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REPORT

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COMMISSIONER FOR HUMAN RIGHTS

on the Activities

OF THE NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE

in 2016

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Report of the Polish Commissioner for Human Rights on the Activities of the National Mechanism for the Prevention of Torture in 2016 (Synthesis)

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Introduction

Dear Readers,

Torture is one of the gravest violations of fundamental human rights. It not only infringes upon numerous rights enjoyed by people, but also constitutes a direct assault on human dignity which is protected by the Polish Constitution as the source of those rights. The prohibition of torture is absolute and unconditional, and there exist no circumstances under which torture may be justified. The prohibition arises from international law[1] as well as the Polish Constitution, and reflects the moral progress of nations. Any violation of the freedom from torture and other inhuman or degrading treatment or punishment constitutes, at the same time, an assault on human dignity. According to the case-law of the European Court of Human Rights in Strasbourg, the state, regardless of complainant's attitude, may not evade compliance with this prohibition, even at times of war or any other threat to national security[2].

Regular unannounced visits to places of detention are considered one of the most effective measures to prevent torture and other prohibited forms of treatment of detained persons. The visits are supplementary to the judicial mechanism applied by the European Court of Human Rights in Strasbourg.

The Republic of Poland is one of 83 States-Parties that have ratified or acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[3] (hereinafter referred to as the OPCAT or Protocol), adopted by the United Nations General Assembly in New York on 18 December 2002. Poland is also one of 57 countries that have established their National Preventive Mechanisms.

The objective of the Protocol has been to introduce a system of regular visits undertaken by independent bodies to places where people are deprived of their liberty. At the international level, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been established. At the national level, each State party is

[1] The human rights protection systems of both the United Nations and Europe prohibit the use of torture and other inhuman or degrading treatment or punishment.

[2] Case Ireland v the United Kingdom, judgment of 18 January 1978, application no. 5310/71.

[3] Dz. U. (Journal of Laws) of 2007, no. 30, item 192.

required to establish its National Preventive Mechanism. These measures are intended to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The Government of the Republic of Poland implements numerous recommendations of the Polish Commissioner for Human Rights [i.e. the Polish Ombudsman]. However, despite the content of the OPCAT provisions and contrary to the Paris Principles[4], from the very beginning of the Commissioner's work as the National Preventive Mechanism, no sufficient funding has been allocated to the implementation of the Mechanism's tasks.

2013 was the ninth year of the Commissioner for Human Rights' work as the National Mechanism for the Prevention of Torture. Representatives of the Commissioner's Office carried out 85 unannounced visits to various places of detention across the country.

As in the previous years, this publication not only describes the findings of the visits carried out, but also analyses final and valid court judgments that were delivered in 2016 in criminal cases where the use of torture was ascertained.

The report describes major findings of the conducted preventive visits and diagnoses the existing systemic problems. Regretfully, numerous systemic problems identified in the last years still remain unsolved, including: the failure to amend the Act of 26 October 1982 on juvenile delinquency proceedings, as had been postulated; the failure to solve the problem of placing persons, for the purpose of sobering up, in police rooms for detained persons; the lack of systemic solutions for pregnant juveniles (residents of juvenile establishments) as well as juvenile mothers and their children.

As in the previous years, in places of detention in Poland there occur situations which, regrettably, can be classified as degrading or inhuman treatment or punishment. Experience shows that NPM visits play an important role in preventing torture. Given the fact that the country has approximately 2600 places of detention within the meaning of Article 4 of the OPCAT[5], and that the NPM visiting team is currently composed of 10 persons, despite their high commitment the Commissioner for Human Rights is, unfor-

[4] The Paris Principles are requirements to be met by human rights institutions. They were adopted by the UN in 1993. The main requirements to be met are independence and pluralism.

[5] According to Article 4(1) of the OPCAT, a place of detention is any place under its jurisdiction and control 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.

tunately, unable to guarantee compliance with the minimum international standards of frequency of preventive visits[6].

Apart from the monitoring of places of detention, the year 2016 was also devoted to strengthening the educational role of the National Mechanism for the Prevention of Torture. In 2016, a series of 16 regional debates organized by the NMPT in capital cities of each of the country's voivodeships (regions) was started. During the visits, representatives of the NMPT discuss the key issues relating to the operation of places of detention in Poland. The meetings are addressed to representatives of all types of such places, as well as to representatives of public prosecutor's offices, judicial authorities, voivodeship self-governments and universities.

The report is also available on the website of the Polish Commissioner for Human Rights (www.rpo.gov.pl.) in English, which makes it possible for international institutions to receive information on the activities of the National Preventive Mechanism in Poland.

I hope that you will find the present *Report of the Polish Commissioner for Human Rights on the activities of the National Preventive Mechanism in 2016* an important source of information and that it will contribute to the improvement and proper functioning of the different types of places of detention in our country, in line with the international standards.

Adam Bodnar, Ph. D.
Commissioner for Human Rights

[6] According to the UN Special Rapporteur on torture, ad hoc preventive visits under the NPM should be carried out once in several months, and comprehensive visits once in five years. According to minimum standards defined by the APT, comprehensive visits to organizational units of the Police, pre-trial detention centres and to places of detention of people particularly vulnerable to threats or aggression, such as women and foreigners, should be carried out at least once a year.

Structure of the Report

The structure of the Report has been organised so as to reflect the results of work of the National Mechanism for the Prevention of Torture (hereinafter referred to as the NMPT) in 2016 to the largest possible extent. Last year, the following places of detention were visited[7]:

- pre-trial detention centres/prisons,
- youth care centres,
- rooms for detained persons within police organisational units,
- social care homes,
- psychiatric hospitals,
- closed detention centres for migrants.

The NMPT also re-inspected 4 places of detention which were already inspected in the past years.

All the places were visited so as to check whether no torture or inhuman, degrading treatment or punishment is applied there. During each visit, regardless of the type of the place of detention, the NMPT examined the following aspects: treatment of detained persons, their living conditions, the right to health protection, the right of access to information, the right to contacts with the outside world, the right to religious practices, and the qualifications of the personnel. This Report describes, among others, irregularities in the implementation of citizens' rights and freedoms. As not all visited places of detention were identified as having such irregularities, the individual parts of this Report may differ from each other in terms of issues analysed. If some aspect (e.g. the right to religious practices) is not described, it means that the NMPT did not find any violations in this area in a given type of detention places. Each type of the places of detention visited by the NMPT in 2016 is described separately and its specific systemic problems are indicated. During preventive visits, the NMPT is also trying to pay attention to positive sides of the establishments, which is reflected in the Report in the section *Strengths and good practices*.

[7] According to Article 4(1) of the OPCAT, a place of detention is any place under the country's jurisdiction and control 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.

The introduction to the report describes the NMPT's organizational structure, financing system, assessment of legislative acts, the NMPT's national and international cooperation, as well as educational activities of the NMPT seeking to build the culture of non-acceptance of torture across the society. Part I explains the methodology of preventive visits, the problems in the NMPT's fulfilment of its mandate, and the conclusions on the visits to places of detention. That part also discusses individual cases of violation of the rights of persons deprived of liberty, which reflect the existing threats to the system of protection of those persons' rights. The chapter aims to identify the weaknesses of the system of protecting the rights of persons in detention, as their rights are not sufficiently protected due to such weaknesses.

Compared to the NMPT's previous annual reports, part II of this report has been extended by an analysis of the main pillars of the system of protecting the rights of persons deprived of their liberty, including protection against torture, and the role of national preventive mechanisms in the system. This is of particular importance in the context of the case of Igor Stachowiak[8], in which police officers used torture against the detainee. Part II also contains a legal analysis of a new problem identified by the NMPT in one of the types of detention places visited. The problem, in 2016, was the use of direct coercion at the request of a psychiatric hospital patient.

Part II of the report also mentions the NMPT's activities planned for 2017 and the technical standards that should be met by places of detention in order to be adjusted to the needs of persons with disabilities.

[8] file no. in the CHR Office system: BPW.519.21.2016.

1. Organisation of the activities of the National Mechanism for the Prevention of Torture

In his letter of 18 January 2008, Undersecretary of State in the Ministry of Justice, pursuant to the Council of Ministers Resolution No. 144/2005 of 25 May 2005, officially assigned to the Commissioner for Human Rights the role of the National Preventive Mechanism within the meaning of Article 3 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the OPCAT). The protocol was adopted by the United Nations General Assembly in New York on 18 December 2002. For the Republic of Poland, it entered into force on 22 June 2006[9]. According to Article 1(4) of the Act of 15 July 1987 on the Commissioner for Human Rights[10] (hereinafter referred to as the Act on the CHR), the Commissioner performs the function of the visiting body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (the national preventive mechanism). The function consists in conducting regular inspections to assess ways of treatment of persons deprived of liberty (Article 8(2) of the Act on the CHR). During the inspections, the Commissioner may make audio or video recordings at places of detention, with the consent of persons whose voice or image is going to be recorded. He may also meet with persons deprived of liberty, without the presence of other persons, and with other persons expected to provide relevant information (Article 13(1) of the Act on the CHR).

The National Preventive Mechanism constitutes one of the Departments within the Office of the Commissioner for Human Rights[11].

The NMPT Department is supported by employees of the Commissioner for Human Rights' regional representative offices located in Gdańsk, Wrocław and Katowice. Deputy Commissioner for Human Rights also regularly participates in the NMPT visits. It is also worth pointing out that since

[9] Dz. U. of 2007, no. 30, item 192.

[10] Consolidated text: Dz. U. of 2017, item 958.

[11] Article 6 of the Appendix to Regulation no. 45/2015 of the Commissioner for Human Rights of 19 November 2015 adopting the Statutes of the Office for the Commissioner for Human Rights.

2016, visits to penitentiary establishments have been carried out jointly by representatives of the National Mechanism for the Prevention of Torture and representatives of the CHR Office's Department for Soldiers and other Uniformed Service Members. The solution meets the needs of the Prison Service officers who may report their problems directly to the CHR Office employees who are aware of the officers' rights. Appropriate assessment of the methods of treatment of persons deprived of liberty requires gathering information from various sources which, in many cases, is impossible without the support and knowledge of experts. Therefore, if possible, the visits are carried out together with external experts: psychiatrists, geriatricians and internal medicine doctors.

Pursuant to the CHR's decision[12], the Expert Committee on the National Preventive Mechanism (hereinafter referred to as the Committee) was established. It is composed of specialists whose daily work relates to the rights of persons deprived of their liberty. The specialists include: lawyers, representatives of non-governmental organisations, representatives of uniformed services and doctors. The role of the Expert Committee on the NMPT is to support the Mechanism by providing expert opinions and developing the CHR's comments and recommendations regarding existing or planned amendments to legislative acts and proposed systemic changes, and by formulating key points for the Commissioner's interventions.

Since the name "the National Preventive Mechanism" did not fully identify the Department's role in the area of protection of rights of persons deprived of their liberty, including protection against torture, the Commissioner for Human Rights, following the Committee's suggestion, agreed to the use of the name "the National Mechanism for the Prevention of Torture" or "the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"[13].

[12] Regulation no. 46/2016 of the Commissioner for Human Rights of 18 October 2016 determining the composition of the Expert Committee on the National Preventive Mechanism operating within the CHR Office.

[13] Regulation no. 52/2016 of the Commissioner for Human Rights of 22 December 2016 on the names used by the National Preventive Mechanism.

2. Financing

Expenditures on the activities of the National Mechanism for the Prevention of Torture are covered from the state budget allocation received by the CHR. According to the Annual Report on the Implementation of Activity-Based Expenditures of the State Budget and of the European Funds Budget, in 2016 the Office of the Commissioner for Human Rights disbursed PLN 2,361,864.71, including PLN 82,185.25 on capital expenditures and PLN 2,279,679.46 on other expenditures.

In 2016, the composition of the NMPT changed: the staff was decreased by 2.5 full-time positions. The actual number of employees of the NMPT's visiting Team was 7. The CHR has repeatedly emphasized that the small size of the Team makes it impossible to perform the CHR's tasks arising from the OPCAT to the full extent.

3. Assessment of legislative acts

Assessment of legislative acts, both those in force and those at the drafting stage, is a form of preventing torture and other cruel, inhuman or degrading treatment or punishment. The national preventive mechanisms' power to submit proposals and observations concerning existing or draft legislation to relevant authorities is provided for in Article 19(c) of the OPCAT.

In 2016, the NMPT submitted observations concerning 6 draft legislative acts. All the observations were made available on the NMPT website under the tab *Assessment of Legislative Acts*.

4. National and international cooperation[14]

An important element of the operation and development of the National Mechanism for the Prevention of Torture is the participation of its representatives in various events on the national and international levels. This way, the NMPT emphasizes its role as a body that protects the rights of persons deprived of their liberty, as well as gains new experience as a result of cooperating with other entities operating in this area.

In April, the Polish Deputy Commissioner for Human Rights together with the NMPT's staff member took part in a conference for representatives of local governments and youth care centres. In his speech, the Commissioner presented the main issues relating to youth care centres and monitored by the CHR, as well as systemic problems which need to be regulated by the law.

At the CHR Office a meeting was held of the NMPT's representative with members of the Penitentiary Group of the Faculty of Law and Administration of the University of Łódź. In the meeting, the students and accompanying academic teachers had an opportunity to learn about the Polish system of prevention of torture and other cruel, inhuman or degrading treatment or punishment.

In August, representatives of the NMPT took part in a working meeting in the Ministry of Justice, devoted to legislative changes relating to the application of medicines to minors. The discussion focused on the problem of insufficient regulation of the issue of application of medicines to minors, which problem had been raised at the beginning of 2016 by the Patients Ombudsman.

In October, the NMPT Department employees held a meeting with patients' ombudsmen from psychiatric hospitals. During the meeting, the NMPT representatives presented the legal bases, methodology and objectives of the preventive visits conducted in psychiatric hospitals. They also emphasized the significance of the NMPT 's cooperation with psychiat-

[14] More information on the NPM's activity on the national and international arenas is available on the NPM website under the tabs *NPM's national cooperation* and *NPM's international cooperation.*

ric hospitals' patient ombudsmen for the protection of the patients' rights against potential violations.

Activities of the NMPT find their reflection in the Commissioner's international cooperation. In 2016, representatives of the Mechanism participated in several conferences and workshops held in Vienna on the prevention of torture as well as the organization and operation of National Preventive Mechanisms in different countries. A representative of the NMPT also took part in a conference on juvenile detention systems in Brussels. It needs to be emphasized that the Polish NMPT also participated in a series of three meetings on strengthening the cooperation between the National Preventive Mechanisms and judges. The meetings were organized by the Ludwig Boltzmann Institute of Human Rights in Vienna.

Representatives of the NMPT also participated as Short Term Experts in the Polish-German Twinning Project *Support to the Strengthening of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan*. The aim of the project was to strengthen the institution of Ombudsman in Azerbaijan through the exchange of experience and good practices of the Polish Commissioner for Human Rights in the area of protection of the rights of persons deprived of their liberty, including their protection against torture, as well as protection of the rights of children, elderly persons and persons with disabilities, and of the broadly understood right of access to information. The NMPT was represented by two employees whose tasks were related, respectively, to the organization of training for staff of the national preventive mechanism operating within the Ombudsman's Office in Azerbaijan, and the development of a long-term development strategy for the Office.

The NMPT's representative also took part as an expert in training for Russian Public Monitoring Committees, organized by the Council of Europe in Yerevan. In addition to discussing theoretical aspects, the NMPT's representative conducted practical group training in the formulation of appropriate questions for the first meeting with the head of the visited establishment, and for conducting an individual conversation with a person deprived of liberty.

5. Educational activity

In 2016, a series of 16 regional debates organized by the NMPT in capital cities of each of the country's voivodeships (regions) was started. The meetings are addressed to representatives of all types of places of detention, representatives of the public prosecutor's offices, judicial authorities, voivodeship governments and universities. The debates provide a platform for the exchange of experience in the cooperation of detention places' managers with the NMPT in the field of protecting the rights of persons deprived of their liberty. The visits also aim to provide an insight into the systemic problems identified during preventive visits to places of detention, and to highlight the role of the National Mechanism for the Prevention of Torture as a partner for the visited establishments' managers in building the culture of non-acceptance of torture and other cruel, inhuman or degrading treatment or punishment. From September 2016 to the end of the year, four regional debates were held in: Katowice, Gdańsk, Lublin and Olsztyn.

Local media representatives were also invited to take part in the debates. Especially for them, information was prepared on the results of the NMPT's visits conducted, in the 2 years preceding the meeting, in places of detention located in a given voivodeship.

The organization of the regional debates is a form of fulfilment of the NMPT's educational role in the field of preventing torture and other cruel, inhuman or degrading treatment or punishment.

As part of their activities aimed to prevent torture, in 2016 the NMPT representatives conducted two training meetings and workshops: one for police officers from units subordinate to the Voivodeship Police Headquarters in Łódź (on 7.04 in Sieradz), and the other one for trainers from the Police Training Centre in Legionowo (on 18.04 in Legionowo). The meetings focused on analysing the concept of torture and inhuman or degrading treatment, the standards of protection of the rights of detainees, and the organisation and methods of work of the NMPT.

PART I

1. Methodology

In all the establishments visited, the NMPT operates based on the same methodology. The first stage is to establish the composition of the visiting group. In accordance with the OPCAT provisions, experts of national preventive mechanisms should have the required capabilities and expertise.

The visiting team usually consists of several persons, with one person performing the role of a group coordinator. Two persons, including the team coordinator responsible for drawing up a visit report, inspect the premises and buildings of the establishment, while others conduct individual conversations with persons deprived of their liberty. In order for the groups to be interdisciplinary the visits, whenever possible, are also performed by experts in general medicine, psychiatry and geriatrics. They draw up an expert opinion which is incorporated in the preventive visit report.

The duration of a specific visit depends on the size of the visited establishment and the problems encountered there, and usually lasts 1 to 3 days.

Every visit of the NMPT comprises the following stages:

- conversation with the establishment's managers;
- inspection of all rooms used by persons deprived of their liberty;
- individual and group conversations with detainees;
- conversations with the personnel;
- analysis of documents;
- formulation of post-visit recommendations during the conversation summarizing the visit;
- listening to the establishment managers' opinions on the recommendations.

During the visits, the NMPT employees may use measuring and recording devices including cameras.

If a person deprived of his/her liberty reports an unlawful event during the visit, he/she has the opportunity to lodge an official complaint. The complaint is then forwarded to the competent team within the CHR Office. Yet, if the person does not consent to addressing the issue officially, the visiting team considers the information as a report to be investigated in a way that prevents identifying the source. If the unlawful event is confirmed, the members of the visiting team report their findings to the director of the vis-

ited establishment and the complainant remains anonymous if. If the team is unable to confirm the complainant's charges, these are reported during the summarising conversation as unverified reports, and it is the establishment director's duty to investigate them.

When the visit is completed, a report is drawn up which describes all the findings and conclusions, as well as recommendations for the body managing the visited establishment and for its supervisory bodies. If the establishment's management does not agree with the recommendations, the NPM representatives request the supervisory bodies to issue their opinion and position on the matter. Such a dialogue is conducted to indicate the merits of the NMPT's recommendations whose implementation will strengthen the protection of the rights of persons deprived of their liberty at the visited place.

If torture or inhuman, degrading treatment or punishment is revealed, the visitors, following the visit, file a notification about a suspected crime. In each case, however, the victim has to consent to having his/her personal data revealed and to referring the case to law enforcement bodies. Only drastic cases justify deviations from the rule. If so, the decision is made personally by the Commissioner for Human Rights who signs the notification about a suspected crime.

If the victim does not consent to report the case to the law enforcement agencies, and in the opinion of the visiting team, the possible inappropriate behaviour is not drastic, the visiting team treats the obtained information as reports which may point to inappropriate treatment of detainees, and requests the directors of the establishments to explain the situation and present their conclusions.

The situation is different when information about torture, inhuman or degrading treatment or punishment is derived from documents or CCTV footage, rather than directly from the victims. In such a case, the visitors do not have to request consent for referring the case to law enforcement bodies, and each time draw up a notification about a suspected crime.

2. Prisons and pre-trial detention centres

2.1. Introduction

In 2016, a total of 16 penitentiary establishments were visited[15], including 6 prisons, 8 pre-trial detention centres and 2 field units. In one prison and in 4 pre-trial detention centres thematic visits were conducted to assess the observance of the rights of persons with disabilities (physical and sensory disabilities), detained there[16]. The NMPT representatives also carried out one visit to verify the observance of the rights of persons with intellectual disabilities and persons with mental illnesses, serving sentences of deprivation of liberty in therapeutic care wards, and prisoners who pose a serious threat to other members of the society or to the penitentiary establishment's security (and who are detained in the so-called N units for dangerous prisoners, with N standing for the Polish word "niebezpieczny" which means dangerous)[17]. Here was also one *ad-hoc* visit carried out as a result of a press publication[18].

2.2. Systemic problems

Unfortunately, the visits to penitentiary establishments carried out in 2016 lead to the conclusion that the systemic problems identified in the last years still remain unsolved:

1. Placement of persons with serious health problems in penitentiary establishments

In the opinion of the National Mechanism for the Prevention of Torture, particular attention should be paid to the problem which arises from

[15] Prisons in: Płock, Bydgoszcz-Fordon, Wołów, Gorzów Wlkp., Koszalin and Stare Borne; pre-trial detention centres in: Poznań, Wrocław, Gdańsk, Lublin, Lubsko, Sanok, Elbląg and Nowa Sól; field units: Poznań and Moszczaniec.

[16] Prison in Bydgoszcz-Fordon; pre-trial detention centres in: Poznań, Wrocław, Gdańsk and Lublin.

[17] Prison in Wołów.

[18] Prison in Płock.

the provision of Article 35 of the Regulation of the Minister of Justice of 23 June 2015 on administrative activities related to the enforcement of pre-trial detention sentences as well as penalties and coercive measures resulting in deprivation of liberty, and on documenting such activities[19]. According to that provision, *every person admitted to a penitentiary establishment, whose health condition poses an immediate risk to the person's life or health, or who is 28 months pregnant or beyond, should be immediately provided with appropriate medical care.* The regulation previously in force[20] provided that a person in need of immediate medical care could not be admitted to a penitentiary establishment due to the existence of immediate risk to his/her life or health. The previous solution took into account the limited capacity of the penitentiary health care system which is unable to offer medical services as comprehensive as those provided by the general health care system. The current solution, in the opinion of the NMPT, may pose a serious threat to the health or lives of persons admitted to penitentiary establishments.

As indicated last year, the arguments and serious objections to the newly introduced regulation, which were expressed by the Commissioner for Human Rights and by Prof. J. Heitzman, Vice-President of the Polish Psychiatric Association, were not taken into account by the Ministry of Justice. Therefore, there still remains the risk that a mentally ill person, for example with acute psychosis, may be admitted to a penitentiary unit. The NMPT's employees will pay particular attention to the monitoring of the impact of the new regulations.

2. Living space per prisoner in a prison cell

The issue is one of the most acute problems encountered with regard to living conditions in visited prisons and pre-trial detention centres. The living space per person in a prison cell/detention centre cell meets the minimum formal requirements set out in the national legislation (i.e. 3 m^2 per person). However, it is necessary to guarantee at least 4 m^2 of living space per prisoner/detainee in a cell in a penitentiary establishment. On 24 May 2016, the CHR submitted a general intervention to the Minister of justice with regard to the issue, requesting relevant legislative changes[21]. The current 3m^2 standard existing in Poland is, in the Commissioner's opinion, non-compliant with the international standards, Poland's international obligations,

[19] Dz. U. of 2015, item 927.

[20] Dz. U. of 2012, item 1153.

[21] CHR's general intervention to the Minister of Justice of 24.05.2016, ref. no. KMP.571.5.2016.

recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), recommendations of the UN Committee Against Torture (CAT) and the case law of the European Court of Human Rights in Strasbourg.

In this regard, Poland failed to implement the CPT recommendation formulated during its first visit to Poland in 1996, which called on the Polish authorities to increase the standard of living space from the existing 3 m^2 to 4 m^2 (the recommendation was consistently repeated by the Committee on the occasions of its subsequent visits to Poland). As the CPT pointed out, *the Polish authorities should revise, as soon as possible, the standard of living space per prisoner, that is determined in the country's relevant legislation, so as to ensure that in every penitentiary establishment the living space per prisoner is at least 4 m^2 in multi-occupancy cells and at least 6 m^2 in single-person cells, not including the cell's sanitary areas*[22].

Notably, in 2015 the CPT issued a report entitled *Living space per prisoner in prison establishments*[23], relating to the living space standard applicable to prisoners. The report clearly states that as regards living conditions, the minimum living space standard for persons deprived of their liberty is 4 m^2.

The Constitutional Tribunal also pointed out that the CPT recommendations set out the standard to be followed by the member states of the Council of Europe. The failure to comply with the standard constitutes a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and of Article 31(3) of the Constitution of the Republic of Poland[24].

The CAT also expressed its position on the aforementioned minimum standard in Poland. When considering Poland's 5th and 6th periodic reports on the implementation of the Convention against torture and other cruel, inhuman or degrading treatment or punishment[25] (hereinafter referred to as the Convention against torture) it pointed out that the Polish standard of

[22] Cf. Article 42 of the CPT's report on the visit to Poland in 2013. The CPT representatives' visits to Poland took place on the following dates: 30.06.1996; 12.07.1996; 8.05.2000; 19.05.2000; 4.10.2004; 15.10.2004; 26.11.2009; 8.12.2009; 05.06.2013 and 17.06.2013. All the reports on the visits and the related replies of the Polish government were made available to the general public (at the request of the Polish authorities) and are available on the CPT website http://www.cpt.coe.int

[23] Cf. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): Living space per prisoner in prison establishments: CPT standards; Strasbourg, 15 December 2015; CPT/Inf (2015) 44.

[24] Cf. the reasoning of the Constitutional Tribunal's judgment of 26 May 2008, ref. no. SK 25/07, p. 8.

[25] Dz. U. of 1989, no. 63, item 378.

3 m² per person is not in line with the European standard of at least 4 m² per person.

Consequently, the CAT decided that the problem of overcrowding of penitentiary institutions in Poland had not yet been solved and called on Poland to take necessary steps to ensure that the conditions in prisons are at least equivalent to the United Nations Standard Minimum Rules for the Treatment of Prisoners of 31 July 1957, and, in particular, to take action to increase the capacity of penitentiary institutions in order to ensure the minimum European standard of 4 m² per prisoner in a cell[26].

Unfortunately, the arguments presented by the CHR were not met with understanding. The Minister of Justice, in his reply of 23 June 2016, refused to take legislative action[27]. His position was based on the argumentation that the number of persons in penitentiary institutions in Poland is continuously decreasing, and the number of persons who serve their sentences outside penitentiary institutions, under the electronic surveillance system, is growing. It is difficult to share the position of the Minister of Justice because, according to the National Mechanism for the Prevention of Torture, the decrease in the number of prisoners at the same time opens up the possibility of increasing the living space per prisoner.

In view of the above, on 29 July 2016 the CHR submitted an intervention to the Minister of Justice. In the document, the Commissioner took note of the complexity and long-term nature of the process of elimination of overcrowding of penitentiary institutions, and appealed to the Minister of Justice to consider legislative action to introduce the postulated living space standard (4 m²) in therapeutic care wards for persons with non-psychiatric mental disorders or mental retardation[28]. In the CHR's opinion, this group of persons deprived of their liberty is most severely affected by the consequences of imprisonment and, therefore, the Polish authorities are required to take more decisive action in this respect.

In his reply of 17 October 2016, the Secretary of State in the Ministry of Justice assured[29] that the Minister takes into account all recommendations of the NMPT and supports measures aimed at eliminating any possible deficiencies concerning the operation of establishments where isolation meas-

[26] The translation of the recommendations is available on the *Public Information Bulletin (BIP)* page of the website of the Ministry of Justice, under the tab *The United Nations and Human Rights.*

[27] Reply of the Secretary of State of the Ministry of Justice of 23.06.2016, ref. no. DWOiP-I-072-21/16.

[28] CHR's general intervention no. KMP.571.5.2016 of 29.07.206 to the Minister of Justice.

[29] Reply of the Secretary of State of the Ministry of Justice of 17.10.2016, ref. no. DWOiP-I-072-21/16.

ures are used. He also emphasized that he carefully analysed the Mechanism's recommendations so as to ensure that all penalties as well as preventive, security and corrective measures are carried out in a humane manner respecting the dignity of persons deprived of their liberty. To illustrate the understanding of the problems indicated by the CHR and the appreciation of their significance and complexity, the Secretary of State pointed to the establishment, by way of Regulation of 29 April 2016, of the Task Force for developing solutions to reform the country's Prison Service. The Task Force, as a body providing support to the Minister of Justice, is reviewing and assessing the functioning of the Act of 9 April 2010 on the Prison Service[30] with regard to the enforcement of the penalty of imprisonment, and is developing solutions to reform the Prison Service. However, the correspondence with the representative of the Ministry of Justice does not clearly indicate that the changes in this truly important area are going to be introduced in the near future. Therefore, the CHR will continue to monitor the problem of insufficient living space per prisoner in prison cells.

3. Dealing with persons with physical disabilities in penitentiary establishments

The NMPT visits showed that none of the establishments indicated by Director General of the Prison Service[31] as institutions where persons with disabilities are placed ensures conditions for fully independent functioning of prisoners who have to cope with their physical or sensory disabilities.

Based on the results of the NMPT visits conducted jointly with representatives of the foundation Polska Bez Barier (Poland Without Barriers)[32], Deputy Commissioner for Human Rights, in his general intervention of 24 January 2017[33] requested Director General of the Prison Service to update the *Ordinance no. 30/15 of 1 July 2015 determining the intended purpose of prisons and pre-trial detention centres.* In the CHR's opinion, the ordinance

[30] Dz. U. of 2010, no. 79, item 523 as amended.

[31] Cf. Appendix to the Ordinance no. 30/15 of 1 July 2015 determining the intended purpose of prisons and pre-trial detention centres, and the preceding Ordinance no. 55/13 of Director General of the Prison Service of 20 December 2013 determining the intended purpose of prisons and pre-trial detention centres.

[32] During the visits, the foundation's employees who, on daily basis, use wheelchair verified the actual adjustment of the penitentiary establishments to the needs of persons with disabilities. The CHR's thematic report summarizing the findings of the visits is under development.

[33] Deputy CHR's general intervention no. KMP.571.2.2017 of 24.01.2017 to Director General of the Prison Service.

should indicate penitentiary establishments designed for persons with disabilities and actually adjusted to their needs.

According to the Charter of Rights of Persons with Disabilities, adopted on 1 August 1997 by Polish Sejm[34], persons with disabilities have the right to live in an environment free of functional barriers. Furthermore, on 6 September 2012 Poland ratified the Convention on the Rights of Persons with Disabilities[35] adopted by the United Nations General Assembly on 13 December 2006. According to the Convention, persons with disabilities should be enabled to live independently and fully participate in all aspects of life. Both documents apply also to persons deprived of their liberty and their environment at the place of imprisonment. In addition, according to the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)[36], *prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.*

Determination of conditions in which disabled persons should serve sentences of deprivation of liberty or undergo preventive measures in the form of pre-trial detention has become an important issue to be resolved by the ECHR. Failure to comply with the aforementioned rules of dealing with this category of prisoners may lead to allegations of violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms[37]. In its judgment on the case D.G. v. Poland[38] the Court pointed out that architectural barriers existing in Polish penitentiary establishments may generate the feeling of suffering in disabled prisoners[39]. Furthermore, the ECHR has repeatedly criticized the system whereby a physically disabled prisoner should, as a rule, be assisted by other prisoners, as this must give rise to the disabled prisoner's concern and place him/her in a position inferior to other prisoners[40]. If the authorities decide to deprive a disabled person

[34] *Monitor Polski* official journal of 1997, no. 50, item 475.

[35] Dz. U. of 2012, item 1169.

[36] Adopted by Resolution no. 2015/20 of the UN General Assembly. The Rules, translated into Polish, are available on the CHR website.

[37] Dz. U. of 2010, no. 90, item 587, as amended; Article 3 of the Convention provides that no one shall be subjected to torture or other inhuman or degrading treatment or punishment.

[38] Application no. 45705/07, judgment of 12.02.2013.

[39] See also: Arutyunyan v. Russia (application no. 48977/09, judgment of 10.01.2012), and Cara-Damiani v. Italy (application no. 2447/05, judgment of 7.02.2012).

[40] Cf. Farbtuhs v. Latvia (application no. 4672/02, judgment of 2 December 2004), and Vincent v. France (application no. 6253/03, judgment of 24.10.2006).

of his/her liberty they, as a rule, should ensure to the person the conditions that meet specific needs arising from his/her disability[41].

The deputy CHR, in his aforementioned intervention, also emphasized that architectural barriers are mainly found in establishments built long ago and included in the list of monuments of architecture, and in those for which, at their designing stage, no account was taken of the required adjustments. The proposed amendment of the aforementioned Regulation should take into account the need to indicate such establishments for wheelchair users, which enable necessary adjustments to the full extent and thereby guarantee to persons with disabilities the possibility to move independently.

In reply to the above-mentioned general intervention, the Deputy Director General of the Prison Service, despite his assurances of compliance with the principle of humanitarianism and of efforts made to minimize the burden related to imprisonment of persons with disabilities, did not indicate that the Prison Service intended to review the list of establishments designated for placing persons with disabilities and indicate those institutions whose adjustment is possible at all. Given the scale of non-adjustment of penitentiary establishments within the discussed scope, as disclosed by the NMPT, this fact should be considered very disturbing[42].

4. Body search

Since 2014, the CHR has been calling for amending the regulations on body search[43]. The Commissioner's application to the Constitutional Tribunal for assessing the constitutionality of Article 116(6) of the Executive Penal Code in conjunction with Article 7(1) thereof, which permit such measures without issuing decisions that are subject to judicial review[44], is awaiting consideration by the Tribunal. The challenged provision directly infringes the right to the respect for bodily integrity and privacy of persons deprived of their liberty. Apart from introducing the possibility of judicial review of the justification of body search, the adoption of appropriate regulations will, in the CHR's opinion, be compliant with judgements of the European Court of Human Rights issued in the cases Milka v. Poland[45] and Świderski v. Poland[46].

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41 Cf. Farbtuhs against Latvia, Price v. Great Britain (application no. 33394/96, judgment of 10.07.2001).

42 For more information on the issue, see point 7 Situation of persons with disabilities in penitentiary establishments.

43 CHR's application to the CT of 29.08.2014, ref. no. II.519.344.2014.

44 CHR's application to the CT of 21.01.2016, ref. no. KMP.571.83.2014.

45 Application no. 14322/12, judgment of 15 September 2015.

46 Application no. 5532/10, judgment of 16 February 2016.

According to the CHR, respect for prisoners' intimacy and personal dignity also means respect for peoples' feeling of embarrassment, which is undoubtedly violated when a person is naked. Therefore, starting from 2015 the NMPT representatives recommended body search be carried out in two steps, without the prisoner having to take off all his/her clothes. Instead, the prisoner should be allowed to take off some pieces of clothing and put them back on after a given part of the body has been searched. As a result of the NMPT's recommendations, the Regulation of the Minister of Justice of 17 October 2016 on security measures in organizational units of the Prison Service[47] contains Article 68(5), *according to which during a (body) search, the prisoner should be partially dressed; the searching officer first searches through one part of the clothes, and the prisoner may put them on before the other part is searched.* The observance of this provision in practice in penitentiary establishments is verified each time during the preventive visits.

5. Absence or limited range of cultural and educational activities for remand prisoners

Unfortunately, the problem relating to the organization, diversity and availability of cultural, educational or sports activities for remand prisoners has remain unsolved despite the plan to introduce relevant changes in this regard, as was announced in the reply of the Undersecretary of State in the Ministry of Justice dated 9 November 2016.[48]

The visits carried out by representatives of the NMPT in 2016 proved, as in the previous years, that the basic cultural and educational facilities were day rooms with tables for table tennis and with TV sets. In practice, no other activities outside the cells were available to remand prisoners. Thus, the postulates contained in the NMPT's thematic report on the situation of persons deprived of their liberty in pre-trial centres and therapeutic care wards remain up-to-date[49]. In view of the fact that such persons have no opportunity to work[50] or

[47] Dz. U. of 2016, item 1804.

[48] Reply dated 9.11.2016 of the Undersecretary of State of the Ministry of Justice to the Report on the Activities of the NPM in 2015, ref. no. DWMPC-III-0741-10 / 16.

[49] More information on the observance of the rights of remand prisoners can be found in the CHR's thematic report *The National Preventive Mechanism's visits to therapeutic care wards for persons with non-psychotic mental disorders or mental retardation and to units for remand prisoners*, which is available on the CHR website under the tab *Publications on the rights of persons deprived of their liberty.*

[50] According to the data of the National Headquarters of the Prison Service, available on their website under the tab *Statistics,* on 31 December 2016, of 4917 remand prisoners only 13 were employed (the overall number of employed persons deprived of their liberty being 12472).

study, it is a serious challenge to organise the time of their stay in penitentiary establishments in a reasonable way. In the NMPT's opinion, however, measures in this area should be taken because the possibility of participation in organized activities and forms of spending time outside prison cells reduces the negative consequences of penitentiary isolation.

6. Insufficient number of psychologists in penitentiary establishments

In the Commissioner's opinion, it is necessary to increase the availability of psychological support for persons deprived of their liberty and, at the same time, to ensure adequate standards of work to psychologists. According to the current standards, one psychologist is responsible for 200 prisoners. This makes it impossible to conduct all the tasks required of psychologists. A full-time psychologist in a penitentiary facility is, theoretically, able to work in direct contact with each of the supervised prisoners for 48 minutes per month on average. The problem of limited access to psychologists is further aggravated by their long-term absences from work, e.g. due to sick leaves or participation in training and professional qualification courses.

In view of the above, the Commissioner appealed to the Director General of the Prison Service to set out a new standard for psychologists' work[51]. In his reply of 15 June 2016, the Director shared the Commissioner's position. He pointed out, however, that without new job positions, changes in the system of psychological care in penitentiary establishments can only take place gradually, depending on the funds available to the Prison Service.

The NMPT will continue to monitor the issue of availability of psychological care in prisons.

7. Placement of washbasins in prison cells outside sanitary areas

It is still required to solve the problem of placement of washbasins in prison cells outside sanitary areas. The problem occurs in connection with the *Guideline no. 3/2011 of 4 October 2011 of the Director General of the Prison Service on technical and security requirements applicable to buildings used for accommodation of prisoners* which permits such placement of washbasins. However, the Commissioner, in his correspondence to the Director General of the Prison Service of 17 July 2015 and 10 March 2016[52]

[51] CHR's general intervention of 17.05.2016, ref. no.KMP.571.8.2016.

[52] Deputy CHR's general intervention of 10.03.2016, ref. no.IX.517.1494.2015.

pointed out that in prison cells, the placement of a washbasin (as the only facility for washing) outside the sanitary area separated from the rest of the cell by a permanent structure means that the conditions of maintaining personal hygiene do not meet legal, cultural and social standards.

The National Headquarters of the Prison Service, in a letter of 5 April 2016[53], upheld, however, the opinion that the existing solution is appropriate and does not violate the right to intimacy during the maintenance of personal hygiene because, in their view, washbasins are not intended for maintaining intimate hygiene.

It is difficult to agree with this opinion, especially bearing in mind that intimacy while maintaining personal hygiene needs to be respected not only in relation to certain parts of the body. The individual feeling of shame, experienced by prisoners, justifies the need to ensure conditions for washing and other hygiene activities out of sight of other persons. Consequently, all sanitary facilities, not only toilets, should be placed within the cell's sanitary area. Moreover, if a washbasin is located outside the sanitary area, prisoners can wash their hands only after leaving the area. This is certainly not conducive to maintaining proper hygienic habits and may cause the transmission of bacteria from the sanitary area to the cell.

The issue will still be monitored by the NMPT.

8. Access of prisoners to public information

The CHR's postulate to extend the catalogue of rights of persons deprived of liberty, set out in Article 102 of the Executive Penal Code, by the right of access to information contained in the Public Information Bulletin still has not been met.

This issue is constantly monitored by the NMPT representatives during their preventive visits to penitentiary establishments. Unfortunately, their findings indicate that the level of prisoners' awareness of the possibility of access to the Public Information Bulletin is insufficient. This confirms the need to regulate the issue by way of a parliamentary act.

[53] Reply of Deputy Director General of the Prison Service of 5.04.2016, ref. no. BDG-070-28 / 16/208.

2.3. Strengths and good practices

In 2016, representatives of the NMPT considered the following solutions used in the visited establishments as recommendable and deserving appreciation:

- the possibility for prisoners to take a bath more frequently than twice a week[54] or every day[55];
- regular supervision by a psychologist and educators[56];
- wide range of activities dedicated to persons deprived of their liberty[57];
- prisoner's access to a laundry room with an automatic washing machine and clothes dryer[58];
- availability, in cells for remand persons, of brochures developed by the Ministry of Justice with information on mediation in criminal proceedings, within the framework of the project *Promotion of alternative methods of resolving disputes*[59].

[54] Prison in Łupków, field unit in Moszczaniec.
[55] Prison in Stare Borne.
[56] Pre-trial detention centre in Lubsko.
[57] Prison in Wołów.
[58] Prison in Koszalin, pre-trial detention centre in Elbląg (therapeutic care ward).
[59] Pre-trial detention centre in Elbląg. On 27 July 2017, Deputy CHR sent a letter to Director General of the Prison Service highlighting the positive aspects of the practice followed in the centre, and suggested its use also in other penitentiary establishments; ref. no. BPG.571.2.2016.

3. Youth care centres

3.1. Introduction

In 2016, the representatives of the NMPT visited 11 youth care centres[60]. Four of the visits were *ad hoc* visits[61], and one establishment was reinspected[62].

The NMPT also started a series of thematic visits to youth care centres to analyse the issue of access of their juvenile residents to health care services in the areas of psychiatric care and addiction treatment. In 2016, 6 thematic visits were conducted[63]. The materials collected during the visits will be used to draw up a thematic report analysing the health care system used for juvenile residents in those areas as well as possible recommendations for the competent authorities.

In addition to conducting the above mentioned visits, the NMPT also monitors preparatory proceedings concerning physical and mental abuse of two juvenile residents by youth care centre staff members[64]. When the proceedings are closed and judgments are issued, an analysis will be carried out of actions taken in those cases by relevant institutions and of the systemic solutions aimed to eliminate the risk of inhuman treatment in the future.

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[60] YCCs in: Marszew, Rejowiec (two visits), Augustów, Różanystok, Kolonia Szczerbacka, Mszana Dolna, Kolonia Ossa, Leśnica, Wałbrzych and Gostchorz.

[61] YCCs in: Rejowiec (two visits), Różanystok and Kolonia Szczerbacka.

[62] YCC in Różanystok.

[63] YCCs in: Pogroszyn, Warsaw (ul. Barska 4, and ul. Strażacka 57), Łódź, Kolonia Szczerbacka and Wrocław.

[64] Proceeding conducted by District Prosecutor's Office in Myślibórz, file no. Ds. 887/15, concerning abuse of juveniles from the youth care centre in Renice; Proceeding conducted by District Prosecutor's Office in Radomsko, file no. Ds. 1240/2016 concerning ill-treatment of juveniles from the youth care centre no. 1 in Łódź (KMP.573.15.2015). According to the reply of the District Prosecutor's Office in Myślibórz, dated 13.07.2017, the case concerning abuse of juveniles from the youth care centre in Renice, after its discontinuance by a court and subsequent reinstatement following an appeal procedure, is currently reexamined under the new file no. PR Ds 413.2017. As regards the case concerning ill-treatment of juveniles from the youth care centre no. 1 in Łódź, in his letter of 27.06.201 the District Prosecutor's Office in Piotrków Trybunalski informed that the proceeding was discontinued. Deputy CHR requested the Office to forward the files to the CHR Office. After examining the files, the CHR, on 13.07.2017, requested the District Prosecutor's Office in Łódź to verify the correctness of the decision of the District Prosecutor's Office in Piotrków Trybunalski. The NMPT is awaiting a reply.

3.2. Systemic problems

1. The need to draw up a new Act on juvenile delinquency proceedings

There still exists the need to draw up a new Act on juvenile delinquency proceedings, which, in the NMPT's opinion, should regulate the issues of: juvenile residents' access to medical care (including specialist care for pregnant minors), video surveillance, tests detecting the presence of alcohol and intoxicating substances, as well as contacts between juvenile residents and their parents, legal guardians and attorneys. The problem has already been highlighted by the NMPT in its annual activity reports for 2013, 2014 and 2015[65]. In his response dated 19.02.2016, the Undersecretary of State in the Ministry of Justice informed that *legislative work has been commenced on drafting a bill amending the Act on juvenile delinquency proceedings*[66].

In 2016, the CHR drew attention to further issues which should be regulated by way of a parliamentary act: the need to introduce a definition and a catalogue of adverse events that may take place in youth care centres; the procedures for dealing with them, and the issue of supervision over juvenile residents' correspondence.

On 20 July 2016, the Commissioner for Human Rights, in his intervention to the Minister of National Education, addressed the need to adopt a single definition of adverse event and to develop a catalogue of such events, binding for all youth care centres, as well as the need to develop uniform procedures for dealing with such events, including their documentation and notification to supervisory authorities. The existing legal regulations do not determine how to act, for example, in the case of violence, including sexual violence, among juvenile residents. They do not require directors of youth care centres, either, to keep a register of adverse events. Apart from situations when a juvenile resident escapes from the establishment and situations of accidents, directors of youth care centres independently determine the procedures and methods applied to adverse events.

In her response of 22 December 2016, the Secretary of State in the Ministry of National Education pointed out that according to the findings of the

[65] Cf. Reports of the Commissioner for Human Rights on the activities of the National Preventive Mechanism in Poland in: 2013 – p. 64-69, 2014 – 34-35, 2015 – p. 36. The reports are available on the NMP website under the tab *Reports on the activities of the NPM.*

[66] Reply of the Undersecretary of State of the Ministry of Justice of 19.02.2016, ref. no. DL-III-072-34/15.

meeting held on 9 November 2016 at the Centre for Education Development for representatives of the Ministry of National Education, the Centre for Education Development, the Office of the Ombudsman for Children, the Office of the Commissioner for Human Rights and directors of youth care centres, a working group was established for developing a uniform catalogue of adverse events, including their descriptions, recording system and monitoring system. The group includes representatives of the NMPT.

The second problem highlighted by the Commissioner was the need to determine, in a relevant parliamentary act, the procedures to be followed by personnel in the area of supervision over the content of juvenile residents' correspondence. In his general intervention to the Minister of Justice of 18 August 2016[67], the CHR indicated inconsistencies in the practices used in this area by staff members of establishments for juveniles (juvenile detention centres, juvenile shelters, youth care centres), revealed during the NMPT visits. In some establishments, incoming correspondence is opened by a supervising officer in the presence of the juvenile resident to check its contents, in others it is opened without the presence of the juvenile resident.

The Commissioner pointed out that the current provision of Article 66(3) of the Act of 26 October 1982 on juvenile delinquency proceedings[68] (hereinafter referred to as the AJP) provides only for the juveniles' right to maintain contacts with the outside world by means of correspondence and indicates reasons for which this right may be restricted. However, the legislator did not refer to the issue of supervision over correspondence, which constitutes, in the Commissioner's opinion, an inherent element of exercising this right. The existing gap in the regulations gives the supervising officers actual freedom in supervising the content of correspondence, which creates a risk of abusing their powers in this area and reading juvenile residents' correspondence without their presence. The current regulation thus limits the protection of the right to correspondence of juvenile residents of youth care centres and juvenile rehabilitation facilities, compared to the situation of prisoners[69].

In his reply of 13 September 2016, the Undersecretary of State in the Ministry of Justice informed the Commissioner that the issue would be analysed and taken into account in the course of legislative works on amending the AJP[70].

[67] Cf. CHR's general intervention to the Minister of Justice of 18.08.2016, ref. no. KMP.573.12.2016.
[68] Dz. U. of 2014, item 382 as amended.
[69] Cf. Article 242(6) of the Executive Penal Code.
[70] Reply of the Undersecretary of State of the Ministry of Justice of 13.09.2016, ref. no.KMP.573.12.2016.

The NMPT also emphasizes the need to urgently regulate the use of video surveillance in establishments for juvenile offenders. The NMPT's visit to one of the establishments[71] showed that video surveillance was used in 5 bedrooms of juvenile residents which, under the current legislation, constitutes unlawful interference with their right to privacy. There is a need for a parliamentary act that would govern the right to install video surveillance systems in schools and educational institutions, as well as the rules and purposes of their installation, recorded data storage, access to surveillance camera recordings, data security and possible requirements for marking areas under video surveillance.

The legislative process of drafting the bill will continue to be monitored by the NMPT.

2. Lack of systemic solutions applicable to pregnant juveniles as well as juvenile mothers and their children

Since 2012, the NMPT has been highlighting the need for legislative changes with regard to juvenile mothers - residents of youth care centres and juvenile detention centres[72].

Article 16(3) of the currently applicable Regulation of the Minister of National Education of 2 November 2015 on the types and operating principles of public-sector establishments for children and youth, conditions of children and youth's stay in such establishments, as well as fees and rules of payment by parents for such stay[73] (hereinafter referred to as the regulation) only provides that *youth care centres shall support juvenile mothers in taking regular care of their children and in the child upbringing process, unless otherwise decided by a family court in accordance with Article 96(2) of the Act of 25 February 1964 – the Family and Guardianship Code*. In his general intervention of 21 January 2016 to the Minister of National Education[74], the Commissioner suggested restoring the original wording of the aforementioned provision, contained in the draft regulation of 7 August 2015, which provided that juvenile mothers should live in youth care centres together with their children on regular basis. According to the CHR, the lack

[71] YCC in Gostchorz.

[72] Cf. Reports of the Commissioner for Human Rights on the activities of the National Preventive Mechanism in Poland in: 2012 – p. 46, 2013 – p. 68-69, 2014 – p. 45-46, 2015 – p. 36-37. The reports are available on the CHR website under the tab *Reports on the activities of the National Preventive Mechanism.*

[73] Dz. U. of 2015, item 1872.

[74] CHR's general intervention to the Minister of National Education of 21.01.2016, ref. no. KMP.573.52.2014

of proper regulations allowing minor mothers to live in social rehabilitation establishments together with their children violates Articles 18, 47 and 71 2 of the Constitution of the Republic of Poland.

The Commissioner also pointed out that a minor mother staying in a youth care centre has the right to take regular care of her child, even without having formal parental responsibility for it. This clearly arises from Article 96(2) of the Family and Guardianship Code[75], and the regulations in force do not prohibit minor mothers to stay in youth care centres with their children on daily basis, provided that they take regular care of their children, as referred to in the above mentioned provision of the act.

In her reply of 21 April 2016, the Secretary of State in the Ministry of National Education[76] pointed out that the issue of juvenile mothers covers a wide range of legal, social and administrative aspects. However, the existing problem of juvenile mothers, placed in youth care centres pursuant to family court decisions, is not of systemic nature. In the systemic dimension, the possibility for juvenile mothers to stay in contact with their children and, at the same time, to continue their social rehabilitation process has been ensured by the solution allowing to form specialized foster families under the system of support to families and professional specialized foster families.

The Secretary of State also pointed out that given the specificity of the existing solution and the scale of the problem, it seems there is no real need to develop new systemic solutions. There is, however, the need to consistently implement the existing solution mentioned above, in order to meet the social rehabilitation and family needs of juvenile mothers from youth care centres, including the possibility to build ties with their children.

The Secretary of State emphasized, furthermore, that the legislator's intention was not to allow the stay of infants, babies and toddlers with their juvenile mothers in youth care centres, but to make it possible for such mothers to take regular care of their children to the largest possible extent. In the Secretary of State's opinion, children of juvenile mothers should not live in youth care centres on daily basis also because of the fact that they do not offer on-site medical care, and that there may appear risks to the safety of children in such centres.

The NMPT would like to emphasize that according to the data of the Centre for Education Development, in 2014 youth care centres across the

[75] Consolidated text: Dz. U. of 2017, item 682.

[76] Reply of the Secretary of State of the Ministry of National Education of 21.04.2016, ref. no. DWKI-WSPE.5014.12.2016.KT.

country had 126 pregnant residents. None of them was placed in a professional specialized foster family. 18 returned to the youth care centres without their babies; 68 returned to their families which were often malfunctioning families unable to provide proper care to the babies, and 14 returned to orphanages. Moreover, statistical data provided by the Ministry of National Education did not indicate any case in which, in 2014 and 2015, a pregnant juvenile resident of a youth care centre was placed in a specialized professional foster family.

It may therefore be presumed that the current system does not work in practice. This is also confirmed by the fact is that the social rehabilitation process was discontinued for most of the juvenile females after childbirth.

According to the NMPT, the existing legislation which, due to the lack of effective systemic solutions may lead to the separation of juvenile mothers from their children, poses a significant risk of inhuman treatment of such mothers and thus requires urgent amendment. According to the NMPT, juvenile mothers should be able to stay in detention establishments together with their children on daily basis so as to build emotional and family ties, rather than to have to come to meetings with their children who are brought up by other persons.

When the attitude of a juvenile mother shows that she is not ready to take full care of her child, the court should not permit her to exercise parental custody. Applicable legislative solutions should, however, make it possible for juvenile mothers to take full care of their children.

In the context of the above-mentioned postulates and legal regulations sought by the Commissioner, attention should be paid to the practice of the youth care centre in Czaplinek[77]. If a juvenile resident of the centre is pregnant, the centre's director notifies the District Family Support Centre and the visiting judge in order to find, within the municipality of Czaplinek, a foster family to look after the juvenile's child during the time when the mother is at school. For two juvenile mothers from the centre its employees became their children's foster families and legal guardians. They took care of the children during school hours but in the afternoons the children were staying with their mothers. This practice allows the children to stay in daily contact with their biological mothers. Such daily contact should be protected by relevant legislation as it is necessary for correct development of the child and for building an appropriate relationship between the child and the mother.

[77] The establishment was visited by the NMPT from 11th to 12th May 2015. An excerpt of the report is available on the NMPT website under the tab *Visits of the National Preventive Mechanism*.

3. Implementation of the right to lodge complaints by juveniles deprived of their liberty

The problem of introducing an effective system of lodging complaints by juvenile residents of youth care centres, juvenile detention centres, juvenile shelters and police emergency centres for children remains unsolved. The issue was already mentioned in the NMPT's activity report for 2015[78].

The NMPT would like to emphasize that the possibility for juveniles to lodge complaints to independent institutions and entities is a fundamental guarantee of their protection against torture and other forms of inhuman or degrading treatment. This right may be a dissuasive factor towards persons inclined to use such treatment, and makes it possible to take effective action in cases when juveniles are mistreated.

An effective complaint mechanism, as a guarantee of protection against torture and other inhuman and degrading treatment, is a method which can be commonly applied in all places where persons are deprived of their liberty. Its importance has been frequently emphasized by the SPT[79] and CPT[80]. As regards juveniles, the CPT has pointed out that *effective complaints and inspection procedures are basic safeguards against ill-treatment in juvenile establishments. Juveniles should have avenues of complaint open to them, both within and outside the establishments' administrative system, and be entitled to confidential access to an appropriate authority*[81].

According to point 121 of the Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, *Procedures for making requests or complaints shall be simple and effective. Decisions on such requests*

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[78] Cf. *Report of the CHR on the activities of the National Preventive Mechanism in Poland in 2015*, p. 37. The report is available on the CHR website under the tab *Reports on the activities of the National Preventive Mechanism*.

[79] UN Subcommittee on Prevention of Torture; Cf. Articles 57, 80, 87, 91 and 100 of the 7th Annual report of the SPT of 20 March 2014, CAT/C/52/2; Article 50 of the Report of the SPT visit to Italy, 23 August 2016, CAT/OP/ITA/1; Articles 39, 53-55, 72-73 and 96 of the Report of the SPT visit to Ukraine, 16 March 2016, CAT/OP/UKR/1; Articles 32-33, 67, 86 and 141-142 of the Report of the SPT visit to Brasil, 5 July 2012, CAT/OP/BRA/1.

[80] Cf. Articles 41 and 54, Excerpt of the 2nd General Report on the CPT's activities [CPT/Inf (92) 3]; Article 45, Excerpt of the 12th General Report on the CPT's activities [CPT/Inf (2002) 12]; Article 53, Excerpt of the 8th General Report on the CPT's activities [CPT/Inf (98) 12]; Article 38, Excerpt of the 14th General Report on the CPT's activities [CPT/Inf (2004) 28].

[81] Cf. Article 36, Excerpt of the 9th General Report on the CPT's activities [CPT/Inf (99) 12].

or complaints shall be taken promptly[82]*. If a request is denied or a complaint is rejected, reasons shall be provided to the juvenile and, where applicable, to the parent or legal guardian who made it. The juvenile or, where applicable, the parent or legal guardian shall have the right to appeal to an independent and impartial authority.*

In view of the above, on 10 December 2015 the CHR requested the Ombudsman for Children to start mutual cooperation in the area of developing standards of lodging complaints by juveniles deprived of their liberty[83].

On 7 June 2016, a letter was also sent by Deputy CHR to the Director of the Office of the Ombudsman for Children. In his reply of 21 June 2016, the Director confirmed that the issues raised in the above mentioned letters had been discussed in a meeting of the Commissioner for Human Rights and the Ombudsman for Children, and declared the Ombudsman's readiness to take further action in this area.

In the opinion of the NMPT, appropriate regulations in this area are urgently needed.

3.3. Strengths and good practices

During their visits to the youth care centres, the NMPT identified numerous positive initiatives increasing the security of juveniles and building the positive culture of non-acceptance of torture and other degrading and inhumane treatment. The following initiatives deserve appreciation:

- Anonymous questionnaires for juveniles, inquiring about: their sense of security in the establishment, organization of free time, use of so-called designer drugs in the establishment, prevention of addictions. In the questionnaires, the juveniles are asked to indicate dangerous places in the facility as well as to describe: situations of aggressive behaviour; perceived threat of ill-treatment by staff members or other juveniles; and relationships in the establishment. The results of the questionnaires are analysed in writing, and specific conclusions are formulated (e.g. stricter supervision over bathroom areas as particularly dangerous)[84].

[82] Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures (adopted by the Committee of Ministers on 5 November 2008 at the 1040th meeting of the Ministers' Deputies).

[83] CHR's general intervention of 10.12.2015 to the Ombudsman for Children, ref. no. KMP.573.42.2014.

[84] YCC in Wałbrzych.

- Formulation of very detailed criteria for the evaluation and grading of juveniles' school achievements[85]. The criteria are described in Chapter VIIIa of the Centre's Internal Regulations. The transparent and clear criteria are, undoubtedly, an important instrument to prevent subjective and unfair evaluation of juveniles, which may be considered as degrading treatment.
- Extensive catalogue of educational and recreational activities, including: numerous thematic groups, sports activities also outside the establishment (swimming pool activities, excursions, participation in regional and national sports events, holiday trips, canoeing, hiking and cycling trips, additional tuition for juveniles with learning deficiencies)[86].
- Promotion of volunteer work among juvenile residents[87]: they may provide support, as volunteers, to various local institutions - hospices, social welfare homes, kindergartens, special schools, sociotherapy centres, and specialized foster families.
- Juveniles' participation in charity events, such as food collection actions, support to the charity action named the Great Orchestra of Christmas Charity[88].
- Numerous therapeutic activities for juveniles (sociotherapy, anti-aggression training, addiction therapies, psychotherapy, music therapy)[89].
- Availability of psychiatric consultations within the establishment; psychiatric care is provided by one psychiatrist who visits the establishment once per month[90].
- Organization of annual *Good Practice Sharing* conferences[91] gathering representatives of various institutions, youth care centres, sociotherapy centres and other institutions from Dolnośląskie Voivodeship, who can share their experience in work with juveniles. Thanks to the meetings, educators, teachers, trainers and psychologists can present their institutions' work and their own educational successes, and to find out about ideas and useful solutions applied by others. Over the last years, a group of regular participants of the conferences has formed; they continue the cooperation by exchanging correspondence and supporting each other.

[85] YCC in Wałbrzych.
[86] YCCs in: Augustów, Gostchorz, Wałbrzych, Mszana Dolna, Leśnica, Kolonia Ossie, Różanystok.
[87] YCCs in Gostchorz and Wałbrzych.
[88] YCC in Gostchorz.
[89] YCC in Wałbrzych.
[90] YCC in Kolonia Szczerbacka.
[91] YCC in Wałbrzych.

- Regular supervision over the youth care centre's staff[92].
- Organization of trips to a mountain hut owned by the youth care centre (YCC) and run by its former resident[93].
- Cooperation with the *Sursum Corda* foundation and the *Przemiana Serc [Change at Heart]* foundation which, e.g., supports juveniles who have no adequate living conditions upon leaving the establishment[94].
- Possibility for juveniles in late pregnancy to attend a Birth School in Kędzierzyn Koźle and sexual education workshops[95].
- Possibility for juveniles in need of specialized treatment to use the Addiction and Co-dependency Therapy Centre (in 2015 and 2016, 10 juveniles used therapies there)[96].
- *Call your Mum* programme, implemented in cooperation with the *Orange* foundation, under which payphones and free-of-charge telephone cards are offered for juveniles in the establishment to contact their loved ones[97].
- Possibility to learn horse riding at a stud farm owned by the YCC[98]. One of the YCC's former residents obtained specialist education and, on the day of the NMPT visit, got a job on the farm as a horse riding trainer.
- Possibility to attend circus activities[99]. Thanks to the programme *Education through Circus* the YCC won the first place in the country in the category of social rehabilitation activities.
- Foreigners working within the international voluntary service organise capoeira classes and sports activities for juveniles, and work as educators. This way the juvenile residents may learn tolerance towards other cultures[100].
- Annual *Festival without borders* with the participation of artists from around the world. The morning part offers workshops in various subjects, in the evening there are concerts and shows. For several days, the juvenile residents have the opportunity to learn to be open to different cultures and to the local community, and can develop their interests[101].

92 YCC in Mszana Dolna.
93 YCC in Mszana Dolna.
94 YCC in Mszana Dolna.
95 YCC in Leśnica.
96 YCC in Leśnica.
97 YCC in Leśnica.
98 YCC in Różanystok.
99 YCC in Różanystok.
100 YCC in Różanystok.
101 YCC in Różanystok.

- Meetings with lawyers, organised for groups of juveniles. The educational meetings also provide the possibility to have legal questions explained[102].
- Work of a separate self-empowerment group comprised of best behaving juveniles They get prepared for leaving the establishment with discreet support from the staff[103].
- The role of *angel* in the establishment. The angel is a juvenile resident who has stayed in the establishment for a long time already, and whose task is to introduce it to newcomers and to help them in the initial period of stay. The angel plays a supportive role on voluntary basis[104].

In October 2017, a three-month preventive programme named *My journey*, financed by the National Bureau for Counteracting Drug Addiction, is planned to start. The programme will provide training in social and interpersonal skills and methods of spending free time in a constructive way. The topics to be covered include: integration, stress management, communication, assertiveness, decision-making and self-esteem building. The personal development workshops will be accompanied by hip-hop music workshops whose participants will compose and record their own hip-hop song. The programme will be conducted by the Personal Development Laboratory from Opole[105].

The NMPT is encouraging directors of other YCCs to implement similar initiatives.

[102] YCC in Różanystok.
[103] YCC in Różanystok.
[104] YCC in Augustów.
[105] YCC in Leśnica.

4. Rooms for detained persons (PDRs)

4.1. Introduction

In 2016, the NMPT visited 4 rooms located within police units and assigned for placing detained persons or intoxicated persons to sober up[106]. There are 333 police detention rooms across the country. Over 50% of them (186) were visited by the NMPT in the period 2008–2016. The number of conducted visits made it possible to precisely identify PDRs' main problems and reasons thereof. Thus, in 2016 the NMPT visited only a limited number of such detention rooms located within police organizational units.

4.2. Systemic problems

1. Strategy against human rights violations by police officers

The Ministry of the Interior developed a document entitled *Strategy against human rights violations by police officers*, which provides for conducting activities in 10 thematic areas, including: consideration of complaints against police officers, educational activities, research on police aggression, and support to victims. In the Commissioner's opinion, it is necessary to quickly adopt appropriate systemic solutions that effectively prevent the use of violence against detainees by police officers during investigation activities (e.g. interrogation of detainees).

The urgent need for such solutions is confirmed by the currently ongoing proceeding relating to suspected use of torture (beating, kicking in different parts of the body, use of a taser gun) against a man arrested by officers of the Municipal Police Headquarters in Olsztyn on charges of drug possession (the case is being investigated by the District Prosecutor's Office in Ostrołęka; ref. no. V Ds. 91/15[107]), and by the NMPT visits to police rooms for detained persons or intoxicated persons to sober up, held in the period 2011–2015, which identified cases of detainees' ill-treatment by police officers (e.g. pushing, ear pulling or slamming on the face).

[106] PDRs in: Aleksandrów Kujawski, Busko Zdrój, Płońsk and Krasnystaw.

[107] The issue is still monitored by the CHR; ref. no.: II.519.617.2015.

Furthermore, the NMPT analysed final court judgments issued in the period 2008–2015 on cases relating to crimes provided for under Article 246 of the Penal Code[108]. The analysis showed that in that period, thirty three police officers were sentenced in twenty two cases for the use of violence in order to obtain information from detainees. In 2016, 9 other police officers were convicted for the same offence under 6 other judgments[109] It should be emphasized that, in most cases, torture was used by one or more police officers who intentionally used physical or psychological violence to extort testimony from detainees, to force them to plead guilty or to obtain information from them.

In view of the above, in 2016 the CHR continued to exchange correspondence[110] with the Minister of the Interior and Administration with regard to the document entitled *Strategy against human rights violations by police officers*, adopted by the Ministry and the National Police Headquarters on 11 March 2015 (hereafter referred to as the Strategy). The document covers 10 subjects relating to the work of police officers:

- disciplinary and criminal proceedings against police officers, and consideration of complaints against police officers;
- introduction of new evidence gathering solutions;
- building an environment conducive to professionalism at work;
- change of attitudes and ways of thinking, educational activities;
- police human resources;
- psychological support;
- mechanisms for officers' work evaluation;
- in-depth comprehensive research on the problem of aggression in the police;
- cooperation with other entities;
- impact on the society, and support to victims.

In his intervention of 18 May 2016, the Commissioner expressed his concern that the Strategy, in its important area of disciplinary proceedings and complaints against police officers, is not properly implemented[111]. However, he appreciated the intention to coordinate the activities of the police and

[108] Article 246 of the Penal Code: *A public officer or any other person acting under his orders, who uses force, unlawful threat, or otherwise torments another person, either physically or psychologically, for the purpose of obtaining specific testimony, explanations, information or a statement shall be subject to the penalty of deprivation of liberty for a period from 1 to 10 years.*

[109] More information on the issue is available from Chapter *Cases of torture identified by the courts in 2016.*

[110] CHR's general intervention of 28.10.2015 to the Ministry of Interior, ref. no. KMP.570.24.2015.

[111] CHR's general intervention of 18.05.2016 to the MIA, ref. no. KMP.570.24.2015.

prosecutor's offices to simultaneously conduct criminal and disciplinary proceedings and investigations, and to make available to the police materials gathered by prosecutors' offices on conducted criminal proceedings.

In reply, the CHR was assured by the Secretary of State of the Ministry of the Interior and Administration that works on ensuring effective conduct of disciplinary proceedings against police officers in the cases of human rights violations were advanced. Among others, a draft version of a database on disciplinary proceedings relating to cases of human rights violations had been developed as a source of support to police disciplinary officers (the database materials have already been forwarded to the police). Activities were also undertaken to organize specialist training for police disciplinary officers in the methods of classification of disciplinary offenses related to human rights violations[112]. The implementation of the Strategy will still be monitored by the CHR.

Regretfully, the Ministry's assurances of speedy and effective disciplinary proceedings against police officers found no confirmation in the currently famous case of Igor Stachowiak. The proceedings on the case, conducted by the police and the prosecutor's office in order to clarify the circumstances of the man's death in a police station in Wrocław, were accelerated only one year after his death, when the case was highlighted on television[113].

2. Shifting responsibility for care of persons intoxicated with alcohol to the police

Apart from the requirement to submit a person to a medical examination prior to admission to a PDR, there is no obligation to provide full-time medical care for persons detained in such rooms. There is a shortage of physicians to monitor the condition of persons placed in PDRs for the purpose of sobering up, as well as persons intoxicated with alcohol but placed in PDRs due to a suspicion of committed offence. The responsibility for the safety of such detainees has been shifted to police officers who are only able to provide first aid and, if needed, to call an ambulance hoping that it will arrive soon and that such intervention will be effective.

According to the statistics, of the total of 112 persons who died in PDRs in the period 2010-2016, 90 were detainees intoxicated with alcohol, includ-

[112] Reply of the Secretary of State of the MIA of 14.06.2016, ref. no. BMP-0790-4-6/2016/MJ.

[113] Deputy CHR's general intervention of 24.05.2017 to Commander-in-Chief of the Police, ref. no. BPW.519.21.2016; CHR's general intervention of 28.06.2017, ref. no. II.519.563.2017; CHR's general intervention of 26.06.2017 to Commander-in-Chief of the Police, ref. no. BPW.519.21.2016.

ing those detained for the purpose of sobering up[114]. The main causes of death included respiratory and cardiovascular system failure, infarction, stroke and alcohol intoxication.

The problem of shifting responsibility for care of persons intoxicated with alcohol to the police has been mentioned for several years in the Commissioner for Human Rights' annual reports on the activities of the National Mechanism for the Prevention of Torture in Poland, and in his general interventions[115]. It has also been discussed in conferences and debates organized by successive CHRs (last time on 12 September 2016[116]).

The reason for the current situation is the content of Article 39 of the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism[117], according to which local governments of cities with over 50,000 inhabitants, as well as powiat (i.e. district) authorities may, but do not have, to establish and run sobering-up stations. Given the content of the regulation local governments, for various reasons, but mainly financial ones, close down sobering-up stations being aware that in practice, care of persons intoxicated with alcohol will have to be provided by the police.

In view of the to-date discussions and information provided on the issue to the Commissioner over recent years by the Minister of the Interior[118] and the Minister of Health[119], the following problems in the area of care of persons intoxicated with alcohol should be mentioned:

- lack of funds to employ doctors at PDRs (according to the data of the Ministry of the Interior, 1650 doctors would be needed for PDRs and Police Emergency Centres for Children, and police facilities would have to receive adequate medical equipment);
- no possibility for hospitals (medical institutions) to take care of persons intoxicated with alcohol who otherwise need no medical care, and intoxi-

[114] Data provided to the NMPT by the Guarded Transport Division of the National Police Headquarters' Prevention Department.

[115] CHR's general intervention of 18.11.2013 to the Prime Minister, ref. no. RPO-738421-VII-720.7/13; CHR's general intervention of 8.01.2015 to the Prime Minister, ref. no. KMP.574.14.2014.

[116] Information on the conference is available from the CHR website.

[117] Consolidated text: Dz. U. of 2016, item 487.

[118] Reply of the Secretary of State of the Ministry of the Interior of 22.07.2014 to the CHR's Report on the activities of the NMPT in 2013, ref. no. DKSiW-ZPC-0790-2 2014; Reply of the Undersecretary of State of the Ministry of the Interior of 29 August 2013 CHR's Report on the activities of the NMPT in 2012, ref. no. DN-NKSPP-0744-9 2013/KiK; Reply of the Secretary of State of the MIA of 19.12.2016 to the CHR's Report on the activities of the NMPT in 2015, ref.no. DPP-OP-0790-14/2016/PW.

[119] Reply of the Secretary of State of the Ministry of Health of 30.01.2015, ref. no. ZP-P.073.4.2015; reply of the Undersecretary of State of the Ministry of Health of 31.01.2014, ref. no. MZ-ZP-P-073-28414-2/MM/14.

cated persons who should be detained by the police due to committed offences;

- no interest on the side of local governments to run specialized facilities with professional medical staff and adequate equipment, to care of and support people in starting alcohol addiction treatment.

In conclusion, 2016 was another year in which the systematic problem of shifting the responsibility for care of persons intoxicated with alcohol onto the police. Therefore, there is still the need to develop a solution to this problem jointly by the Minister of the Interior and Administration and the Minister of Health.

3. No requirement for medical examinations for persons intoxicated with alcohol and detained as suspected of committing an offence

Medical examinations of persons admitted to PDRs are carried out only for detainees referred to in Article 1(3) of the Regulation of the Minister of the Interior of 13 September 2012 on medical examinations of persons detained by the police (hereinafter referred to as the regulation)[120]. Persons intoxicated with alcohol and detained as suspected of offence are not subject to medical examinations.

The current legislation on medical examination of persons detained by the police fails to comply with the constitutional principle of equality before the law, which assumes that citizens in a similar situation should be treated in a similar way by entities who take decisions in their cases. It is difficult to understand why health of a person intoxicated with alcohol and detained for the purpose of sobering up is protected under higher standards than health of detainees suspected of committing an offence. The current legislation clearly provides for different treatment of persons in terms of covering them by medical examinations.

In the context of equality before the law it should be emphasized that the situation is very different in the case of persons placed in PDRs located within organizational units of Military Police. Every person detained in a de-

[120] Dz. U. of 2012, item 1102; Article 1(3) of the Regulation: *Medical examinations shall be conducted for detainees who: 1) claim they suffer from a condition which requires permanent or periodic treatment whose discontinuation would put their lives or health at risk, and demand a medical examination or have a visible physical injury indicating an immediate risk to health; 2) according to the information gathered by the police during the detention process are: a) pregnant, b) breastfeeding, c) suffering of an infectious disease, d) have mental disorders, e) are minors and are intoxicated by alcohol or other substance with similar effects.*

tention facility of Military Police has to be issued a medical certificate confirming there are no medical counter-indications for being placed there. The Regulation of the Minister of Defence of 10 September 2014 on detention facilities[121] provides for no differences in the treatment of persons deprived of liberty in terms of medical examinations. Thus, the situation of detained intoxicated persons suspected of committing an offence and not subject to medical examinations seems even more unjustified.

The CHR has repeatedly pointed to the necessity to introduce compulsory medical examinations for all persons detained by police officers. This was mentioned, among others. in the CHR's general intervention of 15 February 2012 to the Commander-in-Chief of the Police[122] and the earlier annual reports on the activities of the National Preventive Mechanism in Poland for 2011, 2012, 2013, 2014 and 2015[123].

The issue was also addressed by the Commissioner in his correspondence regarding the strategy adopted by the Ministry of the Interior and Administration (MIA)and the National Police Headquarters, referred to in the section *Strategy against human rights violations by police officers*. He recalled many times the standard referred to in many judgments of the ECHR[124] (e.g. Dzwonkowski v. Poland, application no. 46702/99, judgment of 12 April 2007), according to which *a person remaining under police supervision should , at the end of the supervision, be in a condition not worse than at its beginning. If the person, while leaving the police facility, has physical injuries not existing before, the state has the duty to explain in what circumstances they had occurred. In its judgments to be complied with by Poland, the Court pointed out that one of the grounds for accepting the applicant's arguments was the inability of the Polish State to explain how the person's physical injuries had occurred*[125].

A sudden deterioration of detainee's health condition generates specific obligations on the side of public authorities. *Consequently, if a person is arrested in good health at the time of his/her arrest and released in a worse health condition, the state should explain how the bad condition occurred*[126].

[121] Dz. U. of 2014, itsm 1358.

[122] Ref. no. RPO-687961-VII-720.8.1/11.

[123] NPM's annual reports are available on the NMP website under the tab *Reports on the activities of the NPM.*

[124] E.g. judgment of 12 April 2007 in the case Dzwonkowski v. Poland, application no. 46702/99.

[125] CHR's general intervention of 28.10.2015 to Commander-in-Chief the Police, ref. no. KMP.570.24.2015.

[126] Judgment of 9 December 2008 in the case Dzieciak v. Poland, application no. 77766/01.

In the current legal situation, in the context of the obligation to adjust disciplinary proceedings and investigations to the ECHR standards, the question appears how police officers will be able to determine the types and reasons of supervised persons' injuries if there is no obligation to conduct medical examinations of all detainees. Thus, in the event any injuries are identified in a released person, they will be presumed to have occurred during the period of detention.

The CPT, in Article 44 of its report to the Polish government on the visit to Poland in 2004, recommended that *all new arrivals are medically screened*. The report on the 2013 visit, in Article 30, included the recommendation that *the records drawn up following the medical examination of detained persons in police establishments contain: (i) an account of statements made by the persons concerned which are relevant to the medical examination (including their description of their state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination, and (iii) the health-care professional's observations in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings.*

The provisions of the aforementioned Regulation of the Minister of the Interior cannot, therefore, be considered as compliant with the CPT recommendations or the ECHR standards.

The issue of medical examination of detainees was also raised in the CHR's general intervention to the Minister of the Interior and Administration of 10 December 2015, concerning the implementation status of the Strategy[127]. Unfortunately, the Minister did not address this subject[128].

However, according to the information provided by the Secretary of State of the MIA in his letter of 14 June 2016, the obligation to conduct a medical examination only after it has been requested by a person detained by the police, or if he/she has visible injuries, is considered one of the solutions for counteracting potential abuse of powers by Police officers[129]. A similar position on the possibility of medical examination of intoxicated detainees, at their explicit request, was taken by the Secretary of State of the Ministry of the Interior and Administration in his reply of 12 December 2016[130] to the CHR's Report on the activities of the NMPT in 2015, in which the issue was also raised.

[127] CHR's general intervention of 10.12.2015 to the MIA, ref. no. KMP.570.24.15.

[128] Reply of the Secretary of State of the MIA of 25.01.2016, ref. no. BMP-0790-6-7/2015/MJ.

[129] Reply of the Secretary of State of the MIA of 14.06.2016, ref. no. BMP-0790-4-6/2016/MJ.

[130] Reply of the Secretary of State of the MIA of 19.12.2016 to the CHR's Report on the activities of the NMPT in 2015, ref. no. DPP-OP-0790-14/2016/PW.

Unfortunately, the analysis of final judgments handed down in the period 2008–2015 with regard to police officers who committed the offence provided for under Article 246 of the Penal Code[131], made by the NMPT employee inter alia with regard to medical examinations of detained persons prior to their admission to PDRs indicates that the provisions of the current regulation are not always applied[132]. Irregularities disclosed in this area included failure to provide medical assistance to beaten persons detained, and failure to conduct medical examinations of persons with visible injuries. The District Court in Bolesławiec in the case no. II K 149/10 concluded that persons detained by the police in connection with urinating in public places, who were beaten up by the policemen who detained them, were not provided medical assistance. In the case no. II K 16/10, the District Court in Olsztyn determined that the detainees were not examined by a doctor before they were admitted to the PDRs and the Police Emergency Centre for Children. For each detainee, the PDRs' logbook included an entry: *in good health, does not demand a medical examination*; and the Emergency Centre for Children's logbook: *reports a good health condition, no injuries identified*. In the reasoning of its judgment, the court pointed out that *the victims could have no visible injuries, particularly in the case of X who was hit on the back of the neck with an open hand by defendant X. Victim Y's injuries, in turn, could have been ignored even if they were visible. It is highly likely that victim X, as he stated, was not screened for the presence of injuries at all, as the behaviour of defendant Y and the police officer (who admitted the victim to the PDR) showed they knew each other well. They did not check if the victim had been beaten; it was only about searching him (c. 497). Victim X did not report injuries because he was hungry, tired and sleepy (c. 498). Such behaviour is understandable.*

The District Court in Wrocław-Śródmieście, in its judgment in the case no. VK 1561/06, pointed out that the detainee, although he looked beaten and was limping, and despite telling the police officers he had been beaten, was not examined by a doctor prior to admission to the PDR. After the symptoms got more severe on the following day, the provost reacted and ordered

[131] Article 246 of the Penal Code: *A public officer or any other person acting under his orders, who uses force, unlawful threat, or otherwise torments another person, either physically or psychologically, for the purpose of obtaining specific testimony, explanations, information or a statement shall be subject to the penalty of deprivation of liberty for a period from 1 to 10 years.*

[132] More information on the issue is available from the CHR's general intervention of 18.04.2017 to the Minister of Justice, ref. no. KMP.570.3.2017.

that the detainee should have a medical examination. As a result, medical assistance was provided to the detainee and further action was taken by the Inspection Division of the Military Police.

Notably, judges themselves have doubts as to the correctness of the principle that police officers are not required to have all intoxicated detainees examined by a doctor. The president of the District Court in Toruń, in his letter to the CHR of 4 January 2017[133], referred to the position of a penitentiary judge visiting the PDRs, and appealed for getting interested in the problem. He pointed out, inter alia, that *it is difficult to agree with the interpretation of applicable legislation by the police, according to which, for example, a person intoxicated with alcohol and lying on a street, offends the public but also poses a risk to his or other person's life or health, but a drunk driver is not covered by the provision and does not have to be examined prior to being admitted to an PDR*.

In the penitentiary judge's opinion, included in the report on the visit[134] and forwarded to the CHR together with the above-mentioned letter, the regulation on medical examinations of persons detained by the police raises doubts as it fails to regulate the issue of medical examinations of adults intoxicated with alcohol. The judge rightly points out that Article 1(3)(2)(e) of the regulation provides for compulsory medical examinations of detained minors who *have been drinking alcohol*, which means they do not have to *be intoxicated with alcohol* to have to be examined.

The NMPT fully shares the judge's opinion and notes that at the final stage of the drafting the regulation the Minister of the Interior and Administration, in his letter of 6 June 2012, indicated that the legislator intended to introduce compulsory medical examinations of all minor detainees who have been drinking alcohol, regardless of its concentration level in the body. It should be remembered that minor detainees are, in most cases, placed in police emergency centres for children where no medical care is available on-site. Therefore, it is for the good and safety of minors to adopt a solution which requires conducting a medical examination of any minor detainee who has been drinking alcohol[135]. In the NMPT's opinion, the same argu-

[133] Ref. no. VII W-436-4/16.

[134] Report on an inspection carried out by a District Court judge on 21 March 2016 in a room for detained persons or intoxicated persons to sober up, located within the District Police Headquarters in Brodnica (ref. no. VII-436-4/16).

[135] The draft regulation is available on the Public Information Bulletin (BIP) page of the website of the MIA, under the tab *Draft legislation*.

ment should, however, be applied to also adult detainees placed in PDRs where, as in police emergency centres for children, medical care is not available either.

Given the above, the NMPT is of the opinion that the issue of compulsory medical examinations of all detained persons intoxicated with alcohol, prior to their admittance to PDRs, needs to be re-examined by the Minister of the Interior and Administration.

4. Examination of persons with mental disorders by doctors other than psychiatrists

As in 2015, during the visits to rooms for detained persons or intoxicated persons to sober up, located within police units, the NMPT representatives encountered a disturbing practice of examination of persons with symptoms of psychiatric disorders, or with reported psychiatric treatment, by doctors of other than psychiatrists (e.g. surgeons[136], general practitioners[137]). In one case, no medical examination was carried out and no medical certificate allowing placement in a PDR was issued, despite the fact that according to the documentation, the detainee had undergone several psychiatric examinations[138].

In the NMPT's opinion, such a practice may pose a risk to other detainees' health or lives, since a doctor who does not specialize in psychiatry may make an error in the diagnosis. It should be remembered that admitting a person with mental disorders to a police facility may not only pose a risk to the person and to other people, but also burdens police officers with a very difficult task which in fact requires specialist medical knowledge.

The problem was highlighted in the CHR's Report on the activities of the National Mechanism for the Prevention of Torture in Poland in 2015[139]. The Deputy CHR, in his general intervention of 7 January 2016, also requested Commander-in-Chief of the Police to take appropriate action to eliminate the identified practice[140] in a reply of 9 February 2016, the Deputy Commander-in-Chief of the Police indicated that *the legislator did not determine the specific specialization of doctors to examine persons prior to their*

[136] PDR in Aleksandrów Kujawski.

[137] PRD in Płońsk.

[138] PDR in Aleksandrów Kujawski.

[139] CHR's Report on the activities of the NPM in Poland in 2015. The report is available on the NMP website under the tab Reports on the activities of the NPM.

[140] CHR's general intervention of 07.01.2016 to Commander-in-Chief of the Police, ref. no. KMP.570.25.2015.

admittance to police facilities. However, the accepted practice of conducting examinations by general practitioners seems an optimum solution. A general practitioner has general medical knowledge based on which he/she may refer the patient to an additional specialist consultation, e.g. a psychiatric one[141]. In addition, in the opinion of the Deputy Commander-in-Chief of the Police, the introduction of a solution whereby the examination is conducted directly by a specialist doctor may raise doubts as to the competences of the entity which refers the person to the examination.

In view of the above, the Commissioner highlighted the problem on 30 June 2016 in his intervention to the Minister of the Interior and Administration[142] in which he referred, inter alia to Article 2(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that *everyone's right to life shall be protected by law.* He also referred to the position of the ECHR which, in its judgments, reminds that *according to the first sentence of Article 2(1*), *the states should not only refrain from the intentional and unlawful taking of life, but also take appropriate steps to safeguard the lives of those within their jurisdictions*[143]. *A positive obligation will arise, the Court has held, where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual by a third party or himself and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk*[144] (Keller v. Russia, application no. 26824/04; judgment of 17 October 2013). The doctrine points out that even when it is not possible to determine whether the authorities knew or ought to have known of such a risk, certain safeguards should be taken, inter alia, by the police to protect persons deprived of their liberty[145].

In his reply of 5 August 2016 regarding the issue, the Secretary of State in the MIA admitted that the legislator did not determine the specific specialization of doctors to examine persons prior to their admittance to PDRs. However, the accepted practice of conducting the examinations by general practitioners seems an optimum solution.

Given the identified case of failure to conduct, prior to admittance to a PDR, a medical examination of a person who, in the past, had undergone

[141] Reply by Commander-in-Chief of the Police of 9.02.2016, ref. no. EK-795/15.
[142] CHR's general intervention of 30.06.2016 to the MIA, ref. no. KMP.400.9.2015.
[143] Judgment of 3 November 2015 in the case Olszewscy v. Poland, application no. 99/12.
[144] Judgment of 17 October 2013 in the case Keller v. Russia, application no. 26824/04.
[145] William A. Schabas, The European Convention on Human Rights, a Commentary, Oxford, 2015, p. 133.

psychiatric consultations, as well as other cases of failure to conduct psychiatric examinations of detainees, as revealed by the NMPT, and taking account of the argumentation presented above, the issue requires re-examination by the Ministry of the Interior and Administration.

5. The Istanbul Protocol – a tool underused in practice

According to the CAT's General Comment No. 3 on the implementation of Article14 of the Convention against Torture, sates parties, in order to ensure to the victim the right to prompt, fair and adequate compensation for torture or ill-treatment, shall promptly, effectively and impartially investigate and examine the case of any individual who alleges she or he has been subjected to torture or ill-treatment. Such an investigation should include an independent physical and psychological forensic examination as provided for in the Istanbul Protocol.

The Istanbul Protocol was drawn up by an expert group working under the auspices of the United Nations. It contains methods of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. The document is annexed to the United Nations Commission on Human Rights resolution no. 2000/43 of 20 April 2000[146].

The authors emphasize that the manual was drawn up to enable States to address one of the most fundamental concerns in protecting individuals from torture – effective documentation. It contains the principles to be followed in the work of experts in fields such as forensic medicine, psychiatry and psychology. It indicates the specific duties of entities responsible for evaluating persons deprived of their liberty. It also emphasizes that only joint and coordinated action of persons who are in contact with victims of torture may contribute to effective disclosure of such cases. The guidelines set out in the Protocol set out minimum standards for assessment of persons who allege torture and ill-treatment and for documenting such assessments.

The manual emphasizes that properly developed documentation provides evidence of torture and ill-treatment. This allows the perpetrators of these acts to be held responsible and to eliminate the phenomenon of impunity.

In the case Dzwonkowski v. Poland, mentioned above in this chapter, and in other cases[147] the ECHR recalled that state authorities must take all reasonable steps available to them to secure the evidence concerning the incident, in-

[146] The document's translation into Polish is available on the CHR website.

[147] Judgment of 27 September 2011 in the case Karbowniczek v. Poland, application no. 22339/08; judgment of 9 December 2008 in the case Dzieciak v. Poland, application no. 77766/01.

cluding, *inter alia,* eyewitness testimony and forensic evidence. In this context, immediate and prompt action is required. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

In all those cases and, e.g., in the cases Pieniak v. Poland[148], Mrozowski v. Poland[149] and Polanowski v. Poland[150] the ECHR considered that the state has failed to provide a plausible explanation of the allegations of inhumane treatment by state service officers.

Despite the fact that in its Resolution no. CM/ResDH (2016)148 of 8 June 2016 the Committee of Ministers of the Council of Europe admitted that Poland implemented the aforementioned judgments, there is no doubt the Polish State institutions should continue their efforts to increase protection against torture and ill-treatment.

Article 2(1) of the Convention provides that a State Party should take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. According to the doctrine, the regulation should be interpreted as covering the states' obligation to respect human rights and not to use torture. However, the main emphasis is placed on the positive obligation to take effective measures[151].

In view of the above, on 30 June 2016 the Commissioner for Human Rights appealed to the Minister of the Interior and Administration to develop, based on the Istanbul Protocol materials, a single procedure applicable to all uniformed services[152]. The procedure should be mandatory in the case of any contact with a person in relation to whom the use of inhuman treatment or torture is suspected. The procedure, for example issued in the form of a manual, should explain, step-by-step, the measures to be taken in order to identify the victim and secure the evidence.

The Commissioner also suggested to carry out a series of training sessions for uniformed services to address the subject of torture and other inhuman or degrading treatment or punishment, and methods of investigating and documenting such cases[153].

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148 Application no. 19616/04, judgment of 24February 2009.

149 Application no. 9258/04, judgment of 12 May 2009.

150 Application no. 16381/05, judgment of 27 July 2010.

151 William A. Schabas, The European Convention on Human Rights, a Commentary, Oxford, 2015, p. 133.

152 CHR's general intervention of 30.06.2016 to the MIA regarding the development of medical procedures applicable to detainees, ref. no. KMP.400.9.2015.WS2.

153 CHR's general intervention of 30.06.2016 to the MIA on the organization of training for uniformed services, ref. no. KMP.400.9.2015.WS1.

According to the replies of the Secretary of State in the MIA, of 4 and 5 August 2016[154], it is not possible to automatically transpose the Istanbul Protocol guidelines so as to develop medical procedures applicable to all persons admitted to police detention facilities. The Ministry of the Interior and Administration is of the opinion that the solutions provided for in the Regulation of the Minister of the Interior and Administration of 13 September 2012 on medical examinations of persons detained by the police are sufficient and guarantee that medical examinations of detained persons or intoxicated persons to sober up are conducted by doctors with a medical specialization adequate to the examined person's health condition.

In the opinion of the Ministry, there exist no reasons for conducting separate training courses as the current ones cover the subject of human rights protection, including the subject of torture and other inhuman or degrading treatment or punishment. Moreover, the Police Commander-in-Chief's Plenipotentiary for Human Rights Protection, having examined the content of the Istanbul Protocol, concluded that the guidelines contained therein are of general informative nature and recommended the document's use in this role to the police.

6. Insufficient staffing of PDRs

In 2016, no amendments were introduced to Article 2(2) of the Ordinance no. 30 of the Commander-in-Chief of the Police of 7 August 2012 on methods and forms of performing service in rooms for detained persons or intoxicated persons to sober up[155], which provides that *the supervising officer shall organize work in such a way so as to ensure at least one officer on duty in a police detention room*.

In accordance with the regulation[156], in most of the rooms visited by the NMPT there was one officer on duty who was, at the same time, a deputy for the shift officer and was required to perform other tasks as instructed by him/her. According to the NMPT's findings of the previous visits, one person is unable to simultaneously ensure the safety of detainees and the possibility for them to exercise their rights. When supervising the behaviour

[154] Reply of the Secretary of State in the MIA of 5.08.2016, ref. no. BMP-0790-4-9/2016/MJ; Reply of the Secretary of State in the MIA of 4.08.2016, ref. no. BMP-0790-4-8/2016/MJ.

[155] Official Journal of the National Police Headquarters of 2012, item 42.

[156] The problem was identified in 3 of 4 PDRs visited by the NMPT in 2016: Płońsk, Aleksandrów Kujawski and Busko Zdrój.

of detainees, filling in official documentation and admitting, releasing or transferring PDR detainees, it is impossible to supervise, at the same time, other detainees who what to make use of their rights (e.g. use sanitary facilities, have some product purchased via a police patrol, etc.). It is also significantly more difficult to react to emergency situations, including, for example, suicide attempts. Moreover, according to the NMPT findings, a deputy shift officer, while on duty at a PDR, has to remain in the control room which poses a risk of delay in arriving to the PDR in the case an adverse event has taken place.

The risks related to the fact that only one officer is responsible for a PDR while on duty were also highlighted by police officers themselves in the visited facilities.

In view of the above, it is difficult to agree with the information contained in the reply of the Secretary of State of the MIA to the CHR's report on the activities of the NMPT in 2015[157]. According to that reply, the National Police Headquarters have determined that a deputy shift officer, while on duty in a PDR, does not at the same time perform other tasks relating to the command of the police station.

A significantly stronger guarantee of safety of detainees is provided by the standards adopted by the Border Guard service. According to Article 3(3) of the Ordinance no. 88 of 18 November 2015 of the Chief Commander of the Border Guard, regarding the methods of performing service in rooms for detained persons, located within Border Guard units[158], there should be at least two border guard officers on duty.

The NMPT will continue to monitor the issue described above.

7. Security search conducted on detainees undressed down to their underwear, or strip search

Representatives of the NMPT still come across situations in which detailed security search, referred to in the Regulation of the Minister of the Interior of 4 June 2012 on rooms for detained persons or intoxicated persons to sober up, transitional facilities and police emergency centres for children, as well as rules and regulations on the stay in such facilities and

[157] Reply of the Secretary of State in the MIA of 19.12.2016 on the CHR's report on the activities of the NPM in 2015, ref. no. DPP-OP-0790-14/2016/PW.

[158] Official Journal of the National Border Guard Headquarters of 2015, item 84.

procedures used for image recordings of those facilities[159] (hereinafter referred to as the PDR and PERC regulation), is understood by police officers as body search[160].

Article 5(2) of Annex 1 to the PDR and PERC regulation provides that *a person admitted to and placed in the facility shall undergo a detailed security search in order to detect items referred to in Article 1(2). The search of the person and of clothes on him/her shall respect his/her intimacy and shall, whenever possible, be conducted by a person of the same sex*.

The words "*clothes on him/her",* used in the regulation, indicate that a police officer may conduct the security search without instructing the detainee to get undressed down to his/her underwear or take all clothes off. The need to ensure security to all detainees and police officers in the PDR is understandable, but such a far-reaching interference with people's right to privacy may not take place without an appropriate legal regulation consistent with Article 31(3) of the Constitution of the Republic of Poland[161].

The CHR, on 10 July 2015, submitted an intervention regarding the urgent need to regulate the issue of body search by way of a parliamentary act[162]. In his reply of 12 August 2015[163] the undersecretary of State in the MIA informed that work was ongoing on drafting the objectives of the new Act on the Police, which will regulate, inter alia, the issue of body search in the act.

Having waited for the results of the works for nearly one year, the CHR, on 19 July 2016 [164], submitted another intervention with regard to the issue. In his reply of 11August 2016[165] the Minister of the Interior and Administration explained that the formula of drafting the Act on the Police was changed. As a result, the work carried out so far on drafting the objectives of the Act will now be replaced with drafting its specific provisions. He also pointed out that the planned amendments to the Act on the Police would be

[159] Dz. U. of 2012, item 638, as amended.

[160] PDRs in Aleksandrów Kujawski and Busko Zdrój.

[161] Dz. U. of 1997, no. 78, item 483; Article 31(3) *Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by a parliamentary act, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.*

[162] CHR's general intervention of 10.07.2015 to the MIA, ref. no. KMP.570.36.2014.

[163] Reply of the Undersecretary of State in the Ministry of the Interior of 12.08.2015, ref. no. BMP-0790-6-2/2015/MJ.

[164] CHR's general intervention of 19.07.2016 to the MIA, ref. no. KMP.570.36.2014.

[165] Reply of the Secretary of State in the MIA of 11.08.2016, ref. no. BMP-0790-4-10/2016/MJ.

introduced gradually, taking into account the Ministry's legislative priorities relating primarily to the need to ensure: solutions necessary for the security of the state; optimal conditions of service for police officers, and implementation of the Constitutional Tribunal's judgments.

In his reply of 12 December 2016 to the CHR's report on the activities of the NMPT in 2015[166], the Secretary of State in the MIA noted that the issue of constitutionality of the current regulations on body search is examined in the proceeding no. K 17/14 conducted by the Constitutional Tribunal on the CHR's application. The MIA, without waiting for the Tribunal's judgment, ordered the National Police Headquarters to initiate internal consultations to develop comprehensive solutions in this area, to be introduced at the level of a parliamentary act. However, the final directions of the legislative initiative will depend on the CT's judgment.

The progress of work on the above mentioned regulations is monitored by the NMPT.

8. PDR's adjustment to the needs of persons with disabilities

The issue of ensuring appropriate conditions to persons with disabilities, admitted to PDRs, still remains unsolved.

The issue of adjusting the detention rooms to the needs of persons with disabilities was one of the subjects of the NMPT's meeting with representatives of the National Police Headquarters, held on 13 October 2014. In the meeting, it was agreed that detention rooms which meet the standards required for persons with disabilities will be indicated, and that persons who require special conditions will be transported to those rooms.

Deputy CHR, in his intervention[167] of 24 July 2015 to Commander-in-Chief of the Police, inquired about the expected date of the full adjustment of the rooms indicated by the Police as meeting the needs of persons with disabilities. According to his response of 17 August 2015[168], the Deputy Commander-in-Chief of the Police, on 10 August 2015, instructed Voivodeship Police Commanders and Warsaw Municipal Police Commander to gradually adjust the rooms for detained persons so that in each Voivodeship there is least one PDR adjusted to the needs of persons with physical disabilities and wheelchairs users.

[166] Reply of the Secretary of State in the MIA of 19.12.2016 to the CHR's report on the activities of the NPM in 2015, ref. no. DPP-OP-0790-14/2016/PW.

[167] CHR's general intervention of 24.07.2015 to Commander-in-Chief of the Police, ref. no. KMP.570.1.2014.

[168] Reply of the Deputy Commander-in-Chief of the Police of 17.08.2015, ref. no. EK-5363/15.

In his subsequent general intervention of 13 October 2015[169] to the deputy Commander-in-Chief of the Police, the Deputy CHR pointed to the need to ensure appropriate technical conditions for persons with disabilities with regard to the overall infrastructure (entrance to the police station, rooms for detainees, sanitary facilities), in order to ensure to disabled detainees and persons to sober up the possibility to move independently and to be self-dependent. In the letter, the Deputy CHR reminded, at the same time, that disability does not only mean using a wheelchair or crutches. It also applies to persons with sensory dysfunctions, for whom appropriate conditions are needed.

In his reply of 27 October 2015[170] the deputy Commander-in-Chief of the Police presented tabular information on measures taken to adjust the designated PDRs to the needs of persons with physical disabilities and wheelchair users. Notably, for 7 of the 16 units to be adjusted, no deadline for completing the works was indicated. Moreover, the information on the units that the Police considered adjusted indicated the existence of only partial adjustment to the needs of persons with physical disabilities (e.g. adjustment of a toilet only, but not a shower).

The deputy CHR, on 17 December 2015, again requested the Commander-in-Chief of the Police[171] to provide information on the progress of PDRs' adjustment to the needs of persons with disabilities, as planned for the period 2016-2019, and of adjustment of those units for which no specific deadlines had been set. In his reply of 4 February 2016[172], deputy Commander-in-Chief of the Police explained that the Voivodeship Police Headquarters which had not determined the deadlines for the investments concerned, or only indicated the timeframes for the PDR modernization works, were either planning the construction of new premises or were developing technical design documentation for the said investment projects.

The situation was verified again by the Deputy CHR at the end of 2016[173]. In his reply of 9 November 2016, the deputy Commander-in-Chief of the Police concluded that *regardless of the circumstances which lead to the ex-*

[169] Letter of the Deputy CHR of 13.10.2015 to the Deputy of Commander-in-Chief of the Police, ref. no. KMP.570.I.2014.

[170] Reply of the Deputy Commander-in-Chief of the Police of 27.10.2015, ref. no, EK-6843/15.

[171] Deputy CHR's general intervention of 17.12.2015 to the deputy Commander-in-Chief of the Police, ref. no. KMP.570.I.2014.

[172] Reply of the Commander-in-Chief of the Police of 4.02.2016, ref. no. EK-695/16.

[173] Deputy CHR's general intervention of 11.10.2016 to deputy Commander-in-Chief of the Police, ref. no. KMP.570.I.2014.

tended time of PDRs' adjustment to the needs of the said group of persons, the initiated process is consistently continued[174].

The analysis of data provided by the Police on the subject shows that in 2016, on the national scale there were 13 units considered as partially adjusted to the needs of persons with physical disabilities (sanitary facilities, toilets, rooms for detained persons)[175]. 8 units were planned to be adjusted[176], of which 2 by very distant dates (by 2020[177]); for 5 other units the deadlines for the adjustment hand not been indicated at all[178]. According to the provided information, the PDR of the District Police Headquarters in Poddębice is to be adjusted by December 2017.

The progress of work on further adjustment of the PDRs to the needs of persons with disabilities will continue to be monitored by the NMPT.

4.3. Strengths and good practices

A valuable initiative, identified by the visiting staff and worth duplication in all police units, is a separate room for conducting medical examinations in a PDR. This allows to respect detainees' right to privacy and medical information secrecy[179].

[174] Reply of the Commander-in-Chief of the Police of 9.11.2016, ref. no. EK-4336/16.

[175] Municipal Police Headquarters (MPH) in Bydgoszcz, Kartuzy and Katowice; District Police Headquarters (DPH) in Skarżysko-Kamienna, Voivodeship Police Headquarters (VPH) in Kraków, MPH in Nowy Sącz, DPH in Ryki, Ełk and Gniezno; MPH in Płock and Rzeszów; DPH in Gryfino, and the police station Wrocław Krzyki.

[176] MPH in Białystok, Grudziądz and Brodnica; DPH in Międzyrzecz and Poddębice; MPH in Opole, DPH in Krapkowice, and the police station Warsaw VI.

[177] MPH in Opole and Krapkowice.

[178] MPH in Białystok and DPH Kartuzy.

[179] PDR in Płońsk.

5. Social care homes

5.1. Introduction

In 2016, the National Mechanism for the Prevention of Torture visited 25 social care homes[180] (hereinafter referred to as the "SCHs", "homes" or "institutions"). 2016 was, at the same time, a year in which it was possible to summarize the NMPT's 146 visits conducted in social care homes in the period 2009-2016. Thus, the NMPT initiated the drafting of a thematic report to summarize the results of the monitoring visits. The publication entitled *Rights of residents of social care homes*, issued in 2017, aims to highlight both the irregularities found in individual institutions, and the specific problem areas in which the rights of the residents may be violated. The purpose of the report is not, therefore, limited to presenting the position of the National Mechanism for the Prevention of Torture on the treatment of persons deprived of their liberty in social care homes, but also to stimulate discussion on the issue and increase the sensitivity of personnel of such institutions to potential situations of inn-treatment.[181]

5.2. Systemic problems

The visits carried out by the NMPT in 2016 have shown the continued existence of the systemic problems identified in the previous years, which include: the performance by the homes' staff members of the role of legal

[180] Social care homes in: Włocławek (ul. Żeromskiego 28a), Włocławek *Na skarpie*, Włocławek (ul. Nowomiejska 19), Kielce (ul. Sobieskiego 30), Kielce *Florentyna Malska Home*, Wrocław (ul. Rędzińska 60/68), Pruszcz (ul. Łowińska 9), Moryń, Nowy Czarnów, Suwałki - *Kalina*, Otwock (ul. Marii Konopnickiej 17), Elbląg - *Niezapominajka*, Górno, *the John Paul II Hostel* in Otwock, home of Franciscan Sisters of St. Mary's Family in Augustów (ul. Studzieniczna 2), home of Franciscan Sisters of St. Mary's Family in Augustów (ul. 3 Maja 37), Gościn, Stanisław Broniewski *Orsza* home in Warszawa-Wesoła, Pabianice (ul. Wiejska 55/61, branch facility at ul. Łaska 68), Katowice *Zacisze*, Zabrze – home no. 1, Bobrek, Kętrzyn, Krasnystaw, Warsaw – *Na przedwiośniu*.

[181] The report is also available in an electronic version on the NPM website under the tab *Publications on the rights of persons deprived of their liberty*.

guardians of incapacitated persons[182], the use of video surveillance[183], alcohol-related problems of some residents[184], contacts with the outside world[185] and the scope of cooperation with psychologists[186]. All the problems were analysed in the previous reports on the activities of the NMPT in Poland[187], as well as in the aforementioned thematic report on the functioning of social care homes.

Last year, attention was also paid[188] to serious difficulties existing in practice in the interpretation of Article 8(1) of the Regulation of the Minister of Health of 28 June 2012 on the use and documentation of direct coercion and the assessment of the necessity of its use[189] (hereinafter referred to as the DC regulation). According to the regulation, direct coercion in the form of a person's isolation may be used in a room which, on the one hand, is organized in a way which protects persons with mental disorders against physical injury and, on the other hand, meets the living and sanitary standards similar to the other rooms in the social care institution. The provision requires, therefore, the reconciliation of two aspects which, to a certain degree, are contradictory to each other: ensuring the safety of isolated residents and, on the other hand, ensuring that they stay in conditions typical of the institution, throughout the period of their isolation. In the opinion of the NMPT, in cases when the use of direct coercion is justified, the key obligation should be to ensure the person's safety, even if, during his/her isolation period, he/she temporarily has no access to equipment and items available in the other rooms. According to the applicable

[182] Social Care Homes (SCHs) in: Gościan, Pabianice, Nowy Czarnów, Moryń, Otwock (ul. Marii Konopnickiej 17), Katowice *Zacisze*, Zabrze, Górno, Augustów (ul. Studzieniczna 2 and ul. 3 maja 37), Bobek, Elbląg – *Niezapominajka* and Krasnystaw.

[183] SCHs in: Pabianice, Zabrze, Warszawa-Wesoła im. Stanisława Broniewskiego *Orszy,* Górno, Elbląg *Niezapominajka* and Pruszcz.

[184] SCHs in: Katowice *Zacisze,* Górno, Zabrze, Kętrzyn, Krasnystaw – branch unit in Ostrów Krupski.

[185] SCHs in: Otwock (ul. Marii Konopnickiej 17), Krasnystaw.

[186] Social care centres in: Nowy Czarnów, Włocławek (ul. Nowomiejska 19), Kielce (ul. Sobieskiego 30), Kętrzyn and Pruszcz.

[187] Cf. Report of the Commissioner for Human Rights on the activities of the National Preventive Mechanism in 2015, the CHR Official Bulletin of 2016, no. 4, sources, pp. 88-94; Report of the Commissioner for Human Rights on the activities of the National Preventive Mechanism in 2014, the CHR Official Bulletin of 2015, no. 4, sources, pp. 81-85; Report of the Commissioner for Human Rights on the activities of the National Preventive Mechanism in 2013, the CHR Official Bulletin of 2014, no. 4, sources, pp. 139-141; Report of the Commissioner for Human Rights on the activities of the National Preventive Mechanism in 2012, the CHR Official Bulletin of 2013, no. 5, sources, pp. 81-83.

[188] SCHs in Augustów (ul. Studzieniczna 2 and ul. 3 Maja 37).

[189] Dz. U. of 2012, item 740.

regulations, direct coercion in social care homes, in the form of people's isolation, may be used for up to 8 hours (Article 5(1) of the DC Regulation) which excludes people's long-term stay in isolation rooms. Therefore, there is no need to arrange them in the same way as the other rooms available to the residents. It should be borne in mind, however, that the priority of security does not justify non-compliance with the requirement to arrange the isolation rooms in such a way so as to respect the dignity of the residents.

During the visits conducted in 2016, the NMPT representatives also identified the problem of insufficient supervision exercised by family judges over social care homes. According to Article 43(1) of the Act of 19 August 1994 on Mental Health Protection[190] (hereinafter referred to as the AMHP), the requirement for conducting, by judges, of supervision over the lawfulness of admitting persons with mental disorders to social care homes, over respecting their rights and over the conditions existing in the institutions, applies only to social care homes for mentally ill persons or mentally retarded persons. Persons with mental disorders may, however, be placed in various types of homes, e.g. homes for persons with chronic somatic diseases, if this is justified by their somatic condition and if they are referred to such a home by the referring entity. In practice, therefore, it may happen that because of the construction of the above-mentioned provision, a given social care home is not supervised by a court at all, despite having mentally ill residents[191]. In the opinion of the NMPT, such a solution puts some residents of social care homes in an underprivileged position as they may be deprived of their liberty for a period not subject to verification and not specifically determined. This violates the guarantee of every human being's personal liberty, as well as closes the possibility to demand verification of the person's status through direct contact with a visiting judge.

Both above mentioned issues were highlighted by the CHR in his letter to the Minister of Health, containing an opinion on the bill amending the Mental Health Act and certain other acts[192].

[190] Dz. U. of 2016, item 546.

[191] E.g. SCH *Kalina* in Suwałki.

[192] Letter of 27 October 2016, ref. no. KMP.022.4.2016.

5.3. Strengths and good practices

During every visit, the National Mechanism for the Prevention of Torture emphasizes all aspects of a given institution's work that positively distinguish it from other entities and can serve as examples of good practices.

Measures taken by the social care home *Kalina* in Suwałki deserve particular attention and appreciation. The home has established, e.g., a Regional Tradition Hall where occupational therapy activities are carried out among old traditional objects. Also, a series of meetings entitled *Saving the memories* is carried out, in which local community members' achievements are presented. There is also a professionally-equipped theatre where the residents can give performances themselves and watch performances by invited actors. Numerous other activities are also organized, including *International Theatrical Animation*, and *Integration Street Running* events which gather residents from other Polish and Lithuanian homes, occupational therapy participants, persons from community care facilities and school children. On the initiative of the home's staff members, the Society of Friends of Kalina Social Care Home in Suwałki has been established. Its main objective is to raise funds to help meet the living, health and cultural needs of the residents. The society has managed to build an outdoor fitness path, buy several rehabilitation beds for severely ill residents, buy 3 electrically powered wheelchairs, organize training for the personnel, and hold conferences on the work of SCHs.

Employees of the SCH in Górno established the Association for Support of the Górno Social Care Home. It gathers food for the home's residents through Food Banks operating in different cities, and organizes trips and integration events for them. The facility also implemented a project entitled *Górno Social Care Home service quality improvement through the development of infrastructure, new equipment purchase and personnel training* co-financed under the Swiss-Polish Co-Operation Programme for the Podkarpackie Region for 2012-2016. The main objective of the project was to improve the availability and quality of social care services. The project consisted of two components: implementation of innovative infrastructural solutions and purchase of modern equipment, as well as training for personnel working directly with the residents. The project made it possible to: modernize the institution, invest in new equipment, develop the land around the home to meet the needs of persons with disabilities, strengthen personnel competences, increase the quality of services provided to residents and improve the working conditions of the personnel.

The SCH in Nowe Czarnowo takes a number of measures to support the residents' integration with the local community, and improve their psychological, physical and social functioning. As a result of those activities, one of the residents became able to live independently, found a job and now lives in a sheltered flat. Thanks to the efforts of the director of the John Paul II Hostel in Otwock, two of its residents also found jobs.

However, the SCH in Bobrek is the institution with the greatest achievements in the area of residents' employment. It established a cooperative company's branch which employs 26 residents in metal waste recovery from electric cables. The home also runs two hostels where more independent residents live.

The work of the SCH in Moryń is based on the so-called "little family method" developed by the founder of the Benedictine Samaritan Sisters of the Cross of Christ. The method is used in all institutions run by the Sisters. Every "little family" has its own sector of the building, with own bedrooms and common spaces. It also has separate staff members working with it: the head of the family, family carers and room carers. The staff approach every resident individually to determine his/her needs, abilities and interests. In the opinion of the NMPT the "little family method" supports interaction with the residents and contributes to building family-like ties.

Three of the visited institutions have very good facilities for physical rehabilitation and physiotherapy. The SCH in Pabianice has professionally equipped rooms for kinesiotherapy, physiotherapy and hydrotherapy. The residents may also use point laser treatment. There is a range of treatments available to improve the residents' mobility. For residents who stay in bed all the time, massage and special bedside rehabilitation services are provided. The SCH in Augustów[193] has professional kinesiotherapy and hydrotherapy rooms, a speech therapy facility and a sensory treatment room (with equipment which supports the work of the senses, improves the reception and interpretation of sensory stimuli, and acts in a relaxing and tranquilizing way). There are also several artistic workshops organized (ceramics, painting, papier-mâché and sewing).

The SCH in Bobrek also has extensive rehabilitation and therapy infrastructure. It offers occupational therapy, music therapy, therapy through book reading, a theatre group, a botanical interest room, and a computer room. The residents are encouraged to practice physical activity: 60 of them

[193] At ul. 3 Maja 57.

take part in the activities of the home's sports club, and thanks to the commitment of their sports instructor they also participate in special annual sports competitions for persons with disabilities.

The *Niezapominajka* social care home in Elbląg has introduced a GPS tracking system for residents who leave the home's premises but may have difficulty in finding their way back (e.g. due to memory or orientation disorders). Every such resident receives a small GPS device which tracks the person and sends an alert if required (e.g. if the person walks too far away from the home, or presses the SOS emergency button).

The home cooperates with the Elbląg Pre-Trial Detention Centre in the framework of the national programme "*It's easier together*". The programme is focused on social reintegration of persons deprived of their liberty, by working with persons with disabilities and elderly persons. Detainees from the Pre-Trial Detention Centre work as volunteers -assistants to users of the day-care centre run by the home. The home's residents are also covered by the projects implemented together with the association *Forum for Needs and Support*: the "Niezapominajka [forget-me-not flower] Festival", and "the calendar" (2016 was the event's second edition). The latter project is a series of photographs with residents. The Forget-me-not Festival is an event for all generations, offering the possibility for residents to spend time actively with their families and loved ones. There are also several other projects for the residents, including: *Volunteering work in the animal shelter in Elbląg*, and *Active Senior Volunteers.*

Apart from the above mentioned good practices implemented by the visited homes, the following activities should also be appreciated: provision of legal assistance in individual residents' cases[194] by the home's legal adviser; regular memory exercise for residents with Alzheimer's disease[195], availability of 5 meals per day[196], a complaint book which includes not only the date and content of the complaint, but also information on its consideration and results[197], applying to the court for appointing a legal guardian under Article 44 AMHP in cases when a resident requires assistance in his/her actions but his/her health condition does not justify incapacitation[198], work for SCHs provided by persons in relation to whom a district court adjudicated restric-

[194] SCHs in: Zabrze, Katowice – Zacisze and Kętrzyn.
[195] SCH in Pabianice.
[196] SCH of the Franciscan Sisters of St. Mary's Family in Augustów (at ul. 3 Maja 37).
[197] SCH in Gościn.
[198] SCH in Nowy Czarnów.

tion of their liberty in the form of provision of free-of-charge work for the society[199], personnel training with the use of an "old age simulator" through the use of which the employees can feel the limitations experienced by elderly persons[200], possibility for the residents to own and to take care of small pet animals[201], meetings of residents with their relatives and close ones, organized on the first Sundays of the month; the visiting persons have the opportunity to discuss the condition of their family members with the home's therapist, psychologist and director[202], publication of a quarterly newsletter edited by the home's residents and personnel[203], availability of a free-of-charge Wi-Fi connection in one of the buildings and in an internet point[204], availability of a computer station with Skype[205], outdoor sports equipment items within the home's premises[206].

[199] SCH Hostel of John Paul II in Otwock.
[200] SCH in Pruszcz.
[201] SCHs in Pabianice and Bobrek.
[202] SCH in Bobrek.
[203] SCH *Kalina* in Suwałki
[204] SCH in Górno.
[205] SCH *Niezapominajka* in Elbląg.
[206] SCH in Górno.

6. Psychiatric hospitals

6.1. Introduction

In 2016, representatives of the NMPT visited 17 psychiatric hospitals and wards[207]. A revisit was also conducted in the Voivodeship Independent Public Psychiatric Hospital in Radecznica. The objective of the visits was to assess the state of observance of the rights of persons who had been placed there against their will, that is:

- perpetrators of prohibited acts, placed in psychiatric care institutions within a preventive measure (either a standard measure, or an enhanced-security measure);
- persons placed in hospitals under Article 23(1), Article 24(1), Article 28 or Article 29(1) of the AMHP, i.e. persons admitted to hospitals without their consent, as well as persons who consented to their placement in a hospital but withdrew the consent during their stay there.

6.2. Systemic problems

1. Insufficient funding of psychiatric wards

The problem of insufficient funding by the National Health Fund (hereinafter: NHF) of psychiatric hospital treatment has been raised by the CHR for

[207] Psychiatric Ward of the Independent Public Health Care Centre in Radzyń Podlaski (hereinafter referred to as: Radzyń Podlaski hospital), St. Kryzan's Hospital for Mentally Ill Persons in Starogard Gdański (Starogard Gdański hospital), Non-public Health Care Centre in Lipno, Psychiatric Clinic in Lipno (Lipno hospital), Antoni Jurasz Medical University Hospital no. 1 – Psychiatric Ward in Bydgoszcz (Bydgoszcz hospital), Independent Public Psychiatric Hospital in Radecznica (Radecznica hospital), Public Hospital for Mentally Ill Persons in Rybnik (Rybnik hospital), John Paul II Podhalański Specialist Hospital's Psychiatric Ward in Nowy Targ (Nowy Targ hospital), Independent Public Health Care Centre at ul. Leśna 22, Psychiatric Ward in Leżajsk (Leżajsk hospital), Świętokrzyskie Psychiatric Care Centre in Morawica (Morawica hospital), Psychiatric Ward of the Regional Hospital in Kołobrzeg (Kołobrzeg hospital), Pabianice Medical Centre's Psychiatric Ward (Pabianice hospital), Voivodeship Hospital for Mentally Ill Persons in Suchowola (Suchowola hospital), Psychiatric Ward of the 105th Military Hospital in Żary (Żary hospital), Psychiatric Ward of the Specialist Hospital in Kościerzyna (Kościerzyna hospital), Psychiatric Ward of the Independent Public Health Care Centre in Lębork (Lębork hospital), Psychiatric Ward of the District Hospital in Chrzanów (Chrzanów hospital), Psychiatric Ward of the Głuchołazy Independent Public Health Care Centre (Głuchołazy hospital).

a long time, starting with the *Report of the Commissioner for Human Rights on activities of the National Preventive Mechanism in Poland in 2012*[208]. The problem is still valid in 2016. In the opinion of the CHR, it has its source in the fact that the NHF, in its funding allocations, fails to take account of the fact that in addition to psychiatric treatment as such, the hospitals are frequently required to provide more expensive somatic treatment (which is particularly strongly required in the case of elderly persons). What is not taken into account either are costs of medicinal products (medicines, insulin for patients with diabetics, etc.), and of transport to additional medical consultations.

2. Insufficient number of hospital beds

The visits conducted in 2016 confirmed, regrettably, that the shortage of beds in psychiatric hospitals, identified in the previous years, still exists.

The NMPT continues to come across cases of patient beds being placed in corridors, or additional beds being placed in patient rooms, which causes overcrowding and problems with 3-sided access to beds[209]. The information gathered by the visiting team confirms the practice is still used in many psychiatric hospitals[210].

The National Mechanism for the Prevention of Torture notes that the placement of patient beds in common areas i.e. corridors clearly restricts their right to privacy. The same applies to patient rooms' overcrowding which negatively affects the treatment process by causing tensions among patients due to too large number of beds. It should also be borne in mind that in the case of patients hospitalized within a preventive measure, hospitalization can last for many years. According to the CPT's opinion, *Creating a positive therapeutic environment involves, first of all, providing sufficient living space per patient (...).* Moreover, *particular attention should be given to the decoration of both patients' rooms and recreation areas, in order to give patients visual stimulation. The provision of bedside tables and wardrobes is highly desirable, and patients should be allowed to keep certain personal belongings (photographs, books, etc.). The importance of providing patients with lockable space in which they can keep their belongings should also be*

[208] Cf. Report for 2012, pp. 92-97.

[209] Cf. Articles 18 and 19 of the Regulation of the Minister of Health of 26 June 2012 on specific requirements to be met by premises and equipment of medical service providers, Dz. U. item 739.

[210] Hospitals in: Lipno, Pabianice, Lębork and Nowy Targ.

underlined; the failure to provide such a facility can impinge upon a patient's sense of security and autonomy[211].

3. CCTV monitoring in psychiatric hospitals

As indicated in the CHR's Report on the activities of the NPM in 2015, the Commissioner for Human Rights submitted a general intervention to the Minister of Health, regarding the need to regulate the issue of CCTV monitoring in psychiatric hospitals. The Minister of Health agreed with the CHR's arguments and announced that appropriate regulations would be introduced to the Act on Mental Health Protection[212]. Regretfully, the declaration has not yet been fulfilled.

It should be recalled that certain issues concerning CCTV monitoring of isolation rooms and rooms for patients detained in hospitals with enhanced security systems are regulated by way of legislative acts on the level of ministerial regulation[213]. However, the powers awarded by parliamentary acts to issue implementing legislation do not cover the power to regulate, in such legislation, the use CCTV systems in psychiatric hospitals. It should thus be concluded that the current regulations on the use of CCTV camera monitoring in psychiatric hospitals have been adopted in a way which violates the provisions of Article 92(1) of the Constitution of the Republic of Poland. The fragmentary regulations of the current Regulations are, moreover, non-compliant with Article 47 in conjunction with Article 31(3) of the Constitution of the Republic of Poland, with Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and with Article 17(1) of the International Covenant on Civil and Political Rights[214].

The bill of 29 September 2016 amending the Act on Mental Health Protection and certain other acts should, undoubtedly, be assessed positively in the scope in which it permits the installation of CCTV monitoring cameras in rooms intended for direct coercion measures in the form of isolation. Still,

[211] Cf. 8th General Report on the CPT's activities [CPT/Inf (98) 12], point 34.

[212] CHR's general intervention of 5.01.2016 to the Minister of Health, ref. no. KMP.574.8.2015.

[213] Regulation of the Minister of Health of 29 June 2012 on the use and documentation of direct coercion and the assessment of the necessity of its use (Journal of Laws of 2012, item 740); Regulation of the Minister of Health of 19 January 2017 on the Psychiatric Committee on preventive measures and the implementation of such measures by psychiatric care institutions (Journal of Laws of 2017, item 119); Regulation of the Minister of Health of 26 June 2012 on specific requirements to be met by premises and equipment of medical service providers, Dz. U. item 739 (Journal of Laws of 2012, item 739).

[214] Dz. U. of 1977 no. 38, item 167.

there are no adequate statutory regulations with regard to single occupancy rooms where direct coercion measures in the form of restraining patients with mental disorders are used, and with regard to hospitals' observation units and wards with enhanced security systems[215].

Apart from the aforementioned arguments regarding the correctness of legislative procedures, the issue of CCTV monitoring is of fundamental importance from the point of view of human rights. Particular care about the situation of psychiatric hospitals' patients is also related to the higher risk of social exclusion, compared to other social groups. There is no doubt that the failure to appropriately protect those patients' rights, personal data and images creates a risk that such information may be misused. With this in mind, the NMPT will monitor the implementation of legal regulations ensuring adequate protection of psychiatric hospitals' patients.

4. Lack of regulations on escorted transport of persons subjected to preventive measures outside the institution

For several years, the NMPT has been calling for the regulation of the procedure of escorted transport of patients of psychiatric hospitals and wards, who are held there pursuant to adjudicated preventive measures, outside the premises of the institution for the purpose of medical consultations, examination or treatment. Currently, it is the responsibility of the hospital administration to provide such escorted transport. The NMPT noted that at present there happen situations in which psychiatric hospital patients are escorted by public transport, which raises reasonable concerns about the safety of other passengers. In the opinion of the Ministry of Health, it is justified to introduce, into the Executive Penal Code, provisions on escorted transport of persons in relation to whom preventive measures have been adjudicated. According to the NMPT, it is necessary to take legislative action to determine the escorted transport procedure, i.e.: situations in which it should be used, responsible entities, escorting team composition, means of transport, and measures to be taken in order to prevent aggression and uncontrolled departure of the escorted person. At present, it is the sole responsibility of psychiatric hospitals to organize escorted transport and to ensure its safety and security, in cases when it is necessary to transport a patient beyond the

[215] The CHR's opinion of 27.10.2016 on the bill amending the Act on Mental Health Protection and certain other acts, ref. no. KMP.022.4.2016.

psychiatric hospital for the purpose of an important medical consultation, examination or treatment procedure.

Correspondence on the issue has been exchanged both with the Minister of Health and the Minister of Justice[216]. The Minister of Justice, in his reply to the general intervention of 23 August 2016 correctly noted that the detailed regulations on the rules and conditions of escorted transport should apply to all patients of psychiatric care institutions, and not only to persons in relation to whom a preventive measure has been adjudicated. Therefore, on 2 March 2017 the Commissioner for Human Rights submitted a general intervention to the Minister of Health requesting him to take appropriate action to regulate the issue of escorted transport of all patients of psychiatric hospitals.

In his reply of 20 April 2017, the Undersecretary of State in the Ministry of Health pointed out that Article 41 of the Act of 27 August 2004 on health care services financed from public funds[217] contains a provision on medically-supported transport of persons in relation to whom preventive measures have been adjudicated. However, the content of the Act does not cover matters such as the specific course of implementation of preventive measures, including the patient's possible stay outside the institution where the measure is conducted, as this should be determined by the court.

The issue will continue to be monitored by the NMPT.

5. Emergency call system

One of the component elements of protection of the rights of persons deprived of their liberty, verified by the NMPT during its visits to places of detention, is the persons' safety.

According to the NMPT, the role of an efficient and easily accessible emergency call system cannot be overestimated here. It enables fast intervention of medical personnel in emergency situations of health deterioration of patients. In the opinion of the NMPT's representatives, emergency call buttons should be available in all rooms used by patients (bathrooms, bedrooms, safety rooms for patient isolation as a direct coercion measure, etc.). Emergency call systems are also of particular importance for persons with disabilities who, according to the requirements laid down in the

[216] CHR's general intervention of 23.08.2016 to the Minister of Justice, ref. no. KMP.571.23.2014.

[217] Dz. U. of 2004, no. 210, item 2135, as amended.

Convention on the Rights of Persons with Disabilities[218] should be provided with various forms of personal assistance, broadly understood mobility measures, and reasonable accommodation to ensure to those persons the enjoyment or exercise, on an equal basis with others, of all fundamental freedoms as well as safety. In this context, the lack of emergency call installations, identified also in some visited psychogeriatric wards where there are supine patients who are unable to leave the room to notify personnel about any emergency.

The NMPT's recommendation based on the above arguments is received by its addressees in different ways. Some institutions declare they will install emergency call systems, while others refuse to do so and claim that it would create a risk of electric shock in the case someone purposefully damages the installation.

The inequality of hospital patients' safety standards, identified by the NMPT in this regard, requires therefore the introduction of systemic solutions.

Article 8 of the Act on the Rights of Patients and Patient Ombudsman, of 6 November 2008, stipulates that patients have the right to health care services provided by healthcare providers with due care and in conditions which meet applicable professional and sanitary requirements laid down in separate regulations.

The Regulation of the Minister of Health of 26 June 2012 on specific requirements to be met by premises and equipment of medical service providers does not require the installation of emergency call systems available in patient rooms, bathrooms or other rooms used by patients in hospital wards (including psychiatric wards visited by the NMPT).

According to Article192(a) of the regulation of the Minister of Infrastructure of 12 April 2002 on technical conditions to be met by buildings and their sites[219], apartments in a multi-apartment buildings and separate residential units in collective housing buildings should be equipped with door communication systems and emergency call systems adjusted to the needs of persons with disabilities.

This requirement was introduced in 2012 and explained in the Information of the Government of Poland on measures taken in 2012 in order to implement the provisions of the resolution of the Polish Sejm [lower Parlia-

[218] Adopted by the United Nations General Assembly on 13 December 2006 and ratified by Poland on 6 September 2012.

[219] Dz. U. of 2015, item 1422, consolidated text.

ment chamber] of 1 August 1997 adopting the Charter on the Rights of Persons with Disabilities[220], as one of the elements implementing the provisions thereof.

The NMPT considers the installation of emergency call systems in hospital wards to be one of the guarantees of patients' safety. Recognizing the gap in the legislation, the Commissioner for Human Rights called on the Minister of Health[221] to consider legislative action to introduce the requirement to install such systems. In his reply of 29.06.2017,[222] Undersecretary of State in the Ministry of Health informed the Commissioner that the National Consultant in Psychiatry and the National Consultant in Youth Psychiatry had been requested to present their opinions on the issue. When the opinions are issued, the Commissioner will be notified thereof.

6.3. Strengths and good practices

During their visits to psychiatric hospitals and wards in 2016, representatives of the NMPT took note of practices which, in their opinion, deserve recognition as model solutions worth introducing in other places of detention. They include:

- procedures of dealing with: patients – victims of sexual violence; persons affected by domestic violence[223]; and non-Polish speaking patients with whom communication needs to be ensured[224];
- wide-scope programme of therapeutic activities[225];
- patients' free access to the hospital garden patio; supervision over therapeutic teams[226];
- use of a separate room for visits paid to patients by their children; the objective is to protect the young visitors against possible negative experience of contacts with the other patients of the ward; free-of-charge access to the Internet via the hospital's wi-fi network[227];

[220] The Sejm's procedural form no. 1672 of 19 August 2013.
[221] CHR's general intervention of 22.05.2017 to the Minister of Health, ref. no. KMP.574.4.2017.
[222] Reply of the Undersecretary of State in the Ministry of Health of 29.06.2017, ref. no. OZO.073.21.2017/CP.
[223] Hospital in Morawica.
[224] Hospital in Głuchołazay.
[225] Hospitals in Pabianice and Morawica.
[226] Hospital in Kościerzyna.
[227] Hospital in Chrzanów.

- standard community visits by hospital's medical staff to homes of patients to whom psychiatric care is provided at home; the visits aim to support the treatment process and to improve the treated patients' functioning in the local community and in the family, which prevents their stigmatization as mentally ill persons; cooperation with the *Association of Psychiatric Care Users and their Families*, and with the *Fenix Association of Friends*[228];
- hospital staff's engagement in assistance provision to non-Polish speaking patients, in order to ensure their safe return to their families in the country of origin; indication, in the documentation on applied direct coercion measures, that a room partition screen was used[229];
- procedure of anticoagulant administration to persons restrained as a result of applying direct coercion measures; use of spreadsheets to monitor regular assessment of patient's behaviour during the use of direct coercion measures; drawing up a document listing all internal regulations applicable in the hospital, and ensuring that they are available in the hospital wards[230];
- establishment of an observation room in the hospital's reception unit[231].

[228] Hospital in Kołobrzeg.
[229] Hospital in Lębork.
[230] Hospital in Rybnik.
[231] Hospital in Morawica.

7. Closed Detention Centres for Migrants

7.1. Introduction

In 2016, the National Mechanism for the Prevention of Torture conducted inspection visits to four closed detention centres for migrants[232] (hereinafter: CDC, Centre or facility).

7.2. Systemic problems

1. Detention of juveniles

Polish law allows for the confinement in CDCs of unaccompanied juveniles who are staying in Poland illegally. Yet the permissibility of detaining juvenile migrants has been questioned by non-government organizations[233], international institutions[234] and the Commissioner for Human Rights himself on numerous occasions. The guidelines of the United Nations High Commissioner for Refugees (UNHCR) concerning the criteria and standards governing the detention of persons who seek to be granted refugee status state that, as a general principle, those who apply for refugee status should not be placed in detention. Exceptions are permissible only for the purpose of ensuring public order, public health and security. Unaccompanied migrants under the age of 18 who apply for the refugee status should not be placed in detention. Rule no. 9 states that, in so far as it is possible, such persons should be placed under the care of family members who have obtained refugee status in the given country. If this solution is not possible, competent child welfare institutions should ensure juvenile migrants alternative care in the form of suitable accommodations and proper supervision. In the case of children accompanying migrant parents, the UNHCR recommends considering all suitable alternatives to detention. The UNHCR's guidelines emphasise that detention may be used in the case

[232] CDCs in: Biała Podlaska, Lesznowola, Krosno Odrzańskie and Kętrzyn.

[233] Cf. position statement of the Association for Legal Intervention of 30 March 2015, available on the Association's website.

[234] E.g. ECHR' judgment of 19 January 2010 in the case *Muskhadzyhieva v. Belgium*, application no. 41442/07.

of families with children pursuant to Article 37 of Convention on Children's Rights – i.e. as a last resort and for the shortest time possible.

Likewise, the recommendations on detention of persons applying for refugee status issued by the Committee of Ministers 16 April 2003[235] emphasise that detaining juveniles seeking the refugee status should be the option of last resort and applied for the shortest time possible. Juveniles should not be, against their will, separated from their parents or other legal or customary guardians. The Committee recommends that if juveniles must be detained, they may not be housed in prison conditions. Such persons must be released from detention as quickly as possible, and they must be provided separate accommodations. The Committee also recommends special solutions within closed facilities that are suitable for families with children, as well as alternative accommodations that safeguard proceedings without entailing deprivation of liberty, such as care homes or foster homes for unaccompanied juveniles applying for the refugee status[236].

According to the NMPT, regardless of how well the juveniles are looked after during their stay in a CDC, such stays, in every instance, have a very negative impact on their psychological condition and their normal functioning thereafter.

2. Access to psychological evaluation

The key role of psychological evaluations in the process of identifying victims of torture is made clear in the "Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"[237], which states that *Psychological evaluations provide useful evidence for medico-legal examinations, political asylum applications, establishing conditions under which false confessions may have been obtained, understanding regional practices of torture, identifying the therapeutic needs of victims and as testimony in human rights investigations*.

[235] Rec 2003)/5.

[236] From: *Detention of migrant children in Poland*, report on the implementation of international and national standards concerning detention of foreign children, Halina Nieć Legal Aid Center, 25 March 2011.

[237] Publication of the United Nation, drafted in 1999 by a group of experts (mainly doctors, lawyers and psychologists) that contains, inter alia, guidelines on how to identify and document cases of torture or other cruel treatment or punishment for the needs of criminal investigations. The Istanbul Protocol is an official UN document; while it is not binding (it's so-called soft international law), its application is recommended by the UN General Assembly as well as the UN Human Rights Commission / UN Human Rights Council.

However, in accordance with decision no. 32 of Chief Commander of the Border Guard (BG) of 22 February 2013, psychologists employed by the BG primarily perform tasks relating to the recruitment, psychological support and training of BG officers. Care provided to migrants is merely one of the many tasks with which BG psychologists are charged. Moreover, pursuant to point 5 of the decision, BG psychologists may render psychological aid in the case of traumatic events at the written request of the doctor examining the migrant. Thus, migrants themselves may not initiate a psychological evaluation which could result in an official psychological opinion. According to the NMPT, this restriction impedes identification of potential victims of torture.

7.3. Strengths and good practices

1. Provision of compulsory education

Juveniles staying at the CDC in Kętrzyn receive compulsory schooling on the basis of an agreement with a primary school. This practice merits praise in the context of laws in effect. The Act on Aliens of 12 December 2013[238] (hereinafter: A.o.A.) as well as the Act of 13 June 2003 on Granting Protection to Aliens on the Territory of the Republic of Poland[239] do not impose the requirement to ensure the educational rights of juveniles during their stay in a CDC.

However, Article 70(1) 1 of the Constitution of Poland grants the right to education to everyone and specifies that it is compulsory until the age of 18. The formulation *everyone* means that this requirement also extends to aliens who are staying on the territory of our country. Therefore, no one who wants to attend school and has not yet turned 18 may be refused this right, and the obligation to provide the appropriate conditions to exercise it falls upon the relevant state institutions.

Article 22 of the Convention on Children's Rights also explicitly mentions children who have been recognized as refugees or are applying for such status. It states that such children should receive appropriate protection as specified elsewhere in the Convention, and one of its manifestations is ensuring the right to education (Article 28). Moreover, pursuant to Article

[238] Dz.U. of 2013, item165.

[239] Dz.U. of 2012, item 680, consolidated text.

15(1) of the Act of 7 September 1991 on the Education System[240], persons who have not turned 18 years old are required to attend school. To recapitulate, all children who are staying on the territory of the Republic of Poland are subject to compulsory schooling, regardless of their legal status. This requirement also applies to migrants, whether they are staying in Poland legally or illegally. Therefore, in the NMPT's view, the Kętrzyn centre's practice of ensuring education for juveniles until they reach the age of 18 – which recognizes the primacy of the Constitution – deserves to be recognized as recommended also in other such detention centres.

2. Removal of bars from windows

The Centre in Kętrzyn is gradually taking down bars installed in windows. According to the NMPT visiting team, this practice should be adopted by all CDCs, particularly those in which children are staying. This is because bars in windows generate associations with prison, yet migrants staying in such centres have not committed any crimes. In any case, these facilities are very well guarded and outfitted with monitoring devices, which minimizes the possibility of detainees exiting them on their own.

3. Provision of replacement mobile telephones

Because Article 420 of the A.o.A. prohibits detained aliens from holding technical devices that can record images, migrants in CDCs who have phones that can take pictures are required to deposit them. The NMPT found, however, that migrants detained in the centres they inspected may obtain substitute telephones that are the property of the administration during their stays there.

4. Designation of a centre adjusted to the needs of persons with mobility impairment

The centre in Kętrzyn, as of 2017, has been designated for accommodating migrants with disabilities. The NMPT representatives positively evaluate this initiative. It should be noted that, pursuant to the UN Convention on the Rights of Persons with Disabilities, ratified by Poland on 6 September 2012, the signatory states shall undertake appropriate measures, including the identification and elimination of barriers to building access, so as to enable persons with disabilities to live independently.

[240] Dz.U. of 2015, item 2156.

5. Personnel training

The NMPT representatives who inspected the CDC in Biała Podlaska positively evaluated the centre's dedicated training programme for its personnel. The programme includes: administration of first aid, language workshops (Russian and English), inter-cultural psychology, anti-discrimination law and human rights as understood by the Convention for the Protection of Human Rights and Fundamental Freedoms as well as rulings of the European Court of Human Rights.

6. Weekly meetings with return counsellors

The centre in Krosno Odrzańskie has implemented the good practice of organizing, in addition to ad hoc legal assistance, weekly meetings of migrants with employees of the Administrative Services for Aliens Section (return counsellors). These meetings are meant to familiarise people detained in CDCs with legal issues they face and to explain their administrative situation.

8. Violations of the rights of persons deprived of their liberty, identified during inspection visits to places of detention (*selected examples*)

The NMPT's preventive visits revealed particularly disturbing situations in which the elementary rights of persons deprived of liberty were not respected. Information about these situations was obtained by NMPT representatives on the basis of interviews held with people staying in detention centres as well as from analyses of monitoring and documentation kept in these places. The selected examples described below cast light, in the NMPT's opinion, on the system protecting the rights of persons deprived of liberty in Poland. These cases reveal that the standards in effect for observing these persons' rights do not adequately safeguard their interests. The descriptions below of irregularities committed by public functionaries in dealing with persons deprived of liberty also have educational value: by making these cases public, the NMPT believes they will constitute valuable lessons for all functionaries responsible for persons deprived of liberty in regard to the procedures that should be followed with such persons, for the purpose of avoiding the violations described.

8.1. Closed detention centres for migrants

During inspections of CDCs in 2016, the NMPT representatives discovered individual cases of persons[241] whose detention in the centres – in the NMPT's opinion – attest to the ineffective functioning of the system for identifying victims of torture and violence, which should protect these persons from placement in closed centres[242].

[241] The first three cases were identified in the CDC in Kętrzyn; the last one was found in the CDC in Biała Podlaska.

[242] More information on the issue is available from CHR's general intervention to the Chief Commander of the Border Guard of 30.06.2017, ref. no. KMP.572.4.2016.

One case concerned a married couple from Chechnia who, together with their three juvenile children (2, 4 and 8 years old), were transferred from Germany to Poland. According to an expert of the NMPT, the recommendation submitted by the local Border Guard Commander in Szczecin to place them in a CDC, as well as the procedure whereby a court issued the order to do so, failed to take into account procedures for screening migrants to determine if they faced threats to their lives or health or had been victims of violence, the results of which could have clearly indicated there were no grounds for placing the migrants in a closed centre. The expert also determined that the German side had transferred the migrants without securing and conveying, in an appropriate and clear manner, information about their current state of health and the treatment they had received during their stay in Germany as persons applying for refugee status in that country – information that would appear to be crucial when the decision was made by the Polish Border Guard to recommend placing them in a CDC.

Pursuant to Article 31 of the Dublin III Regulation, *The Member State carrying out the transfer of an [asylum] applicant (...) shall communicate to the Member State responsible such personal data concerning the person to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, and to ensure continuity in the protection and rights afforded by this Regulation and by other relevant asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in accordance with national law have sufficient time to take the necessary measures.* The member state carrying out the transfer shall provide *(...) the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred (...)including any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required.*

Moreover, Article 9 of the implementing regulation requires the transferring state to inform the country receiving migrants from it about impediments to the transfer stemming from the health of the persons being transferred: the relevant Member State shall be informed without delay about (…) physical impediments such as the poor health of the person applying for asylum.

An examination of the family's medical documentation drawn up in German, which – it should be noted – they were carrying when they were stopped by the German police and during the Dublin transfer, revealed that their physical and mental health not only was probably unsuitable for being transferred, but was undoubtedly unsuitable for placement in a closed centre. The hospital release document stated that the man had been hospitalized in a psychiatric clinic in Eberswalde from 26 July 2016 to 27 August 2016 due to PTSD[243] and an episode of severe depression with suicidal thoughts – disorders that can be directly attributed to violence (including torture) he had suffered in his country of origin.

Article 88 and Article 88b(2) of the Act on Granting Protection to Aliens on the Territory of the Republic of Poland [244], as well as Article 398(2) and Article 401 of the A.o.A.,[245] protect aliens from placement in detention if they have suffered violence or if their health is poor, allowing the use of alternative measures to deprivation of liberty in a CDC. In this case, however, the Chechen family was placed in a closed centre. The NMPT expert found that this situation occurred due to the following reasons:

- The German side did not furnish appropriately secured and translated (from German) information about the family's health,
- The Polish Border Guard, upon receiving the aliens, failed to take the German documentation into account,
- The doctor working the reception room in the clinic (Samodzielny Publiczny ZOZ MSWiA) in Szczecin to which the aliens were transported on 5 October 2016, concluded after an examination and interview that they could be escorted and there were no counter-indications to holding them in detention,
- The court did not take into account the medical documentation in the aliens' possession, which would have provided grounds not to place them in detention – instead, it merely agreed with the Border Guard's recommendation to detain them.

It should also be emphasised that after the family had been placed in a CDC, their German medical documentation was not checked by the doctor at the Centre. Thus, an opportunity was wasted to appeal the court's decision to place the aliens in a CDC within the legal time limit (7 days after placement). The medical documentation drawn up by the Polish doctor did not mention the man's diagnosis of PTSD, depression or suicide risk, which were the reason for his hospitalization in Germany. On the third day of their stay in the CDC, the patient and

[243] The English acronym for Post-Traumatic Stress Disorder.

[244] Dz. U. of 2016, item 1836, consolidated text.

[245] Consolidated text: Dz. U. of 2016, item 1990.

his wife requested psychological consultation, and the next day they provided the psychologist their medical documentation in German. Next, an EKG and psychological diagnosis were performed in the presence of a Russian-language translator. During the second week of their stay a psychiatric consultation was held, during which the psychiatrist noted the patient's account of having been tortured, his suicidal tendencies after the traumas he had suffered and the fact he slept in his clothes (as he feared being arrested in the middle of the night again). The family was released from the CDC three weeks after having been placed in it.

According to the National Mechanism for the Prevention of Torture, the placement of the alien and his wife (who had also been hospitalized in a German psychiatric clinic with a diagnosis of severe reaction to stress) in a closed centre and holding them there for 3 weeks was inappropriate considering their health and circumstances (victims of violence) and caused further re-traumatisation. Preliminary analysis indicates that the improper detention occurred due to numerous procedural shortcomings during the transfer of the family to Poland by German police as well as the lack of appropriate operational algorithms that should have been implemented in order to promptly identify victims of torture and violence as well as persons whose mental and physical condition rule out their placement in detention.

Another irregularity discovered by the NMPT concerned a single woman with three children (5, 8 and 9 years old) who recounted that she and one of her children had suffered torture and violence. An expert of the NMPT held a one-on-one conversation with the woman, during which she noticed possible symptoms of progressing PTSD. During the conversation, the expert learned that the woman had been a victim of torture and violence, and one of her children had been shot in the feet during a militia raid on their house in their country of origin. The expert also examined the boy, who was withdrawn, cautious and had irregular scars on his legs. Analysis of medical documents revealed that until the day the NMPT intervened, the facility's staff had not noticed the grounds for not holding the woman and her children in detention. The day after the NMPT intervened with the commandant of the CDC, the woman and her children were released from the Centre.

The next case concerned another couple from Chechnia (the woman was in the second trimester of a pregnancy) who were held in detention together with three young children (2, 3 and 5 years old). The man informed inspectors that he felt excessively excited and was prone to overreact, which he had observed in himself ever since he had been tortured in his country of origin. An expert of the NMPT, concerned about the man's inability to control his anger,

spoke alone with his wife, who felt so bad she was lying in the room crying. At the couple's request, the expert examined their medical documentation.

Analysis of the documents revealed that when the family were taken into custody, the Border Guard doctor in Gdańsk did not sign under "no counter-indications to detaining and escorting" the pregnant woman, but merely referred her to Kętrzyn. This decision, however, was not taken into consideration by the court as grounds for not placing the woman in a CDC. The family's documentation also lacked entries concerning psychological evaluations. Neither the man's problems with excitability nor the woman's depressive behaviour appeared to attract the attention of medical staff. During the NMPT inspection visit, the Centre's personnel did not plan to release the aliens due to their poor health or circumstances indicating that they had been victims of violence in their country of origin. In the NMPT's opinion, the family should be released from detention pursuant to Article 406(1)(2) of the A.o.A.

8.2. Rooms for detained persons or intoxicated persons to sober up (PDRs)

During an inspection of the PDR in Płońsk, a citizen of Georgia informed inspectors that he had not been presented the reasons for his detention nor was he provided an opportunity to contact a lawyer or inform his family of his detention, despite his requests. According to the protocol of detainment, the alien was detained by Border Guard officers stationed in Warszawa-Modlin on 5 July 2016. Even though the documentation does not indicate it was drawn up in the presence of a translator, BG officers wrote in the protocol of detainment that the detainee was informed of his rights and declared that he did not demand to inform a family member or to contact a lawyer or legal counsellor in connection with his detention. Yet the protocol contains a statement by the detainee in which he refused to sign any document without a translator present. Accordingly, he signed neither the protocol of detainment nor the notice informing him of his rights. The man did not speak Polish, and spoke English only to a very limited degree. During his stay in the PDR, the detainee was not provided any means of communicating about matters relating to his stay in the PDR with the help of a translator, contrary to Article 1(2) of the Rules and Regulations of the facility.

Considering the information presented above and the absence in the PDR of a translation of the facility's Rules and Regulations into Georgian, the NMPT visiting team found it suspicious that the detainee had signed a statement confirming

that he had familiarised himself with the aforementioned Rules and Regulations. The team' interview with the detainee also made it clear that he had no knowledge about his rights relating to his placement in the facility. The NMPT subsequently sent a letter regarding this matter to the Commander-in-Chief of the Police with a request to determine whether the Georgian citizen held in the PDR in Płońsk, after having been detained by the Border Guard submitted a request to contact a lawyer[246]. In his reply[247], the Commander-in-Chief of the Police wrote that preliminary findings do not confirm that the detainee had submitted a request to contact a lawyer. Nevertheless, for the sake of fully clearing up the matter, the Commander-in-Chief of the Police had requested the Voivodeship Police Commander in Radom to provide a more complete explanation. The National Mechanism for the Prevention of Torture is still waiting to learn the results of this request.

In the same PDR, the visiting team members also expressed doubts regarding the manner in which examinations are conducted by doctors who decide whether detainees are healthy enough to be placed in the facility. Information provided by a detainee indicates that, in his case, the examination consisted of an interview alone without a physical examination, and that the doctor had merely observed him for a moment from a distance of several metres. The man's allegation could be confirmed by the doctor's failure to note the injuries visible on the detainee's body. Inspectors also found it suspicious that the doctor's certification stating there were no medical counter-indications to holding the man in the PDR was issued on 5 July at 11:45 p.m., and less than 2 hours later, at 1:23 a.m. the next day, an ambulance was summoned because the man's health had suddenly deteriorated (at 12:40 a.m., according to monitoring system recordings).

Taking into account these findings, the NMPT representatives sent a letter to the director of the independent public health-care centre (SPZZOZ) in Płońsk, requesting an explanation. In response, the director wrote that the allegations formulated against the doctor performing examinations of detained men had not been substantiated. The doctor in question declared that the examinations had been performed with all due diligence. Much greater understanding of the importance of conducting proper medical examinations before admitting people to the PDR was shown by the District Police Commander from Płońsk, who sent a request to the SPZZOZ director to instruct the doctors supervised by him about the necessity to include all relevant information concerning the health of examined persons, particularly any injuries they have suffered, in the content of every certificate of a person's admission to the PDR.

[246] Letter to the Commander-in-Chief of the Police of 14 April 2017, ref. no. KMP.570.5.2016.

[247] Reply of the Commander-in-Chief of the Police of16 May 2017, ref. no. EK 2810/17.

PART II

1. Freedom from torture and other inhuman or degrading treatment or punishment

The prohibition of torture and other inhuman or degrading treatment or punishment is absolute and unconditional. It is enshrined in Article 40 of the Constitution of the Republic of Poland of 2 April 1997, according to which *no one shall be subjected to torture or other inhuman or degrading treatment or punishment. The application of corporal punishment shall be prohibited.* It is also provided for in key documents of international law, including the Universal Declaration of Human Rights of 1948[248], the Geneva Conventions of 1949[249], the European Convention on Human Rights of 1950[250], the International Covenant on Civil and Political Rights of 1966[251], the American Convention on Human Rights of 1969[252], the African Charter on Human and Peoples' Rights of 1981[253], and the Inter-American Convention to Prevent and Punish Torture of 1985.[254]

In the European system of protection of human rights, the issue of freedom from torture and other inhuman treatment is regulated, in particular, by the European Convention for the Protection of Human Rights and Fundamental Freedoms which was signed by Poland in 1991 and entered into

[248] Article 5: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment punishment.*

[249] Article 3: (…) *To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; b) taking of hostages; c) outrages upon personal dignity, in particular humiliating and degrading treatment; (…).*

[250] Article 3: *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

[251] Article 7: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

[252] Article 5(2): *No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.*

[253] Article 5: *Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.*

[254] Article 1: *The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.*

force in 1993. The prohibition of torture is listed in the document is the third place, just after the obligation to respect human rights and freedoms and the right to life. Thus, the right to freedom from torture can be *counted among the core rights provided for under the Convention, referred to as the fundamental rights*[255].

Article 3 of the Convention expressly emphasizes that *no one shall be subjected to torture or to cruel, inhuman or degrading treatment punishment*, thereby protecting one of the fundamental values of a democratic society. The broad nature of the prohibition is deliberate. Article 3 has been drawn up with a view to determining its minimum content (prohibition of torture) in a way which leaves much space for interpretation in the practical application of the provision[256]. Article 3 does not stipulate any possibility to evade this prohibition, even at times of war or any other threat to national security. This means that the prohibition should remain in force even in the most severe circumstances such as the fight against terrorism and organized crime. The Convention also strictly prohibits the use of torture and other inhuman or degrading treatment or punishment, irrespective of the conduct of the persons concerned[257]. Therefore, the prohibition is absolute and applies irrespectively of the conduct of other people. The use of force against another person is allowed only in specific circumstances of the highest necessity, as determined in applicable legislation (e.g. direct coercion measures against persons who pose a risk to their own lives or the lives and safety of other people). Hence, any use of force beyond the circumstances of the highest necessity violates human dignity and is in breach of Article 3 of the Convention[258].

Protection of human rights enshrined in the Convention is ensured by the European Court of Human Rights (hereinafter referred to as the ECHR or the Court), which considers applications and demands that States Parties improve and tighten their legislative systems in so far as they are pro-

[255] Cf. A. Ploszka, *Zakaz tortur. Czy na pewno bezwzględny?* [*The prohibition of torture: is it really unconditional?*] [in]: Przegląd Prawniczy UW, no. I-II, year XI, Warsaw, 2012, p. 124.

[256] Cf. *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Tom I. Komentarz do artykułów 1-18* [Convention for the Protection of Human Rights and Fundamental Freedoms. Volume I. Commentary on Articles 1 to 18]. Edited by: L. Garlicki, C. H. Beck, Warsaw 2010, p. 98.

[257] Cf. judgment of 24.07.2014 in the case Al Nashiri v. Poland, application no. 28761/11, Article 507 (judgment regarding the CIA black-site prisons in Poland).

[258] Cf. *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Tom I. Komentarz do artykułów 1-18* [Convention for the Protection of Human Rights and Fundamental Freedoms. Volume I. Commentary on Articles 1 to 18]. Edited by: L. Garlicki, C. H. Beck, Warsaw 2010, p. 99.

vide space for their abuse. The Court's longstanding practice has allowed to distinguish between torture and other inhuman or degrading treatment, as well as to formulate a definition of torture used for the first time in the *Declaration on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment*[259], and then in the *Convention against Torture*, adopted by the United Nations General Assembly on 10 December 1984.[260]

In the case law of the ECHR, the case of key significance for the formulation of the definition of torture has been the so-called case of Greece[261] of 1969 (in which Denmark, Norway, Sweden and the Netherlands filed a collective multi-national application against Greece, concerning the use of torture by security forces during the dictatorship of the so-called black colonels in that country). Torture is defined as inhuman treatment for the purpose of obtaining information or confession, or for the purpose of punishment. Inhuman treatment or punishment, in turn, is defined as severe pain or suffering, whether physical or mental, for which no justification exists in the given situation. Treatment of an individual may be said to be degrading if it grossly humiliates him/her before others or drives him to act against his will or conscience[262].

Analysis of the ECHR judgments issued across the period of its work shows a significant change that has taken place over time in the interpretation of torture and other inhuman or degrading treatment. Practices which were not considered torture or inhuman treatment in the 1960s, at present are prohibited which reflects our society's shift towards increased moral sensitivity. Acts of cruelty are condemned increasingly often. The level of tolerance of various methods and forms of inhuman treatment has reduced. Initially, the Court considered complaints regarding infringement of Article 3 with great caution, describing certain methods and acts without qualifying them as torture. Of greatest importance was the so-called case of Ireland[263] considered by the ECHR in the 1970s. It concerned the use by the British po-

[259] UN General Assembly Resolution 3452 (XXX).

[260] Dz. U. of 1989, no. 63, item 378.

[261] The so-called case of Greece covered the following applications: 3321/67 Denmark v. Greece, 3322/67 Norway v. Greece, 3323/67 Sweden v. Greece, and 3344/67 Netherlands v. Greece.

[262] Cf. A. Kremplewski, *Policja a zakaz tortur oraz innego nieludzkiego postępowania*, w: *Prawa jednostki a prawo karne [Police and the prohibition of torture and other inhuman treatment,* in: *Rights of individuals in criminal law]*. Collective work, edited by M. P. Wędrychowski, Warsaw, Criminal Law Department, Faculty of Law, the University of Warsaw, 1995, pp. 9-39.

[263] Ireland v. the United Kingdom; application no. 5310/71, judgment of 18.01.1978.

lice, in relation to detained persons suspected of terrorism in Northern Ireland, of the "five techniques" (long-term hooding, subjection to noise, wall standing, deprivation of sleep and deprivation of food and drink other than bread and water). Although the European Commission of Human Rights considered the techniques to amount to torture, the Court qualified them only as inhuman and degrading treatment. In the rationale of its judgment, the Court emphasized that the techniques employed by the British police constituted severe and distressing treatment but they did not occasion suffering of the particular intensity, and therefore were considered inhuman treatment[264].

Only in the 1990s, in a number of cases against Turkey, the meaning and definitions of various forms of ill-treatment were significantly extended. It was considered necessary to consider various other aspects of the prohibition of torture (e.g. regarding deportation) in addition to those concerning treatment by the police or prison services. The ECHR also saw the necessity to impose on the states the obligation to develop procedures to protect citizens against such activities, as well as to carefully investigate allegations of torture and inhuman treatment. It was not until 20 years after the judgment in the case of Ireland that the interpretation of torture was extended. A breakthrough judgment was issued in 1999 in the case Selmouni v. France[265]. It related to a several-hour interrogation of the detainee in police custody, during which he was beaten and forced into sexual acts. The ECHR found the police officers guilty of using torture against the detainee. It also emphasized that certain acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. [266]

In its contemporary case law the Court considers torture to be deliberate inhuman treatment causing very serious and cruel suffering[267]. *Inhuman* treatment is one which is deliberately exercised for many hours and causes either physical injury or inflicts intense physical and mental suffering. Treatment may be described as degrading in the case of ill-treatment designed to arouse in victims feelings of fear, anguish and inferiority capable of humiliat-

[264] Cf. S. Sykuna, Tortury w XXI wieku [*Torture in the 21st century*], Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2013, p. 171.

[265] Selmouni v. France (complaint no. 00025803/94, judgment of 28.07.1999).

[266] Cf. S. Sykuna, *Tortury w XXI wieku [Torture in the 21st century]*, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2013, p. 180.

[267] Cf. Al Nashiri v. Poland case (application no. 28761/11, judgment of 24.07.2014).

ing and debasing them and possibly breaking their physical or moral resistance. At the same time, the Court repeatedly held that for punishment to be degrading, the humiliation or debasement involved must exceed a particular level and must, in any event, entail other elements beyond the mere fact of lawful treatment or punishment[268].

The case law of the ECHR and the activities of human rights defenders show that the understanding of the definition of torture is subject to dynamic change and constant evolution, and that new aspects continuously appear in relation to the prohibition itself[269].

Analysis of to-date judgments of the ECHR (1959-2015) shows that violations of Article 3 of the Convention accounted for approximately 15% of all the violations of the articles thereof (2465 cases); including 133 cases relating to torture[270]. Among the countries that most frequently violate Article 3 of the Convention are Russia and Turkey.

In the cases against Poland, to-date the Court has found 45 violations of Article 3 of the Convention, including 2 cases of torture, 34 cases of inhuman and degrading treatment and 9 cases of failure to properly conduct an investigation.

The two judgments relating to torture were issued in 2014 and concerned the treatment of two prisoners by CIA officers in black-site prisons in Poland (the prisoners were held for six months in the back-site intelligence facility in Stare Kiejkuty)[271]. The Court found that Poland had infringed Article 3 by allowing torture and ill-treatment to take place in its territory. In the first place, the Court pointed at the serious infringement in the form of the failure to effectively and diligently conduct an investigation with regard to the allegations of ill-treatment in the period of the CIA custody in Poland. The related proceedings began 6 years after the applicants had been detained and ill-treated, despite the fact that the authorities were aware of the nature and purpose of the CIA's activities. According to the Court's judgment, the detainees were subjected to torture, including two mock executions. The first one was made with an unloaded gun which was then reloaded next to the head of the applicant chained in the sitting position. The other one

[268] Cf. Piechowicz v. Poland (application no. 20071/07, judgment of 17.04.2012).

[269] Cf. *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Tom I. Komentarz do artykułów 1-18* [Convention for the Protection of Human Rights and Fundamental Freedoms. Volume I. Commentary on Articles 1 to 18]. Edited by: L. Garlicki, C. H. Beck, Warsaw 2010.

[270] The statistics are available on the ECHR website.

[271] Cf. Al Nashiri v. Poland (application no. 28761/11, judgment of 24.07.2014) and Husayn (Abu Zubaydah) v. Poland (application no. 7511/13, judgment of 24.07.2014).

was mocked with an electrically powered drill; the applicant was forced to stand naked in his cell, with a hood on his head. The complainant was also subjected to something that was described as *potentially harmful stress position*. It meant that he had to kneel on the floor and lean back. He was also placed in standing stress positions, was pushed, and pulled up from the floor by his shoulders tied on his back with a belt. This could have caused at least shoulder dislocation. He was threatened with his female family members being abused in front of him. With the intention to cause pain, the complainant was also washed with a rigid brush that is normally *used ... to peel off dirt that is hard to remove*[272]. In the light of the above, the Court held that the treatment to which the applicants had been subjected while in the CIA custody in Poland constituted torture within the meaning of Article 3 of the Convention.

As regards violation of Article 3 of the Convention by way of inhuman or degrading treatment or punishment, most of the cases concerned: conditions in which the penalty of imprisonment was served (lack of adequate medical care, overcrowding, long-term isolation, and regime used for dangerous prisoners)[273]; treatment by the police[274] and treatment in sobering-up stations[275].

Analysis of the ECHR judgments shows that despite the existence of numerous safeguarding systems, cases of torture and inhuman treatment still take place. The application lodging system is centred primarily on reacting to situations that have occurred. It allows to assess a given situation and determine the methods of action only after the use of torture or other inhuman or degrading treatment has been disclosed, and thus it fails to work in a preventive manner. Such an approach has led to the search for legislative solutions that protect human rights more strongly. On 26 November 1987, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[276] was drawn up in Strasbourg, gen-

[272] Cf. Al Nashiri v. Poland (application no. 28761/11, judgment of 24 July 2014, point 511.

[273] Case examples: Chyła v. Poland, application no. 8384/08, judgment of 3.11.2015; Klibisz v. Poland, application no. 2235/02, judgment of 4.10.2016; Janusz Wojciechowski v. Poland, application no. 54511/11, judgment of 28.06.2016; Pugžlys v. Poland, application no. 446/10, judgment of 14.06.2016; Karwowski v. Poland, application no. 29869/13, judgment of 19.04.2016.

[274] Case examples: Lewandowski and Lewandowska v. Poland, application no. 15562/02, judgment of 13.01.2009; Artur Mrozowski v. Poland, application no. 9258/04, judgment of 12.05.2009; Pieniak v. Poland, application no. 19616/04, judgment of 24.02.2009.

[275] Wiktorko v Poland, case no. 14612/02, judgment of 31.03.2009.

[276] Dz.U. of 1995, no. 46, item 238, as amended.

erating new challenges. In Article 1, the Convention establishes the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT), whose mission 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 treatment or punishment.

Nearly simultaneously, similar measures were undertaken within the structures of the United Nations. In 1970s, during the 5th United Nations Congress[277], in view of the numerous reports of the use of torture in various parts of the world, the *Declaration on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment* was adopted on 9 December 1975. It was the first international-level document to contain a definition of torture[278] Less than 10 years later, a new definition was set out in the *Convention against Torture*.

For the purposes of the Convention, the term "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 Convention against Torture contains a definition of torture and establishes a complaint body in the form of the UN Committee against Torture which is responsible, inter alia, for examining all communications regarding torture. However, the convention does not refer to the issue of prevention

[277] Cf. A. Kremplewski, *Policja a zakaz tortur oraz innego nieludzkiego postępowania*, w: *Prawa jednostki a prawo karne [Police and the prohibition of torture and other inhuman treatment,* in: *Rights of individuals in criminal law]*. Collective work, edited by M. P. Wędrychowski, Warsaw, Criminal Law Department, Faculty of Law, the University of Warsaw, 1995, pp. 9-39.

[278] UN General Assembly Resolution 3452 (XXX). For the purposes of the Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

of torture and inhuman treatment. Therefore, in the 1970s, a discussion began on the importance of preventing and eliminating such practices[279]. The Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Protocol or OPCAT), adopted on 18 December 2002, crowned the efforts to supplement the torture prevention system. This way the international community officially expressed its opposition to the use of torture and other cruel, inhuman or degrading treatment.

According to the Protocol, one of the most effective ways to prevent torture is to establish a preventive system of regular visits to places of detention. The protocol provides for the establishment of the so-called *international preventive mechanism* as well as *national preventive mechanisms*. According to the OPCAT, each State Party shall allow visits, in accordance with the present Protocol, by those mechanisms, to any place under its jurisdiction and control 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.

The specific innovativeness of the OPCAT arises from the complementary nature of the preventive visits conducted, on the one hand, by the international body and, on the other hand, by one or more national preventive mechanisms that the signatory States are required to establish upon ratification of the Protocol. This two-pillar approach implements the idea of monitoring places of detention at the national level[280].

As the international preventive mechanism, the Subcommittee on Prevention (SPT) was established within the United Nations Committee against Torture which operates pursuant to the provisions of the Convention against Torture. The mandate of the SPT covers, in particular, the power to conduct visits on the territories of States Parties, make relevant recommendations, cooperate and provide advice and assistance to national preventive mechanisms (Article 11 OPCAT).

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[279] Already at that time, several international organizations joined their forces to find further more pragmatic measures to prevent such infringements. Swiss philanthropist Jean Jacques Gautier, inspired by the results of visits to prisons, conducted by the International Committee of the Red Cross during world war II, sought to create a system of regular visits to all places of detention across the world. In 1977, he established the Association for the Prevention of Torture (APT), an independent NGO based in Geneva, which from its earliest days has been supporting his simple but innovative principle that visits to places where people are deprived of their liberty are the most effective method of preventing torture and ill-treatment. For many years, APT members have sought to create such a system within the UN structures.

[280] Cf. *Monitoring places of detention*. Practical Guide, Geneva, April 2004, p. 7.

On the national level, the OPCAT provides for the establishment of so-called national preventive mechanism. According to Article 3 of the OPCAT, each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism). The mandate of national preventive mechanisms includes, in particular, the power to examine the treatment of persons deprived of their liberty in places of detention, to make recommendations to the relevant authorities, and to submit proposals and observations concerning existing or draft legislation. As in the case of the SPT, national preventive mechanisms shall be granted broad powers to access places of detention and to interview persons deprived of their liberty[281].

Deprivation of liberty, according to Article 4 of the OPCAT, 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. The concept of a place where people are deprived of their liberty is used in a broad sense: it applies to any place where a person is deprived of his/her liberty, including a prison, police station, closed detention centre for migrants or refugees, juvenile social rehabilitation centres, social care homes, live-in nursing homes for senior, disabled and chronically ill persons, psychiatric care institutions, military detention centre and other places where people are deprived of their liberty.

It should be emphasized that OPCAT was the first document to grant such broad powers to entities and to take action with the aim to eliminate torture and inhuman treatment. While the CPT and the UN Committee against Torture may examine cases only where there are justifiable allegations of recurrent use of torture in the States Parties, this requirement does not apply to the preventative visits under the OPCAT. Furthermore, OPCAT provides for the possibility to conduct regular and unannounced visits of international and national experts to all types of places where people are deprived of their liberty.

The protocol does not specify precisely which type of institution should act as a national preventive mechanism. It only contains the requirement to guarantee the functional independence of national preventive mechanisms and the independence of their personnel.

[281] Cf. Articles 19-20 OPCAT.

Poland ratified OPCAT in 2005[282]. The country's national preventive mechanism was established in 2008. The role was entrusted to the Commissioner for Human Rights who, pursuant to Article 1(4) of the Act of 15 July 1987 on the Commissioner for Human Rights[283] holds the function of the visiting body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (the national prevention mechanism).

Accordingly, the Department for the National Mechanism for the Prevention of Torture (hereinafter: the NMPT), operating within the structure of the CHR Office, conducts unannounced preventive visits to all types of places of detention. In the period 2008 - 2016 the NMPT representatives visited a total of 934 such places.

Based on to-date experience of the NMPT activities in Poland it can be concluded that undoubtedly, regular visits to places of detention constitute an effective method of preventing torture and other forms of ill-treatment. Discussions with managers and staff members of the visited establishments and problems indicated by them frequently provided a basis for initiating a dialogue with relevant state authorities on improving the situation in the facilities. Moreover, the possibility of unannounced inspection visits by an external entity may have a significant deterrent effect. Visits by independent experts also enable first-hand consideration and examination of the case, without the need to use intermediaries.

Finally, it should be emphasized that the role of the national preventive mechanism is not only to identify violations, but also to constructively cooperate with all entities responsible for the functioning of places of detention. This approach undoubtedly allows to implement long-lasting improvements.

[282] Dz. U. of 2007 no. 30, item 192.
[283] Dz. U. of 2014, item 1648.

2. Cases of torture identified by the courts in 2016

Prevention of torture consists not only in the regular monitoring of places of detention by way of visiting them, but also in conducting educational and information activities. Consequently, the NMPT on annual basis analyses final judgments delivered under Article 246 of the Penal Code.

In 2016, 6 judgments became final, pursuant to which a total of 9 police officers were convicted under Article 246 of the Penal Code (hereinafter: the PC)[284]. The article provides that *a public officer or any other person acting under his orders, who uses force, unlawful threat, or otherwise torments another person, either physically or psychologically, for the purpose of obtaining specific testimony, explanations, information or a statement shall be subject to the penalty of deprivation of liberty for a period from 1 to 10 years.* In view of the fact that in the period 2008 - 2015 courts delivered final judgments convicting a total of 33 officers in 22 cases, it should be emphasized that the scale of the use of torture by the police is increasing.

For the needs of this Report, representatives of the NMPT have analysed the final court judgments from the point of view of three basic safeguards that protect persons deprived of their liberty against torture. These are: access to a lawyer, the right to a medical examination and the right of the person concerned to have the fact of his/her detention notified to a third party [285].

The analysis of the contents of the indictments and the judgments delivered in 2016 clearly indicates that the acts committed by the police officers concerned constituted torture as defined in the United Nations Convention

[284] Data as per the National Criminal Record. Analyzed cases: District Court (DC) in Bełchatów, file no. II K25/15; DC in Tarnowskie Góry, file no. VI K539/15; DC in Pruszków, file no. II K375/13; DC Warsaw Praga Południe, file no. III K 1131/13; DC Warszawa Śródmieście file no. V K 822/13. The judgment of the DC in Kłodzko, issued in the case II K 725/12, was revoked and referred back for reexamination in relation to one of the two defendants.

[285] The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) indicates three fundamental safeguards against the ill-treatment of detained persons by the police: the right of access to a lawyer, the right to request a medical examination by a doctor of his/her choice and the right of the person concerned to have the fact of his/her detention notified to a third party. Cf. Article 36 of the CPT's Second General Report [CPT Inf (92)3].

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984[286] (hereinafter: the Convention).

According to the descriptions contained in the analysed case files, the officer's actions had various forms of physical and psychological violence against the detained persons: the officers, among others, insulted the detainees, humiliated them, pushed, jerked, slapped on the face several dozen times with an open hand in a leather glove, hit on the heels with a truncheon, kicked all over their bodies, choked by putting a plastic bag on the head, subjected to waterboarding by having the head held in washbasin, lifted by the cuffed hands and then threw on the floor, stood on detainee's chest, used tear gas launchers, hung by the hands cuffed on the back. In one case a detainee was threatened with rape, and in another case, threatened he would be beaten.

The victims of the violence were not persons suspected of committing any severe crimes, or members of organized criminal groups. They were suspects and perpetrators of minor offenses (possession of small amounts of marijuana, theft of garden lamps, theft of a bicycle).

In a case pending before the District Court in Bełchatów[287] the victim was a young female student detained as a witness in the case concerning organized crime. At the police station, the detainee was many times insulted, ridiculed, jerked and pushed. One of the interrogating officers showed her stains on the room's walls and suggested they occurred as a result of beating a person up and that the same may be done to her. The young person's treatment by the officers resulted in her long-term psychological suffering which had to be treated by way of psychotherapy.

In another case[288], the victims of torture were young men detained for theft of garden lamps. The person who reported the offence did not recognize them as the perpetrators. Still, they were detained and transferred to the Municipal Police Headquarters in Piekary Śląskie, where the officers used physical and psychological violence to force them to admit guilty of other offences regarding property, whose perpetrators had not been identified. The men were seated on chairs while being handcuffed by a single pair of handcuffs. Each of them was then hit on the face several dozen times with an open hand in a glove. One of them started bleeding, the officer told him to go to the bathroom and get washed. The men were still handcuffed. While

[286] Dz. U. of 1989, no. 63, item 379.

[287] File no. II K 25/15.

[288] District Court in Tarnowskie Góry, file no. VI K 539/15.

they were in the bathroom, the bleeding detainee fainted. The officer told the other man to pull his friend along the floor into the room. When he was doing this, the officer kicked both detainees. When they were back in the room, the officers decided to transfer the detainees to a sobering-up facility. The records of the detainees' transfer to the facility, drawn up by the officers, contained no mention of the injuries.

Notably, the officer who used torture against the detained men has been convicted not only for using it in that specific case, but also for the abuse of powers (Article 231 of the PC) during an intervention at a private flat against a man who resisted the officer and tried to attack him with a knife. During the incident, the detained man fell on the floor after one of the officers kicked him. He was then handcuffed with the hands on his back. He tried to kick the officers, so they placed a ladder on his legs, and then kicked him and beat him with a truncheon all over the body. As a result of the kicking, a hole was made in a wall of the room in which the man was detained. After leaving the flat, the officers called an ambulance. A doctor who examined the detainee noticed several bruises and bleeding from the nostrils, but the patient made it impossible to continue the examination. After the detainee was transported to the sobering-up facility, he lost his consciousness. Thus, he was transported to hospital and thoroughly examined. In the course of the later interrogation regarding the abuse of powers by the police officers, the doctor from the hospital emergency unit, who examined the man brought from the sobering-up facility, explained that the man looked *as if someone had beaten him all around his body, place after place. Probably with a truncheon, as the marks were very specific, typical of a longitudinal object, they were about 20-30 cm long and 4-5 cm wide.* Taking into account that in both cases physical violence was used by the same officer, as well as the type of acts committed against the detainees and the scale of physical injuries caused by him, in the opinion of the NMPT representatives the police officer has obvious problems with aggression. He was, notably, sentenced to 1 year and 6 months of imprisonment, suspended conditionally for 2 years, and was prohibited to work as police officer for 2 years.

The cases of torture were reported to have taken place within the premises of police units.

Only in two cases, the victims of torture actively resisted the officers during the police interventions (tried to escape, refused to get into a police car, refused to leave the apartment, attacked a police officer with a knife). In the other cases the courts, during the proceedings, confirmed that the victims

behaved peacefully: they did not resist the police officers, answered questions during the interrogations, there was no need to use direct coercion. The officers convicted under Article 246 of the PC from the very beginning were seeking confrontation. They used violence against the detainees without warning, and the victims were handcuffed and could not defend themselves.

The brutality and intimidation experienced by the victims of torture has definitely influenced their decision not to file a formal notification of a suspected crime. Only one of the detainees requested a medical examination and then filed a notification of a suspected crime to the prosecutor's office. In the other cases, the proceedings were initiated by the victims' relatives.

In the analysed cases, the penalties adjudicated by the courts were suspended. In two cases, the court adjudicated the prohibition to work as police officer for 2 years.

The above mentioned cases clearly demonstrate there are instances of use of torture in Poland, despite the fact that the crime of torture is not provided for in the Penal Code The acts committed against the detained persons by the police officers can be classified as torture in the meaning of Article 1 of the Convention. The NMPT hopes, therefore, that the proposed safeguards aimed at protecting the citizens against such risks, as set out in the intervention of the Commissioner for Human Rights to the Minister of Justice of 18.04.2017, will be fully accepted[289].

[289] More information on the subject is available from the CHR's general intervention to the Minister of Justice of 18.04.2017, ref. no. KMP.570.3.2017.

3. Use, in psychiatric care facilities, of direct coercion at patient's request, in the form of restraining the patient

The Act of 19 August 1994 on Mental Health Protection [290] (hereinafter: AMHP) provides for the possibility of using direct coercion with regard to patients of psychiatric wards. The forms of direct coercion may include: holding the patient down (to prevent him/her from moving, by applying physical force), compulsory administration of a medicinal product (as rescue therapy, or as pre-planned therapy, applied without the patient's consent), restraining a patient (with the use of safety straps, handles, sheets, straitjacket or other technical equipment), insolation (placement of a person in a closed and properly adjusted room). The implementing regulation i.e. the Regulation of the Minister of Health of 29 June 2012 on the use and documentation of direct coercion and the assessment of the necessity of its use [291] (hereinafter: the Act) sets out specific methods of applying direct coercion and assessment of reasons for its use.

The use of direct coercion with regard to psychiatric patients violates their personal and bodily integrity and therefore should be subject to strict supervision. It may not be used in situations other than those provided for by the law.

Article 1 of the AMHP permits the use of direct coercion in a patient who:

1. takes action targeted against life or health, and thereby:
   a) poses a risk to his/her own live or health, or to the lives or health of other persons,
   b) poses a threat to public safety and security,
2. violently destroys or damages objects in his/her vicinity, or
3. severely disturbs or disables the operation of the healthcare institution providing psychiatric health care (…).

[290] Dz. U. of 2016, item 546.
[291] Dz. U. of 2012, item 740.

As noted by Piotr Gałecki and King Bobińska[292], *action targeted against life or health means a violent and drastic action posing a risk to the health or life of the person taking the action or to the health or lives of other people. It may consist in a suicide attempt, self-aggressive acts including self-injury, or aggression towards other people. Action targeted against public security means any behaviour that poses a threat to public security, not necessarily consisting in aggressive behaviour (e.g. arson, i.e. setting fire). A situation when a person violently destroys or damages objects in his/her vicinity is usually a manner of strong emotional expression combined with aggressive behaviour. The aggression is targeted against objects in the person's vicinity. Such behaviour entails strong disorientation, unpredictability and inability to manage one's own actions, which generates a direct threat to the safety of those in the vicinity.*

The act of disturbing or disabling the operation of the healthcare institution providing psychiatric health care is a very imprecise term that can lead to abuse of direct coercion, particularly against patients who are difficult to deal with and unwilling to comply with the personnel's instructions. It should be emphasized, however, that such behaviour may be a reason only for holding the patient down, or compulsory administration of a medicinal product.

According to Article 2(18) of the AMHP, decision on when and how to use direct coercion is taken by a physician who is also responsible for supervising such measures. If it is not possible to have the decision taken immediately by a physician, it has to be taken and supervised by a nurse who should immediately notify the physician. Prior to the use of direct coercion, the patient has to be informed of the possibility of its use which has to be indicated in the medical documentation. Any justified use of direct coercion by a nurse has to be approved by a physician, or otherwise discontinued. When using direct coercion, the method least discomforting for the patient should be applied, and if the patient subjects himself/herself to the medical procedure and cooperates in the treatment, the coercion should be immediately discontinued[293].

During the visits to psychiatric care facilities, the NMPT representatives identified the practice of using direct coercion at patient's request. Personnel members who applied direct coercion to patients explained that the patients

[292] Cf. P. Gałecki, K. Bobińska, *Ustawa o ochronie zdrowia psychicznego Komentarz* [teh Act on Mental Health Protection. A commentary], Warsaw, 2016, p. 125.

[293] Ibidem, p. 128.

themselves feel best when they need to be restrained with straps, due to sudden deterioration of their health condition. In many cases, personnel members also pointed out that during the evening and night hours there are not enough doctors and nurses to be able to conduct the direct coercion procedures in accordance with the law. Thus, direct coercion is used at patient's request, for the good of the patients, prior to their aggression attacks.

It must be firmly emphasized that the current legislation does not provide for the use of direct coercion upon the patient's request or demand. In the opinion of representatives of the Polish Psychiatric Association, it is inappropriate to use direct coercion (straps) at patient's request, in an automatic manner and without professional verification, only because of a *possibility* of the occurrence of aggression, self-aggression or disturbance in the operation of the healthcare institution. Moreover, the purpose of restraining a patient is to control his/her psychomotor excitement, violence and destructive behaviour, as well as to eliminate direct threat to the patient and other persons, rather than to prevent the occurrence of such behaviour. Professor Antoni Kępiński is of the opinion that a restrained person perceives threat more strongly than a person who is able to move freely. The lying position indicates the person's vulnerability and the advantage on the side of people around him/her. According to Prof. Jacek Wciórka, MD, Director of the 1st Psychiatric Clinic of the Institute of Psychiatry and Neurology in Warsaw, medical personnel should not automatically comply with such requests of patients, but instead should provide to them appropriate therapy or psychological support to neutralize the future attacks. If such requests are fulfilled, in certain patients specific habits may develop, which is definitely against the purpose of the treatment.

4. The conditions of imprisonment in detention centres assessed by the representatives of the National Mechanism for the Prevention of Torture as positive

SCH's Elbląg – modern bathroom facilities

SCH's Elbląg – patio for residents

SCH's Kielce - dining room

SCH's Kielce – day room

SCH's Kielce – resident room

SCH's Moryń – residents room

Youth care Centres Gostchorz – gym for the children

Youth care Centres Gostchorz – common room for young people

5. The conditions of imprisonment in detention centres assessed by the representatives of the National Mechanism for the Prevention of Torture as negative

Psychiatric hospital Lębork – ward

Psychiatric hospital Lębork – ward – cramped beds

Prison in Wołów – cell

Prison in Wołów – sanitary facilities in one of the cell

Prison in Wołów – sanitary facilities