



RZECZNIK PRAW OBYWATELSKICH

Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2009

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Table of contents

1. Introduction.....	4
2. The mandate of the National Preventive Mechanism in Poland	5
A. The concept of torture, cruel, inhuman or degrading treatment or punishment	6
B. The powers of the National Preventive Mechanisms in the light of the OPCAT	10
C. The role of the National Preventive Mechanism and its activities in practice.....	11
3. The organisation of the activity of the National Preventive Mechanism within the Office of the Human Rights Defender.	18
4. Financing of the National Preventive Mechanism in Poland.....	19
5. Cooperation of the National Preventive Mechanism with other institutions....	20
A. Subcommittee on Prevention of Torture (SPT).....	20
B. Association for the Prevention of Torture (APT)	21
C. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	21
D. Non-governmental organisations.....	22
E. International cooperation – participation in conferences and seminars on the issues related to the National Preventive Mechanism	23
6. Visits under the National Preventive Mechanism in 2009	25
A. Penitentiary establishments	27
B. Youth care centres and youth sociotherapy centres.....	41
C. Juvenile shelters and juvenile detention centres.....	46
D. Police emergency centres for children.....	53
E. Rooms within the Police organisational units for detained persons or persons brought to sober up	54
F. Sobering stations	58
G. Guarded Centres for Foreigners and Deportation Centres	61
H. Centres for Foreigners Applying for a Refugee Status or Asylum.....	63

I. Psychiatric hospitals.....	64
J. Military places of detention	67
K. Social care centres	68
7. Extraordinary incidents	69
8. Summary	71
9. Annex 1. List of places of detention visited in 2009 by visit date	74
10. Annex 2. List of places of detention visited in 2009 by type of place of detention.....	79

1. Introduction

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the OPCAT or the Protocol) was adopted by the General Assembly of the United Nations in New York on 18 December 2002. It was ratified in Poland with earlier consent provided for in the act. As a result, it is a part of the Polish legal order and is directly applied.

The objective of the Protocol is to establish a system of regular visits of independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The system consists of the Subcommittee on Prevention of Torture, established pursuant to Article 2 of the OPCAT, and the national preventive mechanisms the establishment of which is the obligation of each State Party to the Protocol pursuant to Article 3 of the OPCAT. The guiding principle of the Protocol was the belief that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial measures of preventive nature, based on regular visits to places of detention. According to the Protocol, the latter concept means any place under the jurisdiction and control of a given State where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (Article 4(1) of the OPCAT). The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority (Article 4(2) of the OPCAT). These definitions are very broad which means that various places are subject to visits.

In Poland the tasks of the National Preventive Mechanism (hereinafter referred to as the NPM) are performed by the Human Rights Defender, starting from 18 January 2008. On this day, Mr. Łukasz Rędziniak, the Undersecretary of State in the Ministry of Justice, acting on the grounds of the resolution of the Council of

Ministers No 144/2005 of 25 May 2005, addressed a letter to the Human Rights Defender entrusting him with fulfilling the tasks of the National Preventive Mechanism.

The present Report is the second report of the National Preventive Mechanism in Poland, which Poland is obliged to prepare and publish, pursuant to Article 23 of the OPCAT. The Report presents the conclusions from visits organised between 1 January and 31 December 2009, broken down by specific types of places of detention. It also shows the activities of the Polish Ombudsman undertaken in consequence of the irregularities revealed during the visits. The Report also touches upon international cooperation of the National Preventive Mechanism, including the contacts with the Subcommittee on Prevention of Torture, the European Committee for the Prevention of Torture and the Association for the Prevention of Torture.

The Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2009 was drawn up in two languages in order to disseminate it also among international institutions and national preventive mechanisms in other countries.

2. The mandate of the National Preventive Mechanism in Poland

The representatives of the Human Rights Defender performing the tasks of the National Preventive Mechanism aim at strengthening, if necessary, the protection of people deprived of liberty against torture and other cruel, inhuman or degrading treatment or punishment. In order to make those terms, which are very close in meaning, cleared to the readers, they have been discussed in detail below, as were the powers and role of the National Preventive Mechanism.

A. The concept of torture, cruel, inhuman or degrading treatment or punishment

When prohibited forms of ill-treatment of persons deprived of their liberty are referred to in the Protocol, synonyms are used, and only the definition of torture is specified in acts of international law.

Pursuant to Article 1 of the UN Convention against Torture (...), torture means “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The UN Convention against Torture (...) does not define any prohibited forms of ill-treatment of persons deprived of their liberty which are less severe than torture. Article 16(1) of the Convention only refers to them by stating that each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The extensive case-law of the European Court of Human Rights is particularly helpful for the analysis which behaviour or conditions may be deemed torture or other unacceptable forms of treatment. The Court on numerous occasions analysed the meaning of those individual concepts in its judgments on violations of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

As the Court emphasized on numerous occasions, account should be taken of the distinction drawn between the notion of torture and of cruel, inhuman and degrading treatment.¹ Inhuman treatment or punishment should be considered more general than torture, while torture covers inhuman treatment. Degrading treatment is a separate category of behaviour.² Ill-treatment has to occasion suffering of the particular intensity and cruelty and attain a minimum level of severity in order to be considered as torture. It must be emphasized that the right to freedom from torture is absolute, as well as the right to a fair trial, the right not to be punished for an act which was not yet a crime at the time of its commission, and the right to freedom of thought, conscience and religion. No circumstances, even the interests of the state security, the martial law, the state of emergency, the fight against terrorism and organized crime cannot justify the use of torture or other forms of inhuman treatment.

Referring to the judgments of the European Court of Human Rights in Strasbourg, it should be stressed that inhuman treatment occurs when ill-treatment is intended, severe suffering is inflicted and there is no justification for such suffering. However, each case has to be examined individually while determining if such prohibited behaviour occurred.

The treatment of a person deprived of liberty is considered degrading, if it severely humiliates a given person in front of that person or in public, making them act against their consciousness or will. A punishment is deemed degrading if humiliation or degrading reaches a certain level different from the normal level of humiliation associated with serving a prison sentence. However, a treatment of a sentenced person does not have to inflict serious and long-lasting physical or mental distress to be considered degrading.³

For the analysis of the discussed notions, it is also worth quoting the judgment of the Constitutional Tribunal of 26 May 2008⁴ which deemed Article 248(1) of the

¹ Judgment of the European Court of Human Rights of 21 December 2000 in the case of *Egmez v. Cyprus*, Application no. 30873/96, p.17.

² R. St. J. Macdonald, F. Matscher, H. Petzold, *The European system for the protection of human rights*, Martinus Nijhoff Publishers, Dordrecht-Boston-London 1993, p. 229.

³ *Ibid.*, p. 242.

⁴ SK 25/07.

Act of 6 June 1997 – Executive Penal Code⁵ to be inconsistent with Article 40, Article 41(4) and Article 2 of the Constitution of the Republic of Poland. The judgment is of particular importance as Article 40 of the Constitution states that no one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. It is related to Article 41(4) of the Constitution, pursuant to which anyone deprived of liberty should be treated in a humane manner. The challenged and no longer effective provision of the Executive Penal Code stated that in particularly justified cases the head of a prison or a pre-trial detention centre may place inmates, for a specified period of time, in the conditions where the cell area per person is less than 3 m². The penitentiary judge had to be notified immediately about each such placement.

The Constitutional Tribunal emphasized that “humane” treatment is something more than the lack of torture and the prohibition of cruel, inhuman or degrading treatment. Humane treatment has to take into account the minimum needs of each human being, considering the average living standard in a given society. Furthermore, it requires positive actions on the part of the public authorities in order to meet those needs.

The Tribunal pointed out that overcrowding in a cell may itself be classified as inhumane treatment, and if combined with additional aggravating circumstances, it might even be considered as torture. The assessment of the level of severity of inconveniences resulting from overcrowding in penitentiary establishments requires accumulation of other factors which affect the evaluation of the conditions of being detained in the penitentiary establishment. Each case must nevertheless be analysed separately.

The Constitutional Tribunal believes that the content of the challenged Article 248(1) of Executive Penal Code and its interpretation result in its non-compliance with Article 40 and Article 41(4) of the Constitution. Overcrowding in prisons, resulting from the implementation of the impugned provision of the Executive Penal Code, may lead to inhuman treatment of prisoners. It is difficult to imagine that a person could be afforded humane treatment in a cell, in which the space per person is less than 3 m² (one of the

⁵ Dz. U. of 1997 No 90, item 557, as amended.

lowest standards in Europe). Moreover, humane treatment also includes the requirement of corrective and supportive measures which prepare for life outside prison and prevent a relapse into crime.

The above judgment of the Constitutional Tribunal was referred to in 2009 by the European Court of Human Rights in Strasbourg in the case of *Orchowski v. Poland*⁶. Examining the case the Court emphasized that Article 3 of the Convention enshrines one of the most fundamental values of democratic societies, namely, the prohibition of torture and inhuman or degrading treatment or punishment. As in numerous previous judgments, the Court reminded that ill-treatment must attain a minimum level of severity which depends on many circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, the Court verifies whether the object of such treatment was to humiliate the person concerned and even if it was not the purpose, the breach of Article 3 of the Convention cannot be excluded. In its judgment in the case of *Orchowski v. Poland*, the Court also referred to the position of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which recommends providing a minimum of 4 m² of living space per prisoner in Poland.

The Court in Strasbourg pointed out that the applicant was confined to his overcrowded cell virtually 24 hours a day, save for one hour of daily outdoor exercise and, possibly, an additional hour spent in an entertainment room (not always). During six years of detention in penitentiary establishments, the applicant had been transferred twenty-seven times between eight different prisons and was also very frequently moved between cells. It may be a breach of the Convention as it may increase the feelings of distress experienced by an inmate. It has been established that for the most part of his detention the applicant had been afforded below 3 and at times, even below 2 m² of personal space inside his cells. He showered in a common room along with 12 to 24 inmates. Those conditions did not allow any elementary privacy and aggravated the applicant's situation. Having regard to all circumstances of the case, the Court

⁶ Application no. 17885/04, judgment of 22 October 2009.

considered that the distress attained the minimum level of severity which pointed to a violation of Article 3 of the European Convention on Human Rights.

The invoked judgment of the European Court of Human Rights is significant, as there are numerous cases against Poland pending before the Court which concern detention in overcrowded penitentiary establishments.

B. The powers of the National Preventive Mechanisms in the light of the OPCAT

The status of national preventive mechanisms is described in detail in Part IV of the OPCAT. It is relatively broad, in order to ensure that these new institutions operate efficiently in individual states.

First of all, national preventive mechanisms are guaranteed the functional independence as well as the independence of their personnel. Their experts should have the required skills and professional knowledge. As regards the composition of the mechanism, there is a strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

Furthermore, in accordance with Article 19 of the OPCAT, the national preventive mechanisms shall be granted at a minimum the power to regularly examine the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment. They have the right to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment. While making such recommendations, the mechanisms take into consideration the relevant norms of the United Nations, such as the so-called Paris Principles, which relate to the functioning of national institutions for protection and promotion of human rights, explicitly indicating the necessity to ensure adequate measures allowing these institutions to fulfil their tasks.

In addition, the mechanisms submit proposals and observations concerning existing or draft legislation.

In order to enable the national preventive mechanisms to fulfil their mandate, their members have the right of access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location. Moreover, during the visits the members of the mechanisms have the right of access to all information referring to the treatment of those persons as well as their conditions of detention, and to all places of detention and their installations and facilities. What is important, they have the opportunity to have private interviews with chosen persons deprived of their liberty, without witnesses, either personally or with an interpreter, if deemed necessary. The members of the mechanism also have the right to have interviews with any other person who they believe may supply relevant information. The national preventive mechanisms also have the liberty to choose the places to visit and the right to contact, send information to and meet with the Subcommittee on Prevention of Torture.

In view of the above, entrusting the Polish Ombudsman with the tasks of the National Preventive Mechanism ensures a proper implementation of the OPCAT provisions relating to the mandate of national preventive mechanisms. The Human Rights Defender acts independently of other state authorities and reports only to the Sejm.

C. The role of the National Preventive Mechanism and its activities in practice

The objective of the national preventive mechanisms is:

- 1) to regularly examine the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- 2) to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment taking into consideration the relevant norms of the United Nations;
- 3) to submit proposals and observations concerning existing or draft legislation;

- 4) to raise awareness of the society on the issues of preventing torture and on the relevant norms concerning the treatment of people deprived of their liberty.

The role of the National Preventive Mechanism consists in but is not limited to preventive visits to places of detention.

The definition of places to be visited under the mechanisms is provided in Article 4 of the OPCAT, as well as the definition of persons deprived of their liberty. In practice, each country has to determine which places are covered by the definition. In Poland, there are approximately 1,000 such places, including 192 penitentiary establishments. Other establishments include juvenile detention centres, juvenile shelters, the Police emergency centres for children, rooms for detained persons within the Police organisational units, rooms for apprehended persons or persons brought to sober up within the Police organisational units or the premises of the Military Forces of the Republic of Poland, sobering stations, youth care centres, youth sociotherapy centres, deportation custody centres, facilities for foreigners applying for a refugee status or asylum, psychiatric hospitals, and social care centres.

The visits should be carried out on a regular basis to guarantee their high efficiency. It poses a problem for many mechanisms, as regular visits require adequate financial and human resources.

Within the framework of the National Preventive Mechanism tasks, the representatives of the Human Rights Defender carried out visits to 76 establishments in 2008, and 106 in 2009. These were predominantly unannounced visits, the places of detention were selected at random, and all the available information on the visited facilities was taken into consideration.

The list of all types of places of detention visited by the Mechanism is updated on a current basis. The schedule of the NPM visits is prepared a year in advance, but it is not made public. It includes different types of places of detention and different locations around the country.

The minimum frequency of visits to individual places of detention depends on the type of visit, the category of the place to be visited, and the availability of other

sources of information on a given place. The results of former visits, which were carried out within the framework of the Human Rights Defender's statutory tasks, are also taken into consideration. Moreover, the data on irregularities in places of detention are submitted to the Office of the Human Rights Defender by non-governmental organisations with which the Polish Ombudsman cooperates in connection with functioning of the Mechanism. An Agreement on the implementation of the OPCAT has been introduced in Poland. It includes such organisations as Amnesty International Poland, Polish Section of the International Commission of Jurists, the Association for Legal Intervention, the Helsinki Foundation for Human Rights, and the Sławek Foundation. Additional information is obtained from reports, regularly submitted to the Office of the Human Rights Defender, which concern extraordinary incidents in penitentiary establishments, in the Police units and in juvenile facilities. Once, an information on a high number of escapes from a youth care centre resulted in a visit of the National Preventive Mechanism to the establishment. The visit revealed that numerous changes of a general nature were necessary in the facility, and that the girls living there were subjected to inhuman forms of treatment and punishment, which was the reason behind such an elevated number of escapes.

In general, the places which are known to be facing more serious problems require more frequent visits, similarly to pre-trial detention centres, Police detention centres and places housing the so-called vulnerable persons (i.e. women, juveniles, psychiatric patients).

The objective of the Mechanism is to make ad-hoc or detailed visits. The aim of a detailed visit is to conduct a thorough analysis of the detention system, to identify the sources and causative factors that lead, or may lead in the future, to torture or cruel or degrading treatment (including low quality of detention conditions), and to make appropriate recommendations.

Ad-hoc visits are carried out in-between detailed visits in order to check whether the recommendations are being followed, and to ensure that the persons deprived of their liberty are not subjected to repressions.

In Poland, a substantial majority of visits are detailed visits, due to a very high number of places of detention and a limited number of staff responsible for preventive visits. The implementation of recommendations is verified mainly by way of correspondence, continuous dialogue with the head of visited establishments, and, if necessary, with their supervisory authorities.

The length of a visit depends on the size of the visited place and on the problems encountered on site. Detailed visits usually last 3-4 days in large penitentiary establishments, and 1-2 days in juvenile facilities or the Police units. Ad-hoc visits are appropriately shorter.

While performing the tasks of the NPM, the representatives of the Polish Ombudsman hold an official identity card and an authorisation to a visit in a given establishment.

In 99% of the cases, the management of the establishment is not informed in advance of the planned visit. The information about the planned visit is provided only in the case of large prisons or pre-trial detention centres for 800-1000 people, by fax sent on the day of the visit or a day in advance, with the aim to make the visit more efficient and to obtain, immediately upon arrival to the establishment, all the necessary information which determine further activities. In this way that the management of a facility does not have time to introduce any changes. However, there were cases where inmates informed the representatives of the Ombudsman about the changes being introduced just before visits to penitentiary establishments. Such changes included the distribution of the establishments internal regulations in the cells, or the removal of triple-decker beds from the cells, and, in the opinion of the inmates, were due to the NPM visit.

As regards other types of detention places, we do not notify of the planned activities. So far we have only had a few problems with access to some Police units. Despite the fact that all the institutions were informed at the very beginning about the new role of the Polish Ombudsman as the National Preventive Mechanisms, these difficulties obviously resulted from the lack of knowledge on the part of individual Police officers about the formal basis for the activities of the Mechanism in Poland.

The dialogue with the Police authorities allowed us to eliminate these difficulties. At the request of the Human Rights Defender⁷, the Police Commander in Chief informed all subordinate commanders about the fact that the Human Rights Defender acts as the NPM and about the rules of conducting visits to the Police organisational units.

The course of a visit is strictly determined by the tasks of the National Preventive Mechanism, that is by the need to strengthen, if necessary, the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. With this objective in mind, the representatives of the Human Rights Defender inspect the entire establishment, its installations and equipment, as well as the rooms where the persons deprived of their liberty are held, including sanitary facilities, kitchens, common rooms and living quarters. An important element of every visit are the interviews conducted in such a way that no third parties can learn the answers given by the respondents. The Office of the Human Rights Defender has drawn up questionnaires to be used during the NPM visits, separate for penitentiary establishments, sobering stations, rooms for detained persons in the Police organisational units, the Police emergency centres for children, a common questionnaire for juvenile detention centres and juvenile shelters, and a common questionnaire for youth care centres and youth sociotherapy centres.

The questionnaires consist of several dozens of open and closed ended questions. Some of the respondents are selected because they are at a greater risk of inappropriate treatment than others. Therefore, the persons interviewed by the Ombudsman representatives in prisons and pre-trial detention centres always include inmates aged above 60 years, physically disabled, foreigners as well as persons who were subjected to direct coercive measures or who received the disciplinary punishment of solitary confinement in the last 6 months, or the so-called dangerous prisoners. Regardless of the type of the place of detention, a rule was adopted to interview 10% of the population of a given establishment. If some alarming circumstances are revealed during a visit, the pool of respondents is appropriately

⁷ RPO-605914-VII/09.

broadened. The respondents are selected at random, but interviews with persons who come forward themselves are also admitted. In addition, short conversations with persons deprived of their liberty also take place during the inspection of the establishment, in particular of its living quarters.

The composition of the visiting team should be of an interdisciplinary nature, which may pose a problem for some of the mechanisms, as Ombudsman offices usually employ mostly jurists and it is Ombudsmen that perform the tasks of national preventive mechanisms in the majority of the countries. In Poland, the visiting teams include external experts, such as psychologists, including clinical psychologists, doctors and addiction specialists. They participated in the visits, if it was justified by the profile of a given facility⁸. Opinions of those specialists are presented in the post-visit report and taken into account when making recommendations. The teams that carry out the NPM visits consist mainly of jurists, political scientists and rehabilitation educators.

The NPM post visit reports are sent to the head of the visited facility, to its superior authorities, to the judge supervising the facility, and to the Helsinki Foundation for Human Rights. They are also sent to the “Agreement on the implementation of the OPCAT”.

It needs to be emphasized that the time from the provision of recommendations to a reply is monitored. If the Office of the Human Rights Defender does not receive a response from the addressees of recommendations within a month, a reminder is sent informing of the need to adopt a stance on the recommendations. Often an exchange of arguments proves necessary, as well as a repeated explanation of the rationale behind the recommendations. In some cases, the circumstances revealed in visited establishments resulted in the actions being taken to the prosecutor’s offices.

Until now, post-visit reports have not been made public. The National Preventive Mechanism page (in Polish and in English) on the Ombudsman’s website⁹ presented only the current information on the activities of the NPM, its annual and

⁸ In 2008, external experts took part in the visits to 10 places of detention, and in 2009 to 14. Sometimes two experts participated in a visit to one establishment.

⁹ www.rpo.gov.pl

quarterly reports. From 2010, the website will also present the excerpts from post-visit reports, taking into account the positions of the visited authorities.

Apart from regular preventive visits, the task of the national preventive mechanisms also consists in submitting proposals and observations as regards the existing or draft legislation. As regards the first task, the NPM visits in 2009 revealed that the legal regulations in force do not include the right of juveniles (in juvenile shelters, juvenile detention centres, youth care centres and sociotherapy centres) to daily outdoor exercise (a walk) and pointed to the lack of regulations on living conditions in the Police emergency centres of children. Therefore, the Ombudsman asked the competent ministers for a relevant legislative initiative. This is because the Polish Ombudsman does not have the right to a legislative initiative. The course of legislative process is monitored each time, and if the legislative initiative is not undertaken, the relevant discussion is continued, in particular if the matter is considered important from the point of view of the aims of the NPM. Until now, in the majority of the cases the Ombudsman have met with positive attitudes of the addressee to the presented problems. In Poland, however, the legislative process usually takes a relatively long time. Therefore, the implementation of recommendations that require legislative changes is a lengthy process.

In relation to the requirement to analyse draft legislation, on 24 December 2008 the Human Rights Defender submitted a request to the Prime Minister¹⁰ that all drafts of legal acts that refer in any way to the persons deprived of their liberty be submitted to his Office, pointing out that this is necessary for the performance of the NPM tasks. In 2009, the draft legal regulations were regularly submitted to the Office of the Human Rights Defender in 2009. However, so far the Ombudsman has made more observations pertaining to the laws being already in force, after verifying the reality of their enforcement. For instance, currently the analysis is carried out on how the regulations concerning the use of closed-circuit television cameras in penitentiary establishments are being enforced.

¹⁰ RPO-R-072-45/07.

3. The organisation of the activity of the National Preventive Mechanism within the Office of the Human Rights Defender

The tasks of the National Preventive Mechanism (NPM) are currently performed mainly by six employees of the Criminal Executive Law Department, delegated to carry out the tasks of the Mechanism. Other members of the Department (eight persons, including the director) participate in the NPM preventive visits where necessary. The employees of the Criminal Executive Law Department visit prisons, pre-trial detention centres, juvenile detention centres, juvenile shelters, youth care centres and sociotherapy centres, the Polish emergency centres for children, rooms for detained persons within the Police organisational units and sobering stations.

In addition, the tasks of the Mechanisms are performed by four employees of the Public Administration, Healthcare and Protection of Aliens Department, who carry out visits to centres of aliens applying for a refugee status or asylum, deportation custody centres, guarded centres for foreigners and psychiatric hospitals. The employees of that Department support also the Labour Law and Social Insurance Department on visits to social care centres. Seven employees of the latter Department were preliminarily assigned with the task of visiting social care centres.

Furthermore, in 2010 special rooms were designated in organisational units of the Military Forces of the Republic of Poland, where persons detained in pre-trial custody and convicted persons may be temporarily placed. Therefore, they will be visited by one employee of the Rights of Soldiers and Public Officers Department.

The abovementioned employees of the Office of the Human Rights Defender are employed full time, and the majority of them performs the NPM tasks from the moment this function was entrusted to the Human Rights Defender. Only some of them have been employed for a shorter period, but all of them are appropriately prepared to carry out preventive visits.

In addition, the tasks of the National Preventive Mechanism are performed by one employee from the Local Group in Katowice, one from the Local Group in Wrocław and two from the Local Group in Gdańsk. All of them have been trained in the methodology of visits.

It should nevertheless be pointed out that due to the fact that the National Preventive Mechanism is not sectioned off within the Ombudsman's Office, all those employees at the same time perform the statutory tasks of the Ombudsman, i.e. examine numerous requests from the citizens.

4. Financing of the National Preventive Mechanism in Poland

In the second year of its operations in Poland, the financial condition of the National Preventive Mechanism was significantly better than in 2008. The amount allocated for the NPM activities in the budget for 2009 was PLN 1.4 million (approx. EUR 350 000), while in 2008 it totalled PLN 426 000 (approx. EUR 106 000). It allowed to increase the frequency of visits from 76 visits in 2008 to 106 in 2009 and to furnish the employees of the Mechanism in necessary equipment.

However, the final months of 2009 were again focused on intensive measures to obtain financial resources for the Mechanism's operation in 2010. In the course of work on the state budget for 2010, the budget of the Office of the Human Rights Defender was reduced by PLN 1.3 million, i.e. by almost the same amount as the one allocated for the NPM operations in 2009. The budget for 2010 did not allocate any funds to the Office of the Human Rights Defender for the performance of the Mechanism's tasks. Its operations must be financed from the general resources of the Office. This means that those tasks will be performed at the expense of other activities of the Office and will be largely limited. Therefore, it constitutes a breach of Article 18(3) and (4) of the OPCAT. Poland has an obligation to ensure necessary funding for the operations of the National Preventive Mechanism and to observe the so-called Paris Principles with regard to the financing of national institutions for protection of human rights.

The Human Rights Defender sent a relevant letter informing about serious financial difficulties of the Mechanism to the Secretary General of the Association for the Prevention of Torture (APT), the Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT).

5. Cooperation of the National Preventive Mechanism with other institutions

A. Subcommittee on Prevention of Torture (SPT)

The Subcommittee on Prevention of Torture¹¹ is a body which collaborates with national preventive mechanisms on development of a system of regular visits to detention places in order to prevent torture and other forms of cruel, inhuman or degrading treatment or punishment. It is a new body of the United Nations established on 18 December 2006, i.e. four years after the adoption of the OPCAT by the General Assembly of the United Nations. It is responsible not only for visiting of detention places. It also serves a function of an advisory body to States Parties and national preventive mechanisms appointed by them, and integrates all existing mechanisms. Both SPT and national preventive mechanisms are to conduct a constructive dialog with and to submit recommendations to the authorities of individual countries in order to prevent torture and other prohibited forms of treatment of the detained persons.

The Subcommittee on Prevention of Torture has not yet been visiting places of detention in Poland. In 2009, the SPT made visits to Paraguay, Honduras and Cambodia.

Currently, one of the SPT members is a representative from Poland — Professor Zbigniew Lasocik¹².

In 2009, the Human Rights Defender did not refer to the Subcommittee in relation to problems revealed during the NPM visits. However, due to the problems with obtaining funds for the activities of the National Preventive Mechanism, at the end of 2009 the Human Rights defender informed the Subcommittee about the existing

¹¹ Subcommittee on Prevention of Torture, <http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>.

¹² Professor's term in office expires on 31 December 2012.

situation and asked for its intervention. However, by the day on which this report was prepared, the SPT did not reply in this matter.

B. Association for the Prevention of Torture (APT)

The Association for the Prevention of Torture is an international non-governmental organisation which has been operating since 1977, and is currently responsible for supervision of the activities of national preventive mechanisms in individual States Parties to the OPCAT.

The APT is engaged in a campaign for ratification of the Protocol and its proper implementation. On its website¹³ the Association disseminates a number of publications on the operation principles of national preventive mechanisms and on the method of conducting preventive visits. This is a valuable source of information for the Polish National Preventive Mechanism. The website includes the *Guide to Establishment and Designation of National Preventive Mechanisms*, which is also available in Polish. The translation was made by the Association for Legal Intervention, i.e. one of the organisations constituting the Agreement on the implementation of the OPCAT.

In 2009, while performing the tasks of the National Preventive Mechanism in Poland, the Human Rights Defender was in touch with the APT members. He informed them about the NPM's activities in the Republic of Poland and the related problems.

C. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The European Committee for the Prevention of Torture has been established pursuant to Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Its objective is to examine, by means of visits, the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading

¹³ www.appt.ch

treatment or punishment. The objectives of the CPT are therefore consistent with the tasks of the National Preventive Mechanism.

Therefore, it is worth paying attention to the fourth periodic visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which took place in Poland between 26 November and 8 December 2009. The CPT delegation met with the employees of the Office of the Human Rights Defender performing the tasks of the National Preventive Mechanisms and got acquainted with the annual report of the Mechanism for 2008. The Ombudsman's representatives also participated in the recapitulation of the visit of the Committee which took place in the Ministry of Justice. The CPT delegation assessed the implementation of recommendations made after the last periodic visit of the Committee to Poland in 2004, in particular the recommendations concerning the Police units, the Border Guard and penitentiary establishments. The CPT for the first time visited a social care centre in Poland.

D. Non-governmental organisations

As the Human Rights Defender is responsible for the execution of tasks under the National Preventive Mechanism, once every 3 to 4 months he meets with the representatives of the Agreement for the implementation of the OPCAT. This is the name given to an initiative group created in the Department of Social Prevention and Resocialization of the University of Warsaw on 26 October 2007. The members of the group represent academic circles and non-governmental organisations which act for the benefit of human rights and their protection. Key humanitarian and human rights protection organisations have been invited to cooperate, including: Amnesty International in Poland, the Helsinki Foundation for Human Rights, the Association of Legal Intervention, the International Commission of Jurists – Polish Section, the Chair of Criminology and Criminal Policy (University of Warsaw), the “Sławek” Foundation.

In 2009, the Ombudsman held three meetings with the representatives of the Association to discuss issues related to the functioning of the Mechanism in

Poland. During the meetings, information about the problems encountered by penitentiary establishments in Poland, as well as by other places of detention, was exchanged. The first annual report on the activities of the Mechanism in 2008 was discussed as well.

The aforementioned cooperation between the National Preventive Mechanism and non-governmental organisations is of great value, for it encourages a discussion about the problems identified in the functioning of detention places in Poland and an exchange of views in this regard. The representatives of organisations who meet with members of the NPM are experienced as far as visits to places of detention are concerned. They have a broad knowledge on the subject of the protection of human rights. All this contributes to the transparency of the activities of the Mechanism.

E. International cooperation – participation in conferences and seminars on the issues related to the National Preventive Mechanism

In 2009, the issues related to the activities of the National Preventive Mechanisms were discussed on numerous occasions on the international forum. Increasingly intensive international contacts of the NPM are related to the development of preventive mechanisms in other countries and the need to exchange experience in this regard.

The activities of the NPM were presented at the Human Dimension Seminar: entitled “Strengthening the rule of law in the OSCE area”. The seminar was held in May 2009 in Warsaw and was organised by the Office for Democratic Institutions and Human Rights (ODIHR). The said issues were also presented at the annual Human Dimension Implementation Meeting held in Warsaw at the end of September and the beginning of October 2009.

The issues related to the performance of tasks of the National Preventive Mechanism by the Human Rights Defender were discussed on 25 October 2009 in Warsaw-Natolin, as a part of the implementation of the “Eastern Partnership Countries’ Ombudsmen Cooperation Programme”. The representatives of the Ombudsmen of Georgia, the Republic of Moldova and Azerbaijan discussed the problems related to the performance of the NPM tasks in their countries. All parties

expressed their interest in further detailed discussion on the activities of national preventive mechanisms of all countries from the Eastern Partnership.

The activities of the National Preventive Mechanism in Poland were presented in detail during the workshops in Kiev (11-16 October 2009) and in Warsaw (24-27 November 2009). The workshops for the representatives of the Ukrainian Ombudsman were organised as a part of the implementation of the component of the project "Support for sectoral reforms in Ukraine II", entitled "Strengthening of the cooperation of the Polish and Ukrainian Ombudsmen". The workshops included the visit to the Prison in Bila Tserkva in Ukraine and the Prison and Pre-Trial Detention Centre in Warsaw-Białoleka. Although a national preventive mechanism has not been officially designated in Ukraine, the office of the Ombudsman of Ukraine conducts visits and interventions in penitentiary establishments. Therefore, the problem of appropriate implementation of the OPCAT was an important element of the workshops.

The activities of the National Preventive Mechanisms were also the subject of interest of the Ombudsman of Tajikistan who was a guest to the Office of the Human Rights Defender. During the meeting on 7 October 2009, the organisation of the NPM's activities within the Office of the Human Rights Defender and the methodology of preventive visits were presented.

Due to an increasing number of countries which designated national preventive mechanisms and the need to establish closer cooperation between those mechanisms, the Council of Europe and the Association for the Prevention of Torture initiated the project of cooperation of mechanisms functioning in the Council of Europe member countries. The project is co-financed by the Council of Europe and the European Commission¹⁴. It was presented at the conference in Strasbourg on 5 and 6 November 2009, attended by the representatives of the Polish Ombudsman. The objective of the project is to create an active network of all NPMs in Europe, raise awareness of standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Subcommittee on Prevention of

¹⁴ "European NPM Project", www.apt.ch/region/eca/EuropeanNPMProject.pdf

Torture, strengthen the cooperation between the SPT and the CPT, promote the ratification of the OPCAT and the establishment of NPMs where they do not exist. In 2010 and 2011, six thematic workshops will be organised on specific issues related to the performance of preventive tasks. Trainings for employees of national preventive mechanisms will also be organised in individual countries. In Poland, such training (On-site visits & Exchange of experiences) will take place in May 2010. An important fact is that the CPT, SPT and APT experts will take part in the trainings.

In the fourth quarter of 2009, a representative of the Human Rights Defender participated in the conference, organised on 25 and 26 November in Baku, on the OPCAT implementation in Azerbaijan. The conference was organised by the Ombudsman of Azerbaijan, Professor Elmira Suleymanova, in cooperation with the OSCE and the ODIHR. At the seminar, which was attended by the experts of the University of Bristol, Estonia and Georgia who perform preventive visits in places of detention, the representative of the Human Rights Defender presented detailed information on practical aspects of the activities of the National Preventive Mechanism in Poland, including the issues related to making recommendations, preparing post-visit reports, quarterly and annual reports.

In addition to the abovementioned conferences and seminars, on 8 December 2009 the Human Rights Defender, Dr. Janusz Kochanowski, participated in the Round-Table on Detention Conditions in the European Union, organised by the European Commission in Brussels. The discussion focused on the activities of national preventive mechanisms and current problems of penitentiary establishments. In his speech, the Human Rights Defender presented the conclusions from the NMP visits to prisons and pre-trial detention centres.

6. Visits under the National Preventive Mechanism in 2009

As earlier mentioned, the definition of places of detention, within the meaning of Article 4(1) of the OPCAT, is very broad and covers almost 1 000 various types of establishments in Poland. In practice, the visits of the National Preventive Mechanisms in 2009 covered such establishments as:

- prisons, pre-trial detention centres and external wards of individual penitentiary establishments;
- juvenile detention centres;
- juvenile shelters;
- youth care centres;
- youth sociotherapy centres;
- rooms within the Police organisational units for detained persons or persons brought to sober up;
- Police emergency centres for children;
- sobering stations;
- psychiatric hospitals;
- guarded centres for foreigners;
- deportation custody centres at the Border Guard organisational units;
- centres for foreigners applying for a refugee status or asylum;
- social care centres;
- military disciplinary detention centres.

Between 18 January and 31 December 2009, the representatives of the Human Rights Defender, executing the tasks of the National Preventive Mechanism, carried out preventive visits in 106 various types of places of detention. They were selected by taking into account their type, size and location in the country. All available information on the problems of individual institutions was also taken into consideration.

A detailed list of places of detention which were visited by the NPM in 2009 is available on the website of the Human Rights Defender. It is also attached to this report (see Annex 1 and 2).

The results of the visits, by types of detention places, are presented below. The results present specific problems and general follow-up measures taken.

A. Penitentiary establishments

In 2009, the representatives of the Human Rights Defender, performing the tasks of the National Preventive Mechanisms, visited 16 prisons, 10 pre-trial detention centres and 4 external wards of penitentiary establishments.

During the visits the attention was paid mainly to the issues related to living conditions and medical care provided to persons deprived of liberty.

The living conditions in the visited penitentiary establishments varied. Numerous living wards were renovated. However, the lack of funds does not allow to carry out the required renovation works in the most worn-out units. For example, the residential premises in Prison in Płock on the day of the visit were worn out and overcrowded. The living conditions of inmates were undoubtedly hard. This was due, in particular, to the technical conditions and appearance of numerous cells and baths, the lack of full separation of sanitary facilities and cramped conditions in some cells. It was emphasized that the accumulation of such inconveniences may lead to deeming them inhuman or degrading. The visiting persons noticed that the administration authorities of the Prison make efforts to improve the living conditions of inmates and, as the funds are available, gradually carry out renovation works (hiring contractors for individual works). Nevertheless, those activities are insufficient. In order to significantly improve the conditions in the Prison in Płock, the establishment should obtain more funds to carry out the complete refurbishment of two oldest residential buildings (including the separation of sanitary facilities, the replacement of window woodwork, the renovation of common baths) and complete the modernisation and renovation works of the kitchen (started in 2007) as fast as possible.

In reply to the reservations of the representatives of the Human Rights Defender, the Regional Director of Prison Service in Łódź informed that the Prison in Płock was under special supervision and control. A special team was established to reorganize the command unit in the establishment and to organise a monitoring unit. Some cells for persons deprived of their liberty, who had to be held in specific wards or cells of the prison, in conditions ensuring increased protection of the society and security of the prison, have been renovated, i.e. walls have been painted, floor surface

has been changed and sanitary facilities have been renovated. In addition, a refurbishment of baths was carried out, third floor beds were liquidated and worn-out mattresses and blankets were replaced with new ones. The establishment received financial support and the indicated changes will be verified during the repeated visit of the Mechanism to be carried out as soon as possible.

The persons visiting penitentiary establishments also voiced reservations concerning the living conditions in, inter alia, the Pre-trial Detention Centre in Warsaw-Mokotów and the Prison in Kraków-Nowa Huta. Despite current renovations and modernisation works, there are still cells in the said Pre-trial Detention Centre where living conditions are unsatisfactory. Sanitary facilities which are not separated from the rest of the cells constitute yet another problem. The conditions of the ventilation system is a serious problem in the pavilion for inmates who constitute a major threat for the society and have to be placed in an appropriate ward of the penitentiary establishment. Although the ventilation system functions, it does not ensure appropriate air circulation, particularly in summer. The visiting persons had an opportunity to experience that, as the temperature in visited cells was very high.

As a response to the above post-visit recommendations, the Director of the Pre-trial Detention Centre in Warsaw-Mokotów informed that the lacking curtains separating sanitary facilities from the rest of the cell were supplemented and that the residential cells in unsatisfactory conditions are renovated as the financial resources allow. The Director also pointed out that the ventilation system in the pavilion for the so-called dangerous inmates was built in 2004, according to the project approved by the relevant authorities. In order to ensure the appropriate comfort in the area where people live, mechanical exhaust ventilation was used, combined with gravitational supply ventilation.

The visit in the Prison in Kraków-Nowa Huta led to the conclusion that a complete refurbishment of cells located in old buildings and the furnishing of cells in the lacking furniture were among the necessary tasks. It is also important to solve the problem of the lack of access to hot water in women wards and the repair of ventilation system in the bath of one ward. In response to the said recommendations,

the Director of the Prison in Kraków-Nowa Huta informed that the General Director of the Prison Service had been asked to include the complete refurbishment of cells in four penitentiary pavilions in the investment and renovation plans. Apart from that, in order to guarantee the appropriate furnishing of prisoners' cells, the furniture was provided from warehouses and the Regional Director of the Prison Service in Kraków has been asked to secure funds for purchasing new equipment. In women's prison wards, the time of providing hot water to sinks and showers was extended in order to fulfil the requirement of § 30(4) of the Minister of Justice of 25 August 2003 on organisational and order regulations for serving prison sentences, according to which each woman prisoner can use hot water at least once a day and hot shower at least twice a week.

The directors of almost all establishments visited in 2009 complained about the lack of sufficient funds for renovations. They emphasized that modernisation works and replacement of old furniture and equipment with the new one were suspended due to financial difficulties of the Polish prison service. The visits resulted thus in calls to provide additional financing to those prisons and pre-trial detention centres where the situation was the worst. This included also the need to purchase e.g. medical equipment necessary for the hospital (Pre-trial Detention Centre in Bydgoszcz), complete refurbishment of the boiler room (Prison in Głogów) or renovation of the kitchen (Pre-trial Detention Centre in Bartoszyce).

On the day of the visit in the Prison in Kozięłowy, there was no cold or hot water and sanitary facilities in the prisoners' cells. In all residential buildings, sanitary rooms (baths with showers and sinks, squat toilets) were located outside the cells. Walls, ceilings and floors required renovation. Only the cells renovated in 2008 and 2009 raised no reservations. Three out of four baths needed renovation due to poor technical condition and appearance. Walls and ceilings were damp and mouldy. The efficient ventilation system was lacking. The representatives of the Ombudsman stated that taking a bath in such conditions may be considered inhuman and degrading treatment. Only one bath, at the final stage of renovation, raised no reservations of the visiting persons. Therefore, more financial support for the establishment, allowing to

continue renovation works, was deemed extremely important. The fact that there are no limits on using baths for inmates was assessed positively. In response to presented recommendations, the Director of the Prison in Kozięglowy stated that plans for 2009 included the completion of the renovation of toilets and baths, as well as the beginning of renovation of cells in one of the penitentiary buildings. Due to major financial difficulties of the prison service, the completion of the renovation according to plan in 2009 has proved to be impossible.

The visit to the Prison in Sztum in 2009, carried out to check the implementation of recommendations of the Human Rights Defender issued after the visit in September 2007, showed that the cell intended for disciplinary punishment in the form of solitary confinement had still not been renovated. During the visit, despite an open window, the cell was filled with stench from the sewage system. The walls were dirty and ruined. The representatives of the Human Rights Defender believe that placing an inmate in such conditions may be considered cruel, inhuman and degrading treatment. They also considered necessary the renovation of the surface of the volleyball court. The conditions in which disabled persons are held in the therapeutic ward have improved significantly as compared to the conditions encountered during the previous visit. However, selected cells should be adjusted only to the needs of disabled persons. In addition, the information provided by the management of the Prison shows that it is impossible to separate sanitary facilities with walls in the cells for two persons, due to architectural constraints of the establishment. Thus, the situation in this regard has not changed since the last visit.

The response to the recommendations sent to the Director of the Prison in Sztum was information that the cell for disciplinary punishment in the form of solitary confinement was renovated immediately after the NMP visit. The surface of the volleyball court in the prison yard was renovated. In 2009, the establishment also managed to solve the problem of overcrowding in the therapeutic ward.

As indicated above, the conclusions formulated after the visits to penitentiary establishment concerned also the issue of **separating sanitary facilities in the cells with walls and ensuring intimacy to persons deprived of their liberty**. According

to the provisions of § 28(1) and (30) of the organisational and order regulations on serving a prison sentence or pre-trial detention, sanitary facilities should be situated in a way ensuring privacy while using them. Furthermore, taking into consideration the case law of the European Court of Human Rights, being held in an overcrowded cell, combined with other inconveniences, including the necessity to meet one's physiological needs in front of the others, may lead to inhuman or downgrading treatment of persons deprived of their liberty. Therefore, e.g. in the Pre-trial Detention Centre in Inowrocław, the representatives of the Human Rights Defender noticed narrow, unserviceable cells, mainly with not separated sanitary facilities. In some cases, on the day of the visit the beds of inmates occupied almost the entire area of the cell, making it difficult to move around it. The toilet separated only with a curtain did not ensure the sense of privacy for persons using the toilet.

In reply to those remarks, the Director of the Pre-trial Detention Centre in Inowrocław informed that during the renovation of cells, the sanitary facilities are separated from the rest of the cell with walls, wherever it is possible due to architectural and structural reasons. However, due to the fact that one of the buildings is hundred years old, the separation of sanitary facilities with walls entails a very complicated reconstruction resulting in the changes to the structure of the building. This requires large financial outlays and a significant reduction of the capacity of the inmates' cells, which requires consent of the Central Board of the Prison Service.

As in the Pre-trial Detention Centre in Inowrocław, also in other establishments the lack of the possibility to separate sanitary facilities with walls in some cells stemmed from architecture of the buildings. Such a situation occurred for example in two-person transition cells of the Pre-trial Detention Centre in Bydgoszcz. Therefore, it was deemed necessary to provide at least the curtain separating sanitary facilities and replace them if any damages are discovered. The necessity to meet their physiological needs in front of other inmates violates the prisoners' personal rights, such as dignity and the right to privacy. Taking into consideration the obligation to observe the latter right, the recommendation was made to install screens separating individual showers in baths (e.g. Pre-trial Detention Centre in Bartoszyce).

In almost all prisons and pre-trial detention centres visited by the National Preventive Mechanism, there was a need to install **safety rails and ladders on bunk beds**. In the overwhelming majority of establishments, the bunk beds lacked the ladders and railings on upper bunk which would protect persons deprived of their liberty against falling out. As the problem requires a systemic solution, on 29 December 2009 the Human Rights Defender asked the Minister of Justice¹⁵ to present his opinion on the need to amend the Ordinance of the Minister of Justice of 17 October 2003 on living conditions of inmates in prisons and pre-trial detention centres¹⁶ and introduce a requirement to install safety rails in bunk beds protecting the users from falling out. This certainly requires financial outlays on the part of the prison service, but such safety rail on bunk beds are necessary, due to accidents which happen sometimes and often result in severe injuries of inmates. The Human Rights Defender had not received a reply in this regard by the end of 2009.

In addition, the National Preventive Mechanism visits often pointed to the lack of anti-slip mats in baths (e.g. in the Prison in Bydgoszcz, in the Pre-trial Detention Centre in Wojkowice). The implementation of this recommendation, as well as the fitting of safety rails on bunk beds, will significantly improve the safety of inmates. In one of the establishments, appropriate conformity certificates for multigyms used by persons deprived of their liberty had to be obtained for safety reasons (Prison in Głogów).

The analysis of the issue of appropriate living conditions took into account also the **lack of separate lighting for the place where sanitary facilities are located** in prisoners' cells. This problem was a source of repeated complaints of persons deprived of their liberty. Therefore, on 21 December 2009, the Human Rights Defender sent a letter to the General Director of the Prison Service¹⁷. He indicated that persons deprived of their liberty complain that due to the lack of supply of power to the cells in the night-time, there is no light in the places where sanitary facilities are located. This results in discomfort while meeting one's physiological needs and puts

¹⁵ RPO-629291-VII/09.

¹⁶ Dz.U. of 2003 No 186, item 1820.

¹⁷ RPO-628927-VII/09.

inmates at risk of injury. The complaints in this regard were submitted mainly by elderly persons and physically handicapped. The administration bodies of numerous establishments do not see the need for a separate lighting system for sanitary facilities, and consider the previous solutions sufficient, indicating that at night-time sanitary facilities are lit by external, artificial lighting system from outside the building. In other cases, the prison administration suggests that inmates who want to use the toilet would inform about it an officer of the Prison Service who can put on the light in their cell. Such methods of dealing with inmates are not a solution to the problem. Moreover, they may be considered inhuman. Therefore, the Human Rights Defender asked the General Director of the Prison Service to change the practice followed in this regard. However, he had not received a reply in this regard by the end of 2009.

During the visits, attention was also paid to the problem of equipping the entertainment rooms and inmates' cells in furniture (e.g. Pre-trial Detention Centre in Bartoszyce, Prison in Wojkowice) or adding equipment to the rooms where personal inspection are performed and furnishing the rooms for so-called intimate visits in equipment laid down in the Ordinance of the Minister of Justice of 17 October 2003 on living conditions for inmates of prisons and pre-trial detention centres (e.g. Pre-trial Detention Centre in Bartoszyce, Prison in Dubliny, Prison in Wojkowice).

In addition, the visits to penitentiary establishments included the inspection of their territory, including yards used by the persons deprived of their liberty. In relation to the deficiencies revealed, the visiting persons considered necessary the instalment of benches in some yards (e.g. Pre-trial Detention Centre in Bartoszyce, Prison in Wojkowice) and adjustment of the number of inmates walking in the yard to the size of the yard. Furthermore, they also pointed to the need to repair the damaged surfaces in some prison yards (e.g. Prison in Wojkowice). As regards the right of inmates to a daily, one-hour walk, a recommendation was made in one of the establishments to eliminate the cases where the persons deprived of their liberty had to choose between a walk and cultural activities (Prison in Wojkowice).

The assessment of living conditions is inherently linked with the issue of the **number of inmates in penitentiary establishments**. The Human Rights Defender

repeatedly motioned to the relevant authorities in this case. On 12 March 2009, he sent a letter to the Secretary of State at the Ministry of Justice¹⁸ on the planned amendments to the Executive Penal Code, aimed at exercising the judgment of the Constitutional Tribunal of 26 May 2008. In reply, the Secretary of State at the Ministry of Justice informed that the Department of Decision Implementation and Probation prepared a draft Act amending the Executive Penal Code and certain other acts, taking into account the position of the Constitutional Tribunal and offering a comprehensive solution to the problem of overcrowding in penitentiary establishments. After social consultations, due to its innovative solutions, previously unknown in the penitentiary regulations, the draft Act (in its version of 6 March 2009) was sent for the evaluation of academic authorities in the field, mainly in terms of compliance of proposed amendments with the Constitution of the Republic of Poland. Individual legal solutions raised controversies not only among the academics, but also among the law practitioners.

The Human Rights Defender submitted another motion referring to the problem of overcrowding to the Minister of Justice – the General Prosecutor on 13 March 2009¹⁹. It concerns the possibility of the implementation by the Polish government of the judgment of the Constitutional Tribunal stating that the regulation allowing for long-lasting overcrowding of pre-trial detention centres and prisons was unconstitutional and the problem of executing penalties with regard to persons who do not serve their prison sentence for various reasons. In reply the Secretary of State at the Ministry of Justice informed that the draft Act amending the Executive Penal Code and certain other acts, whose assumption is to offer a systemic solution to the problem of overcrowding, was at the stage of social consultations. The draft assumes that the directors of pre-trial centres will receive the powers to flexibly set the dates when the convicted persons should come to serve their sentence. In exceptional circumstances, inmates can be placed in a cell of below 3 m² per person for up to one month. In addition, the Secretary of State informed that the Act on serving a prison sentence outside the prison using the electronic monitoring system would enter into force on 1

¹⁸ RPO-572925-VII/07.

¹⁹ RPO-515967-VII/05.

September 2009. The draft amendments to the Executive Penal Code also assume the liquidation of the possibility of respite and interrupted penalty in the case of a prison sentence, and thus mean that the convicted persons will serve their sentences.

All in all, in view of the entry into force of the abovementioned amendments to the Executive Penal Code and the implementation of the government “Programme of obtaining 17 000 places in organisational units of the prison service in 2006-2009”, the Human Rights Defender notices a significant improvement in terms of the overcrowding of penitentiary establishments. The statistics of the Central Board of the Prison Service show that between 2007 and 2009 overcrowding in prisons and pre-trial detention centres was significantly reduced and the number of places where prisons were placed grew considerably. At the end of 2007 and 2008, the number of inmates in prisons and pre-trial detention centres stood at 87 462 (110.9% of capacity) and 82 882 (99.7% of capacity), respectively, while the number of places in which they were placed totalled 78 883 and 83 112, respectively. On 4 January 2010, the number of inmates amounted to 83 791 (99.6% of the capacity of penitentiary establishments).

It is worth noting that pursuant to the new provisions of the Executive Penal Code²⁰, in specified circumstances or if there is a need to place a specific category of convicted persons in a given establishment, the director of a prison or a pre-trial detention centre may place a convicted person for a specified time (not longer than 90 days) in a cell where the living space per inmate is below 3 m², but not less than 2 m². The standard required by the European Committee for the Prevention of Torture (CPT) is 4 m² of the cell per inmate.

The level in which the capacity of individual establishments was used was verified during each visit of the National Preventive Mechanism. For example, in the Prison in Kozięłowy the capacity was used in 111%, in the Pre-trial Detention Centre in Inowrocław in 116.7%, in the Prison in Płock in 117.5%, while in the Pre-trial Detention Centre in Piotrków Trybunalski in 120%. A peculiar situation occurred in the Prison in Kraków Nowa-Huta where the total capacity was used in 115% on the day of the visit, in the ward for convicted women it was used in 140%, in the ward for

²⁰ Dz.U. No 190, item 1475, Act of 9 October 2009 amending the Executive Penal Code.

convicted men in 127%, while in the ward for temporarily arrested in was used only in 27%.

The methods of coping with overcrowding were similar in prisons or pre-trial detention centres visited in 2009. They included the adaptation of entertainment rooms, infirmaries, and sometimes even cells for solitary confinement, for cells for inmates classified as persons posing a serious social threat or a serious threat to the safety of the establishment, and sometimes also for transition cells.

In the establishments where there was no overcrowding at the time of the visits, not all inmates were placed in the cells providing 3 m² of living space per person.

Overcrowding of penitentiary establishments, and thus the necessity to obtain additional places for inmates, is related to the problem of a **poor offer of cultural activities** for the majority of prisoners. In some establishments, entertainment rooms are temporarily transformed into cells (e.g. Pre-trial Detention Centre in Bydgoszcz) or are very small (Prison in Płock), equipped only in chairs (Prison in Wierzchowo), which does not encourage inmates to leave their cells. The persons deprived of their liberty declared that they found it pointless. Those remarks do not refer to all visited establishments. Many prisons and pre-trial detention centres received very high marks in terms of their offer of cultural activities. All libraries in penitentiary establishments had, among others, up-to-date codes and large book collections. “Codziennik Prawny”²¹, a manual published in 2009 and edited by the Human Rights Defender, Dr. Janusz Kochanowski, was distributed by the Office of the Human Rights Defender to all penitentiary establishments in the country.

The **prison health service** was also an issue verified during each visit of the National Preventive Mechanism. The functioning of prison outpatient units and the observance of inmates’ right to health care were verified. The need to increase the health care personnel was emphasized on numerous occasions, as such an increase would improve the access of inmates to health care services. For example, the medical personnel in the Pre-trial Detention Centre in Warsaw-Mokotów was overburdened with work, due to the difficulties in recruiting doctors and nurses willing to work in a

²¹ It includes, among others, specimen of letters, contracts, basic information from various fields of law. Its electronic version, available at www.rpo.gov.pl, is updated on a current basis.

hospital functioning at the penitentiary establishment. As a result, during the visit to the internal diseases ward, the representatives of the Human Rights Defender found an inmate with a post-acute withdrawal syndrome, tied with straps and guarded by a person deprived of liberty who was employed to do cleaning work. Such a situation is a consequence of the lack of a room for patients in need of intensive care or frequent checks of their condition. Furthermore, the visiting persons were concerned by the fact that all patients of the forensic psychiatry ward are in locked cells, though there is no medical justification for such a measure. They are not offered any form of activity, which may adversely impact their health. The practice of placing the persons under psychiatric observation and mentally ill in the same cell, and leaving patients tied with straps in the night-time, was considered inappropriate. In addition, the visiting persons pointed to the necessity of furnishing the establishment in additional medical equipment for the hospital (a cardiac sonographer, C-arm X-ray necessary for orthopaedic surgeries). The bathrooms in surgery wards of the hospital should be adjusted to the needs of physically handicapped patients.

After a visit to the Pre-trial Detention Centre in Warsaw-Mokotów, on 17 August 2009 the Human Rights Defender sent a letter to the General Director of the Prison Service²², pointing to the difficulties in recruiting medical personnel in the visited pre-trial detention centre and in other penitentiary establishments in the country. In reply, the General Director of the Prison Service listed various reasons behind the difficulties in recruiting doctors to work in the prison service. He pointed to the growing disproportion between the wages of the prison medical personnel and the remuneration of the public health care service employees. He also mentioned the fact that many employees leave when they obtain the right to retirement pay, due to difficult conditions of work. Moreover, the unappreciated image of the prison doctor does not encourage to work in penitentiary establishments. At the same time, the General Director emphasized that intensive activities are conducted with the aim to recruit more doctors to work in the prison health care services, by means of press

²² RPO-623027-VII/09.

announcements, announcements in infirmaries and employment of specialists on civil law contracts.

The problem of ensuring appropriate medical care, including psychiatric care, to persons deprived of their liberty is of particular importance from the perspective of **the cases lost by Poland before the European Court of Human Rights in Strasbourg**²³. Due to the alarming situation in this regard, the Human Rights Defender, sent a letter on 18 May 2009²⁴ to the Minister of Justice - the General Prosecutor on the implementation of the judgments of the European Court of Human Rights concerning the lack of appropriate health care services in the Polish penitentiary establishments. In reply, the Secretary of State at the Ministry of Justice informed that, in general, the inmates in prisons and pre-trial detention centres are provided with appropriate living conditions and health care services. The fact is confirmed by the number of judgments ordering compensation for inmates compared to the number of cases they take to courts. For 440 cases finished in 2007 before general courts, 21 cases finished with adjudication of compensation, while in 2008, when the number of pending cases concerning the infringement of personal rights due to inappropriate conditions of serving a prison sentence exceeded 1000, purely symbolic awards were granted only in 10-20 cases. The Human Rights Defender was also notified about the measures aimed at reducing overcrowding in the Polish penitentiary establishments. Furthermore, it was established that the currently binding regulations of the Executive Penal Code sufficiently secure the needs of persons deprived of their liberty with regard to the access to health care benefits and the infringements indicated by the European Court of Human Rights may stem from the defective practice of implementing those regulations. Therefore, the current activities will be aimed at appropriate implementation of the legal regulations in force.

In the context of ensuring appropriate medical care to prisoners, it is worth noting that the NPM visits revealed that numerous establishments **had not prepared the Charter of Patients' Rights** (a collection of information about rights and

²³ For example, the judgment of 20 January 2009 in the case Musiał vs. Poland (Application no. 24557/94), judgment of 3 February 2009 in the case Kaprykowski vs. Poland (Application no. 23052/05), the judgment of 20 January 2009 in the case Wenerski vs. Poland (Application no. 44369/02).

²⁴ RPO-561484-VII/07.

obligations of the patient-prisoner) to include the provisions on the situation of patients of the prison health care service. Often the Charter was not available to persons deprived of their liberty in the infirmary or in another place allowing inmates to read the Charter (e.g. Pre-trial Detention Centre in Jelenia Góra, Prison in Bydgoszcz-Fordon, Prison in Płock). Therefore, on 3 June 2009 the Human Rights Defender sent a letter to the General Director of the Prison Service²⁵, indicating the need to prepare a consolidated version of the Charter of Patients' Rights adjusted to the needs of persons deprived of their liberty who would be available to inmates in all prisons and pre-trial detention centres. In reply to the letter, the Director of the Health Care Service Department of the Central Board of the Prison Service presented a draft document entitled "Rights of a patient - person deprived of liberty" asking for an opinion about the document. In further correspondence on the subject, the Human Rights Defender stated that the information on the rights of patients deprived of their liberty should be published in the form of a booklet, with its first part presenting the excerpts from legal regulations proposed by the Director of the Health Care Service Department of the Central Board of the Prison Service. The second part should include the key questions asked by the inmates in this regard, along with replies to those questions. This will allow the persons deprived of their liberty to better understand the legal regulations in force.

A positive reaction to the letter of the Human Rights Defender and the actions aimed at drawing up the rights of patients deprived of their liberty is significant and deserves recognition. The document was sent to all penitentiary establishments in the country and the NMP visits will verify whether it is available to prisoners.

As in 2008, also in 2009 some of the visited establishments did not comply with the Ordinance of the Minister of the Interior and Administration of 26 November 1996 laying down the rules for **admissibility of tobacco use** in closed facilities reporting to the Minister of Justice.²⁶ The internal regulations of the establishments most often included the prohibition of smoking in the night-time (e.g. Pre-trial Detention Centre in Jelenia Góra, Prison in Bydgoszcz-Fordon, Prison in Malbork, Prison in

²⁵ RPO-561484-VII/07.

²⁶ Dz.U. of 1996, No 140, item 658, as amended.

Koziegłowy, Pre-trial Detention Centre in Inowrocław, Prison in Głogów). Furthermore, in the Prison in Wojkowice there was a need to consider the possibility to change the places intended for smoking in some living quarters, so as to prevent the cigarette smoke from reaching the prisoners' cells.

All penitentiary establishments where the above irregularities were revealed accepted the recommendations they received and introduced the relevant changes to their internal regulations.

An important event in 2009 was also the entry into force of the regulations concerning **the use of CCTV cameras in penitentiary establishments**. On 24 November 2009, the Human Rights Defender sent a letter on this matter to the Minister of Justice.²⁷ He stated that the Office of the Human Rights Defender received a number of complaints from persons deprived of their liberty on the use of CCTV in prisons and pre-trial detention centres. The complaints regard new regulations introduced to the Executive Penal Code by the Act of 18 June 2009 amending the Executive Penal Code. The analysis of the solutions in the Act leads to the conclusion that the extensive powers granted to the directors of prisons or a pre-trial detention centres to determine places and rooms where visual or audio monitoring may be used are incompliant with the principle of legal protection of private life included in particular in the Constitution of the Republic of Poland and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, the Human Rights Defender asked for an opinion on the constitutionality of the new solutions. In reply, the Undersecretary of State at the Ministry of Justice did not agree with the opinion of the Human Rights Defender and informed that in Article 88c, Article 116 and Article 212b(2) of the Executive Penal Code the legislator precisely determined whose behaviour is subject to obligatory or optional monitoring and where. The director of a prison is only to decide on the use of monitoring in other places and rooms than those listed in Article 88c, Article 212b(2) of the Executive Penal Code. They will include places accessible to all persons, such as passageways, yards for walking and the area of the prison outside the buildings. The suggestion that the

²⁷ RPO-572925-VII/07.

solution granting the director of the prison the power to use monitoring in the abovementioned places, if it is aimed at ensuring order and safety of the prison, is unconstitutional seems thus groundless. The charge of alleged violation of the principle of legal protection of the private life included in the European Convention for the Protection of Human Rights and Fundamental Freedoms is inaccurate as well. According to the Ministry of Justice, the solutions offered in the Act fulfil the Recommendations of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules.

Therefore, the Human Rights Defender considers filing a motion to the Constitutional Tribunal on the compliance of new regulations with the Constitution of the Republic of Poland. In addition, the analysis of the use of CCTV cameras in penitentiary establishments is scheduled for 2010.

B. Youth care centres and youth sociotherapy centres

In 2009, 7 youth care centres and 4 youth sociotherapy centres were visited under the National Preventive Mechanism.

The visits led to the conclusion that **unacceptable forms of treatment of juveniles** occur in some youth care centres. The situation was particularly bad in one establishment, where the interviews with the juveniles revealed that their housemasters yell at and insult juveniles, use vulgar language in front of them and threaten them with sending them to a psychiatric hospital (Youth Care Centre in Kruszwica). In another visited establishment, the Police conduct explanatory proceedings on physical and psychological mistreatment of juveniles by the personnel of the centre. Those cases are monitored by the Human Rights Defender.

No cases of maltreatment of juveniles were revealed in youth sociotherapy centres. On the contrary, the visiting persons noticed very good relations between the juveniles and the personnel of the centre and the confidence placed in the personnel (e.g. “Kał” Youth Sociotherapy Centre in Warsaw-Anin). However, it must be emphasized that the said centre has a very small number of juveniles who were placed in a youth sociotherapy centre as a result of the decision of a family court. The majority of them are persons who apply to the centre themselves.

The **internal regulations on punishments and rewards** in visited centres raised reservations. For example, the internal regulations of the Youth Sociotherapy Centre in Ostrowiec Świętokrzyski provided for the punishment of the prohibition on going home. Such a provision is incompliant with Article 66(4) of the Act on juvenile delinquency proceedings, which states that “the director of the establishment, centre or shelter (...) may limit or prohibit the contacts of a juvenile person with persons from outside the establishment, centre or shelter for juveniles only in the case when such contact may pose a threat to legal order, safety of the establishment, centre or shelter or may adversely influence the pending proceedings or resocialization of the juvenile person”. The above provision includes a closed catalogue of reasons for limiting or prohibiting the contact of a juvenile person with person from outside the centre and thus prevent the common use of the penalty in the form of “prohibition on going home”. Furthermore, the visiting persons expressed their reservation about the possibility of merging several punishments, provided for in the internal regulations of the said centre. The representatives of the Human Rights Defender believe that only one punishment should be imposed for one offence. If a juvenile resident committed more offences before being punished for any of them, he/she should receive one punishment, proportionally more severe.

In addition, disciplinary punishments in the form of a prohibition of telephone conversations with the family (which violates the abovementioned Article 66(4) of the Act on juvenile delinquency proceedings) were common in the Youth Care Centre in Kruszwica. Such measures are incompliant also with Article 9(3) of the Convention on the Rights of the Child which states that “States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.” Therefore, the quoted regulations do not allow to use a "prohibition of telephone conversations" as a punishment, as it was used in the centre, according to the statements of the girls staying in the centre made during the visits.

Collective responsibility cannot be applied to juveniles. In one of the centres, an escape or smoking by one of the girls resulted in the ban on going outdoors for all

(confirmed by a “Ban on walks” message on the board in the supervisors' room). Limiting the access to the open air is contradictory to the Recommendation “European Rules for Juvenile Offenders Subject to Community Sanctions or Measures” (Strasbourg, 4 April 2008). Pursuant to rule 82, “All juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air”. Although the national legislation does not include legal regulations guaranteeing juveniles an access to exercise in the open air every day, such access has to be considered necessary, taking into account the needs of the psychological and physical development of a young person and the necessity to relieve difficult emotions of young people with difficulties in adapting to the society. It also needs to be emphasized that in other youth care centres visited in the discussed period, the resident juveniles were offered a wide range of sports activities, also in the open air, which they were very pleased with (e.g. Youth Care Centre of Orionine Fathers in Warsaw). The activities in the open air in individual centre did not result in the increased number of escapes. The educational atmosphere among juveniles who could exercise in the open air without limits was much better than in the centre with permanent restrictions in this regard. Therefore, on 7 December 2009 the Human Rights Defender sent a letter to the Minister of National Education²⁸ in which he pointed to the need of legislative initiative with regard to ensuring the juveniles' right to exercise in the open air every day. It was another letter in this regard. In response to the previous letter of the Human Rights Defender in this regard, the Undersecretary of State at the Ministry of National Education gave an evasive reply, stating that the regulations in force allow juvenile residents to take part in physical education classes within the framework of the general curriculum and the curricula of individual types of schools included in the youth care centres or youth sociotherapy centres.

The visits of the National Preventive Mechanism in the abovementioned centres show that the current practice and the binding regulations in this regard are insufficient to solve the problem. The possibility of exercise in the open air depends on individual consent of the carers and the physical education classes managed by teachers not

²⁸ RPO-614994-VII/09.

always take place outside the buildings. Therefore, the Human Rights Defender believes that legal regulations should guarantee the juveniles placed in youth care centres and sociotherapy centres the right to exercise in the open air for at least one hour every day. The situation of the juveniles cannot be worse than the situation of the adults deprived of their liberty who have such a right guaranteed in the commonly binding law.

In reply, the Undersecretary of State at the Ministry of National Education stated that the requirement to ensure at least one hour of exercise in the open air would be included in the education law, namely, in the amendment to the Ordinance of the Minister of National Education of 7 March 2005 on framework statutes of public establishments. The reply does not put an end to interventions in this matter. They will continue in 2010.

Apart from the abovementioned problems, the visiting persons noted **chaotic organisation of foster care** over juveniles in two youth care centres. The main problem was the powerlessness of the teaching staff in the face of conflicts between the juvenile residents of the centres (e.g. Youth Care Centre in Trzciniec). The lack of established procedures to be followed in the case of disputes and inappropriate, sometimes too emotional, reactions of the personnel to the problems caused by juveniles, which are a source of frustration for the juveniles and discourage them from cooperation with the personnel, were recorded also in the Youth Care Centre in Kruszwica. Numerous escapes of juveniles, cases of self-mutilation and frequent Police interventions demonstrate the inappropriate atmosphere in the centre. In other visited establishments the relevant methods of dealing with difficult situations were developed and the juveniles were provided with a large offer of educational activities (e.g. Youth Sociotherapy Centre “Jędrus” in Józefów, Youth Care Centre in Krupski Młyn, Youth Care Centre in Kuźnia Raciborska).

During the visits to youth care centres, the representatives of the Human Rights Defender also paid attention to significantly varied **living conditions** in those centres. For example, the Youth Care Centre in Radzionków provides very good living conditions for juveniles. Girls’ rooms are colourful, furnished with new furniture and

decorated with personal belongings of the juveniles, including their toys. All this creates a nice, homely atmosphere appreciated by the residents. The living conditions in the Youth Care Centre in Kruszwica were mediocre, although it is a relatively new centre, open on 1 September 2008. The walls in all bedrooms require renovation. On the day of the visit, they were vandalized and dirty in some of the rooms. The rooms seemed squalid and only some of them were decorated and looked aesthetically pleasing. The sanitary facilities also needed renovation. Moreover, the juveniles pointed to the lack of the sense of intimacy due to the lack of shower screens.

One of the problems revealed during the visits to youth care centres and youth sociotherapy centres was the **admissibility of using tobacco products** by juveniles in such centres. The current regulations prohibit the use of tobacco products in schools and care centres (Act of 9 November 1995 on the protection of health against the consequences of the use of tobacco and tobacco products²⁹). However, the introduction of the prohibition of smoking and punishing, including collective punishment, for its violation do not seem to solve the problem and lead to the exacerbation of conflicts between the juveniles and the personnel of the centre (e.g. Youth Care Centre in Kruszwica). Due to the fact that the overwhelming majority of juveniles in such centres smoke, a better solution seems to be a separate place for smoking which would protect non-smokers against harmful impact of cigarette smoke. The necessary activities in all visited establishments include prevention measures on a large scale and health promoting classes, informing about the consequences of smoking and encouraging young people to pursue a healthy lifestyle

The analysis of internal regulations of the centres revealed certain inconsistencies with the commonly binding legal regulations, e.g. regarding the admissible **coercive measures**. Pursuant to Article 95a(5) of the Act on juvenile delinquency proceedings, direct coercive measures in the form of solitary confinement, restraint strap or straitjacket may be used only with respect to juveniles placed in a juvenile detention centre or a juvenile shelter. Such measures cannot be thus used with

²⁹ Dz.U. of 1995, No 10, item 55, as amended.

respect to juveniles in youth care centres or youth sociotherapy centres. The only admissible coercive measure with respect to those juveniles is force.

The issue examined during the visits to all establishments was the **availability of information on the institutions** to which juveniles may refer to, if necessary. When such information was lacking on notice board, the visiting persons called for including on the boards the addresses of institutions protecting the rights of juveniles, such as the Human Rights Defender, the Ombudsman for Children, the Helsinki Foundation for Human Rights or a family judge. Although juvenile residents of such centres can talk about their problems or conflicts at the meetings of all residents or directly with their carers or psychologists, it is incredibly important that they had an alternative and a possibility to refer their problem to an external institution. Juveniles should be kept informed and have a permanent access to the above addressed.

C. Juvenile shelters and juvenile detention centres

In 2009, 5 juvenile shelters and 4 juvenile detention centres were visited under the National Preventive Mechanism.

As regards the **treatment of juveniles**, the NPM visit revealed an alarming case of force being used against a juvenile by an employee of the Juvenile Detention Centre and Juvenile Shelter in Głogów. The visiting persons were also concerned about the lack of reaction of other employees who learned about the incident. The visiting persons emphasized that using force against juveniles had to be eliminated, and each such incident should meet with immediate and adequate response, aimed at determining the perpetrators, reasons and circumstances of the violation of juveniles' rights. As a result of the incident, confirmed by the recording from the monitoring system, the Office of the Human Rights Defender notified the District Prosecutor in Głogów. The case is pending.

Furthermore, the visiting persons pointed out that juveniles in the said centre should be protected against physical and psychological violence, exploitation and abuse stemming from the presence of the so-called "second life". In reply, the Director of the Juvenile Detention Centre and Juvenile Shelter in Głogów pointed out that

systematic and consistent activities of the personnel reduced to the minimum the cases when juveniles demonstrate their belonging to a criminal subculture. Those juveniles who try to implement the rules of the so-called “second life” are quickly identified by the personnel. They are subjected to individual measures aimed at redefining their attitudes and forcing them to observe the internal regulations of the establishment. Another challenged issue was the prohibition of free movement of juveniles during the breaks between lessons – the juveniles were forced to sit on a bench supervised by adults. As a result of the visit, the above prohibition has been removed. The director of the establishment emphasized that the prohibition was introduced due to aggressive behaviour observed in the past during the breaks in school classes. Such restrictions have not been recorded in any other visited establishment.

The juveniles in the Juvenile Detention Centre in Ostrowiec Świętokrzyski informed the visiting persons about an inadmissible practice of handcuffing them during the walks. It needs to be emphasized that there are no regulations which would allow the personnel of juvenile detention centres and juvenile shelters to use handcuffs. Therefore, such incidents should be eliminated. There were also reports on inappropriate treatment of juveniles by the personnel in the said detention centre. Commenting on the reported irregularities, the director of the centre denied using handcuffs during walks. He emphasized that if such an incident had taken place, it was without his knowledge and consent. The guards were once again cautions against using handcuffs. The director also stressed that he always reacts to mistreatment of juveniles by the personnel.

No cases of mistreatment of juveniles were revealed in other visited establishments. To the contrary, the visiting persons established that the contacts between the personnel and juveniles were correct (e.g. Juvenile Shelter in Warsaw-Okęcie, Juvenile Detention Centre and Juvenile Shelter in Zawiercie, Juvenile Shelter in Pobiedziska).

The **treatment of mentally handicapped juveniles** placed in juvenile shelters is a serious problem. As many as 25% of the residents of the Juvenile Shelter in Warsaw-Okęcie at the time of the visit were mentally handicapped persons, both with

mild and moderate degree of retardation. The work with such a large group of intellectually disabled juveniles is a challenge for the establishment. They require other educational measures and education according to appropriately adjusted curricula, but the shelter does not employ any persons prepared to work with mentally handicapped persons.

Another problem revealed during the visits to such establishments is the **illegal placing of juveniles in a transition room “for educational reasons”** and the **lack of the solitary confinement room** (Juvenile Shelter in Warsaw-Okęcie, Juvenile Detention Centre in Ostrowiec Świętokrzyski, Juvenile Detention Centre and Juvenile Shelter in Zawiercie, Juvenile Shelter in Pobiedziska). The transition room is very often used as a solitary confinement room, but the persons placed in such rooms are not treated as ordered by the provisions of the Ordinance of the Council of Ministers of 1 February 2005 on detailed conditions and method of use of coercive measures with respect to juveniles in juvenile detention centres, juvenile shelters, youth care centres and youth sociotherapy centres³⁰. As the Ordinance became ineffective on 22 August 2009, in his letter of 21 December 2009 to the Minister of National Education and the Minister of Justice³¹, the Human Rights Defender pointed to an urgent need of undertaking legislative measures aimed at issuing a new ordinance laying down detailed conditions and method of use of coercive measures with respect to juveniles in juvenile detention centres, juvenile shelters, youth care centres and youth sociotherapy centres. It is of particular importance due to the matter itself, but also the irregularities encountered during the visits to establishments for juveniles with regard to the use of coercive measures. The Human Rights Defender had not received a reply in this regard by the end of 2009.

Furthermore, the visits revealed the cases of **inappropriate furnishing of transition rooms**. The conditions in two single rooms in the Juvenile Detention Centre in Ostrowiec Świętokrzyski did not meet the requirements laid down in the relevant regulations (§ 44(4) of the Ordinance of the Minister of Justice of 17 October

³⁰ Dz.U. of 2005, No 25, item 203.

³¹ RPO-629059-VII/09.

2001 on juvenile detention centres and juvenile shelters³²). The juveniles in that centre were usually held in those rooms for several days (in one case for over 14 days). During that period, they do not participate in school and workshop activities, sports activities and do not go for walks. Insufficient lighting in the rooms, both with daylight and artificial light, makes it difficult for juveniles to read papers or books. They also receive reduced food rations. The entries into the journal in the transition room show that the juveniles held in the room are not provided with sufficient psychological and pedagogical care. According to the visiting persons, the accumulation of inconveniences affecting persons held in one-person transition rooms in the said centre is such that it can be characterised as cruel, inhuman and degrading treatment.

The director of the Juvenile Detention Centre in Ostrowiec Świętokrzyski, referring to the remarks in this regard, agreed that the treatment of persons held in the transition room may raise concerns. Therefore, he undertook the actions aimed at eliminating the irregularities. In the light of collected information, the transition room and the solitary confinement room were transferred to the new wing of the building, but by the day on which this report was drawn up the transition room was not adjusted to the binding legal regulations.

The lack of the appropriate furnishing of the transition room (such rooms should be furnished as residential rooms) and the use of the room as a punishment were also recorded in the Juvenile Detention Centre and Juvenile Shelter in Zawiercie. As a result of the visit to the said establishment, a recommendation was made to take actions to reduce to a necessary minimum the time the juveniles held in the transition rooms spent without schooling and to abandon the practice of limiting the contacts of juveniles held in such rooms with their parents (guardians). In reply, the director of the Juvenile Detention Centre and Juvenile Shelter in Zawiercie undertook to prepare new internal regulations for the transition room which will be adjusted to the binding legal regulations, by means of precise specification of the grounds for placing juveniles in the transition room. The director denied the charge that the placement in the transition room was used as a disciplinary measure. Such interpretation and feelings of residents

³² Dz.U. No 124, item 1359, as amended.

stem from the fact that they consider the stay in the transition room as severe inconvenience. As regards the furnishing, it was adjusted to the binding legal regulations as a result of the NPM visit.

Due to the above, on 12 May 2009 the Human Rights Defender sent a letter to the Minister of Justice³³. He stated that the rules governing the placement of juveniles in transition rooms should be properly regulated. The current regulations lack precision. As a result, juveniles are held in such rooms for too long (sometimes over a month). The Human Rights Defender added that it is necessary to introduce a regulations guaranteeing **exercise in the open air every day** to juveniles placed in juvenile detention centres and juvenile shelters, as juveniles encounter numerous difficulties in this regard.

In reply, the Secretary of State at the Ministry of Justice declared that on the basis of its own supervisory activities and analysis of the functioning of the judiciary with regard to juveniles the Ministry also saw the necessity of changes to the procedures followed with respect to juveniles. He added that, as a part of work on comprehensive regulation of procedures followed with regard to juveniles, the Ministry would try to include the changes proposed by the Human Rights Defender not in the ordinance on juvenile detention centres and juvenile shelters but in the act regulating the procedures followed with regard, as those changes have a nature of a guarantee. By the time the new regulations enter into force, the Ministry of Justice will have monitored the application of the current regulations on the functioning of transition rooms.

In the majority of visited establishments, **living and hygienic conditions** were good. The juveniles also declared that the living conditions were good. The recommendations included modernisation of sanitary facilities or a common bathroom in some establishments (e.g. Juvenile Shelter in Stawiszyn, Juvenile Detention Centre and Juvenile Shelter in Zawiercie), the instalment of shower screens in order to ensure the sense of intimacy to the juveniles (e.g. Juvenile Detention Centre and Juvenile Shelter in Zawiercie, Juvenile Shelter in Pobiedziska) and anti-slip mats in showers

³³ RPO-597667-VII/08.

(e.g. Juvenile Detention Centre and Juvenile Shelter in Zawiercie, Juvenile Detention Centre in Witkowo).

The visit to the Juvenile Shelter in Pobiedziska revealed that the sports facilities in the shelter were very limited. The lack of a gym reduces the possibilities of practising sports by the residents, both as a part of school curriculum and as extracurricular activities, in particular in autumn and winter. Such an investment is recommended, as the provision of § 15(2)(3), in relation to § 34 of the Act of the Minister of Justice of 17 October 2001 on juvenile detention centres and juvenile shelters, lists a gym among the facilities that a shelter should be equipped with in order to correctly perform its functions.

The visits also revealed the **problem with developing internal regulations** of the establishments. The internal regulations of juvenile detention centres or juvenile shelters did not specify precisely the grounds for placing juveniles in the transition room, quoted wrong legal basis for the creation of the facility, included inappropriate rules of granting pocket money or introduced disciplinary punishments which were not provided for by law. The interventions of the visiting persons resulted in immediate removal of the indicated irregularities. The representatives of the Human Rights Defender were notified about the removal in writing.

As in the youth care centres and youth sociotherapy centres, also in juvenile detention centres and juvenile shelters the attention was paid to the **availability of information on the institutions to which the juveniles may refer to, if necessary**. In the establishments where such information was unavailable, the recommendation was made to make available the addresses of institutions dealing with juveniles' rights protection, including the Human Rights Defender, the Helsinki Foundation for Human Rights, Children Rights Defender and a family court.

In view of the need to provide the juveniles placed in juvenile shelters and juvenile detention centres with access to information on their rights and obligations, and the institutions they may turn to, if their rights are violated, on 22 July 2009 the Human Rights Defender sent a letter³⁴ to the Minister of Justice on the preparation of

³⁴ RPO-603898-VII/08.

the guide for juveniles placed in such establishments. In reply the Undersecretary of State at the Ministry of Justice agreed with the opinion of the Human Rights Defender and declared that the Ministry of Justice planned to develop a specimen of standard information on rights and obligations of juveniles to eliminate the differences between the establishments in presenting the rights and obligations and the methods of their interpretation. The method of distribution of such information among the juveniles will also be determined, taking into account the need to ensure permanent access to such information. The use of the specimen of information on rights and obligations will be verified as a part of supervisory activities.

On 30 December 2009, the Human Rights Defender wrote a letter to the Minister of Justice³⁵ on rules and procedure of classifying juveniles for placement in appropriate health care centres. He stated that the number of juveniles to whom legally binding decisions on didactic measures, correctional measures or punishments imposed by general courts were adjudicated due to their demoralization or punishable acts they had committed. The number of juveniles treated for mental disorders, also those related to alcohol and other psychoactive drugs abuse has been growing year by year. The priority of activities aimed at protecting the rights of juveniles should be to provide those persons with comprehensive and commonly available health care services. Meanwhile, the commission issuing judicial and psychiatric opinions on juveniles at the Institute of Psychiatry and Neurology in Warsaw was liquidated, although it had played an important role in correct classification of juveniles to care centres and health care centres. Therefore, the Human Rights Defender stressed the need to supplement the Act on juvenile delinquency proceedings with provisions constituting the grounds for establishment the Psychiatric Commission for Juvenile Issues as a body to which the courts could turn to indicate the appropriate health care centre for juveniles. The Human Rights Defender had not received a reply in this regard by the end of 2009.

³⁵ RPO-587722-VII/08.

D. Police emergency centres for children

In 2009, 5 police emergency centres were visited as a part of activities of the National Preventive Mechanism. The visits revealed, first of all, the need to provide the centres with additional financing. In particular, in some centres the bedrooms for juveniles must be furnished with beds (e.g. police emergency centres for children in Płock and in Słupsk) and other need renovation (e.g. the centre in Częstochowa). The visiting persons also consider unacceptable the situation where, due to the lack of funds, the employees of the centre furnish it by bringing things from their own homes (e.g. centre in Płock). Their commitment deserves recognition, as they want to ensure better living conditions for the juveniles, but this issue needs to be resolved in some other way.

Varied **living conditions** in visited police emergency centres for children are a result of the lack of relevant legal regulations specifying the requirements to be met by those centres. On 13 February 2009, the Human Rights Defender sent a letter on this issue to the Minister of the Interior and Administration³⁶. In reply, the Undersecretary of State at the Ministry stated that pursuant to the authorisation from Article 83(3) of the Act on juvenile delinquency proceedings, the Minister of the Interior and Administration issued an Ordinance of 21 January 2002 on detailed rules governing the stay of juveniles in the police emergency centres for children. However, the delegation of legislative powers does not include an explicit basis for the regulation (in the ordinance) of requirements to be met by rooms in the police emergency centres for children. According to the Minister, the best solution would be to include such delegation of legislative powers in the Act on the Police. In view of the above, the draft Act amending the Act on the Police included a proposal to add in Article 15(10) the delegation for the minister competent for internal affairs to lay down, by way of ordinance, the requirements to be met by the rooms in the police emergency rooms for children. The legislative works in this regard were initiated but by the day of this report the relevant ordinance have not been issued and the relevant delegation has not

³⁶ RPO-605914-VII/09.

been included in the Act on the Police. The matter will be monitored by the Human Rights Defender in 2010.

Furthermore, the visits revealed that **juveniles stayed in the Police emergency centres for children longer** than provided for in Article 40(6)(4) and Article 40(7) of the Act on juvenile delinquency proceedings. It is a problem encountered in numerous such centres (e.g. Police Emergency Centres for Children in Płock, Słupsk, Łódź and Częstochowa). The managers of individual centres have to intervene in all such cases. After the visits the problem was presented also to the chief judges of courts to whom inspection judges report.

According to the regulations in force, the **placement of a juvenile in a isolation ward** cannot be treated as punishment. Meanwhile, in one of the visited centres, such placement was listed among the punishments included in rights and obligations of juveniles detained in the Police emergency centre for children (Police Emergency Centre for Children in Płock).

During the visits to the police emergency centres for children, a particular attention was paid to the **access of juveniles to exercise in the open air** and to the condition of yards for walking. The installation of benches in yards for walking was recommended, where such benches were missing (e.g. Police Emergency Centres for Children in Łódź and Częstochowa). In many cases, the notice boards did not include the address of the **law protection authorities**, such as family courts, the Human Rights Defender, the Ombudsman for Children, the Helsinki Foundation for Human Rights, to which juveniles can turn, if their rights are violated.

E. Rooms within the Police organisational units for detained persons or persons brought to sober up

In 2009, 21 rooms within the Police organisational units, where detained persons or person brought to sober up may be held, were visited.

In one of the visited Police units, the representatives of the Human Rights Defender performing the tasks of the National Preventive Mechanism encountered considerable **difficulties in starting the visit**, which was only possible after the telephone intervention at the Voivodeship Police Commander. As it was not the first

time of such obstacles and in view of the need to disseminate the knowledge about the grounds for the activities of the National Preventive Mechanism among the police officers, on 27 March 2009 a relevant letter was sent to the Director of the Prevention Bureau of the General Police Headquarters asking to provide all Police organisational units in the country with the information about the activities and powers of the Mechanism. The General Police Headquarters reminded individual units about the powers of the representatives of the Human Rights Defender with regard to the National Preventive Mechanism's visits to the rooms for detained persons and the police emergency centres for children and presented the grounds for such activities. Apart from that, the Police Commander in Chief asked the Office of the Human Rights Defender to provide model ID cards and authorisations of the representatives of the Ombudsman during the visits. The relevant documents were provided.

As regards the **obligation to inform the detainees about their rights**, it was recommended in all visited units to present the contents of the Regulations on the stay of persons placed in the premises of the Police organisational units in the place visible to detainees, in full version included in the Annex to the Ordinance of the Minister of the Interior and Administration of 13 October 2008 on the rooms within the Police organisational units for detained persons or persons brought to sober up and the regulations governing the stay in those rooms³⁷. As the regulations were available e.g. in the room of the duty officer, on the entrance door to the premises or in the corridor, the recommendation was made to lend them to the detained persons for the time necessary to get acquainted with the regulations. Otherwise, it cannot be assumed that a detainee was acquainted with their contents.

In some Police units, the facility did not have any copies of the Regulations in foreign languages which are available at the website of the General Headquarters of the Police. The idea of making available the Regulations in such a way, in several tens of languages, must be greatly appreciated.

As regards **documentation** kept in the premises for detained persons, the issues discussed included the necessary signing of a depository receipt by two Police officers

³⁷ Dz.U. of 2008, No 191, item 1187.

(if the detained person cannot sign it or refuses to sign it), thorough filling in of detention protocols, providing legal grounds for detention (e.g. District Police Headquarters Warsaw IV), providing in words the amount of money to be deposited by detained persons and making sure those entries are legible (e.g. District Police Headquarters Warsaw VI, Poviast Police Headquarters in Nakło), and, in the case of any crossing-outs in the documents, confirming it with the signature of the person making the crossing-out (e.g. Poviast Police Headquarters in Nakło). The journals of doctor's visits were also kept carelessly in many units. The data on when and to whom the services of the emergency ambulance service were provided may be obtained also from other documentation kept in the relevant premises within the Police organisational units. Nevertheless, it seems that such services should first of all be entered into the journal.

A frequently encountered problem during the visits was the failure to observe the Ordinance of the Minister of the Interior and Administration of 14 September 2001 on **admissibility of using tobacco products** in the premises subordinate to the minister competent for internal affairs³⁸. In some premises smoking was allowed in corridors or sanitary rooms. In one of the units, there was a notice about the total ban on smoking, although detained persons have the right to use tobacco products in specific rooms for detainees or in a separate, properly marked room. Therefore, it was recommended to separate a room for smoking or designate the rooms for smokers (e.g. Poviast Police Headquarters in Stalowa Wola, Nisko, District Police Headquarters in Warsaw VII, District Police Headquarters in Warsaw IV, Poviast Police Headquarters in Nakło, Poviast Police Headquarters in Bartoszyce).

Due to the fact that the above irregularities repeated, the Human Rights Defender sent a letter to the Police Commander in Chief³⁹ on 3 June 2009 on the failure to observe the Ordinance of the Minister of the Interior and Administration on the rules governing the admissibility of using tobacco products in the premises subordinate to the minister competent for internal affairs.

³⁸ Dz.U. of 2001, No 106, item 1163.

³⁹ RPO-614993-VII/09.

In reply the Police Commander in Chief informed that, in order to harmonise the rules governing the execution of detainees' rights to use tobacco products, he imposed an obligation of his subordinate commanders of the Police units to ensure the execution of the detainees' right to use tobacco products, in accordance with the provisions of the said Ordinance.

Apart from that, the rooms for detained persons in one of the visited units (District Police Headquarters in Warsaw IV) were located in the basement. The representatives of the Human Rights Defender pointed the **lack of the required permit** of the State Sanitary Inspection of the Ministry of the Interior and the Administration which is needed in the case of such location of the rooms. In reply to the exposed irregularity, the commander of the visited unit immediately decided on abandoning the use of those rooms for detained persons. The Warsaw Police Headquarters asked the State Sanitary Inspection of the Ministry of the Interior and the Administration to carry out a control aimed at determining whether the said rooms could be used as currently intended and to issue a relevant permit.

The living conditions in visited premises were considered appropriate in the majority of the cases. However, the most often made recommendations included the furnishing of the rooms for detained persons with alarm system and signalling system, appropriate refurbishment in the sanitary room to separate showers from the rest of the room, anti-slip mats in shower-bases, improvement of artificial lighting in the rooms for detained persons so that it is appropriate to write and read (e.g. District Police Headquarters in Warsaw IV), ensuring adequate air supply to the rooms (e.g. Poviát Police Headquarters in Bartoszyce) or installing stools and tables in the rooms for detained persons where they could have their meals (e.g. Poviát Police Headquarters in Wrzeźnia). Other reservations concerned the need to ensure cleansing means necessary for personal hygiene, including soap and toilet paper (e.g. District Police Headquarters in Warsaw VI, Poviát Police Headquarters in Malbork, City Police Headquarters in Płock, Poviát Police Headquarters in Pruszków) and the necessity to designate a place intended for storing personal belongings of persons with infectious diseases (e.g. Poviát Police Headquarters in Płock, Poviát Police Headquarters in Pruszków, District

Police Headquarters in Warsaw VI, Poviát Police Headquarters in Wrzeźnia). In reply one of the Police units stated that, due to the space constraints, they cannot separate a room intended exclusively for storing personal belongings of persons with infectious diseases (Poviát Police Headquarters in Wrzeźnia). In other cases, the relevant recommendations were taken into account.

The recommendations concerned also the need to have replacement clothes for detained persons who are convicted, accused or suspected of committing a terrorist crime, belonging to an organised crime group, committing a crime with extreme cruelty, using fire-arms or explosives (e.g. District Police Headquarters in Warsaw IV, Poviát Police Headquarters in Nakło). Furthermore, it was emphasized that persons brought to sober up had the right to receive beverages and, if they are detained for more than 12 hours, to receive a meal. In addition, the best before dates of all drugs in the first-aid kits available to the officers on duty, who were responsible for the rooms of detained persons, were checked during each control. In some visited units, the recommendations were made to remove the medicines which best before dates had expired (e.g. District Police Headquarters in Warsaw IV, Poviát Police Headquarters in Nakło).

In reaction to the above mentioned irregularities, individual Police organisational units notified the Office of the Human Rights Defender on implemented changes. They declared that efforts had been taken to eliminate the errors in the documentation and the detained persons had been provided with the possibility to familiarize themselves with the Regulations of the rooms within the Police organisational units for detained persons or persons brought to sober up. Where the implementation of the recommendations of the Human Rights Defender's representatives required additional fundings, the units referred to their supervisory authorities as decision-makers, which extended the time of the implementation of recommendations.

F. Sobering stations

In 2009, within the scope of the activities of the National Preventive Mechanism, 11 sobering stations (hereinafter referred to as 'stations') were visited.

It follows from the findings made by the employees of the Office of the Human Rights Defender that the majority of the stations properly performed their tasks provided for in the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism⁴⁰ and in the Ordinance of the Minister of Health of 4 February 2004 on the methods of escorting, accepting and discharging inebriated individuals and on organisation of sobering stations or other establishments created or indicated by a local government unit.⁴¹

The irregularities uncovered during the visits concerned a few fundamental matters. Firstly, it was pointed out with regard to the **application of direct coercive measures** consisting in restraining that, according to legal provisions, the state of health of a person to whom such measures were applied should be checked afterwards. Moreover, it was indicated that the coercion in the form of restraining may not be employed longer than until the reason for its application ceases to exist. Whereas in the Sobering Station in Kielce, as was revealed as a result of the analysis of the documentation made available to the representatives of the Human Rights Defender, many irregularities occurred during restraining, starting from the doubtful grounds for using direct coercive measures, passing through the lack of a proper control provided for in the legal provisions in force, failure to verify whether the measure was still necessary, preventing the patient from meeting their physiological needs, and ending on the unlawful prolongation of restraining without prior examination of the patient and doctor's consent. The above is confirmed by the monitoring records.

As a response to the recommendations, the Director of the Sobering Station in Kielce ensured that the recommendations presented would be followed and the appropriate corrective measures were being implemented. The Mayor of Kielce informed that work was being carried out on transforming the Sobering Station in its material, organisational, legal and financial aspects.

The lack of appropriate documentation concerning the fact of using direct coercive measures, as well as extraordinary incidents that took place in the establishment constituted recurring irregularities found during the visits in sobering

⁴⁰ Dz.U. of 2001, No 70, item 473, as amended.

⁴¹ Dz.U. of 2004, No 20, item 192, as amended.

stations (*e.g.* Miejski Ośrodek Zapobiegania Uzależnieniom (Municipal Centre for Addiction Prevention) in Przemyśl, Sobering Station in Częstochowa, Sobering Station in Kielce, Sobering Station in Bydgoszcz and Sobering Station in Płock).

Technical state and equipment of the majority of stations that were visited in 2009 did not raise any reservations of the visiting persons. The irregularities in this respect were found in the Sobering Station in Bydgoszcz. On the day of the visit, the building housing the Station's facilities was in a very poor condition. In the opinion of the representatives of the Office of the Human Rights Defender, its further use posed a threat both to the personnel and to persons brought to sober up. Therefore, it was put forward after the visit that the municipal authorities provide the Station with new premises. In their response, the Mayor of Bydgoszcz informed that in the Municipal Social Assistance Centre in Bydgoszcz are conducted works on acquiring and renovating the building that would be given to the establishment offering services related to sobering up to homeless persons, and that the Sobering Station would be closed down.

Moreover, the visit also revealed cases of violating the provisions of the above mentioned Ordinance (Article 24(5)), according to which the **activities related with admitting women to sobering stations** may only be carried out by female personnel (*e.g.* Sobering Station in Kielce).

It was also underlined that the persons staying in a sobering station should be informed of the possibility to receive **hygiene and health services** (*e.g.* Sobering Station in Płock, Miejski Ośrodek Zapobiegania Uzależnieniom in Przemyśl, Sobering Station in Kraków, Zakład Medycyny Uzależnień (Addiction Medicine Centre) in Łódź, Sobering Station in Głogów).

Doubts were also raised by the lack of care in **compiling the documentation of sobering stations**. For example, in the Addiction Medicine Centre in Łódź irregularities were found consisting in not indicating in the appropriate records which employee was responsible for the Station's activities during the shift.

All the establishments visited were advised to develop the **sobering station rules of procedure** addressed to the persons staying in the sobering station. They

could familiarise themselves with the rules of procedure upon leaving the establishment. The majority of the stations adopted a positive approach to this recommendation and elaborated “the rights of the persons staying in sobering stations.” This information was placed on the announcement board, in a place accessible to persons leaving the establishment.

G. Guarded Centres for Foreigners and Deportation Centres

In 2009, the visits of the National Preventive Mechanism were made to two guarded centres for foreigners and two deportation custody centres.

Two of the units visited offered very good **living conditions**. In the case of the Guarded Centre for Foreigners in Lesznowola it was noted that the living conditions significantly improved in comparison to the situation observed during the previous visit. Nevertheless, in consequence of the inspection of the rooms in the units visited, the recommendations in this regard were formulated with respect to, *inter alia*, replacing sanitary facilities in the bathrooms (*e.g.* Guarded Centre for Foreigners in Lesznowola), ensuring proper privacy of persons using the bathrooms (*e.g.* Deportation Centre and Guarded Centre for Foreigners in Kętrzyn), improving the standard of the rooms for persons disturbing order in the establishment (*e.g.* Guarded Centre for Foreigners in Lesznowola), changing the manner of securing the cell windows so that the inmates can open them if they need it (*e.g.* Deportation Centre in Kętrzyn).

Furthermore, it was recognised that appropriate actions should be taken with the aim of organising **monthly medical examinations** according to the requirement laid down in Article 24 of Rules of organisation for the foreigners staying in the guarded centres and deportation centres, which is annexed to the Ordinance of the Minister of Interior and Administration of 26 August 2004 on the requirements to be met by the guarded centres and deportation centres and on the rules of organisation for the foreigners staying in the guarded centres and deportation centres.⁴²

As regards **respecting the rights** of persons staying in the facilities of this type, it was noted that it was necessary to explain the reasons for limiting the weekly

⁴² Dz.U. of 2004, No 190, item 1953.

number of visits available to the detained persons, and to evaluate the grounds for temporal restrictions on buying certain products imposed in the internal regulations. The reservations of the representatives of the Human Rights Defender were also raised by the fact of registering in the official records the telephone numbers dialled by the detained persons.

It was also recognised that measures should be taken with the intention of disseminating among the detained persons the information on the **possibility to use interpreters' and translators' assistance**, for example, by displaying appropriate notice on the announcement board.

No occurrence that could lead to cruel, inhuman or degrading treatment of detained persons was identified in any of the establishments visited. The detained persons are treated with respect for their human dignity.

When discussing the issues pertaining to the functioning of guarded centres for foreigners and deportation centres, it is worth noticing that in connection with the beginning of works on the principles to underlie the new act on foreigners the Minister of Interior and Administration requested the Human Rights Defender to take a stance on the draft act. In the response of 31 July 2009⁴³, the Human Rights Defender emphasised that it was important that the legislation adopted by the State with regard to migration corresponded to the challenges presented by the complexity of this issue. It concerns the regulations defining the conditions for entering the territory of the country by foreigners and legalising their stay, as well as the rules of procedure regarding the persons staying on the territory illegally. These legal provisions should be made transparent and clear, especially for the most interested parties. Simplifying the procedures related to legalising one's stay should also include shortening the period of administrative procedures in individual cases. The Human Rights Defender also pointed out that it seems reasonable to consider the possibility of changing the rules for treating the persons involved in the deportation procedure, apprehended and detained in guarded centres or deportation centres. According to the model adopted in the act currently in force the persons placed in deportation centres and guarded centres

⁴³ RPO-R-071-24/09.

are subjected to a regime characteristic for prisons. Whereas the motivation for employing detention measures under the deportation procedure is not to impose sanctions for committing an unlawful act, but to ensure the execution of the decision on expelling from the territory of Poland.

H. Centres for Foreigners Applying for a Refugee Status or Asylum

In 2009, the visits of the National Preventive Mechanism were made to four centres for foreigners applying for a refugee status or asylum.

The visits to two of the centres were carried out in relation to the protest receiving extensive coverage in the media organised by a group of foreigners originating from Chechnya and Georgia who were arrested on 14 December 2009 by the Border Guard when trying to leave Poland. As was established, the protest was connected with a change in the policy of granting refugee status or supplementary protection (Centre for Foreigners Applying for a Refugee Status or Asylum in Podkowa Leśna – Dębak and in Radom).

The **living conditions** in these centres were varied. In the Centre for Foreigners Applying for Refugee Status or Asylum in Łomża, the living conditions offered to foreigners were judged as good. On the day of the visit, the rooms were maintained in good conditions and the temperature inside was adjusted for the season. The only comment was made concerning the need to renovate the building elevation, the state of which had not been improved after the visit paid by the employees of the Office of the Human Rights Defender in 2005.

The living conditions in the Centre for Foreigners Applying for Refugee Status or Asylum in Radom were considerably worse. It was observed that the building housing the Centre and the equipment in the residential part required financial input. It was recommended that the building elevation, as well as the staircases and corridors are renovated. The need to ameliorate the conditions in the foreigners' rooms was indicated, especially as regards replacing or weatherproofing the windows – on the day of the visit the temperature in the rooms was low and the foreigners were forced to use the heating devices they have bought for themselves. Moreover, it was indicated that

the furniture in a part of the rooms was old and worn out. In the visiting persons' view, also the publicly accessible sanitary rooms were in need of a complete refurbishment. The bathrooms and toilets were dirty, the smell was unpleasant, and some of the sanitary facilities were broken.

As to the issue of informing the foreigners on their rights, one of the establishments visited employed a good practice consisting in familiarising the foreigners with the rules for staying in the Centre upon arrival. The rules – in the Russian language version – were displayed on the announcement board. Furthermore, the persons interested could also obtain information leaflets on their rights and obligations. Visits by the representatives of non-governmental organisations having the protection of foreigners' rights as a statutory objective are often held in the facility. The foreigners are also provided with access to the address details of such organisations, as well as of relevant public institutions and bodies to which they can turn to should the need arise.

I. Psychiatric hospitals

In 2009, within the framework of the National Preventive Mechanism tasks, the representatives of the Human Rights Defender carried out visits to nine psychiatric hospitals. .

In all the hospitals visited in 2009, irregularities were found in the field of **using direct coercive measures**. It was revealed that the medical staff does not treat the forcible administration of medications and restraint as forms of direct coercion and does not make appropriate notes concerning using this measures in medical documentation.

Moreover, the legitimacy of restraint and forcible administration of medication was not subject to evaluation in accordance with Article 18(6)(1) of the Mental Health Protection Act of 19 August 1994⁴⁴. Also, a few cases of failing to satisfy the requirement of releasing the restrained patient for short periods of time at least every four hours in order to change the patient's position or to allow them to meet their

⁴⁴ Dz.U. of 1994, No 111, item 535, as amended.

physiological and hygienic needs (*e.g.* Szpital dla Nerwowo i Psychiczenie Chorych im. dr. Józefa Bednarza (the Dr. Józef Bednarz Hospital for Psychiatric and Neurotic Patients) in Świecie, Wojewódzki Specjalistyczny Zespół Opieki Neuropsychiatrycznej (Voivodship Specialist Neuropsychiatric Hospital) in Kielce). It also happened that a direct coercive measure in the form of restraint was applied for reasons not mentioned in the abovementioned Act, such as acute motor agitation (*e.g.* Voivodship Specialist Neuropsychiatric Hospital in Kielce). The provisions of the Act limit the use of this measure only to situations when a patient makes an attempt on their or someone else's health or life, or poses a threat to the public safety, or in a violent way damages the objects in their surroundings. Often, the justification for using the direct coercive measure recorded in the documentation had a vague form or lacked the specification of the type of measure used, and indicated only the manner of its application (*e.g.* Zakład Opiekuńczo-Lecznicy (Care and Treatment Centre) in Gorzyce).

The living conditions in the establishments visited varied. For instance, in the Samodzielny Publiczny Zakład Opieki Zdrowotnej Państwowego Szpitala dla Nerwowo i Psychiczenie Chorych (Autonomous Public Hospital at the State Hospital for Neurotic and Psychiatric Patients) in Rybnik, the patients' rooms visited were clean, yet the State Poviast Sanitary Inspector in Rybnik found that the hospital did not satisfy the basic hygienic and sanitary requirements. The patients' access to sanitary facilities was limited due to the need of reducing costs related to water use.

Whereas Zakład dla Nerwowo i Psychiczenie Chorych im. dr. M. Marzyńskiego (Dr. M. Marzyński Hospital for Psychiatric and Neurotic Patients) in Sieniawka offered relatively good living conditions to its patients. The majority of patients stayed in 10-20-patient rooms. The corridors, rooms and other places were clean on the day of the visit.

The visiting persons' doubts were aroused by the conditions of **maintaining the patients' personal hygiene**. For example, in one of the wards of Wojewódzki Szpital dla Nerwowo i Psychiczenie Chorych im. dr. Józefa Bednarza in Świecie the bathroom was locked with a key and the patients could not use it in the evening. In Zakład dla

Nerwowo i Psychicznie Chorych im. dr. M. Marzyńskiego in Sieniawka there were only two shower cabins for several dozens of patients. In addition, in one of the bathrooms, a shower base for the disabled persons was uncovered. Such conditions seem not to give the patients a **sense of privacy**. Moreover, there were wash bowls in the bathroom, which according to the staff were used for laundry. The patients, though, claimed that the disabled patients were washed in these wash bowls. One of the patients also stated that the patients were washed one after another in the same water. Such a treatment may be considered as inhuman and degrading. Installing CCTV cameras in the toilets was also deemed to be a measure that does not provide the patients with a sense of privacy (Samodzielny Publiczny Zakład Opieki Zdrowotnej Państwowego Szpitala dla Nerwowo i Psychicznie Chorych in Rybnik).

In some establishments, irregularities were found consisting in **employing an insufficient number of medical staff** in relation to the number of patients in wards of the hospital, designed for execution security means in case of strengthened protection (*e.g.* Wojewódzki Szpital dla Nerwowo i Psychicznie Chorych im. dr. Józefa Bednarza in Świecie, Samodzielny Publiczny Zakład Opieki Zdrowotnej Państwowego Szpitala dla Nerwowo i Psychicznie Chorych in Rybnik).

It was also observed that there were irregularities in the **system of receiving complaints and requests**. The patients' oral complaints were not recorded in writing. There was no documentation confirming they had been considered (*e.g.* Wojewódzki Specjalistyczny Zespół Opieki Neuropsychiatrycznej in Kielce, Samodzielny Publiczny Zakład Opieki Zdrowotnej Państwowego Szpitala dla Nerwowo i Psychicznie Chorych in Rybnik).

Furthermore, it was established that the **internal regulations** in hospitals included stipulations limiting the patients' rights and imposing obligations being in violation of legal provisions in force (Szpital dla Nerwowo i Psychicznie Chorych im. dr. Józefa Bednarza in Świecie). Attempts to maintain order by means of unacceptable rules were observed. An example of such measures was the staff rationing at their own discretion the cigarettes belonging to the patients, or the interdiction of families giving home-made meals or drinks to the patients during visits.

The use of own clothing was also regulated – the patients were allowed to have two pairs of trousers, two sweaters and one pair of shoes. The patients complained about having to assume collective responsibility in the form of the interdiction to make telephone calls or to use tobacco products imposed on a specified group of patients (Samodzielny Publiczny Zakład Opieki Zdrowotnej Państwowego Szpitala dla Nerwowo i Psychicznie Chorych in Rybnik).

As to the manner of **treating the patients** by the staff of the hospitals visited, it was emphasised that the patients need to be addressed properly. The Samodzielny Publiczny Zakład Opieki Zdrowotnej Państwowego Szpitala dla Nerwowo i Psychicznie Chorych in Rybnik was advised to take actions aiming at improving the medical staff's attitude towards the patients, which would guarantee due respect of their dignity. Indeed, the medical staff's approach to the patients raised the visiting persons' doubts since the documents drawn up by nurses described patients as importunate and asking questions.

J. Military places of detention

In connection with the suspension of compulsory enrolment into military service due to the introduction of professional military service, over the last year, the units where soldiers could be deprived of their liberty were being gradually closed up.

Therefore, in 2009 the representatives of the Human Rights Defender carried out visits under the National Preventive Mechanism in only one Military Disciplinary Detention Centre in Bydgoszcz, which is supposed to be closed down in 2010. During the inspection, there was no soldier detained. It was established, though, that both the rooms for the detained soldiers and the social rooms had been renovated and that their technical conditions could most often be judged as fulfilling the technical and organisational requirements set out in the Ordinance of the Minister of National Defence of 25 October 2002 laying down the conditions for establishing military disciplinary custodies and requirements for the premises in such centres⁴⁵. Only the wash basins and toilet bowls were made from materials that did not fulfil the

⁴⁵ Dz.U. of 2002, No 183, item 1529.

requirements defined in Article 4(7)(9) of the above mentioned Ordinance as regards eliminating the possibility of shattering.

Furthermore, it was established that daily press had not been provided in the Centre since January 2009. As follows from the explanations obtained, it was because no soldiers were detained and cost reductions were necessary. The Centre did not have a medical examination room due to the proximity of 10 Wojskowy Szpital Kliniczny (10th Military Clinic) where the examinations necessary before and during detention were carried out.

K. Social care centres

In 2009, the representatives of the Human Rights Defender carried out one visit to the Social Care Centre in Szczytna within the framework of the National Preventive Mechanism. It is envisaged that in 2010 the visits of the NPM in social care centres will be more frequent.

The establishment visited in 2009 was intended for mentally disabled men. On the visit day, there were 110 persons staying in the Centre. In principle, the living conditions encountered during the visit were in compliance with the provisions of the Ordinance of the Minister of Social Policy of 19 October 2005 on social care centres⁴⁶.

However, practices violating the dignity and privacy of the persons staying in the Social Care Centre were observed during the visit. They consisted, *inter alia*, in walking a group of naked residents to the bathroom. Reservations were raised by the manner of conducting hygienic procedures and meeting physiological needs by patients with severe motor dysfunctions, or allowing an outsider to freely photograph naked patients (on the website of Newsweek a so-called photocast was published consisting of a slide show and short films made in the establishment featuring, among others, naked and half-naked residents of the Centre). It indicates that the residents of the establishment were treated impersonally. Thus, the representatives of the Human Rights Defender stated that the entire staff should necessarily be made aware that, irrespective of the degree of disability, every resident, as a human being, has the same

⁴⁶ Dz.U. of 2005, No 217, item 1837.

subjective rights as persons without any disabilities. The unacceptable practices should absolutely be eradicated, since they are inhuman, degrading, and violate the residents' dignity and right to privacy. As a result of the visit, it was stated that it is necessary to take actions aimed at eliminating the irregularities found in the area of using direct coercive measures. Moreover, the establishment should ensure appropriate conditions for providing the patients with basic healthcare services and abandon the practice of examining patients in the duty-room. It is also important to resolve the issue of documenting all complaints and requests made orally by the residents, instead of recording only those judged as 'serious'.

With regard to the above mentioned irregularities it was concluded that the residents of the Social Care Centre visited were treated in an unacceptable manner.

In consequence of the remarks submitted, the Starost of Kłodzko notified of an issue-specific control that was carried out in the Social Care Centre in Szczytna by the Head of the Health and Social Policy Department and the Director of the Poviast Family Assistance Centre. The Starost also called the Director of the establishment to organise its activities in such a way that will take into account the absolute respect and protection of personal dignity, privacy and safety of the residents. At the same time, the Director of the Centre was obliged to implement a specific standard procedure for employing direct coercive measures that would be familiar to all the staff members and compliant with the provisions of the Ordinance of the Minister of Health and Welfare of 23 August 1995 on the manner of using direct coercive measures.⁴⁷

7. Extraordinary incidents

The present report should also focus on the activity of the Human Rights Defender in the field of examining extraordinary incidents. Despite the fact that these are individual cases, therefore their analysis falls beyond the scope of activities of the National Preventive Mechanism, their investigation allows for drawing attention to systemic problems and for obtaining more comprehensive view of a given unit. In practice, it was revealed that the visit to one of the youth care centres which was

⁴⁷ Dz.U. of 1995, No 103, item 514.

characterised by a high number of escapes allowed for discovering serious problems in the centre's functioning that caused the escapes.

In 2009, the Group for Penal Executive Law examined 203 cases concerning extraordinary incidents that took place in penitentiary establishments (150) juvenile detention centres and juvenile shelters (11), youth care and sociotherapy centres (28), Police units (13) and sobering stations (1). They concerned cases of, among others, suicide (39), battery of an inmate resulting in severe damage to the body (32), prison riot and ill-treatment of inmates (2), death of a person deprived of their liberty (15), abuse of inmates (63), or rape (16).

In several of such cases the public prosecutor's offices filed indictments with the court against the persons deprived of their liberty who were charged with one of the above mentioned acts. In some of the cases investigated, the indictment also concerned the officers or employees of the Prison Service who were charged with involuntary manslaughter or default of duties.

The examination of individual cases consists principally in analysing the materials from explanatory proceedings conducted by the Prison Service or the public prosecutor's office, and in analysing the documentation on personality recognition regarding the participants of the extraordinary incident. Some events are examined *ad hoc* on site, other – in course of regular visits carried out by the employees of the Group for Penal Executive Law.

It should also be noted that the Office of the Human Rights Defender undertakes activities consisting in requesting the higher-level public prosecutor's offices to examine the cases, within the framework of general supervision, as regards the correctness of the position adopted by a given public prosecutor's office, and to change or repeal the decision by the public prosecutor's office under the procedure provided for in the act on the public prosecutor's office.

It is also worth noting that in course of the examination of the extraordinary incidents the Preliminary Proceedings Office of the National Public Prosecutor's Office was notified of the practice of prematurely discontinuing preliminary

proceedings (or refusing to institute the proceedings), and was asked to take a position on this information.

In order to comply with the Human Rights Defender's request, the Preliminary Proceedings Office of the National Public Prosecutor's Office ordered the appellate public prosecutor's office to examine, within the scope of supervision, the documentation from the proceedings conducted in the years 2007-2009 regarding battery and causing damage to the body of the persons deprived of their liberty or involvement in fights in prisons or pre-trial detention centres in cases when the proceedings had been discontinued or not instituted at all. The analysis led to questioning the decisions in 81 cases and ordering the district public prosecutor's offices to consider 77 cases pursuant to Article 327(1) of the Code of Penal Procedure, and to conduct evidentiary proceedings in 4 cases pursuant to Article 327(3) of the Code of Penal Procedure.

The analysis of individual extraordinary incidents conducted by the Office of the Human Rights Defender in the period between July 2008 and June 2009 allowed for determining the most common of their sources (reasons and circumstances). They were described in the "Report of the Human Rights Defender on extraordinary incidents in places of detention for persons deprived of their liberty".⁴⁸

8. Summary

The system of regular visits to places of detention is considered as one of the most effective measures for prevention of torture and other prohibited forms of treatment of detained persons. It supplements the court system, managed in this respect by the European Court of Human Rights.

In course of the activities of the National Preventive Mechanism in Poland conducted in 2009, no instances of torture were found in the territory of the Republic of Poland. During the visits, the representatives of the Human Rights Defender

⁴⁸ Bulletin of the Human Rights Defender No 6, Warsaw, 2009.

witnessed, however, situations or circumstances that could be considered inhuman treatment or punishment, or that could lead to such unacceptable forms of treatment.

The main comments and recommendations formulated after the visits regarded the living conditions in such places of detention as: penitentiary establishments, centres for foreigners applying for a refugee status or asylum, rooms within the Police organisational units for detained persons or Police emergency centres for children. This matter was connected with the issue of privacy of persons deprived of their liberty.

Moreover, the prisons and pre-trial detention centres frequently had difficulties in recruiting doctors to work in the prison healthcare service. This situation is alarming in the context of the growing number of cases lost before the European Court of Human Rights regarding the failure to ensure the detained persons with appropriate health care.

The visits to juvenile establishments revealed the need to take appropriate legislative action aimed at granting minors specified rights. It was also found that unacceptable forms of punishment were imposed on minors that in some cases could be considered inhuman and degrading. The majority of juvenile detention centres, juvenile shelters, youth care and sociotherapy centres and Police emergency centres for children were advised to display in a publicly accessible place the addresses of institutions that the detained persons could turn to should their rights be violated. Irregularities as regards placing minors in transition rooms were also common. In individual cases the charges of employing physical force against minors were brought against the employees of the establishments.

Moreover, the irregularities occurred in the area of using direct coercive measures in psychiatric hospitals, social care centres and sobering stations.

When recapitulating the activities by the Human Rights Defender in the domain of performing the tasks under the National Preventive Mechanism in 2009, hope should be expressed that the relevant authorities of the Republic of Poland will recognise the need to support these additional activities undertaken by the Polish Ombudsman. Every State Party to the Optional Protocol to the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is obliged to ensure appropriate human and financial resources.

9. Annex 1. List of places of detention visited in 2009 by visit date

VISITS UNDER THE NATIONAL PREVENTIVE MECHANISM IN 2009

No	Unit visited	Place	Date
1	Rooms for Detained Persons within the Poviát Police Headquarters	Pruszków	06.01.2009
2	Police Emergency Centre for Children	Płock	07.01.2009
3	Rooms for Detained Persons within the Municipal Police Headquarters	Płock	07.01.2009
4	Samodzielny Publiczny ZOZ-Wojewódzki Szpital dla Nerwowo i Psychicznie Chorych "Drewnica" (Autonomous Public Hospital – Voivodship Hospital for Neurotic and Psychiatric Patients "Drewnica")	Ząbki	08.01.2009
5	Guarded Centre for Foreigners at Nadwiślański Oddział Straży Granicznej (Nadwiślański Border Guard Unit)	Lesznowola	09.01.2009
6	Rooms for detained persons within the Poviát Police Headquarters	Międzyrzecz	20.01.2009
7	Prison	Gorzów Wielkopolski	21-23.01.2009
8	External Ward of the Prison in Gorzów Wielkopolski	Słońsk	22.01.2009
9	Prison	Barczewo	26-28.01.2009
10	Juvenile Shelter	Warszawa-Okęcie	30.01.2009
11	Rooms for detained persons within the Municipal Police Headquarters	Piotrków Trybunalski	02.02.2009
12	Pre-Trial Detention Centre	Piotrków Trybunalski	02-04.02.2009
13	Pre-Trial Detention Centre	Jelenia Góra	17-19.02.2009
14	Police Emergency Centre for Children;	Wałbrzych	19-20.02.2009
15	Prison	Malbork	25-26.02.2009
16	Rooms for detained persons within the Poviát Police Headquarters	Malbork	24.02.2009
17	Youth Care Centre	Trzcinec	03-04.03.2009
18	Prison	Wierzchowo	05-06.03.2009

19	Military Disciplinary Detention Centre	Bydgoszcz	09.03.2009
20	Prison	Bydgoszcz-Fordon	09-11.03.2009
21	Sobering Station	Bydgoszcz	10.03.2009
22	Prison	Płock	17-19.03.2009
23	Sobering Station	Płock	18.03.2009
24	Youth Sociotherapy Centre	Ostrowiec Świętokrzyski	01.04.2009
25	Juvenile Detention Centre	Ostrowiec Świętokrzyski	02.04.2009
26	Centre for Foreigners Applying for a Refugee Status or Asylum	Bytom	02.04.2009
27	Rooms for Detained Persons within the Poviát Police Headquarters	Ostrowiec Świętokrzyski	03.04.2009
28	Rooms for Detained Persons within the Poviát Police Headquarters	Strzelce Opolskie	21.04.2009
29	Prison No 2	Strzelce Opolskie	22-23.04.2009
30	Rooms for Detained Persons within the Poviát Police Headquarters	Inowrocław	27.04.2009
31	Youth Care Centre	Kruszwica	28.04.2009
32	Pre-Trial Detention Centre	Inowrocław	29-30.04.2009
33	External Ward of the Pre-Trial Detention Centre in Inowrocław	Inowrocław	29-30.04.2009
34	Rooms for Detained Persons within the Municipal Police Headquarters	Cracow	05.05.2009
35	Pre-Trial Detention Centre	Cracow	06-08.05.2009
36	Social Care Centre	Szczytna	12.05.2009
37	Deportation Custody Centre at Sudecki Oddział Straży Granicznej (Sudecki Border Guard Unit)	Kłodzko	13.05.2009
38	Hospital for Neurotic and Psychiatric Patients (at Wielospecjalistyczny Szpital SPZOZ (Autonomous Public Multispecialty Hospital) in Zgorzelec)	Sieniawka	14.05.2009

39	Youth Care Centre	Warsaw (ul.Barska)	18.05.2009
40	Youth Sociotherapy Centre	Warsaw (ul.J.Brożka)	19.05.2009
41	Prison	Sztum	25-26.05.2009
42	Youth Care Centre	Koźmin Wielkopolski	26,29.05.2009
43	Prison	Koziegłowy	27-28.05.2009
44	Sobering Station	Słupsk	18.06.2009
45	Police Emergency Centre for Children	Słupsk	15.06.2009
46	Pre-Trial Detention Centre	Słupsk	16-17.06.2009
47	External Ward of the Pre-Trial Detention Centre in Słupsk	Ustka	17.06.2009
48	Deportation Custody Centre at Warmińsko-Mazurski Oddział Straży Granicznej (Warmińsko-Mazurski Border Guard Unit)	Kętrzyn	16.06.2009
49	Guarded Centre for Foreigners at Warmińsko-Mazurski Oddział Straży Granicznej (Warmińsko-Mazurski Border Guard Unit)	Kętrzyn	16.06.2009
50	Wojewódzki Samodzielny Psychiatryczny Zespół Publicznych Zakładów Opieki Zdrowotnej im. J. Mazurkiewicza (J. Mazurkiewicz Voivodship Autonomous Psychiatric Hospital).	Pruszków	22.06.2009
51	Rooms for Detained Persons within the Municipal Police Headquarters	Siemianowice Śląskie	23.06.2009
52	Youth Care Centre	Radzionków	24.06.2009
53	Youth Care Centre	Kuźnia Raciborska	25.06.2009
54	Sobering Station	Ruda Śląska	26.06.2009
55	Rooms for Detained Persons within the District Police Headquarters (Warsaw VII)	Warsaw	01.07.2009
56	Prison	Cracow-Nowa Huta	01-03.07.2009
57	Sobering Station	Cracow	02.07.2009
58	Pre-Trial Detention Centre	Warsaw-Mokotów	06-09.07.2009

59	Voivodship Rehabilitation Treatment Centre and Care and Treatment Centre	Gorzyce	20.07.2009
60	Prison No 1	Łódź	20-22.07.2009
61	Samodzielny Publiczny ZOZ-Wojewódzki Szpital dla Nerwowo i Psychiczenie Chorych "Drewnica" (Autonomous Public Hospital – Voivodship Hospital for Neurotic and Psychiatric Patients "Drewnica")	Rybnik	21-22.07.2009
62	Police Emergency Centre for Children	Łódź	22.07.2009
63	Municipal Centre for Addiction Prevention and Treatment (Sobering Station)	Łódź	23.07.2009
64	Juvenile Shelter	Stawiszyn	27-28.07.2009
65	Rooms for Detained Persons within the Municipal Police Headquarters	Radom	28.07.2009
66	Youth Socioterapy Centre "Jędrus"	Józefów	31.07.2009
67	Rooms for Detained Persons within the Powiat Police Headquarters	Nisko	04.08.2009
68	Rooms for Detained Persons within the Powiat Police Headquarters	Stalowa Wola	04.08.2009
69	Prison	Przemyśl	05-06.08.2009
70	Wojewódzki Szpital dla Nerwowo i Psychiczenie Chorych im. dr. Józefa Bednarza (Dr. Józef Bednarz Voivodship Hospital for Neurotic and Psychiatric Patients)	Świecie	06-07.08.2009
71	Sobering Station	Przemyśl	07.08.2009
72	Youth Socioterapy Centre No 2 "Kąt"	Warsaw-Anin	13.08.2009 24.09.2009
73	Prison	Garbalin	17-19.08.2009
74	Wojewódzki Specjalistyczny Zespół Opieki Neuropsychiatrycznej (Voivodship Specialist Neuropsychiatric Hospital)	Kielce	25.08.2009
75	Pre-Trial Detention Centre	Kielce	25-28.08.2009
76	Sobering Station	Kielce	26.08.2009
77	Świętokrzyskie Centrum Psychiatrii (Psychiatry Centre of Świętokrzyskie)	Morawica	26.08.2009
78	Rooms for Detained Persons within the Municipal Police Headquarters	Świnoujście	26.08.2009
79	Pre-Trial Detention Centre	Świnoujście	27-28.08.2009
80	Youth Care Centre	Krupski Młyn	01-02.09.2009
81	Juvenile Detention Centre	Zawiercie	03-04.09.2009
82	Juvenile Shelter	Zawiercie	03-04.09.2009
83	Prison	Głogów	16.09.2009

84	Juvenile Shelter	Głogów	17-18.09.2009
85	Juvenile Detention Centre	Głogów	17-18.09.2009
86	Municipal Centre for Addiction Prevention (Sobering Station)	Głogów	17.09.2009
87	Rooms for Detained Persons within the Police Station	Warsaw-Białoleka	24.09.2009
88	Pre-Trial Detention Centre	Bartoszyce	28-29.09.2009
89	Rooms for Detained Persons within the Poviast Police Headquarters	Bartoszyce	29.09.2009
90	Prison	Dubliny	30.09-01.10.2009
91	Centre for Foreigners Applying for a Refugee Status or Asylum	Łomża	06.10.2009
92	Police Emergency Centre for Children	Częstochowa	06.10.2009
93	Prison	Wojkowice	07-08.10.2009
94	Centre for Helping Persons with Alcohol Problems (Sobering Station)	Częstochowa	09.10.2009
95	Juvenile Shelter	Pobiedziska	14.10.2009
96	Juvenile Detention Centre	Witkowo	15.10.2009
97	Rooms for Detained Persons within the Poviast Police Headquarters	Września	16.10.2009
98	Rooms for Detained Persons within the Poviast Police Headquarters	Nakło	27.10.2009
99	Pre-Trial Detention Centre	Bydgoszcz	26-29.10.2009
100	External Ward of the Pre-Trial Detention Centre in Bydgoszcz	Bydgoszcz	28.10.2009
101	Sobering Station	Tychy	29.10.2009
102	Rooms for Detained Persons within the District Police Headquarters (Warsaw IV)	Warsaw	08.12.2009
103	Rooms for Detained Persons within the District Police Headquarters (Warsaw V)	Warsaw	08.12.2009
104	Specjalistyczny Szpital im. dr Józefa Babińskiego SPZOZ (Dr. Józef Babiński Autonomous Public Specialist Hospital)	Cracow	14,16.12.2009
105	Centre for Foreigners Applying for a Refugee Status or Asylum	Dębak	21.12.2009
106	Centre for Foreigners Applying for a Refugee Status or Asylum	Radom	21.12.2009

10. Annex 2. List of places of detention visited in 2009 by type of place of detention

VISITS UNDER THE NATIONAL PREVENTIVE MECHANISM IN 2009 BY UNIT

No	Prisons		Pre-Trial Detention Centres		External Wards of Penitentiary Establishments		Juvenile Detention Centres	
	Place	Date	Place	Date	Place	Date	Place	Date
1	Gorzów Wielkopolski	21-23.01.2009	Piotrków Trybunalski	02-04.02.2009	External Ward in Słońsk (Prison in Gorzów Wielkopolski)	22.01.2009	Ostrowiec Świętokrzyski	02.04.2009
2	Barczewo	26-28.01.2009	Jelenia Góra	17-19.02.2009	External Ward in Inowrocław (Pre-Trial Detention Centre in Inowrocław)	29-30.04.2009	Zawiercie	03-04.09.2009
3	Malbork	25-26.02.2009	Inowrocław	29-30.04.2009	External Ward in Ustka (Pre-Trial Detention Centre in Słupsk)	17.06.2009	Głogów	17-18.09.2009
4	Wierzchowo	05-06.03.2009	Cracow	06-08.05.2009	External Ward in Bydgoszcz (Pre-Trial Detention Centre in Bydgoszcz)	28.10.2009	Witkowo	15.10.2009
5	Bydgoszcz-Fordon	09-11.03.2009	Słupsk	16-17.06.2009				
6	Płock	17-19.03.2009	Warsaw-Mokotów	06-09.07.2009				

7	Strzelce Opolskie Nr 2	22-23.04.2009	Kielce	25-28.08.2009				
8	Sztum	25-26.05.2009	Świnoujście	27-28.08.2009				
9	Kozięgłowy	27-28.05.2009	Bartoszyce	28-29.09.2009				
10	Cracow-Nowa Huta	01-03.07.2009	Bydgoszcz	26-29.10.2009				
11	Łódź Nr 1	20-22.07.2009						
12	Przemyśl	05-06.08.2009						
13	Garbalin	17-19.08.2009						
14	Głogów	16.09.2009						
15	Dubliny	30.09-01.10.2009						
16	Wojkowice	07-08.10.2009						
Total		16		10		4		4

No	Youth Care Centres		Youth Sociotherapy Centres		Police Emergency Centres for Children		Rooms within the Police organisational units for detained persons	
	Place	Date	Place	Date	Place	Date	Place	Date
1	Trzcinec	03-04.03.2009	Ostrowiec Świętokrzyski	01.04.2009	Płock	07.01.2009	Pruszków, Powiat Police Headquarters (rooms for detained persons in Piastów)	06.01.2009
2	Kruszwica	28.04.2009	Warsaw (ul.J.Brozka)	19.05.2009	Wałbrzych	19-20.02.2009	Płock, Municipal Police Headquarters	07.01.2009
3	Warsaw (ul.Barska)	18.05.2009	Józefów "Jędrus"	31.07.2009	Słupsk	15.06.2009	Międzyrzecz, Powiat Police Headquarters	20.01.2009
4	Koźmin Wielkopolski	26, 29.05.2009	Warsaw - Anin "Kał"	13.08.2009 24.09.2009	Łódź	22.07.2009	Piotrków Trybunalski, Municipal Police Headquarters	02.02.2009
5	Radzionków	24.06.2009			Częstochowa	06.10.2009	Malbork, Powiat Police Headquarters	24.02.2009

6	Kuźnia Raciborska	25.06.2009					Ostrowiec Świętokrzyski, Powiat Police Headquarters	03.04.2009
7	Krupski Młyn	01-02.09.2009					Strzelce Opolskie, Powiat Police Headquarters	21.04.2009
8							Inowrocław, Powiat Police Headquarters	27.04.2009
9							Cracow, Municipal Police Headquarters	05.05.2009
10							Siemianowice Śląskie, Municipal Police Headquarters	23.06.2009
11							Warsaw VII, District Police Headquarters	01.07.2009
12							Radom, Municipal Police Headquarters	28.07.2009
13							Nisko, Powiat Police Headquarters	04.08.2009
14							Stalowa Wola, Powiat Police Headquarters	04.08.2009
15							Świnoujście, Municipal Police Headquarters	26.08.2009
16							Warsaw-Białoleka, Police Station	24.09.2009
17							Bartoszyce, Powiat Police Headquarters	29.09.2009
18							Września, Powiat Police Headquarters	16.10.2009
19							Nakło, Powiat Police Headquarters	27.10.2009
20							Warsaw IV, District Police Headquarters	08.12.2009
21							Warsaw V, District Police Headquarters	08.12.2009
Total	7		4		5		21	

No	Sobering Stations		Deportation Custody Centres		Centres for Foreigners Applying for a Refugee Status or Asylum		Guarded Centres for Foreigners	
	Place	Date	Place	Date	Place	Date	Place	Date
1	Bydgoszcz	10.03.2009	Deportation Custody Centre at Sudecki Oddział Straży Granicznej (Sudecki Border Guard Unit) in Kłodzko	13.05.2009	Centre for Foreigners Applying for a Refugee Status or Asylum in Bytom	02.04.2009	Guarded Centre for Foreigners of Nadwiślański Oddział Straży Granicznej (Nadwiślański Border Guard Unit) in Lesznowola	09.01.2009
2	Płock	18.03.2009	Deportation Custody Centre at Warmińsko-Mazurski Oddział Straży Granicznej (Warmińsko-Mazurski Border Guard Unit) in Kętrzyn	16.06.2009	Centre for Foreigners Applying for a Refugee Status or Asylum in Łomża	06.10.2009	Guarded Centre for Foreigners at Warmińsko-Mazurski Oddział Straży Granicznej (Warmińsko-Mazurski Border Guard Unit) in Kętrzyn	16.06.2009
3	Słupsk	18.06.2009			Centre for Foreigners Applying for a Refugee Status or Asylum in Dębak	21.12.2009		

4	Ruda Śląska	26.06.2009			Centre for Foreigners Applying for a Refugee Status or Asylum in Radom	21.12.2009		
5	Cracow	02.07.2009						
6	Łódź	23.07.2009						
7	Przemyśl	07.08.2009						
8	Kielce	26.08.2009						
9	Głogów	16.09.2009						
10	Częstochowa	09.10.2009						
11	Tychy	29.10.2009						
Total	11		2		4		2	

No	Psychiatric hospitals		Military Disciplinary Detention Centres		Juvenile Shelters		Social Care Centres	
	Place	Date	Place	Date	Place	Date	Place	Date
1	Samodzielny Publiczny ZOZ-Wojewódzki Szpital dla Nerwowo i Psychiczenie Chorych "Drewnica" (Autonomous Public Hospital – Voivodship Hospital for Neurotic and Psychiatric Patients "Drewnica") in Ząbki	08.01.2009	Bydgoszcz	09.03.2009	Warsaw-Okęcie	30.01.2009	Szczytna	12.05.2009

2	Hospital for Neurotic and Psychiatric Patients (at Wielospecjalistyczny Szpital SPZOZ (Autonomous Public Multispecialty Hospital) in Zgorzelec) in Sieniawka	14.05.2009			Stawiszyn	27-28.07.2009		
3	Wojewódzki Samodzielny Psychiatryczny Zespół Publicznych Zakładów Opieki Zdrowotnej im. J. Mazurkiewicza (J. Mazurkiewicz Voivodship Autonomous Psychiatric Hospital) in Pruszków	22.06.2009			Zawiercie	03-04.09.2009		
4	Wojewódzki Szpital dla Nerwowo i Psychiczenie Chorych im. dr. Józefa Bednarza (Dr. Józef Bednarz Voivodship Hospital for Neurotic and Psychiatric Patients) in Świecie	06-07.08.2009			Głogów	17-18.09.2009		
5	Wojewódzki Specjalistyczny Zespół Opieki Neuropsychiatrycznej (Voivodship Specialist Neuropsychiatric Hospital) in Kielce	25.08.2009			Pobiedziska	14.10.2009		
6	Świętokrzyskie Centrum Psychiatrii (Psychiatry Centre of Świętokrzyskie) in Morawica	26.08.2009						
7	Samodzielny Publiczny Zakład Opieki Zdrowotnej Państwowego Szpitala dla Nerwowo i Psychiczenie Chorych (Autonomous Public Hospital at State Hospital for	21-22.07.2009						

	Neurotic and Psychiatric Patients) in Rybnik						
8	Voivodship Rehabilitation Treatment Centre and Care and Treatment Centre in Gorzyce	20.07.2009					
9	Specjalistyczny Szpital im. dr. Józefa Babińskiego SPZOX (Dr. Józef Babiński Autonomous Public Specialist Hospital)	14,16.12.2009					
Total	9		1		5		1