for complaints over the accommodation conditions in individual places of detention, for instance, failing to observe the legal standard of 4 sq m, for instance, in the Lepoglava State Prison and Sisak County Prison; unsuitable means of transporting prisoners – old specialised vehicles with bench seats along the sides of the vehicle, not fitted with safety belts (for instance, in the Split County Prison); and not separating smokers from non-smokers, for instance in the Bjelovar County Prison and Lepoglava State Prison.

A trend observed in 2018 has continued, with prisoners no longer complaining about the lack of treatment officers, except in special cases, but about the actions they undertake after interviews with

the prisoners, especially the insufficiently transparent method of assessing how successfully individual prison sentence plans are carried out, which is closely tied to awarding privileges, both in the sense of alleviating the conditions within a penal institution, as well as those pertaining to life outside state or county prison. One prisoner, who had for years been denied the privilege of being allowed to share a private room with his spouse without supervision, complained that this led to him being unable to preserve his marriage.

Inadequate communication of the competent bodies, making it difficult to plan how to proceed with pre-trial detainees, about which we have written in earlier reports, is still a problem, as could be seen in the case of the 18-year-old pre-trial detainee who died in August 2019 at the Clinical Hospital Centre Split, where he had been transported from the Split County Prison in a very serious condition. Acting in this specific case, we requested the Ministry of Health to carry out inspections of the Prison

**Inadequate communication of competent bodies is still a problem, making it difficult to plan how to proceed with pre-trial detainees. This could be seen in the case of the 18-year-old pre-trial detainee who died in Split, in August 2019.**

hospital in Zagreb and the Split County Prison Healthcare department to ascertain what kind of medical care the detainee was given. The Ministry did carry out the inspections, but as we do not yet have all the established information at our disposal, our investigation is still ongoing. However, the prison staff gave us information that they did not know that the person in question was

diagnosed with mental and physical impairments due to which he was declared disabled and had the right to assistance and full extent of care – only that he was diagnosed with pyromania, which certainly had an influence on how he was treated.

Complaints over the ineffectiveness of legal remedies are still frequent, with prisoners citing not receiving, despite the legal deadline of 15 or 30 days, responses from their prison wardens or the Central Office of the Prison System and Probation Directorate (COPSPD), or that the responses did not cover all the allegations in the complaints, and that it was impossible to determine from the responses what facts and norms constituted the grounds for assessing whether the complaints were founded. Such actions are contrary to international standards, as highlighted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its 2018 Annual Report, and render complaints an ineffective legal remedy. During 2019, prisoners continued to complain to us about the protracted time it took for magistrates responsible for the execution of the sentences to act on requests for judicial protection, in which they're abetted by the Execution of Prison Sentences Act (EPSA), which does not stipulate the deadline within which decisions must be adopted.

### 1.1.1. FULFILLING THE FUNCTIONS OF THE NPM IN THE PRISON SYSTEM

Acting in line with the powers granted us by the Act on the National Preventive Mechanism against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (ANPM), during 2019 we made unannounced visits to prisons in Šibenik, Zagreb, Sisak and Varaždin. The visit to the Zagreb County Prison was targeted, with a focus on respect for the rights pertaining to accommodation in high-security units, while the other visits also focused on how the treatment, order and security, and complaints departments were organised.

Following the visits, we issued 11 warnings (one to the Ministry of Justice (MJ), six to COPSPD and four to the penal institutions and 44 recommendations (one to MJ, 16 to COPSPD and 27 to penal institutions), while an evaluation of their implementation will be issued after we have received all the reports and carried out follow-up visits.

#### Acommodation conditions

According to COPSPD data, the prison population increased over the past four years. On 31 December 2019, secure detention units were at less than 100% capacity in just three out of a total of 14 prisons, while in six prisons, they were at more than 120% capacity, which is considered critical according to European Committee on Crime Problems (ECCP) standards. The situation was the worst in the Karlovac (175%), Osijek (174%) and Požega (167%) County Prisons.

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In the Sisak County Prison, whose population was at 167% capacity, tables occasionally have to be taken out of rooms so that mattresses could fit in. In conversations with prisoners, they described to us how one person slept on a mattress on a table, and another on a mattress beneath the table, which is degrading. Due to the overcrowding, both prisoners and convicts were together in individual rooms, which is contrary to the EPSA. Also, the common rooms have been repurposed to accommodate persons in detention even though they have almost no daylight, while the rooms lack the space for sufficient number of lockers, so some persons have to keep their personal belongings in boxes under their beds. In all penal institutions, sanitation facilities are still not physically separated from the rest of the rooms, for instance, in the Zagreb County Prison. This makes privacy impossible, and in certain cases is degrading – as persons deprived of liberty also eat in their rooms, it does happen that a person is having their meal at the same time as another is defecating. In certain penal institutions, showers are not partitioned off with paneling, so the prisoners have no privacy whilst they shower.



Although the visit to the Zagreb County Prison took place during a period in July 2019 that was not the hottest, the highest temperature recorded in the rooms was 28°C, with 70% humidity. The metal blinds on the windows of some rooms made the situation worse still, as the sunlight heated them up, making the prisoners feel as if "they were in an oven". Certain groups of prisoners are especially sensitive to heat, such as the elderly, those using psychopharmaceuticals, high blood pressure therapies, those with asthma, diabetes and similar, who made up more than 40% of the prison population at the time of the visit. A detainee with an implanted pacemaker complained to us that he found it extremely difficult to withstand very high temperatures, trying to help himself by applying a towel dipped in cold water to cool down, but even this often did not help. Living in detention in the current conditions, especially during heatwaves, can be degrading. Such conditions may also negatively affect the behaviour of individuals in detention, and hence the security of the Prison, while it needs bearing in mind that prison staff also work in the same conditions.



Along with overcrowding, accommodation conditions are also affected by the state of the prison buildings, which are old and dilapidated, whose refurbishment would require significant financial investment. For instance, the plumbing in the Varaždin County Prison is so run-down that the water pipes often leak, resulting in damp rooms where mould and fungus damage the walls. Prisoners have reported that even just a couple of days after the walls are painted water damage becomes visible. Such living conditions do not

meet the international standards, and are dangerous to the health of persons living in such conditions.

### Treatment of the prisoners

The deficiencies in delivery of treatment to persons in detention, which we have been highlighting in recent years, were again observed during the 2019 visits. As a rule, treatment staff do not interview detainees upon their reception to prison for remand detention on their own initiative. Such is the case for example in the Sisak County Prison, while the Varaždin County Prison is an example of good practice; there, the treatment staff conduct initial interviews with each person deprived of their liberty within a week of their reception to the prison. The procedure of reception to prison is exceptionally important, and should not be entirely left to the judicial police. The information persons in detention receive about their rights and the rules of conduct upon reception are often either very scarce, or not given at all ("short instructions by the commander and off you go to the cell"). It is important to point out that in its 26th General Report (§54), the CPT has highlighted the importance of carrying out the process of reception properly, so that the person deprived of their liberty receives all the necessary information about life in the prison, as they will otherwise have to rely on other inmates,



which may easily lead to certain inmates being in the superior position of "chief who makes the rules in the room". Persons finding themselves in prison for the first time have stated to us that they found the initial days especially difficult, encountering various problems, from those everyday, such as a lack of toiletries, "three of us use the same razor to shave", to constant tensions in their rooms – in their opinions, a consequence of overcrowding. For instance, in the Varaždin County Prison there is a room where nine detainees are held.

All penal institutions still do not have specially designated rooms for unsupervised conjugal visits, although they house inmates who meet the conditions to be approved such visits. A positive example can be found in the Šibenik County Prison, which, despite the lack of space, prepared a suitable space for the privilege, and began granting it to inmates.

Staff shortages continue to have a significant impact on the functioning of penal institutions. For instance, the staffing requirements of the Sisak County Prison Treatment department are for seven employees, but only the post of head has been filled. As the work that should be performed by an administrative clerk cannot be deferred, such tasks are temporarily performed by a nurse, which means that only one of the two nurses employed perform work related to healthcare for prisoners, which is certainly not enough. Work of the Head of the Department is mainly focused on administrative tasks, tied to legally mandated deadlines, while only a smaller portion of her working time can be dedicated to implementing individual prisoners' programmes. Regarding the work with remand prisoners, she usually works with them only on their request.

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Over the last few annual reports, we have highlighted the negative impact the staff shortage has had on the level of respect for the human rights of persons deprived of their liberty, among other things. Likewise, in its 2017 Report, the CPT recommended that the RC fill the vacant positions in penal institutions in line with the job classification plan. At the same time, numerous international documents, such as the Mandela Rules, the European Prison Rules, the Council of Europe Recommendation R (97) 12, draw a connection between respect for the human rights of persons deprived of their liberty and respect for the human rights of those employed in places of detention. With this in mind, during our visits, we gave those staff members who work directly with persons deprived of their liberty the opportunity to fill out anonymous surveys about their working conditions.

Treatment staff and legal staff find that the biggest problems lie in the lack of proper equipment and resources for their work, excessive administrative work and the treatment of the staff by prisoners, that is, insufficient protection from prisoners' threats. In addition to extrinsic sources of motivation, such as regular pay, early retirement benefits for arduous work, and the working hours, they also cite intrinsic sources of motivation as the advantages of their work, such as working with people, the awareness that they helped

*"I was proud when I was accepted and when I first put on the uniform. Today, all I have is the love that keeps me going. How long it will continue, I don't know..."*

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them and similar. Their suggestions are mostly acknowledged. They also indicated that the profession should not expect too much when it comes to the resocialisation of prisoners, and that organisational improvements are needed at the level of the entire system, if the functioning of the prison as a whole is to be improved. They consider their average stress exposure as moderate, unlike the judicial policemen, who consider theirs to be high. They believe that the shortage of judicial policemen has a direct effect on reducing the level of safety in prisons. The majority of those who took the survey do also see the positive aspects of their jobs, but three judicial policemen could not, while one stated that there are far more things that demotivated him, and that he is becoming more and more preoccupied with the idea of leaving the job. The judicial policemen's answers give the impression that they are at the end of their tether, and that they will not be able to endure much longer if the vacancies remain unfilled. Several have stated that more and more is expected of them ("the pressure is rising, more and more is being asked of people..."). They also pointed out how illogical it is that instead of overtime pay, they get free days, which leads to further staff shortages. Three judicial policemen also highlighted the illusion of job security, stating that "any old nonsense will get you the sack," and that they do not feel like they are getting any support. They also see a problem in the "paperwork", that is, too much administrative work, citing the fact that a single booking has to be registered in three places and on a computer, which officers cannot do on time, especially on first shift. They are most annoyed by disregard for the provisions of the collective agreement; for instance, the majority cannot exercise their right to a break, leaving them with the impression that there is more respect for inmates' rights than their own. They believe their stress could be diminished by better work organisation, by swiftly recruiting more judicial policemen to fill the vacancies, and by ensuring better working conditions and pay. They suggest that judicial policemen should take turns in different positions, and that the practice of always assigning the same persons to the riskiest positions should be stopped, as this exposes them to additional stress, and which is also seen as punishing good workers. Several have highlighted inadequate education programmes, which amount merely to meeting formal demands. However, it is encouraging that the majority nevertheless have not "given up" on their jobs, and are interested in improving their working conditions.

### Maintaining order and security

	2015	2016	2017	2018	2019
Number of PDL (on 31 December)	3.306	3.079	3.190	3.217	3.530
Special measures	1.769	1.775	1.656	1.931	2.245
Means of coercion	53	57	46	56	65

According to COPSPD data, the trend of increasing use of special measures to maintain order and security, and of means of coercion, has continued in 2019.

As in previous years, special measures for maintaining order and security are unevenly applied, which negatively affects prisoners' rights. For instance, during the visit to the Varaždin County Prison, it was established that isolation from other prisoners and restraint measures are determined cumulatively, in order to prevent self-harm. Although the fact that the person being restrained is

separated from other inmates is positive, the method of execution is worrying: the person is handcuffed to their bed, which is absolutely unacceptable, and may constitute inhuman treatment. In interviews unsupervised by prison staff, inmates on whom such measures were thus applied stated that they talked to the head of the Security Department both before and after the measures were applied, that he explained the reasons for such treatment, that they did not last long (a couple of hours), and that they could eat and go to the toilet. We have therefore concluded that such treatment was not meant to cause suffering or make it difficult to carry out the measures, but is merely the case of mistaken practice, which has resulted from, among other things, insufficient communication among prison officers, and insufficient education.

The adverse effect of poor interdepartmental cooperation on inmates' rights was also observed during the visit to the Šibenik County Prison. In the evening hours, emergency services were called due to an inmate's poor psychological condition, and he was given a sedative injection. In spite of this, several hours later he tied a bedsheet to the window grilles and attempted suicide, but was stopped by the judicial policemen who were monitoring him. He was then taken to the emergency

In order to prevent self-harming, separation and restraint measures are determined cumulatively, and carried out by handcuffing the person to their bed, which is absolutely unacceptable and may constitute inhuman treatment.

unit of the Šibenik General Hospital, from where he was released after examination, with a psychiatrist's recommendation that he be placed in the Prison hospital. Until then he should be, if necessary, under increased monitoring and "mildly restrained". When he returned to the Prison, an increased monitoring measure was issued, with a judicial policeman outside his cell at all times. As he soon started to threaten suicide

again, a special measure to maintain order and security was applied – he was restrained. Thus, instead of the prisoner being kept in hospital overnight, under a doctor's supervision, and restrained if need be in line with the rules of the medical profession, which would likely be the procedure if the person in question was not deprived of their liberty, the judicial policemen were saddled with the responsibility, despite neither being educated about applying measures of restraint stipulated in the Protection of Persons with Mental Disorders Act, nor authorised to apply them.

The deficiencies of the segment of the Criminal Procedure Act (CPA) pertaining to disciplinary proceedings against detainees, which we have written about in previous reports, continue to generate absurd situations. In visits to penal institutions carried out so far, we have noted that bans on visits and correspondence is the only disciplinary penalty detainees could be issued with, and whose maximum duration was not stipulated, so it was not issued for periods longer than two months. However, the County Court in Sisak handed down a three-month ban on visits and a six-month ban on correspondence to a detainees who twice tested positive for psychoactive substances. By comparison, a prisoner who tested positive for THC was issued with a 30-day measure restricting, or temporarily denying, his access to cash. It should be emphasised that the CPA, unlike the EPSA, does not define using narcotic or psychoactive substances as a transgression. That is to say, pursuant to Art. 140, para 2, point 3 of the CPA, it is a disciplinary transgression to introduce narcotic

substances or alcohol into a prison, or to produce such substances in prison, which in this specific instance was not the case. Thus, a disciplinary penalty whose size has not been stipulated was issued for a transgression which has not been specified. Although we highlighted the need to change Art. 140 in previous reports, this has not been done in the 2019 CPA amendments.

### **1.1.2. ASSESSMENT OF THE SITUATION IN THE PRISON SYSTEM**

Certain improvements to the accommodation conditions, such as 50 new places in the Požega County Prison, are certainly positive, but in many penal institutions persons deprived of their liberty live in conditions that are not up to legal and international standards, and in some cases are degrading and harmful to health. It is therefore necessary to continue to take measures to ensure that the inmates' living conditions are adequate.

We have continuously highlighted the lack of organised leisure activities in prisons. A significant limiting factor lies in the lack of space and staff, so such activities, even when they are available, are primarily intended for those serving sentences of imprisonment. As activities available to detainees are very limited, such inmates frequently spend 22 hours a day in the dormitories, mostly lying down or watching TV. Although the EPSA and international documents stipulate that persons serving prison sentences should be held separate from those in detention, exceptions can occasionally be made. For instance, Art. 18.9 and 101 of the European Prison Rules allow remand prisoners to participate in organised activities together with prisoners serving sentences, but the general rule is that these two categories are kept apart at night. Therefore, in situations when separate activities cannot be organised for them, it should be possible for them to take part in such activities along with sentenced inmates.

Spending time with a married or unmarried partner in special rooms free of supervision, so called conjugal visits, should be a right, not a benefit. Prisoners and their spouses, especially those of younger age, have pointed out that failure to grant such benefits prevents them from conceiving a child, which in certain cases is a leading cause of divorce, and may also represent a restriction of the right to respect for one's private and family life. As various studies have demonstrated the significant positive effect stable family relations and social connections have on reducing the risk of reoffending, as well as the risk of attempting suicide and self-harming during one's stay in prison, penal institutions should encourage maintaining links to prisoners' families.

The EPSA specifies that a penal institution has to organise primary education for prisoners up to 21 years of age who have not finished primary school, while literacy courses are organised irrespective of age. According to 2018 Ministry of Justice data, ten prisoners, eight of them women, do not have basic reading and writing skills and/or basic numeracy skills, while 237 (11%) have not completed primary education. The Mandela Rules (Rule 104) highlight the important role of education in preventing reoffending, emphasise the need to make education programmes available to all prisoners, while educating the illiterate, as well as younger prisoners needs to be compulsory. All

prisoners, regardless of age, should therefore be offered the possibility of free education, that is, completing primary school.

The fact that treatment staff do not work with detainees is largely a consequence of the view within the prison system that such inmates are only there "for safekeeping", and that treatment staff are not really meant to systematically engage with them; a view which does not in fact have legal grounding. Likewise, the absence of such work is justified by the presumed innocence of remand prisoners, which is not appropriate, as treatment work also involves discussing family problems and participating in general and preventive programmes, and should therefore be intensified.



In several annual reports, we have also highlighted the inadequate means of prisoner transport. They are held in the rear of a specialized vehicle, without safety belts, while prisoners whose hands, and often feet, are tied, are seated on side benches with nothing to hold on to. We asked the COPSPD to stop using such vehicles, but certain penal institutions, for instance the Split County Prison, nevertheless continue to do so. This practice needs to cease, and only vehicles equipped

with safety belts that meet the requirements of the Road Traffic Safety Act, as well as CPT standards (CPT/Inf(2018)24) should be used for prisoner transport.

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Practice in the prison system is still uneven, which we wrote about in the previous reports, while officials in penal institutions have very frequently reported that communication with the COPSPD and other institutions in the penal system is unsatisfactory, especially in comparison with previous years, which is not good. Therefore, information exchange and communication among prison system staff and the COPSPD need to be intensified, in order to harmonise and improve practice. The lack of staff also negatively affects the level of respect for inmates' rights, so the vacancies in the existing job classifications need to be filled.

During 2019, the Constitutional Court adopted four decisions determining that there has been a violation of Art. 25, para. 1 of the Constitution, stating that the courts have not effectively protected the applicant's constitutional right to serve their prison sentence in the conditions prescribed by constitutional standards. That legal recourse is still insufficiently effective, also follows from the decision in which the Constitutional Court took the view that the actions of the magistrate responsible for the implementation of sentences rendered inactive an otherwise active legal recourse, which constituted a violation of the rights guaranteed in articles 23 and 25 of the Constitution, that is, the procedural aspect of article 3. of the ECHR (U-III Bi-3201/2018). The situation is the same when it comes to actions undertaken as a result of complaints, although certain positive changes in the way investigative procedures are carried out in certain places of detention, such as

the Lepoglava State Prison, are encouraging. Nevertheless, there is still much room for improvement and harmonization with international standards.

In interviews and anonymous surveys that we conducted during our visits, persons deprived of their liberty have indicated that there is violence among prisoners, about which we wrote more in previous reports. It is additionally concerning that data from the Report on the Conditions and Work in State and County Prisons and Juvenile Correctional Institutions show that during 2018, there have been 166 physical conflicts among prisoners, 31 more than in 2017. In spite of this, the recommendation from the 2018 Report, issued with the CPT's RC report for 2018 (§31) in mind, to draft a national plan to combat violence among prisoners, has not been implemented.

As we have been highlighting for years the necessity of adopting a new EPSA, we received the drafting of the Draft proposal with great interest. However, the way the public consultation was carried out, as well as the Draft text itself, do not lend themselves to much optimism. The e-Consultation on the Draft proposal was opened in late November, and only lasted for 15 days, which is certainly too little, as the legislation is new. Two weeks after the consultation was closed, it was reopened without any explanation, again for 15 days. Hence, it is difficult to resist the impression that the point of the consultation was not to gather relevant information, ideas and opinion, that is, to promote, ensure and strengthen transparency and inclusion of all stakeholders, but merely to make a show of following procedure. It is additionally concerning that certain existing standards have been omitted, and that its adoption is being used to make it fit around the existing practical problems. For instance, after a four-year trend of growing prison population, it is proposed that the standard 4m<sup>2</sup> of space per prisoner be erased. Here, we also have to remind of the European Prison Rules (18.3.), which stipulate that specific minimum standards are to be set in national law. Equally, instead of at least one visit daily by a medical practitioner to prisoners held in solitary confinement, as stipulated by the current EPSA, it is proposed that visits should take place twice weekly. In addition, it is proposed that certain measures to maintain order and security are carried out under the supervision of a medical nurse or technician, rather than exclusively a doctor as has up to now been the case, which is a retrograde step. Although 88% of the comments on the Draft proposal were rejected after the first consultation, and as many as 91% after the second, we hope that as the process continues, which we will be following with interest, suggestions by both the professional and the wider public will be taken into consideration to a greater extent, with the aim of ensuring the quality of the new EPSA.

Cooperation with penal institutions during 2019 was good, but there is room to improve the cooperation with the COPSPD, especially when it comes to issuing reports and data within deadlines. Since we warned the COPSPD of this problem in October 2019, we hope that there will be positive changes.

## 1.2. THE POLICE SYSTEM

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

*"They arrogantly tell me to get in; I tell them that I can't just leave a 2500 HRK hard earned bike outside, and that they can't bring me in for those "misdeeds"; to which they say, we're proceeding forthwith, and they set about me, handling me, forcibly arresting. And I'm not yielding, I'm showing passive resistance, I yell that they don't have the right to apprehend me like that, and they're squeezing me and twisting my arms on the street, handcuffing me like a criminal, while I plead like mad, cry for help; they're not giving up one bit on their action, trying to forcibly push me into the car head first, I'm telling them I've got eyeglasses, ... I plead, scream for help, at least 30 cars and as many neighbours and shocked passers-by watch what's going on, and I wail and ask for help, they don't let up. In the end, they chucked me into the car the normal way, after I resisted their trying to get me in head first, because I wear glasses! In the car I explain to them that my bike was left in the middle of the street, that someone will steal it! ... And if they'd been sensible, we could have gone to get my ID, my house is 30 m from where the incident happened."*

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#### Complaints to the Ombudswoman

During 2019, we acted in 122 cases, both on the basis of complaints and on our own initiative, concerning omissions in policing practice, unprofessional and unethical conduct towards citizens, as well as overstepping police authority in procedures involving the use of force and resulting in deprivation of liberty.

When it comes to using means of coercion, complaints suggest that the police overstep their authority most frequently during the arrest and when overcoming resistance. In line with ECtHR case-law, in such cases an effective and independent investigation has to be conducted, with the role of the state attorney's office particularly important, as it has to examine all the allegations and determine whether an investigation should be initiated. An effective investigation should also be conducted when the use of firearms leads to severe bodily injuries, as in cases of woundings of irregular migrants, when the SAO initiated an investigation and made inquiries at the scene of the incident. In addition to an effective investigation, it is necessary to continue to warn and educate police officers about applying the safety-first rule when using firearms, in order to avoid accidental firing and endangering human lives.

In addition to the independent investigation conducted by the Croatian State Attorney's office when there are allegations of police overstepping their authority in a way that might constitute a criminal



offence, and which are therefore prosecuted ex officio, in order to examine the allegations in the complaints against the police, the role of two-stage internal control is important.

The first examination, conducted by the County Police Administration, undoubtedly has to involve questioning all parties and impartial witnesses, in order to come to an objective and founded assessment, while the second is conducted by the Internal Control Department based on further complaints. The aim of the examination is to establish facts in an impartial manner, as this is the only way to undertake appropriate measures and give the complainants argued feedback. However, we received a complaint from a citizen who had previously contacted the Internal Control Department about disproportionate use of means of coercion and denial of rights during detention at a police station, as well as about the manner the CPA reviewed the allegations – not taking her statement, nor informing her about the option of submitting an objection. In spite of the CPA's answer, that there was no need to take her statement as it had been contained in her complaint, the objective of ascertaining facts in an impartial manner demands that all parties and impartial witnesses be interviewed, and citizens acquainted with the right to submit an objection, granted them by the Law.

We also received a complaint by a citizen alleging that police officers applied physical force and means of restraint to take him in to the police station for riding his bike carelessly, while he claims that he merely warned the police officers, who were wearing plain clothes, and in an unmarked vehicle, that they had passed a red light, and that they acted as they did

According to complaints, overstepping the use of means of coercion is most frequent in arrests and overcoming resistance. According to the ECtHR, in such cases an effective and independent investigation has to be conducted, with the role of the state attorney's office particularly important, as it has to examine all the allegations and determine whether an investigation should be initiated.

solely because they could not bear his reaction. Had the reason for their action truly been reckless cycling, he should have been charged with a violation of the Road Safety Act. Instead, proceedings under the Misdemeanors Against Public Order and Peace Act were initiated against him, due to his reaction to the unprofessional conduct, as well as proceedings under the Identity Cards Act, giving the impression that they were in fact initiated in order to justify the fact that such conduct by police officers even took place. In this case, disciplinary proceedings were initiated against the police officers over the disproportionate use of means of coercion, but it remains unclear what was the initial reason for their actions, which resulted in depriving a person of liberty. We therefore referred the citizen to a state's attorney, to assess whether the police actions could be considered to have constituted a criminal offence.

Despite our recommendation to the Ministry of the Interior and the Police Directorate in the 2018 Report, that, in line with the Criminal Procedure Act (CPA), all reports of criminal offences be referred to the State Attorney's Office, to assess whether they constitute crimes to be prosecuted ex officio, citizens continue to indicate that police officers refuse to receive reports of criminal offences, claiming the acts in question were not prosecuted ex officio, or even that they did not constitute



criminal offences, despite the CPA stipulating that a report of a crime must be submitted to the competent state's attorney, and if submitted to the police, it is to be forwarded to the SA immediately upon receipt. In addition, the Protocol on the cooperation between the police and the State Attorney's Office during preliminary and criminal proceedings (Protocol) stipulates that, if a relevant police organisational unit has received report of a criminal offence that is prosecuted ex officio, or a request to prosecute, it will immediately convey them to the relevant state's attorney, and if the police have started conducting an investigation, after learning about the crime committed, it needs to notify the state's attorney that same day or the day after. If this is not done, the state's attorney cannot monitor how the investigation is carried out, or instruct the police to take the actions or measures that they deem to be necessary.

Citizens' complaints also concerned the inefficiency of police investigations, that is, omissions to find out the perpetrators of criminal offences in line with the measures defined by the CPA. A complainant residing in Sarajevo twice requested from the commander of a border police station (BPS) that his rights be protected, and on the third attempt, also addressed his complaint to the Ombudswoman, as the police officers' behaviour led him to conclude that he will not be able to realise his need for legal interests. Namely, in his complaints, he pointed out that during his absence from his vacation house in RC, his things were deliberately damaged and looted. Acting on the complaints, the police officers formally exercised some of their powers as defined by the Act on Police Tasks and Authorities (APTA), without establishing whether there have been acts constituting criminal or misdemeanour offences at first. However, the relevant CPA's procedure to ascertain the legality of police conduct and use of police authority has established that there have been mistakes, as the police officers in question made facile conclusions, without interviewing all the persons singled out in the proceedings, while additional police actions resulted in identifying of the real perpetrators; therefore, a special report was submitted to the state's attorney. In this respect, we used a recommendation to highlight the importance of consistence in enforcing the CPA, which prescribes the police force's rights and duties in finding and identifying perpetrators.

We also received a complaint from a journalist and commentator who was identified by police officers at her workplace, with the explanation that they are doing so at the request of the neighbouring PD, in relation to a request by a private individual's lawyer – actions she considered constituted intimidation of her as a journalist pursuing her work. Having analysed the Director General's report on the legal basis and causes for the action undertaken by the police, we established that there was another legal means for the potential private plaintiff (personally or through a legal representative) to gather data on the person he believed violated his rights. In addition, it was also established that the police use different criteria and proceeds unevenly in comparable situations. In this case specifically, they checked the journalist's identity so that her personal information could be handed over to the private individual's representative before charges were filed, while in another case, in which we also acted on a complaint, the police linked handing over of personal information to the filing of charges in the relevant case and to the request issued by the court. In the case in hand, in line with the CPA, the potential private plaintiff could have filed a private lawsuit before the criminal court, which would preliminarily examine whether there was enough evidence to confirm

reasonable grounds for suspicion of the accused regarding the deed that is the focus of the charges. In case a private lawsuit was not properly written, for instance if the personal information of the accused were lacking, it would be returned to the private plaintiff to correct it within the legal deadline, after which there would be no obstacles to him submitting a request to the police, based on a court injunction, to cede the necessary personal information. In that case, the police could take appropriate action, in line with the APTA and the Ordinance on Conduct of Police Officers, appreciating the circumstance that the court conducted a review of the existence of aspects defined by the CPA, that is, that it is likely that the accused did violate the private plaintiff's rights. Any other manner of proceeding would fail to guarantee that, after receiving information about another person from the police, the potential private plaintiff would actually initiate court proceedings at all. This alone makes such an action by the police legally questionable, because the inexistence of a protective mechanism allows for the other person's information to be abused.

The answer by the Director General of the Police, that the option of handing the personal information to the party requesting them is considered on a case-by-case basis, depending on the type of the incident, involved persons, type of the body which requested the information, the reasons for their handing over etc., indicates that the police is acting arbitrarily and unevenly, based on an arbitral interpretation of the APTA, while ignoring the CPA. For this reason, we warned the police that when handing over personal data, it needs to act in an unarbitrary fashion, in a way that will not result in citizens being treated differently, in view of the fact that doing otherwise undermines legal security and the principle of equality before law, and threatens the rule of law. ECtHR case-law also sets the general demand that the way relevant bodies interpret and implement national law must be "free from arbitrariness", and that it is precisely arbitrariness that is a frequent reason for the ECtHR (see *Van Kück v Germany*, 2003) to deviate from the general rule of non-interference in the interpretation and application of the national law of the parties' states.

## 1.2.2. VISITS TO POLICE STATIONS AND POLICE DETENTION UNITS

During 2019, the NPM visited 23 police stations and four police detention units in the following County Police Administrations (CPA): Šibenik-Knin, Dubrovnik-Neretva, Koprivnica-Križevci and Varaždin. The visits to the Šibenik-Knin and Dubrovnik-Neretva CPAs were follow up in order to establish whether the warnings and recommendations issued beforehand were being implemented.

### Regular visits

#### *Accommodation conditions*

In regular visits to 12 police stations, we established that there is partial compliance with CPT standards. The majority are spacious enough, have daily and artificial light, ventilation and heating, and contain wooden benches, rubberized mattresses and blankets. However, some do not have an alert system, and surveillance cameras only cover part of the overall space in which persons deprived of their liberty move, increasing the risk of untimely reaction during any incidents that occur while a

person is in police detention. Although in most police stations, video surveillance does not cover the sanitary facilities, in some it does, which harms an arrested or detained person's right to privacy.

The Varaždin BPS has no rooms of its own for holding irregular migrants, so it uses the premises of the Ivanec PS, which are inadequate to accommodate large groups, and neither does the Varaždin CPA Detention unit have its own space, so it most frequently uses the premises of the Varaždin and other police stations within its jurisdiction. However, the rooms in the Varaždin PS are too small, and often smell unpleasantly of excrement.

The Koprivnica-Križevci CPA Detention unit has three rooms that are tidy, however, the floors are tiled with breakable tiles, which is contrary to the Standards. They are equipped with a concrete bench, rubberized mattress and blankets, and contain a sanitary facility without direct access to drinking water. Persons held in custody at the Koprivnica-Križevci CPA can use the shower, while the building is surrounded with an open-air area where prisoners can spend time in fresh air. Some police stations have no vehicles for transporting people deprived of their liberty, or use old ones, which do not have functioning ventilation and heating systems. CPT standards provide that all transport vehicles need to be clean, well-lit and ventilated, and have adequate heating.

### *The rights of persons deprived of their liberty*

Access to procedural guarantees within the first hours after being deprived of liberty by the police is important, as it ensures a fair trial, in line with article 6 of the ECHR, and is also the most effective means of preventing torture and other forms of violence. According to CPT standards, such guarantees include the right to an attorney, a doctor, and to inform a family member or a third party, and, keeping in mind their significance, we submitted our opinion on the Draft amendments to the Criminal Procedure Act to the Human Rights Committee.

The amended CPA now provides for temporary free legal aid (FLA) for all arrested persons, but not for all suspects – only those suspected of criminal offences that carry a minimum sentence of more than five years' imprisonment, which is not entirely in line with Directive 2016/1919/EU and the opinion we submitted. The directive requires that FLA is made available to everyone, allowing additional checks only in regard to determine individual's financial status, that is, to verify that a person is truly unable to pay for legal representation. During our visits, before the CPA amendments came into force, we established that arrested persons rarely call an attorney, and that most waive their right to legal representation during the proceedings.

The CPA still only stipulates the right to emergency medical care (EMC), leading to some CPAs having to pay for EMC services' arrival when it turns out the case was not an emergency, despite good cooperation. Although police stations do guarantee the right to access to a doctor while in police detention, it is not good that police officers carry out the first assessment of urgency. According to CPT standards, the right to a medical examination consists of more than providing urgent medical care, involving also the right to care by a doctor without limitation, denials or discretionary decisions by the police whether it is truly necessary. Equally, the UN Principles for the

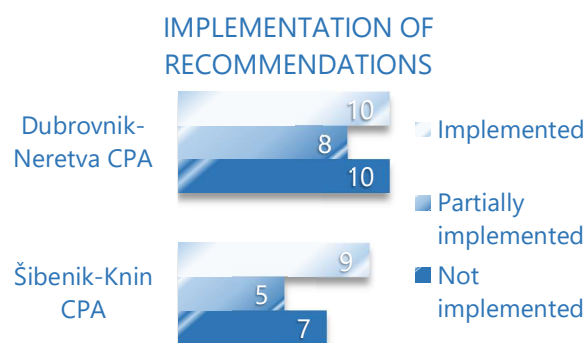
Protection of All Persons under Any Form of Detention or Imprisonment stipulate that, as promptly as possible after their admission, every individual is to be offered a proper medical examination free of charge, and that medical care will be provided whenever necessary.

During the visits, the records were also inspected. In line with our recommendation, the Arrest Report form was changed, separating the description of the actions taken towards the arrested person, from the description of the process of taking them into custody, if this later occurred, which enabled easier and simplified filling out of required documentation. Although the majority of police stations keep proper records, some still do not record the time of release; thus, the Varaždin PS does not record the time when detention order has ceased, although such a measure may last for up to 12 hours.

### Follow-up visits

In 2019, we carried out follow-up visits of the Šibenik-Knin and Dubrovnik-Neretva CPAs, in order to assess the level of implementation of recommendations issued during regular visits in 2015 and 2016.

The follow-up visit to the Šibenik-Knin CPA has established that nine of the recommendations were fully implemented, five partially, and seven not at all. The construction of a detention unit has still not begun, so detainees are held in inappropriate accommodation. The accommodation conditions in the majority of police stations still does not meet CPT standards. However, the Knin and Drniš police stations are examples of good practice, having furnished their rooms with padded beds and installed a call button. The records are properly kept, and assessments of the justification and legality of the use of means of coercion are made within legal deadlines.



The follow-up visit of the Dubrovnik-Neretva CPA has established that ten recommendations have been fully implemented and eight partially; however, those that concern accommodation conditions have not been implemented. The majority of police stations have not implemented the 2016 recommendation, on keeping separate records of copies of the Arrest Report form and the Confirmation of acquaintance with the reason for the arrest. The Metković police station is an example of good practice, as it keeps a separate record of the copies of these forms, which can be used to examine the access individuals have to their rights while deprived of their liberty.

### Treatment of arrested persons and those taken into custody

During regular visits and follow-ups, we visited the Šibenik, Dubrovnik and Varaždin Prisons to examine how arrested and detained individuals are treated before they are taken to remand prison.

Having interviewed the medical staff and reviewed medical documentation, we found that during 2019, no individuals with visible injuries were received into the Šibenik County Prison, while two persons from the Varaždin County Prison stated to the medical staff that certain injuries were sustained during police proceedings. Although there have been no direct complaints of overstepping police authority, only the injuries recorded in medical documentation, police files were inspected, confirming that in both cases there has been use of means of coercion, medical examinations were allowed, and the arrested individuals did not express complaints during their detention in police stations.

During the visit to the Dubrovnik County Prison, medical staff were interviewed, medical documentation reviewed and an interview conducted with a prisoner on remand who complained about his treatment by the police, who, however, did not state a complaint during his arrest due to, as he said, unclear instructions. An inspection of the Dubrovnik-Neretva CPA documentation did not confirm that police authority has been overstepped; however, keeping the prisoner's allegations in mind, clearer instructions need to be provided so as to better protect persons deprived of their liberty.

### **1.3. PERSONS WITH MENTAL DISORDERS WITH RESTRICTED FREEDOM OF MOVEMENT**

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During 2019, we received 26 complaints from persons with mental disorders concerning involuntary detention and placement, coercive measures and accommodation conditions in psychiatric institutions.<sup>1</sup>

In line with the Ombudswoman's mandate as the body responsible for the performance of the NPM activities, we made an unannounced visit of the Neuro-psychiatric Hospital (NP) Dr. Ivan Barbot in Popovača, the Psychiatric Unit (PU) of the KBC Osijek and the Rab Psychiatric Hospital (PH). The visit to the Osijek PU was regular, while the other two were follow-ups to evaluate the implementation of the warnings and recommendations issued after previous visits. Recommendations and warnings which were not implemented, as established during our follow-ups, were repeated in individual reports.

During the visits, we found that the accommodation conditions do not fully meet the international and national standards, especially as regards canteens, as well as sanitary equipment and hygiene protection. For instance, in one of the departments of the Osijek PU, food is served in the common room, where visitors are also received. When larger number of visitors arrive, they are sent to a nearby corridor, which is not an appropriate place for socializing.

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<sup>1</sup> In this chapter, the term "psychiatric institution" implies a healthcare institution or its unit for specialist or consultation-based treatment in the area of psychiatry.

As not all the sanitary facilities in the Osijek PU and the Rab PH have been segregated by sex, all the patients must perform their personal hygiene tasks in the same bathrooms.

A problem common to all psychiatric institutions is the inadequate protection of the patients' right to spend time outdoors, especially those who have physical, not only mental, disorders, and are thus less mobile. For this reason, terraces and ground-level yards urgently have to be put in order, by installing overhead covering and the necessary amenities to allow even the most severely ill patients to spend time in fresh air. In addition, we also pointed out the need to reduce overcrowding, especially in one of the Osijek PU departments, where four women live in a small room, and whose privacy is thus fully compromised, while such conditions can also foster a negative atmosphere in their therapies.

The 2008 [Report](#) of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment makes it clear that poor conditions in psychiatric institutions and care homes for persons with disabilities represent degrading treatment under article 3 of the ECHR. This is also confirmed by ECtHR case-law, in the *Romanov v Russia* case (2005), where the Court confirmed that the applicant was held in a secure unit of a psychiatric institution for one year, three months and 13 days, some four and a half months of which were spent in a small, overcrowded room. In the judicial proceedings it was established that prolonged confinement in a secure-type unit combined with poor accommodation conditions represented degrading treatment. Therefore, although the existence of an intention to do so was not established, the Court found that the standards of accommodation have demeaned the applicant's human dignity and caused him to feel humiliation and degradation.

A problem common to all psychiatric institutions is the inadequate protection of the patients' right to spend time outdoors, especially those who have physical, not only mental, disorders, and are thus less mobile.

From interviews and focus groups with persons with mental disorders conducted during our visits, as well as from complaints we received, we observed that patients, even those who have been committed voluntarily, are not always adequately informed as to why they are held there and what is going to happen to them. Some have indicated that while they did formally agree to hospitalisation, they gave their consent in fear of forced detention or placement, that is, in fear of a court order. They are frequently unacquainted with their treatment plans, do not know which therapies they are on, they ask whether they can go home or out for a walk and do not know why they are denied this, or wonder why they are in a secure unit even though they have been voluntarily committed.

Due to the importance of informed consent, which is a legal obligation, but also a chance to create trust and partnership in treatment, we organised a roundtable with a number of stakeholders, in order to try to identify and understand the problems and act to prevent them. Although we observed that there has been significant progress in informing the patients about their rights through leaflets,

announcements and conversations, including the right to submit complaints, this is still not enough, so psychiatric institutions should additionally improve their complaints mechanisms, among other things by keeping integrated records of complaints and answers.

Use of measures of coercion on persons with mental disorders is allowed only exceptionally, in particularly urgent cases of serious imperilment of one's own or another's health, and only to the extent, and in a way that is absolutely necessary to avert danger, after non-coercive measures failed to do so. All patients have the right to protection from medically unjustified limitations on their movement, or separation. However, the medical documentation often does not contain records of the de-escalation techniques used before measures of restraint are, and patients who have been committed voluntarily still do get restrained, which is not in accordance with CPT standards. Namely, if it is believed that using coercive measures in cases of voluntary confinement is unavoidable, but the patient does not consent, his legal status should be examined.

Despite the recommendations from the 2016 and 2017 reports, no special records have been set up to register the use of coercive measures, which would make it possible to establish how often they are applied, that is, which would allow their monitoring and analysis. Hence, there is still no data on who decided on their use, when they did so and why; which measure of coercion has been applied, which actions preceded it, or on monitoring a patient's physical and mental health, and on the termination of the measure.

## 1.4. HOMES FOR THE ELDERLY

*"I lie like that for days... Looking at a single spot on the wall... I cannot turn the TV on as it annoys the room-mates. They say it emits radiation. I'd like to get out of bed and go talk to other people, but I can't do it alone, and there's no-one to lift me up. I can do it with a walking frame, but I can't do it alone, I'm afraid I'll fall, so I only walk when the physiotherapist or the family come, which is not enough. I like to talk, and my room-mates only lie there in silence. If we had a space to socialize in, I'd sit there and talk to other people. And watch TV."*

During 2019, we made an unannounced visit to the Home for the elderly Duga in Zagreb, in order to establish how well the users' human rights are respected, especially regarding their medical care and in situations that might constitute limitation on the freedom of movement.

In earlier reports, we pointed out the necessity that the user must sign the admission agreement himself/herself, and that in cases of inability to do so due to a serious health condition, and where there is no legal guardian, the Social Welfare Centre has to be informed in order to appoint a special legal guardian. Despite this, it was found that in this Home as well, admission agreements are signed by the person paying for the accommodation, usually a close family member. Such practice is unacceptable, as any form of being held in an establishment without having given consent constitute



a limitation on the freedom of movement that has no legal basis. The majority of residents were not in possession of their ID cards, which were held by their relatives; instead, only copies of ID cards were kept at the Home, which is another mode of limiting freedom of movement, as we had already pointed out in earlier reports.

Like others, this Home has not set up a formal residents' complaints procedure in line with the Social Welfare Act (SWA) and the Ordinance on Minimum Conditions for the Provision of Social Services, neither does it keep a special record of complaints, actions taken and how the complaints are resolved, something that is absolutely necessary. Complaints are mostly made orally, resolved informally and on the spot, and residents are generally informed of the results only orally. Therefore,

**Evacuation drills for emergency situations should be regularly conducted in all Homes for the elderly, with a special emphasis on units housing residents with impaired mobility, immobile residents and those suffering from dementia.**

the currently existing internal statutes need to be harmonised with the SWA and the Ordinance on the standards of quality of social services. Furthermore, permanent or temporary residence at the address of the Home is not registered for its users, although the Residence Act mandates Homes to register at the local police station as resident every person to whom they provide accommodation services for longer than three months; residency is registered.

The shortcomings we pointed out during this visit are broadly the same as those we encountered in previous visits to elderly care homes. Although this Home provides accommodation services for persons suffering from Alzheimer's or other forms of dementia, it does not have a special accommodation unit set up for them in line with the Ordinance on the minimum conditions for provision of social services, but houses such residents together with residents not in need of special care, which is unacceptable. Staff shortage is being compensated with their extra work and efforts, the premises are extremely clean and tidy, but the understaffing nevertheless affects the quality of service. For instance, less mobile residents are only helped out of their beds by the physiotherapist or their relatives, which is not enough. As the tendency is to designate as much available space as possible for dormitories, there is a visible lack of workspace for employees. For instance, the social worker performs her work, interviewing residents and their families, in a corridor, without adequate privacy, which is unacceptable. Restrictive actions, for instance using magnetic straps or lifting the bed rails, are not documented in residents' individual plans, the reasons for their use are not cited, and it is unclear whether a doctor or someone else determined that such actions should be taken, and the necessary records of their use are not kept. Physically limiting movement (immobilising) by using magnetic straps is considered a coercive measure, whose use Act on Protection of Persons with Mental Disorders (APPMD) allows in social welfare centres as well, for persons with serious mental disorders, and in the same manner and under the same conditions as applied in psychiatric institutions. Therefore, if care homes apply such measures, the decision has to be taken by a psychiatrist, and they have to be carried out in the same way they are carried out in psychiatric units, that is, hospitals.



As in the majority of homes for the elderly we visited over the previous years, in this home too, residents who are immobile or have impaired mobility are not housed on the ground floor, which makes it unclear how, if need arose, an evacuation of residents and staff would be carried out. Although there are two exits on the first floor, it took the staff quite a long time to find the key for the rather narrow emergency exit. The home also has no smoke alarms, and as no evacuation drills for cases of emergency such as fire or earthquake have been conducted so far, we recommended that they urgently be conducted. Such drills should be carried out regularly in all homes for the elderly, with a special emphasis on units housing residents with impaired mobility, immobile residents and those suffering from dementia.

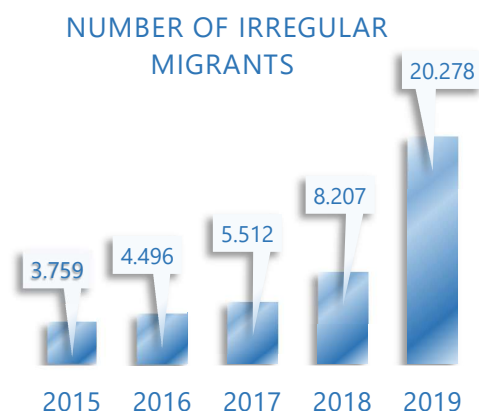
## 1.5. APPLICANTS OF INTERNATIONAL PROTECTION AND IRREGULAR MIGRANTS

Migrations are a challenge at the global, European and national levels, both for countries of origin, as well as for transit and destination countries. The greatest disputes arose over irregular migrations, and there are few solutions that would enable different, that is, legal routes of arrival for those in need of protection. When it comes to causes of mass migrations, as well as solving them, there are no simple answers. Poverty, conflicts and persecutions as joint factors certainly increase their complexity, while climate change, along other causes, announces their further intensification, making better management of mass migration one of the most important tasks in sustainable development.

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Faced with the need to urgently solve the issues of migration, both due to the numbers of persons [arriving at its borders](#), and many controversies this has caused within and among individual member states, the EU has still not managed to achieve an agreement on the proposed reform of the Common European Asylum System, primarily the Dublin system, under which the first countries of entry bear the greatest responsibility to process requests for international protection. In addition, a lack of solidarity has not contributed to even distribution of responsibility among member states, regardless of their geographic position.

In a situation of heightened migration pressures, (delayed) reform of the asylum system, lack of



solidarity and member states installing wire fencing on the borders of neighbouring member states, in 2015 the Republic of Croatia declared its readiness to start the Schengen evaluation process, and began preparations for accession into the Schengen area. During the process, the MoI stressed the importance of protecting borders that are not only Croatian, but are also external EU borders, emphasising that, instead of installing fencing or wire, it by and large uses discouragement methods, that is, placing large numbers of police

officers at the border to discourage persons attempting to cross it irregularly. However, there is no record kept of discouragement proceedings, unlike with measures to return migrants (including readmission), since migrants reportedly do not enter Croatian territory, but, having noticed the discouragement measures, return of their own volition deeper into the neighbouring country's territory.

Despite deploying 6,500 policemen at the state border and employing technical equipment, according to MoI data, in 2019 the number of irregular migrants in Croatia increased by 59.52% in comparison to 2018.

However, complaints by irregular migrants and CSOs and international NGOs reports are coming in from the borders with Serbia and Bosnia describing [police conduct](#) towards migrants apprehended inside Croatian territory, ignoring of requests for international protection, and pushbacks over the green border, very often after seizing money and valuables, or accompanied by violence.

Thus, during 2019, the Ombudswoman opened 35 cases regarding police conduct towards irregular migrants and seekers of international protection, sometimes even in larger groups. For instance, a complaint by a complainant who was found with his family near the BH border describes how the police ignored his, his wife's and their two children's requests for asylum, took their money and mobile phones, and ordered them back into BH. When he asked to be given back his money, one of the policemen showed his firearm, said he would shoot, and grabbed one of the children by the neck, after which the family decided to return to Bosnia and Herzegovina. The complainant managed to memorize the registration number of the police van and declared that he would be able to recognise the policemen, and upon return to BH, he filed complaints with the (Croatian) Police Directorate, the Ministry of Justice and the Ministry of Foreign Affairs, after which, in agreement with the Police Directorate, his criminal charge was filed at a border crossing. Soon after, he also submitted a complaint to the Ombudswoman, on the basis of which we conducted an investigation at the BPS, which denied that any steps have been taken against the complainant. At the same time, in cooperation with USKOK (Bureau for Combating Corruption and Organized Crime), the Directorate established that police officers with the aforementioned BPS were not connected to the described activities, however, the Directorate subsequently did confirm its activities, but not as the complainant had described them, but as having applied discouragement measures. Considering the fact that the MoI has categorically claimed that records of discouragement are not kept because individuals cannot be identified in the absence of contacts with police officers, it is unclear how in this case they managed to identify the complainant and his family, and why this piece of information was not stated at the very start of the proceedings.

In connection to the actions taken by the police upon discovering the migrants after their irregular crossing of the state border, an investigation into the existence of a garage whose characteristics match those of a garage at one of the border police stations where irregular migrants were allegedly held without food, water or a toilet, had to sleep on the concrete floor and were prevented from seeking international protection, is significant. It appears from MoI reports that over the year, migrants were indeed held on two occasions (first a group of eight, and second of 29 members) at

the garage until the criminal investigations were concluded, in order to shelter them from unfavourable weather conditions even though the accommodation conditions there were unsatisfactory; furthermore, that water, food and use of a toilet were made available to all the persons involved, that they were not physically or psychologically abused during the process, and that their overall stay at the station lasted no more than a few hours. However, in the course of our investigation, having directly inspected the case-files and the secondary records, we established that the two groups mentioned were not the only larger migrant groups processed at the BPS during 2019, yet we were unable to establish the reasons and criteria for detaining some, and not others, at the garage. In addition, it could not be ascertained when and for how long these two groups, which included children, were in the yard, the garage, or elsewhere on the station premises. Also, the custody units, which did meet the prescribed conditions, were demolished in February and new ones, repurposed from the garage space, were completed in July. Thus, the BPS, which is responsible for a part of the border with BH where migrants often move, and which often deals with migrants, even larger groups, was left without an adequate space to accommodate them other than the yard and the garage, holding persons in which is a breach of Art. 3 of the ECHR, that is, degrading treatment, as it violates human dignity and causes feelings of fear, suffering and subordination (M.M. v RC (2015)). In addition, in view of the concept of deprivation of liberty in line with Art. 5, para. 1 of the ECHR, and Art. 4, para 2. of OPCAT, there was a failure to record when the persons were brought into the BPS, and why between six and ten hours elapsed between their discovery and their arrest, that is, why they were not arrested as soon as circumstances allowed, which is necessary in order to establish the duration of the deprivation of liberty. Moreover, a direct inspection of the secondary records and cases has established that these groups were there over a longer period, rather than just a few hours, as the written answer had stated.

Allegations of illegal treatment of migrants, both from CSOs and international NGOs reports, as well as from the complaints received, correspond with the allegations contained in a complaint sent to the Ombudswoman by a police officer from a border police station, which he submitted anonymously, due to fear of negative consequences for his family and work. He describes a command by senior police officers to take actions against irregular migrants, that is, alleges that based on an order by the commanding officer of the BPS and the "executives and management", police officers were instructed to return all refugees and migrants into BH territory, "no papers, no processing" so as to leave no trace, to take their money, break their mobile phones and throw them into the river, or keep them for themselves. In addition, his appeal to stop such behaviour is worrying, as he states that the situation in reality is even worse than what the Ombudswoman stressed in her public statements, but that he cannot do anything out of fear of getting dismissed, as he would not be able to feed his family.

Poštovana gospodjo,

obračam vam se za pomoć jer vidimo da jedini vodite brigu o zakonitom postupanju prema izbjeglicama i jednim ljudima prema kojima svakodnevno postupamo na nehumani i loš način.

Djelatnik sam PGP [REDACTED] i radim na zaštiti državne granice već duže vrijeme. nas nekoliko više nemamo ni volje ni snage gledati što se radi sa tim ljudima. Svakodnevno ih vraćamo u BiH bez papira bez procesuiranja bez obzira o kome se radilo, žene djeca, prema svima isto. Nema azila to ne postoji samo i ako u iznimnim situacijama, kada je nešto medijski popraćeno.

Zapovijed načelnika [REDACTED] i rukovoditelja i uprave da sve vraćamo bez papira, nema traga, uzeti novce, mobitele razbiti baciti u [REDACTED] ili si uzeti i izbjeglice na silu vratiti u Bosnu. To je istina kako postupamo sa njima, policajci na ispomoći iz drugih PU su posebno okrutni u postupanju, jer su ljuti što su tu, a tu su kratko pa rade što žele bez kontrole, liče mim na janjičare tuku, otimaju. Ovo je žalosno ali istinito i to sve uz blagoslov rukovoditelja iz policijske postaje i uprave. Posebno nas par policajaca žalosti što na sve to nas potiču i to zapovijedaju rukovoditelji koji bi trebali raditi zakonito i to suzbijati i ne dozvoliti takovo ponašanje policajaca. Na dnevnoj bazi ih vraćamo 20.-50. Kada ih dovoze iz drugih PU ljudi su iscrpljeni ponekad i pretučeni i onda ih još mi vozimo tijekom noći i prebacujemo na silu u Bosnu.

Svega tu ima pa neki policajci posežu i za oružjem, to je sramno za ovu policiju, tako ju ja nisam zamišljao kad sam išao u školu. Ja sam ih osobno tijekom noći vratio preko 1000, nastojim biti što humaniji, ali imam [REDACTED], ako odbijem to raditi dobiti ću otkaz, a od čega ću prehraniti obitelj.

Nas nekolicina koji dijelimo isti stav vas molimo da spriječite ovakvo ponašanje i postupanje policije.

Sve ono što dolazi do vas, natpisi u medijima su točni i vrlo blagi u odnosu što se radi u ovoj postaji.

Takodjer jako je žalosno da se rukovoditelji u postaji, a naročito policijskoj upravi kada spomenu vaše ime iskazuju to na vrlo ružan i neprijemeren način jer vi to ničim niste zaslužili, to ne dolikuje visoko obrazovanim ljudima ta vas časte takovim epitetima i psovkama. Vi samo radite pošteno i časno vaš posao u skladu sa zakonskim propisima i pravilima i tako bi trebalo biti i u policiji, ali nažalost daleko smood toga.

još jednom vas molimo da osobnim angažmanom spriječite ove ružne pojave koje mogu dovesti do tragičnih posljedica, a to nitko ne želi.

Vjerujemo u vas i vaše poštenje i zakoniti rad.

Nezadovoljni policajci PGP  
[REDACTED]

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In view of all the allegations in this complaint, we forwarded it to the SAO as the institution authorised to take appropriate measures to ascertain beyond doubt whether the allegations were grounded in truth, or merely groundless accusations. However, as we received no return information, and in view of the time elapsed and the absence of other options for taking institutional action, we submitted the complaint to the Croatian Parliament, after which we informed the public about the case, in line with article 19 of the Ombudsman Act.

In its answers to individual complaints or CSO and international NGO reports, the MoI very often fully denied the allegations of overstepping police authorities or violent conduct, stressing that it practised zero tolerance towards violence, and stating that all claims submitted by NGOs and other

organisations were looked into, but that they did not contain enough information to initiate criminal investigations.

In addition, it very often asserted that since they were prevented in their attempts to irregularly cross state borders, and returned to BH and Serbia, migrants have falsely accused the police in the hope that such accusations would help them in their new attempts to enter Croatia. Another claim by the Ministry was that "activists posed as Croatian border police officers and submit migrants to violence in order to make the Croatian police look like the bad guys."

On the other hand, the seriousness of the allegations made in the complaints and reports on violations of migrants' rights, as well as those in the anonymous complaint by a police officer, as well as by two others who went public, likewise anonymously, with similar experiences, cast doubt on the notion that instances of such conduct by police officers guarding the border were merely isolated cases, indicating instead that they might point to systematic illegal conduct.

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Furthermore, in October 2019, when the EC confirmed that Croatia has met the conditions to join the Schengen area, it emphasised that protecting the human rights of seekers of international protection and other migrants, as well as the allegations of preventing access to the asylum system and use of means of coercion by the police at the border, remain a challenge. For that reason, the Commission approved funding for a new mechanism for monitoring the compliance of border control activities with EU law, international obligations and with the respect of fundamental rights and the rights resulting from EU asylum acquis rights, including the principle of non-refoulement. However, without the possibility of unannounced visits to institutions, inspections of premises and free access to all data, as foreseen in the OPCAT and the ANPM, monitoring of police treatment of irregular migrants cannot be considered effective. The EC also stated that towards the end of the project, the MoI needs to discuss the results of the monitoring mechanism not only with the EC, but also with the Ombudswoman's Office and with civil society organisations, which it has so far failed to do.

In addition, in July, the Federal Administrative Court of Switzerland suspended the transfer of seekers of international protection to Croatia, which under the Dublin system should be responsible for considering their requests. Taking into consideration the increasing number of reports on the Croatian authorities' denials of access to asylum procedures and about the large numbers of asylum seekers being returned to the BH border where they are forced to leave the country, the Court held that the lower courts failed to take into consideration the systematic shortcomings in the Croatian asylum system, nor did they examine the risk of chain refoulement from the RC, as well as whether the alleged misconduct by the Croatian authorities might have met the threshold of possible



violations of fundamental rights as protected by article 3 of the ECHR. The decision is not final, and the case was referred back to the court of first instance.

Stating that the practices of denying entry and expelling without a case-by-case assessment of the need for protection, that is, pushbacks, have been documented across Europe, and that in some countries they are systemic and can be considered to represent national policies, the CoE appealed to its members to immediately stop such practices due to the severity of violations of human rights they incur. The greatest risk such practices involve is that of refoulement, that is, returning persons to areas where they are in risk of persecution, which is contrary to the UN Convention Relating to the Status of Refugees and the ECHR. The CoE also expressed concern about the degrading treatment of migrants during pushbacks, including intimidation, seizing and destroying personal items, use of violence, even denial of food and basic services. It therefore believes that in denying having carried out such pushbacks, these types of inhuman and degrading treatment are denied as well, and are therefore not adequately examined or not examined at all.

The priority would be to carry out an investigation into actions that might represent a violation of Art. 3 of the ECHR (prohibition of torture, inhuman or degrading treatment or punishment). In order to eliminate, or confirm, suspicions, it is necessary that the investigation is carried out by an authority independent from the officials under suspicion (ECtHR, *Bojcenko v Moldova* (2010)), as otherwise the representatives of a state would be able to abuse the rights of those under their control with impunity (*Labita v Italy* (2010) and *Muradova v Azerbaidjan* (2009)). Therefore, investigating such practice is crucial to maintain the rule of law, where nobody, and especially the police, cannot be above the law.

Apart from the information that the SAO carried out investigations in several specific cases, such as Madina, a girl who died during a pushback, or the use of firearms where migrants were wounded, which we have written about in the segment on the police system, we are not aware of the results of any investigations into systemic violations of migrants' rights.

### NPM visits

During 2019, in line with the authorities granted by the ANPM, and in order to prevent torture and other cruel, inhuman or degrading treatment, we made unannounced visits to the Tovarnik Transit Reception Centre, the Ježevo Reception Centre for Foreigners, and the Tovarnik and Korenica border police stations.

At the reception centres (Tovarnik and Trilj) we found that it was made difficult for migrants to access legal representation, which is contrary to CPT standards, which guarantee unimpeded access from the very outset of the deprivation of freedom of movement, without limitations or censorship. Migrants are not adequately informed about their rights, including the right to file complaints, while the existing complaint mechanisms are insufficiently effective, as they do not entail investigative procedures and the possibility of issuing sanctions while respecting the principle of independence, impartiality and confidentiality. The process of identifying unaccompanied children, as well as other

vulnerable groups, is inadequate, so we recommended that specific identification procedures are guaranteed, as well as additional training for professional staff. Moreover, at the police stations we were denied access to data from the Mol Information System on the proceedings towards irregular migrants, and sometimes even to the cases themselves.

### Withholding of information to the Ombudswoman

In performing the mandate of the NPM, the Ombudswoman is authorised under articles 4, 19 and 20 of OPCAT and Art. 3 and 5 of the ANPM to make unannounced visits to places where there are, or may be, persons deprived of their liberty, and to freely access any data on their treatment, that is, the treatment of anyone in any kind of detention, custody, or being held under surveillance and unable to leave of their own volition. This leaves no doubt that this also pertains to visits to PS/BPS, and access to data on the treatment of irregular migrants held there.

However, since June 2018, the Mol has denied direct access to cases and data on the treatment of irregular migrants. Thus, as for instance during NPM visits to border police stations, we were denied access to the Mol Information System, while where individual cases were concerned, the head of the Police Administration's illegal migrations service explained to us that as the officer in charge of the cases was on holiday, "all the cases are locked in the cabinet", and neither the assistant to the police commander nor the head of the illegal migration department were authorised to retrieve them. He also pointed out that we would have received the individual cases had we announced our visit, even though Art. 5 of the ANPM and Art. 20 of OPCAT explicitly authorised NPM members to make unannounced visits to bodies or institutions. On the other hand, the cooperation with reception centres during NPM visits was good, and access to cases and premises was provided, which highlights the inconsistency of Mol practice.

Data have also been withheld during investigative proceedings, although under Art. 24 of the Ombudsman Act, the Ombudswoman is authorised to request any necessary information, data, explanations, acts and other documentation from any state body, which must fulfil such requests. Such investigative proceedings were

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conducted at the border police station, after a report by the Border Violence Monitoring Network (BVMN) alleging that migrants, and even members of vulnerable groups, were held in a basement room at the station, where they had no access to a toilet, water or food, and that their right to seek asylum had been denied. Among them was an underage individual who stated that he had been held there for more than an hour, beaten with fists and bats, and tazered. At the BPS, the head of the PA's Illegal migration service did not allow us to inspect all the requested data, stressing at first that he could not, and then that he would not hand them, but would only allow us to inspect those

cases that we request by name and surname of complainant, and only for the dates cited in the BVMN report. Thus, the only available cases pertained to dates when actions were taken against 11 foreign citizens who were denied entry into the RC. However, we could not ascertain whether any other measures under the Foreigners Act were taken on the dates in question, and, if so, how were larger groups of irregular migrants treated, especially members of vulnerable groups – for instance, how is vulnerability established, or how is the Protocol on the Treatment of Unaccompanied Children applied, and whether there have been inconsistencies in the treatment of various groups in the same period. Moreover, while the investigation was in progress, the communication by the head of the service was not suited to the official context, he sought to take the dominant position in conversations, trying to make the communication less formal, which, along with insisting on not releasing certain data, represented arbitrary conduct.

In addition to withholding information, during several investigative proceedings and NPM visits, police officers "educated" the Ombudswoman's Office and NPM staff in various ways about how procedures under the OA and the ANPM are to be conducted. Thus, on some occasions we were told that the investigative proceedings or NPM visits can only be carried out with prior announcement, when we would be given access to all the requested case files pertaining to treatment of individuals or groups; on others, that access would only be given to the case files we request by name; in some PS/BPS we can get a print-out of certain data, while in others we cannot get data by direct access, but only if we request them in writing. Denying us access to the Mol Information System concerned all our investigative and NPM visits, with the rationale that according to the Instruction on assigning passwords and the IT Service's response, they cannot give the password to the Ombudswoman's Office staff, as violating the Instruction is considered a serious breach of the code of conduct. However, the Mol should organise its data management system so as to enable effective fulfilment of international and legal commitments under the OPCAT, the ANPM and the OA, whose legal force is superior to that of the instruction.

Using such arbitrary and uneven interpretations of the legal framework regulating the mandate of the Ombudswoman and the NPM, police officers overstep their authority and make it impossible to efficiently fulfil the mandate of the NPM and examine the treatment of irregular migrants.

As an independent national human rights institution, the central body tasked with preventing discrimination and as the NPM, the Ombudsman has a unique mandate to promote and protect human rights, within which she examines illegalities and irregularities in the work of state bodies. The CoE has highlighted the importance of the role played by such institutions, precisely in preventing police impunity for overstepping authority, including violence. For this reason, policemen need to be acquainted with the mandate and the right to access information.

In conclusion, the situation at the RC border cannot be viewed apart from EU legislation and policy, which imposes far greater responsibility for carrying out asylum procedures and combating irregular migrations on peripheral states. Although they are the fundamental principles of this area, solidarity and fair distribution of responsibility have not been sufficiently realised, whether normatively, financially or in support on the ground. The EC's new leadership has emphasised the necessity of



mutual help and assistance among member states to achieve the stability of external borders and a fully functional Schengen area of free movement, highlighting that Europe will always respect its values and help persons fleeing persecution or conflict, which is also its moral duty. Migration policies, legislation and practice can and must guarantee that human rights are protected, as well as find a way to reconcile this approach with a focus on protection of state borders and security, while keeping in mind that protecting borders also demands clear frameworks as to what is allowed to be done in the name of controlling migration.

## 1.6. INTERNATIONAL COOPERATION AMONG NPMs AND MARKING OF INTERNATIONAL DAYS

During 2019, we participated in many international events organised by the South East Europe NPM Network, the EU NPM Forum, ENNHRI, IPCAN Network, or by partner NPMs or international organisations. We also actively cooperated with the SPT and the CPT, and took part in a conference on the occasion of the 30th anniversary of the CPT, on implementing safeguards during police custody.

Since 2019, we have presided over ENNHRI's working group on asylum and migration, which met in Zagreb to build capacities in communicating human rights, while in Madrid work began on a project to promote and protect the rights of migrants on state borders. We also took part at a CoE conference in Sarajevo on the main challenges and examples of good practice regarding migration and asylum.

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We also contributed to the meetings of the South East Europe NPM Network on protecting persons deprived of liberty from possible reprisals and the specific needs of minors in detention facilities. In October 2019 in Skopje, we were chosen to chair the Network in 2020.

During 2019, a meeting with the Group of Experts on Action against Trafficking in Human Beings (GRETA) was also held, and we also took part in an international conference on combating illegal police practice in Budva, while at an international conference in Tunis we presented our experiences of prisoner classification according to their specific needs in the prison system. In addition, we held a lecture at the Summer School of Human Rights organised by the Rijeka University Faculty of Law, on the topic of protecting individuals who entered Croatia irregularly.

In 2019, we paid special attention to the rights of the persons with mental disorders, organising a round-table in Zagreb, entitled "Informed Consent – I Know Why I'm Here!", on the challenges in protecting the rights of patients with mental disorders during their hospitalization. In addition, during our study visit to the Slovenian Ombudsman, we exchanged experiences and examples of good practice in protecting the rights of persons with mental disorders. We 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 with posts on our website, [www.ombudsman.hr](http://www.ombudsman.hr).

## 2. RECOMMENDATIONS:

### Persons deprived of their liberty in the prison system:

1. To the Ministry of Justice, to bring accommodation conditions up to legal and international standards;
2. To the Ministry of Justice, to organise continuous training for prison system staff on the human rights of persons deprived of their liberty;
3. To the RC Government and the Ministry of Justice, to fill the vacancies in penal institutions, in order to respect the rights of those employed there and increase the level of protection of the human rights of persons deprived of their liberty;
4. To the Ministry of Justice, not to use vehicles not equipped with safety belts to transport prisoners;

### The police system:

5. To the Ministry of the Interior and the Police Directorate, to use means of coercion only proportionately and where necessary, to bring under control individuals acting violently;
6. To the Ministry of the Interior and the Police Directorate, to carry out continuous education for police officers about the rules regulating the use of firearms;
7. To the Ministry of the Interior and the Police Directorate, in procedures to examine citizen complaints about police conduct, to take statements both from the complainants and from other witnesses to the events in question, so as to guarantee the efficiency of the investigative procedure;
8. To the Ministry of the Interior and the Police Directorate, that answers to complaints sent to the complainants should inform them about their right to objection to the Mol's Internal Control Department;
9. To the Ministry of the Interior and the Police Directorate, to ensure that accommodation conditions for persons deprived of their liberty meet international and domestic standards;
10. To the Ministry of the Interior and the Police Directorate, to set up video surveillance in all areas occupied by persons deprived of their liberty, which needs to be accessible to detention supervisors in operations and communications centres;

### Persons with mental disorders with restricted freedom of movement:

11. To the Ministry of Health, to bring accommodation conditions in all psychiatric institutions into line with international and domestic standards;
12. To the Ministry of Health, to keep records of the use of coercive means in all psychiatric units;
13. To the Ministry of Health, to adequately inform all persons with mental disorders about undergoing treatment in psychiatric institutions as to the aim, nature, effects, benefits and risks of certain medical procedures, as well as their rights;

### Homes for the elderly:

14. To the Counties and the City of Zagreb, to bring accommodation conditions in stationary departments in all decentralised care homes into line with the Ordinance on the minimum conditions for provision of social services;

15. 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 vacancies in all decentralised care homes, and fill them if necessary;
16. To the Counties and the City of Zagreb, to bring the internal statutes of the care homes they have control over as founders into line with the Social Welfare Act and the Ordinance on the standards of quality of social services, especially as regards residents' complaints procedures;

**Seekers of international protection and irregular migrants:**

17. To the Ministry of the Interior, to process the irregular migrants found in Croatian territory in line with international and EU law;
  18. To the Ministry of the Interior, to allow the Ombudswoman's Office and National Preventive Mechanism staff unannounced and unhindered access to information about the treatment of irregular migrants, in line with OPCAT, the ANPM and the OA;
  19. To the State Attorney's Office, to conduct an effective investigation into the allegations of systemic violations of the rights of irregular migrants.
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## CONCLUSION

It is encouraging that in 2019 we found no practice that might constitute torture; however, practice that might be considered inhuman or degrading is worrying, as are violations of the constitutional and legal rights of persons deprived of their liberty. Although progress in certain segments is visible, the changes have not been rapid enough. Hence, we encounter the same problems year after year, and when they do begin to be resolved, this is often only partially.

This also concerns the need to continue to bring accommodation conditions in all penal institutions up to legal and international standards, as well as the need for continued training of prison system staff, so that in their everyday work they can act in a way that respects the human rights of persons deprived of their liberty.

It is also necessary to continue education of police officers on the use of means of coercion during their proceedings. Likewise, in order to ensure that investigations in cases of citizens' complaints regarding police treatment are effective, it is necessary to take statements both from the complainants themselves and from other witnesses, and answers to citizens' complaints need to clearly state the possibility of submitting an objection.

Patients in all psychiatric institutions need to be adequately informed on the aim, nature, effects, benefits and risks of certain medical procedures, as well as their rights. In addition, in these institutions too, the accommodation conditions need to be fully harmonized with the international and legal standards, which they still are not; it is also necessary to keep up-to-date records of all the means of coercion applied on persons committed in the institutions.

In many homes for elderly, residents with impaired mobility and immobile residents are not housed on the ground floor, which could make evacuating them difficult if need arose – a problem we also encountered in the care home we visited in 2019. Moreover, the living conditions in stationary units need to be brought into line with the Ordinance on the minimum conditions for provision of social services.

In police treatment of irregular migrants, all the procedures envisaged in domestic, international and EU law should be observed in every individual case, while conducting independent and effective investigations is key to establishing beyond doubt whether individual complaints and allegations by OCDs and international NGOs are founded. Furthermore, NPM representatives need to be allowed unannounced and free access to data on the treatment of irregular migrants, which is still not the case.

The aforementioned examples are some of the possible solutions to the problems described in this Report, and are part of the recommendations focused on strengthening the protection of the human rights of persons deprived of their liberty and persons whose freedom of movement is restricted. Their implementation would certainly also strengthen the rule of law in Croatia.