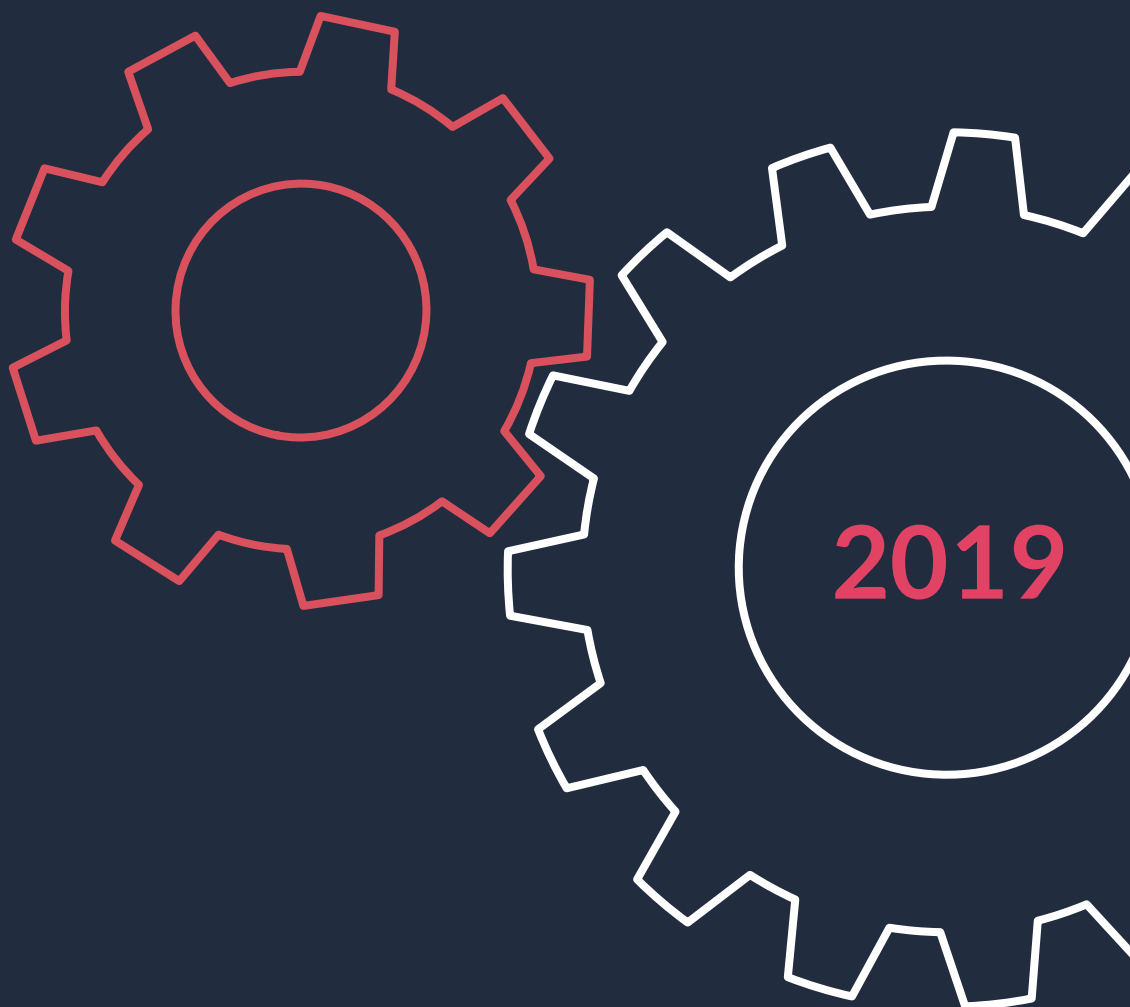


**NATIONAL MECHANISM FOR PREVENTION
OF TORTURE IN POLAND IN 2019**
summary of the Ombudsman's report



RZECZNIK PRAW OBYWATELSKICH

Report
of the Commissioner for Human Rights
on the activities of the
National Mechanism for the
Prevention of Torture in Poland
in 2019



RZECZNIK PRAW OBYWATELSKICH

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PREAMBLE

Torture is one of the gravest violations of fundamental human rights. 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 security¹.

Prevention constitutes the foundation for building a torture-free and inhumane treatment-free culture of any state. The significance of prevention was noticed by the United Nations which in 1992 appointed a working group responsible for preparing the draft of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Protocol was adopted by the United Nations General Assembly on 18 December 2002 and it entered into force in 2006.

Prevention is a brand-new approach to counteracting torture. In line with the OPCAT the main emphasis should be placed on diagnosing the threats and not on interventions conducted *post factum*, i.e. after the violation of the rights of the person deprived of freedom. This is the purpose of the inspection visits to places of detention conducted by the National Mechanism for the Prevention of Torture (NMPT). In the aftermath of such visits the representatives of the NMPT indicate areas which require improvement both, in terms of individual as well as systemic problems.

In compliance with the OPCAT, torture prevention is not only limited to the appointment of the National Mechanism for the Prevention of Torture. It also consists in cooperation with the UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). For the Optional Protocol to be truly effective all those entities must maintain a constructive dialogue. Therefore, it is not the objective of the Preventive Mechanism to criticize the authorities responsible for the places of detention but to offer support in joint efforts aimed at enhancing the protection of persons deprived of liberty against torture and other, inhuman treatment. Recommendations issued by the NMPT after inspection visits strive to support the activities undertaken by the entities responsible for the operation of places of detention.

The present document constitutes the twelfth report on the activities of the National Mechanism for the Prevention of Torture in Poland. It presents advisory activities undertaken by the Team, challenges that we faced when implementing our mandate as well as the most significant observations from preventive visits, including systemic problems.

I hope that you will find the present Report of the Polish Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in 2019 an important source of information and that it will contribute to improvement and proper operation of different types of places of detention in our country in compliance with international standards.

Adam Bodnar, Ph.D.
Commissioner for Human Rights

¹ Ireland vs. Great Britain, ruling of 18 January 1987, application no. 5310/71.

INTRODUCTION

Another annual Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland shows serious problems of legal nature as well as disturbing practices employed against persons remaining in places of detention by bodies which, in principle, should guard human rights. The report constitutes an illustration of the operation of places of detention, their weaknesses but also best practices. Yet, best practices constitute only a small fragment of this document. The NMPT draws our attention to areas that require immediate remedial actions. In that context we write about the ill-treatment of persons residing in places of detention, violating their dignity as a result of, *inter alia*, disproportionate use of means of direct coercion, improperly conducted personal searches, lack of access to a doctor, failure to provide sufficient area per detainee in a residential cell as prescribed by international standards and other oppressive actions which bring about regress in the conduct of persons in places of detention and run counter to the contemporary principles of rehabilitation.

The Report of the Commissioner of Human Rights on the activities of the National Mechanism for the Prevention of Torture reveals, therefore, the weakest points in the operation of places of detention, demonstrating that the fundamental safeguards against ill-treatment and torture fail. The fact that the definition of torture is not included in the Criminal Code creates a sense of a mild treatment of the perpetrator. The failure to register official duties carried out by officers in relation to persons deprived of their freedom limits preparatory inquiries and gives rise to the belief that the conduct of the Police and prison service is beyond control. Lack of access to a lawyer from the moment of apprehension through later stages of the proceedings restricts the right to defense of the person who is, *de facto*, deprived of liberty. Unavailability of a doctor, in turn, violates the right of the detained to guarantees related to the protection of their health, which, upon deprivation of liberty, should be executed by the state. For all those reasons, apart from presenting the national point of view, it is also important to follow international standards which constitute a significant reinforcement not only for the activities of all NMPT but also for all places of detention.

Reports of international organizations demonstrate dysfunctions in the operation of state institutions which often lead to major breaches of fundamental rights of persons remaining in isolation. Reports of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT), final observations of the UN Committee against Torture (CAT) or a report accompanied by the recommendations of the UN Subcommittee on on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) create a consistent picture of problems which still need to be solved. Over the last 30 years, the CPT conducted hundreds of visits to member states, held numerous meetings with representatives of national institutions with respect to the implementation of recommendations associated with the prevention of torture and inhumane treatment. The CPT is implementing the procedure of automatic publication of documents related to inspection visits, which the CHR in Poland argued for on multiple occasions. In 2019 the CPT paid the first *ad hoc*

visit which covered Police units. Its objective was to assess the implementation of recommendations concerning the treatment of detainees in police custody.

This Report of the Commissioner for Human Rights constitutes a diagnosis and up to a certain extent a response to problems associated with the implementation of CPT standards and execution of recommendations comprised in the report from the visit to Poland in 2017. The CPT report presents shortcomings concerning effective implementation of multiple recommendations, particularly in terms of anti-torture guarantees that every person has the right to from the moment of detention.

International organizations examine the fulfillment of treaty obligations concerning the prohibition of torture by states which are signatories of the UN Convention against torture. Problems with the implementation of those obligations formulated by the CAT were the subject of a dialogue between the representatives of the CHR and non-governmental organizations. On the basis of the alternative report on the implementation of the provisions of the convention against torture and other cruel, inhuman or degrading treatment or punishment the representatives of the CHR presented some areas of risk concerning the implementation of the convention. The alternative report concerns, among other things, the missing definition of the offense consisting in torture, the situation of persons deprived of their liberty as well as limitations related to the provision of legal aid, violence against women and domestic violence, refugees and asylum-seekers, temporary detention as well as functioning of persons detained in prisons, including sensitive groups, counteracting discrimination, abortion-related problems, torture-forced evidence, amendments in law associated with the reform of the judicial system and the operation of the NMPT.

The annual Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland is a sum of experiences resulting, primarily, from visits to numerous places of detention with due consideration given to international standards, which makes this Report a comprehensive document in terms of the presentation of the problem of prevention of torture and inhuman or degrading treatment or punishment.

Hanna Machińska, Ph.D.
Deputy Commissioner for Human Rights

PART I

– What is the NMPT?

In 2019 the National Mechanism for the Prevention of Torture conducted **73 unannounced visits** to various types of places of detention as well as **18 training workshops** for the representatives of occupational groups who in their everyday work with persons deprived of liberty may encounter victims of torture or other forms of ill-treatment.

Organization of work of the National Mechanism for the Prevention of Torture

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions².

The Commissioner for Human Rights is the body which is performing the role of the National Mechanism for the Prevention of Torture in Poland.

The Commissioner shall perform the role of a visiting body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (national preventive mechanism) within the meaning of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in New York on 18 December 2002 (Journal of Laws [Dz. U.] of 2007, item 192)³.

The national mechanism for the prevention of torture is composed of employees of the NMPT Team as well as external specialists.

- The National Mechanism for the Prevention of Torture constitutes one of the departments operating within the Office of the CHR. In 2019, the department's Team consisted of 10 specialists and an employee working as a secretary. Przemysław Kazimirski is the Director of the NMPT and the supervision over the activities of the Department is exercised by Deputy

² Article 17 OPCAT.

³ Article 1(4) of the Act of 15 July 1987 on the Commissioner for Human Rights (consolidated text: Journal of Laws [Dz. U.] of 2020, item 627).

Commissioner for Human Rights, Hanna Machińska, Ph.D. Pursuant to OPCAT provisions, employees of national preventive mechanisms should have relevant skills and diversified professional knowledge as well as constitute a representation of men and women. Staff members working for the Mechanism have relevant education in the fields of law, sociology, political sciences, rehabilitation, psychology and criminology. The NMPT Department is supported by employees of the Commissioner for Human Rights' regional representative offices located in Gdańsk, Wrocław and Katowice. Pursuant to the agreement concluded between the NMPT and CHR's regional representatives, in each regional office an employee has been designated who, apart from working for the office, also participates in 3 preventive visits under the Mechanism, held in establishments located in the area for which a given CHR's representative is responsible.

- **Composition of the National Mechanism for the Prevention of the Torture in 2019:**

Przemysław Kazimirski – Director of the NMPT; lawyer

Marcin Kusy – Deputy Director; lawyer

Grażyna Kalisiewicz – employee of the secretary's office, lawyer

Justyna Józwiak, Ph.D. – sociologist

Rafał Kulas – lawyer

Justyna Zarecka – political scientist in the field of internal security

Klaudia Kamińska – lawyer

Michał Żłobecki – lawyer

Aleksandra Osińska – psychologist

Aleksandra Nowicka – criminologist, security specialist (in NMPT since 10.06.2019)

Magdalena Dziedzic – lawyer (in NMPT since 1.07.2019)

Tomasz Górecki – psychologist, psychotherapist (in NMPT until 30.06.2019)

- During the visits, the team is supported by external experts: physicians – psychiatrists, geriatricians, internal medicine doctors as well as professionals specializing in issues that constitute the focus of NMPT visits.
- In 2019 the NMPT commenced discussions concerning the cooperation with Polski Czerwony Krzyż [Polish Red Cross] (PCK). The cooperation is supposed to consist in using the assistance of PCK medical experts during the NMPT's visits to places of detention as well as in mutual promotion of the activities of the CHR and PCK.

EXPERT COMMITTEE

The scope of tasks and issues covered by the National Mechanism for the Prevention of Torture in many cases requires specialist knowledge and professional experience. Therefore, since 2016 the CHR's Expert Committee (EC) on the National Preventive Mechanism has been in operation. On 12 September 2019 the Committee met in full composition. Furthermore, a working group was established with a view to preparing an opinion on non-standard forms of safeguarding patients in nursing facilities and social care homes inspected by the NMPT. NMPT experts also participated in a number of inspection visits and in the 3rd Congress on Human Rights.

In June 2019 the EC of the NMPT issued a statement⁴ with regard to attacks perpetrated, among others, by politicians on the Commissioner for Human Rights in the media (including public television). The attack took place after the National Mechanism for the Prevention of Torture issued a statement concerning the treatment of the person suspected of a cruel murder on a 10-year-old girl⁵. The Police posted a video on the Internet from the apprehension of the man showing how police officers are escorting (dragging) the suspect with joined shackles on his hands and feet wearing only underwear and no trousers. Later, another picture appeared on the Internet showing inquiry operations involving the same man, who was still only wearing underwear. Moreover, what was visible in that picture was the face of the man, which constituted an evident breach of the presumption of innocence. The Expert Committee of the NMPT fully supported the content published in the Statement of the National Mechanism for the Prevention of Torture and expressed appreciation for the activity of the CHR and employees of the NMPT.

Financing of the NMPT

Expenditures on the activities of the NMPT are covered from the state budget allocation received by the CHR. According to the Annual Report on the Activity-Based Expenditures of the State Budget and of the European Funds Budget, in 2019 the Office of the CHR disbursed **2 698 743,77 zł** for the operation of the National Mechanism for the Prevention of Torture.

Polish state, despite the provisions of OPCAT and the Paris Principles⁶, from the very beginning of the execution of the tasks of the national preventive mechanism by the Commissioner has not been allocating sufficient means for that purpose. The insufficient budget allocated for the operation of the Commissioner for Human Rights translates directly into the impossibility to fully exercise the mandate of the National Mechanism for the Prevention of Torture.

⁴ <https://www.rpo.gov.pl/pl/content/oswiadczenia-w-sprawie-ataku-na-rpo-adama-bodnara-po-stanowisku-kmpt>.

⁵ <https://www.rpo.gov.pl/pl/content/Po-zatrzymaniu-mezczyzny-podejrzanego-o-zabojstwo-w-mrowinach-oswiadczenie-KMPT>.

⁶ Adopted by the resolution of the UN General Assembly, no. 48/134 of 23 December 1993. 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.



CAT

Poland should allocate financial resources required by the Office of the Commissioner for Human Rights in order to enable the execution of its mandate and significantly increase the means of the National Mechanism for the Prevention of Torture to allow it to effectively operate, employ necessary specialized personnel and fully execute its mandate (...)⁷.



SPT

The Subcommittee recommends that Poland should in the first place allocate financial resources to the mechanism in compliance with the requirements specified in Article 18(3) of the Optional protocol and guidelines of the subcommittee concerning national preventive mechanisms (...)⁸.

⁷ Cf. Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, Art. 24 (a).

⁸ Report of the SPT visit to Poland, CAT/OP/POL/ROSP/1, Art. 20.

PART II

– How does the NMPT work?

The powers of the National Mechanism for the Prevention of Torture are laid down in Article 19 of the OPCAT. Although the primary method of work indicated by OPCAT is conducting of preventive visits to places of detention, such visits constitute only a part of the process aimed at ensuring a better treatment of persons deprived of their liberty. In order to prevent torture and inhuman treatment it is also necessary to take other measures including education, training and actions increasing public awareness, as well as advisory activities such as recommendations of changes in law and commenting on draft legal acts.

NMPT'S work methodology

The National Mechanism for the Prevention of Torture has the right to visit all places of deprivation of liberty in Poland⁹. Such places include all establishments (public or private ones) 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 acquiescence¹⁰.

THE NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE CARRIES OUT PREVENTIVE VISITS WHICH DO NOT RESULT FROM COMPLAINTS. SUCH VISITS ARE UNANNOUNCED.

During the visits, the Mechanism's representatives may record sound, with the consent of individuals who are going to be recorded, as well as hold meetings with persons deprived of their liberty without the presence of other parties and meet individuals who, at their discretion, may provide significant information¹¹.

In all the establishments visited, the NMPT follows the same methodology. The first stage is to establish the composition of the visiting team¹².

The visiting team consists of several persons, with one person performing the role of a group coordinator who is responsible for drawing up a visit report. Two persons, including the team coordinator, inspect the premises and buildings of the establishment, while others conduct individual conversations with persons deprived of their liberty. External experts participating in visits draw up expert opinions concerning a specific aspect of the operation of the inspected place which are later incorporated in the visit report.

⁹ Article 19 OPCAT.

¹⁰ Article 4 OPCAT.

¹¹ Cf. Art. 13(1a) of the act on the CHR.

¹² According to OPCAT provisions, experts of the national preventive mechanisms should have the required capabilities and professional knowledge.

The duration of a specific visit depends on the size of the visited establishment and 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 and video surveillance footage,
- formulation of preliminary post-visit recommendations,
- listening to the establishment managers' opinions on the presented recommendations.

If a person deprived of his/her liberty reports an unlawful event during the visit and expresses the desire to have it investigated, he/she has the opportunity to lodge an official complaint. The complaint is then forwarded to the competent team within the Office of the Commissioner for Human Rights.

Yet, if the person does not consent to addressing the issue officially, the visiting team shall only use the information for the purposes of analyzing the operation of mechanisms intended to protect persons deprived of their liberty against degrading, inhuman treatment or punishment as well as against torture and for the purpose of presenting relevant recommendations.

PURSUANT TO ARTICLE 21 (1) OPCAT NO PERSON (E.G. INMATE, ESTABLISHMENT'S EMPLOYEE, FAMILY MEMBER, ANOTHER INDIVIDUAL) OR ORGANIZATION THAT PROVIDED THE NMPT WITH INFORMATION SHALL BE SUBJECT TO ANY SANCTIONS OR HARM FOR THAT REASON, REGARDLESS OF WHETHER THE INFORMATION IN QUESTION WAS TRUE OR FALSE.

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 authorities. If the establishment's management does not agree with the recommendations, the NMPT 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 may strengthen the protection of the rights of persons deprived of their liberty at the visited place.

During the visits, NMPT employees use the following measuring and recording devices: CEM DT-8820 multimeters, Makita LDO60P laser rangefinders and digital cameras.

SOCIAL CAMPAIGN STATE WITHOUT TORTURE

In December 2018 the Commissioner for Human Rights launched a social campaign *State without torture* which was implemented throughout 2019. The partners of the project include the Council of Europe, the Office for Democratic Institutions and Human Rights/Organization for Security and Cooperation in Europe, Supreme Bar Council, National Council of Legal Advisors, Association for the Prevention of Torture (APT) in Geneva and Kantar Millward Brown. The campaign aims at the initiation of discussion on the problem of torture in Poland and the need to introduce legal regulations constituting effective safeguards. What is of paramount importance is raising the social awareness about what constitutes torture and who may be affected by it. The experience of the NMPT shows, namely, that it is frequently persons with low social awareness, very often minors but also individuals with disabilities who fall victim to torture. It is also vital to build a culture of no tolerance to torture in the society.

As part of the campaign the representatives of the National Mechanism for the Prevention of Torture initiated training addressed to members of occupational groups who in their everyday work may encounter victims of torture or other ill-treatment.

MORE THAN 500 OFFICERS COMPLETED TRAINING AS PART OF COOPERATION WITH 8 VOIVODESHIP POLICE HEADQUARTERS

Because in the survey *Torture-Poles' opinions*¹³ as many as 87% of the respondents indicated that after 1989 in Poland there have been cases of torture and the Police was believed to be the perpetrator, it is the police officers that became the main addressee of the above-mentioned training program. In 2019 four employees of the NMPT – Klaudia Kamińska, Aleksandra Osińska, Justyna Zarecka and Michał Żłobecki – held meetings with 15 training groups in 8 Polish cities¹⁴. The training was attended by both, officers who on a daily basis perform duty in rooms for detained persons, police emergency centres for children as well as officers in managerial positions, including heads of prevention departments, heads of transport departments as well as municipal and poviats commanders. Discussed topics included, among other things, the definition of torture as well as national and international regulations and standards concerning torture prevention in places of detention and the analysis of selected judicial decisions of the European Court of Human Rights. The representatives of the NMPT also discussed systemic problems and best practices observed during visits. Meetings with officers were based on a dialogue and exchange of experiences. On the one hand, they allowed one to promote the mission of the NMPT and inform about the specific nature of conducted inspection

¹³ The survey was conducted at the turn of September and October 2018 by Kantar Millward Brown at the initiative of the Commissioner for Human Rights.

¹⁴ Lublin, Rzeszów, Bydgoszcz, Olsztyn, Warszawa, Gdańsk, Kraków, Kielce.

visits and on the other, to better understand the problems facing officers on a daily basis. Meetings were organized owing to the involvement of the plenipotentiaries of voivodship commanders for the protection of human rights. In 2019 they were attended by over 500 officers.

The NMPT also initiated cooperation with the Education Development Centre in Sulejówek. Three meetings with representatives of the NMPT were held as part of cyclical training sessions conducted for the employees of youth care centres and youth socio-therapy centres. What was discussed during those meetings were problems observed by the NMPT during visits to facilities for minors, particularly in terms of ensuring minimum anti-torture guarantees.

As part of internships for law students organized in the Office of the Commissioner for Human Rights from July to June, employees of the NMPT assumed the roles of supervisors during study visits to penitentiary units in Warsaw¹⁵. Meetings constitutes a good occasion for trainee lawyers to see first-hand what places of detention look like and learn more about the National Mechanism for the Prevention of Torture. Representatives of the NMPT emphasized the significant role that attorneys and legal counsels play in ensuring fundamental rights to detained individuals.

Various informational materials, including two video spots prepared by APT concerning the role of the national preventive mechanisms as well as changed police interrogation methods were presented during the meetings and training sessions organized by the NMPT. Polish language versions were prepared thanks to the support provided by the Supreme Bar Council and the National Chamber of Legal Advisers. Moreover, as part of the cooperation with the Supreme Bar Council various infographics were prepared illustrating the rights of persons subjected to torture or witnessing torture as well as the role, tasks and work methodology of the NMPT and judicial decisions of the European Court of Human Rights with regard to torture, inhuman and degrading treatment and punishment.

What was also prepared was the new version of the NMPT informational leaflet which is distributed during visits to places of detention. The leaflet comprises information about the role and operation of the National Mechanism for the Prevention of Torture, definition of torture and the nature of preventive visits. Leaflets contain contact details for the victims or witnesses of torture and they are handed by persons performing preventive visits to both, persons deprived of their liberty as well as employees of places of detention. Additionally, it should be observed that those leaflets have been translated into 4 foreign languages: English, Russian, Ukrainian, Vietnamese. They are available on the website¹⁶.

What has been created as part of the campaign is also the poster *No to torture*, designed by Luka Rayski known, among other things, for the poster *Constitution*. The said materials have been sent to all penitentiary units, police units, youth care centres, juvenile detention centres, closed detention centres for migrants. By putting them up the authorities of those establishments send a clear message that they oppose all forms of ill-treatment and they strive to build a culture of no tolerance to torture. People

¹⁵ Pre-trial detention centre in Warszawa-Służewiec and pre-trial detention centre in Warszawa-Białołęka.

¹⁶ All informational materials concerning the campaign are available on the website: <https://www.rpo.gov.pl/krajowy-mechanizm-prewencji>.

visiting such establishments may also scan a QR code on the poster which allows mobile phone users to access the website devoted to the social campaign where one can learn, among other things, how to respond to torture or other forms of ill-treatment. Additionally, the National Headquarters of the Prison Service received from the NMPT printed posters with contact details of the National Mechanism for the Prevention of Torture and the Commissioner for Human Rights. The Prison Service has placed those materials on informational boards on every prison ward and pre-trial detention centre in Poland.

Only by undertaking joint actions can we influence the change in the social attitude towards the problem of inflicting pain and torture in places in which one would normally never expect such things to occur.

Priest Ryszard Pieron, "Zwiastun Ewangelicki" no. 12 of 30 June 2019

The representatives of the NMPT promoted the idea of the campaign by means of media channels, giving interviews on the radio and television and preparing press articles which were later published, for instance, in the supplement to the „Rzeczpospolita” daily called *Rzecz o prawie*. The NMPT wanted the campaign to reach as many people as possible. For this reason, attempts were made to also interest the authorities of the Polish public television as well as representatives of churches in that topic. Regrettably, neither the public television nor the representatives of the Catholic Church expressed any willingness to cooperate in that regard. Yet, what should be emphasized is the role of the representatives of the Evangelical-Augsburg Church who joined the campaign *State without torture*. They were propagating the idea of torture prevention among their followers during services and in the “Zwiastun Ewangelicki” periodical.

It is unacceptable that in the public discourse we can hear statements claiming that foreigners bring diseases. It is unbecoming and dangerous. Therefore, internal education is of such importance – we need to raise the awareness and sensitize officers of particular services who come in contact with foreigners to that issue.

Hanna Machińska, Ph.D., deputy CHR

Under the campaign in April 2019 a discussion panel *Homo Homini Lupus est: Individuals with PTSD in closed detention centres for migrants* was held in the Office of the CHR. Invited panelists included: Ala Elczewska – traumatologist, on a daily basis cooperating with the Danish Institute Against Torture ‘Dignity’. In her speech she talked about working with people who experienced torture and the Post-traumatic Stress Disorder (PTSD). Conclusions from visiting Polish closed detention centres for migrants were presented by Marcin Kusy – deputy director of the NMPT and Ewa Kownacka – NMPT expert. Maria Książak from the International Humanitarian Initiative described the perspective of non-governmental organizations which provide assistance to torture victims. Col. Iwona Przybyłowicz and lieut. Małgorzata Proszek from the department for foreigners of the Headquarters of the Border Guard discussed

issues related to the implementation of the Border Guard's algorithm "Rules of proceeding with foreigners requiring special treatment". Katarzyna Słubik from the Association for Legal Intervention talked about the so-called alternative to detention. What was hugely valuable were the contributions from the representatives of preventive mechanisms from the Czech Republic and Greece who discussed issues related to the migration crisis. When summarizing the discussion, Ala Elczewska recommended initiating educational activities in schools, since in her view there is no social awareness concerning migration problems and the society perpetrates harmful stereotypes.

An important event during which the representatives of the NMPT promoted the message of the *State without torture* social campaign was the Third Congress on Human Rights held between 13-14 December 2019 in the Polin Museum in Warsaw. A few dozen panels were filled with discussions about important problems related to the protection of human rights and civil liberties in Poland. As part of the congress the National Mechanism for the Prevention of Torture organized two panels.

The actual cause of torture is the fact that the majority of people are not sufficiently concerned about that problem.

Andrii Chernousov

The discussion entitled *Psychiatric care provided to children in Poland – screaming for help* was attended by: Barbara Remberk – Head of the Child and Adolescent Psychiatry and Neurology Clinic in Warsaw, national consultant for child and adolescent psychiatry; dr Joanna Paruszkiewicz – child and adolescent psychiatry expert, EMDR psychotherapist; Agnieszka Sikora – founder of the "po DRUGIE" foundation, which helps young people at the risk of social exclusion; dr Tomasz Rowiński – member of the mental health team at the Ministry of Health preparing the psychiatry reform and the member of the team of the National Education Ministry which, among other things, is preparing changes in psychological assistance provided to children with special educational needs. The discussion was moderated by Krzysztof Olkowicz – Chief Coordinator for Mental Health Protection at the Office of the Commissioner for Human Rights. The objective of the panel was to draw attention to the dramatic situation in child and adolescent psychiatry and the urgent need for reform. Experts highlighted that prevention of mental diseases and disorders as well as their treatment are only some tasks that the society should be aware of to face the challenges of the contemporary world.

We keep saying that the use of torture is prohibited but we fail to explain why. For most people human dignity ends upon someone's apprehension or placement in psychiatric hospital. We should explain what human dignity is, it should assume a prominent place and only from that perspective should we assess individual cases.

Michał Żłobecki from the NMPT during the panel: Torture as a disgrace of the 21st century

The second panel *Torture as a disgrace of the 21st century* gave voice to Artur Ligęska who described his traumatic experiences in prison in Abu Dhabi – he was convicted in the United Arab Emirates for life but later acquitted in May 2019. Also the following persons spoke out on the matter of contemporary torture: Andrii Chernousov – Ukrainian expert; Vahe Grigoryan – Armenian lawyer and defender of human rights, judge of the Armenian Constitutional Tribunal; Joseph Hoffmann – lawyer and academic lecturer, he worked, among others, in the International Center of Comparative Law and Politics and at universities in Erlangen and Jena in Germany; Maria Książak – psychologist who completed the post-graduate course in trauma psychology and crisis as well as PTSD therapy at the Psychiatry Department of the Philadelphia University; and Przemysław Kazimirski – director of the NMPT. The discussion was moderated by Marzena Ksel, Ph. D. – member of the European Committee on the Prevention of Torture (CPT). Panel members indicated that there is a lack of awareness on what torture is and how to diagnose and effectively help the victims of ill-treatment. Panelist also agreed that suitable legal regulations are missing which would guarantee that torture perpetrators receive a punishment commensurate with the committed act.

I had not seen people for 8 months, I was tortured. What I saw were atrocities. (...) People were chained and they looked more like camels than human beings. (...) what I saw there was analogical to concentration camps from the second world war.

Artur Ligęska

STATEMENTS OF THE NMPT AS A FORM OF BUILDING AN ATTITUDE OF NON-TOLERANCE TOWARDS TORTURE AND CRUEL AND DEGRADING TREATMENT



The prohibition of torture is unconditional and not subject to any limitations. Torture is one of the gravest violations of human rights, it constitutes an assault on human dignity and degrades the society which accepts it.

Since 2017 the National Mechanism for the Prevention of Torture has been using an educational tool in the form of NMPT statements. The statements present the NMPT's positions on events significant from the point of view of torture prevention. Such events may include the passing of a ruling by a national court or the ECHR, media announcements or adoption of a legislative act.

In 2019 the NMPT issued 3 statements which were published on the website. The first concerned the judgement of the European Court of Human Rights in Strasbourg on the case *Kanciał vs. Poland* (application no. 37023/13). In the opinion of the National Mechanism for the Prevention of Torture it was a breakthrough judgement emphasizing not only the importance of appropriate and proportionate use of means of coercion by authorized services but first and foremost also the significance

of conscientious investigation proceedings. That judgement should trigger deeper reflection concerning means of direct coercion, in particular the so-called stun guns and conscientious investigation proceedings explaining cases of abuse committed by officers.

In the second statement the Commissioner for Human Rights expressed deep concern about the apprehension method and treatment by the Police of a man suspected of murdering a 10-year-old girl from Mrowiny. The whole procedure was filmed by the Police and the video was subsequently placed on the Internet. What was challenged in the statement was the proportionality of direct coercion measures applied with respect to the suspect by a group of 10 police officers (joined shackles placed at the back making it impossible for the suspect to move around) as well as the fact that the man was walked out of the building without footwear, only wearing underwear and a T-shirt. What also raised doubt was the night-time interrogation of the suspect and the fact that in its course he remained only partially clothed. Another disconcerting aspect referred to in the statement was the lack of information about ensuring access to a defense counsel for the detained, which in the context of planned psychiatric examination of the man constitutes an obligation of the state. Furthermore, a picture of the suspect from interrogation “leaked” and thus was made public, which meant clear violation of the presumption of innocence.

Instead of a substantive discussion in the aftermath of those events, the Office of the Commissioner for Human Rights alongside the Commissioner himself were uncompromisingly attacked with hate speech. He was accused of being the commissioner of gangsters and murderers and not their victims. Representatives of high-ranking public offices demanded that the CHR be dismissed on the grounds of representing the interests of only some part of the society. Apart from that, the public television aired material related to his family situation which violated personal rights of the CHR.

Comments of Internet-users published under media announcements concerning the statement of the NMPT demonstrated that there is an absolute lack of awareness about the need to defend the rights of the detained, which results from his/her inviolable human dignity and the Commissioner’s obligation to intervene any time this dignity is violated. Comments calling for lynching or even killing the suspect were not uncommon.

Those reactions made the Commissioner issue yet another statement in which he explained the reasons and the need to publish the stance of the National Mechanism for the Prevention of Torture with respect to the treatment of the apprehended man.

International cooperation

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 level. 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 stemming from cooperation with other entities operating in this area.

In 2019 the representatives of the NMPT participated, among other things, in a meeting concerning enhanced independence of national mechanisms monitoring deportation flights, in meetings of the Nafplion Group, in international 10-year anniversary of the Georgian preventive mechanism, in workshop sessions devoted to ensuring effective implementation of guarantees related to initial hours post apprehension in police pre-trial detention units combined with the 30-year anniversary of the European Committee on the Prevention of Torture as well as in the meeting of national preventive mechanisms devoted to the monitoring of persons constituting a sensitive group in detention, in the International Rehabilitation Congress and the meetings referring to the issue of deportation monitoring in EU member states. The director of the NMPT also participated in round table discussions organized as part of the International Day in Support of Victims of Torture by the Belarusian non-governmental organization Legal Initiative in Minsk.

Furthermore, as has already been mentioned, on 26 April an international expert panel was held in the Office of the CHR. It was financed by the Council of Europe and organized under the social campaign *State without torture*. The panel which was entitled *Homo Homini Lupus est* was devoted to the problems of persons with the PTSD residing in centres for migrants. The conference was attended by the representatives of the national and international non-governmental organizations that work with individuals in trauma, preventive mechanism from the Czech Republic and Greece as well as the Border Guard and the judiciary.

CAT SESSION AND CONCLUDING REMARKS

In the period 22-24 July in Geneva the UN Committee against Torture (CAT) was examining the periodic report on Poland's implementation of the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The alternative report to the report has been prepared by the Commissioner for Human Rights¹⁷. During the 67th CAT session the Commissioner's remarks were presented by the deputy CHR Hanna Machińska, Ph.D. and Marcin Mrowicki, lawyer from the Criminal Law Team at the Office of the CHR.

On 9 August 2019 the CAT adopted the concluding observations concerning Poland's report on the implementation of the provisions of the Convention in which it presented numerous remarks and reservations. First and foremost, the Committee pointed out that the Polish Criminal Code lacks a separate crime of torture, which in its view, results in the fact that not all components of conduct that constitutes torture are subject to penalization. The Committee expressed concern that even though the Convention as such may be used a source of generally applicable law, so far it has only been referred to once – in the judgement of the District Court in Lublin in 2018. Furthermore, the CAT was critical of the meaning of Article 168a of the Code of Criminal Procedure which provides for the admissibility of evidence obtained by virtue of torture in criminal proceedings. The Committee also commented on the recent amendment of the Criminal Code which was adopted by the Sejm

¹⁷ Cf. <https://www.rpo.gov.pl/pl/content/komitet-onz-bada-wykonanie-przez-Polske-konwencji-w-sprawie-zakazu-tortur>.

within two days. What raised CAT's concern was, *inter alia*, the increased upper limit of penalty for some offences to 30 years of imprisonment or adjudication of life sentences without the possibility of conditional release. The Committee also devoted a lot of attention to procedural guarantees granted to the detained. Shortcomings in that regard included: failure to provide the detainee with the possibility to contact a lawyer prior to the first interrogation, missing lists with lawyers performing the role of defense counsels in police units, limitations as regards communication between attorneys and legal advisors and detained persons as well as the lack of a central register of detainees. The CAT also expressed concern about cases of torture applied in police stations and the fact that the Polish Code of Criminal Procedure fails to specify the maximum period of temporary apprehension. Additionally, the Committee drew attention to the need to ensure living conditions that do not violate the dignity of the detained and the necessity to guarantee clinical independence of medical personnel in prisons.

The CAT also referred to the situation of the National Mechanism for the Prevention of Torture. What was pointed out was insufficient financing provided to the NMPT resulting in limited possibilities to execute its mandate by the preventive mechanism. The Committee was also concerned about personal attacks on the Commissioner, particularly after the statement concerning the apprehension of Jakub A. in June 2019¹⁸.

At the same time the Committee obliged Polish authorities to provide information on measures taken in response to recommended actions. The deadline for the submission of that information is 9 August 2020.

CPT VISIT

Between 9-16 September the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) paid an *ad hoc* visit to Poland. It was the seventh visit of the Committee to Poland and the first of this type. Its objective was to check the implementation of long-standing recommendations of the CPT concerning the treatment of individuals in Police units. On 9 September the delegation met with the Commissioner for Human Rights, deputy CHR, representatives of the Criminal Law Team and members of the National Mechanism for the Prevention of Torture. The meeting was held in the Office of the CHR.

Advisory activities

GENERAL INTERVENTIONS

According to Article 14(2) of the Act on the Commissioner for Human Rights, the Commissioner may file a motion with an agency, organization or institution whose activity has been found to have caused an infringement of the liberties and rights of an individual and a citizen. In 2019, as the National Mechanism for the Prevention of Torture, the CHR submitted 2 general interventions.

¹⁸ Detailed description of concluding observations: <https://www.rpo.gov.pl/pl/content/komitet-onz-przeciwko-torturom-ocenil-polske-potrzeba-wielu-zmian>.

The first one concerned

THE LACK OF CLEAR RULES OF PROCEDURE UPON RECEIVING INFORMATION ABOUT SUBJECTING PERSONS PLACED IN PENITENTIARY ESTABLISHMENTS TO TORTURE OR OTHER FORMS OF VIOLENCE.

An independent medical examination coupled with proper documentation of injuries constitute one of the fundamental guarantees protecting persons deprived of their liberty against torture and other forms of violence. This stance is shared by international institutions which monitor the treatment of imprisoned persons: the SPT and the CPT.

Therefore, the Commissioner for Human Rights, acting as the National Mechanism for the Prevention of Torture requested the Director General of the Prison Service¹⁹ to impose an obligation on prison doctors conducting the initial medical examination of inmates to use the so-called body maps. Such a solution would make sure that the examination of persons deprived of their liberty would be an actual and reliable evaluation of their health status instead of merely an opinion expressed on the basis of a superficial conversation with the patient. However, the exchange of arguments with the Deputy Director General of the Prison Service failed to bring the outcome expected by the NMPT. In the final reply the Deputy of the Director General of the Prison Service stated that *it seems completely groundless to introduce changes with respect to the so-called international soft law concerning medical documentation. (...) It is obvious that legal regulations applicable at the moment on the territory of the Republic of Poland fully cover the issues presented in the document*²⁰.

The second general intervention concerned

THE NEED TO ENSURE APPROPRIATE LEVEL AND CONDITIONS OF CONDUCTING THERAPEUTIC AND REHABILITATION PROGRAMS BY PENITENTIARY PSYCHOLOGISTS.

That issue has been monitored by the NMPT since 2016. Visits paid to penitentiary establishments still revealed that in some cases there was one psychologist per 200 inmates. Therefore, the Commissioner for Human Rights once again contacted the Director General of the Prison Service²¹ with an inquiry about changes that were made to increase the availability of psychological staff to prisoners. In response²² the Deputy Director General stated that the staffing level of penitentiary psychologists as at 31 December 2018 was 458,75 full-time equivalents, which represents

¹⁹ General Intervention of the CHR to the Director General of the Prison Service of 29 January 2019, KMP.571.6.2017.

²⁰ Response to the General Intervention of the Commissioner for Human Rights of 13 June 2019, BSZ.55.5.2019. AP.

²¹ General Intervention of the CHR to the Director General of the Prison Service of 19 February 2019, KMP.571.8.2016.

²² Letter of the Deputy Director General of the Prison Service of 11 March 2019, no. BP-P-615-2019/11510/AZD/JK/MR.

an increase of around 60 FTE in comparison with 2015. **In the opinion of the National Mechanism for the Prevention of Torture which appreciates the efforts taken by the Central Headquarters of the Prison Service, the indicated increase does not translate into a smaller number of prisoners per one psychologist. It merely constitutes a necessary addition to the composition of that professional group to the level at which that standard can be met.** In another letter²³ the Director General of the Prison Service informed about notifying the Ministry of Justice of the necessity to allocate at least additional 205 full-time equivalents for psychologists in case Article 164a of the Executive Penal Code is amended²⁴. The NMPT believes that the increase in staffing level will only mitigate the growing workload of psychologists resulting from additional obligations but will not translate, in real terms, into a decreased number of prisoners per one psychologist.

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.

On 15 April 2019 the Commissioner for Human Rights presented his reservations to the draft act on juveniles comprising proposed changes on the operation of detention establishments for minors, including youth care centres²⁵. In the opinion of the Commissioner youth care centres should not perform personal searches due to invasive nature of that measure and the risk of humiliation, which has a negative impact on educational objectives²⁶.

The Commissioner also pointed out to the following:

- the need to exercise judicial supervision over the restriction of contacts of a ward (the court should obligatorily be notified of the restriction or prohibition of contacts and censorship or interception of correspondence)²⁷ and the inspection of parcels (minors should have the right to lodge a complaint in that regard)²⁸,
- the need for the act to specify places covered by monitoring (in the opinion of the Commissioner, in case of youth care centres bedrooms as well as sanitary facilities should not be monitored due to the specificity of that establishment and the purpose of its operation)²⁹,

²³ Letter of the Director General of the Prison Service of 14 May 2019, no. BP-P-1155-2019/22641.

²⁴ The amendment would impose an obligation on prison service personnel to conduct a risk assessment concerning the likelihood of committing a crime with a use of violence by perpetrators of „aggressive crimes“ once they are released from the penitentiary establishment.

²⁵ Cf. Draft act on minors of 8 March 2019 entered to the register of legislative and program projects under no. UD 480; Letter of the Commissioner for Human Rights to the Minister of Justice of 15 April 2019, ref. O22.1.2019. RK. Documents are available on the website <https://www.rpo.gov.pl/content/opiniowanie-akt%C3%B3w-prawnych>.

²⁶ Ibid, item 37.

²⁷ Ibid, item 32-33.

²⁸ Ibid, item 36.

²⁹ Ibid, item 42.

- deletion from the draft act of the provision allowing for the prophylactic examination of a minor after admission to the facility in order to determine possible presence of alcohol or another psychoactive substance in the body by means of methods which do not require lab tests (in the opinion of the Commissioner such an examination, given the strong interference with the ward's privacy and the risk of humiliation, should only be performed if the personnel of the establishment suspects with a high degree of certainty that the minor is under the influence of alcohol or another psychoactive substance. The examination should be performed solely by a medical professional. Furthermore, the minor should have the right to challenge the decision to perform such an examination before the court)³⁰.

The Commissioner also presented his stance on the draft Guidelines concerning the EU policy towards third countries in the context of using torture and other cruel, inhuman or degrading treatment or punishment.

Both opinions have been published on the website of the NMPT³¹.

THEMATIC REPORT³²

In 2019 the National Mechanism for the Prevention of Torture published a thematic report entitled *Monitoring of the treatment of prisoners with physical and sensory disability* which was drawn up in the aftermath of thematic visits. In the course of those visits emphasis was placed on examining the situation of detainees with motor and sensory (vision and hearing organs) disabilities. Some of those inspection visits were also attended by experts from non-governmental organizations dealing with such issues. The report was prepared in the hope that the issues presented therein would encourage the authorities to reflect and undertake concrete measures concerning the situation of persons with disabilities residing in prisons and pre-trial detention centres. The survey developed by the representatives of the *Polska Bez Barrier* Foundation for the purposes of thematic visits conducted by the NMPT and concerning persons with motor and sensory disabilities is included at the end of this publication. It comprises numerous practical tips with regard to, among other things, planning the accessibility of facilities to persons using wheelchairs or elbow crutches. Those recommendations are of universal nature and they can be implemented also in other types of buildings, which makes them a hugely valuable source of knowledge that we should apply more and more commonly in Poland. The report has been translated into English so that it can be shared internationally.

³⁰ Ibid, item 40-41.

³¹ Cf. <https://www.rpo.gov.pl/content/opiniowanie-akt%C3%B3w-prawnych>.

³² Cf. <https://www.rpo.gov.pl/pl/content/monitoring-traktowania-wiezniow-z-niepelnosprawnoscia-fizyczna-i-sensoryczna-raport-z-dzialalnosci>.

SUCCESS

Significant changes were introduced to regulations regarding the rights of residents of social care homes and 24-hour care facilities in the amended act on social care homes³³.

The currently applicable regulations oblige 24-hour care facilities to keep files of fully incapacitated residents. Those files must include, among other things, the decision of the guardianship court on granting the permission for placing such individuals in the facility.

Hence, the discussed legislative change imposes an obligation on 24-hour care facilities to actually verify the legality of resident's stay. It also imposes an obligation on legal guardians to obtain court's permission to place a fully incapacitated person in a 24-care facility.

The said changes follow the argument put forward by the National Mechanism for the Prevention of Torture that the legal status of individuals signing the agreement should be verified. If legal guardians are the ones to sign the agreement one should add a copy of the court's ruling or certificate of the appointment of a legal guardian to the resident's files³⁴.

Additionally, what is also noteworthy is the amended wording of Article 68a of the act on social welfare in the context of ensuring appropriate staffing levels, in which **item 5 was added specifying the required number of people employed in the facility in reference to a number of residents.** Pursuant to item 5 of the said act, the person running a 24-hour care facility is obliged to *employ individuals (...) under part-time contracts for at least 1/3 of full time equivalents per one person residing in the facility, not less than for 4,5 FTE, yet working time of the natural person running the facility that satisfies the conditions mentioned in item 4, includes 1/2 of the FTE and in case of running more than one facility 1/2 FTE from only one facility.*

Furthermore, the implemented legislative changes **impose an obligation on the management of social care homes and 24-hour care facilities to obtain a medical certificate issued for a specified period of time, not exceeding 6 months, in case there is a need to restrict resident's contacts with the outside world.** In line with the wording of the provision: *should the lack of care constitute a threat to life or significantly endanger the health of the resident with mental disorders, the director or the head of such a home may restrict the possibility for the said person to independently leave the premises of the social care home on the basis of a doctor's certificate issued for a specified period not exceeding 6 months that indicates the rationale behind such a restriction.*

Such a restriction is formulated in writing and comprises, among other things, the period for which it was issued, the reasons for establishing the restriction and well as information about the right to submit a motion for the withdrawal of the restriction to guardianship court having a territorial jurisdiction over the location of the facility. The management of the facility shall deliver the notification of restriction to the resident, his/her legal guardian as well as to the guardianship court.

³³ Act of 19 July 2019 on the amendment of the act on social welfare and the act on the protection of mental health (Journal of Laws [Dz. U.] of 2019, item 1690).

³⁴ Cf. Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2018.

In case the resident, including an incapacitated resident, his/her statutory representatives, spouse, relative in the direct line, siblings or a person exercising actual care over the said individual submits a motion to the guardianship court with a request to repeal the restriction, the court passes a ruling after the hearing that should take place not later than within 14 days from the receipt of the request to repeal the restriction.

The National Mechanism for the Prevention of Torture has indicated on numerous occasions that the possibility to freely leave the premises of the facility should only be dependent on the physical and mental fitness of a given resident. Therefore, the only criteria taken into account when issuing a decision concerning one's capability to leave the premises without any supervision should be: the will of the resident and his/her health status. The grounds for rationing the possibility to leave the facility should be doctor's opinion.

The amendment in question entered into force on 4 October 2019 and 1 January 2020, accordingly.

PART III – Difficulties with the execution of the NMPT’s mandate

Visits to places of detention were performed in most cases appropriately and in a good spirit of cooperation. Representatives of the NMPT were usually granted access to rooms and vehicles of their choice. They could also hold confidential interviews with selected persons and inspect requested documentation.

Yet, it came to the attention of the NMPT that despite conducted training on the protection of human rights and torture prevention, officers in Police stations are usually unfamiliar with the provisions of OPCAT and the National Mechanism as such is an unknown institution to them. Police officers were also unaware of the differences between preventive monitoring conducted by the NMPT and the visits of the Commissioner for Human Rights acting as the body guarding individuals’ rights and liberties (Ombudsman). The conclusions of the NMPT are in that regard concurrent with the observations made by the SPT made during the visit to Poland in 2018³⁵.

The NMPT reported a violation of its mandate specified in the OPCAT in case of 3 Police stations. During the inspection of Police Station IV in Łódź³⁶ the NMPT delegation was refused access to the premises of the Criminal Division. Moreover, delegation members were not allowed to prepare photographic documentation of station’s facilities and resulting from the decision of the prosecutor who was present onsite they also could not familiarize themselves with the files of conducted preparatory proceedings.

During the inspection visit to Police station II in Łódź³⁷, inspectors were asked to abort their activities and vacate the station’s duty-room since they, in the opinion of officers, did not have the right to access confidential information. The representatives of the NMPT discontinued their inspection. It was only after the intervention of the NMPT’s Director before the Deputy Plenipotentiary of the Commander-in-Chief of the Police for the Protection of Human Rights that the inspection could be resumed. At that point the representatives of the NMPT obtained access to all rooms (including Criminal Division) and could perform all their duties. As opposed to inspection in Police station IV in Łódź, here the inspectors could prepare photographic documentation of the facility and they were granted access to the files of preparatory proceedings, which were analyzed onsite.

Given the violation of the NMPT’s mandate the Deputy Commissioner for Human Rights requested the Commander-in-Chief of the Police to undertake informative measures among police officers concerning the OPCAT and NMPT’s mandate³⁸. The Commander-in-Chief of the Police was

³⁵ Cf. Report of the SPT visit to Poland, CAT/OP/POL/ROSP/1, Art. 29-33.

³⁶ Police station IV in Łódź (KMP.570.14.2019).

³⁷ Police station II in Łódź (KMP.570.13.2019).

³⁸ Cf. Letter of the Deputy Commissioner for Human Rights of 3 June 2019, reference no. KMP.570.14.2019.RK.

notified of the methodology of the monitoring team's work prior to the commencement of NMPT's visits to Police stations³⁹. At that point he declared full cooperation on the part of the Police⁴⁰.

In response to the letter, the Commander-in-Chief of the Police informed that he instructed all heads of Police organizational units to initiate informational actions devoted to the OPCAT as well as the NMPT's rights and work methodology. Additionally, a comprehensive document was prepared with the analysis of the remit of actions of the NMPT. It was sent to Police units in order to undertake relevant educational and informational activities in response to the needs in that regard⁴¹.

What attracted the attention of the inspection team during the visit to the Warszawa-Wawer Police station⁴² was the apprehension and placement of two foreigners in transitional rooms. In order to inspect the monitoring footage a request was addressed to the Police station to safeguard relevant files and send them on an appropriate carrier to the Office of the Commissioner for Human Rights. The received CD comprised files in a format that could not be played on devices without a suitable operational system.

Given that problem, the NMPT once again requested the Police station to generate the relevant file in a format that could be played on universally used operational systems. Yet, due to the lapse of time, monitoring footage was already deleted from the system and the CD sent to the Office of the CHR was the only carrier from which the recording could be recovered. Since there was a concern about possible data loss, it was necessary for the CD to be picked up personally by the officer from the Warszawa-Wawer Police station. After around a two-week waiting time for the repeated delivery of the materials, it turned out that the material provided did not allow for an appropriate analysis of the recording. It was, namely, fast-forwarded a number of times, which did not make it possible to thoroughly analyze the conduct of detainees and officers. Moreover, all recordings were stopped in the same moment, i.e. when detainees were still in the facilities. It was, therefore, not possible to check at what time the detained were *de facto* released. The described situation resulted in the need for a repeated involvement of the employees of the Police unit and waiting for properly recorded material. Having familiarized itself with the recording obtained in the aftermath of this intervention, the NMPT determined that recordings were still defective (they ended when the detained still remained in transitional rooms).

Given the above, the NMPT came to the conclusion that the Warszawa-Wawer Police station made it impossible for the inspection team to get fully acquainted with monitoring footage from transitional rooms in which the said foreigners were detained, which *de facto* prevented the team from verifying the method of detainees' treatment and the conditions of detention.

³⁹ Cf. Letter of the Deputy Commissioner for Human Rights of 3 October 2018, reference no. KMP.570.26.2018. RK.

⁴⁰ Cf. Response of the Commander-in-Chief of the Police of 26 November 2018, ref. no. l.dz. Gpc-841/18.

⁴¹ Cf. Response of the Commander-in-Chief of the Police of 15 July 2019, ref. no. Gpc-410/345/19.

⁴² Police station Warszawa-Wawer (KMP.570.4.2019).

The NMPT sent a request to the unit's head to indicate the reasons for the occurred situation. At the same time, it pointed out to the necessity to replace the outdated systems and install software which would allow the recordings to be played in all commonly used operational systems.

It can be concluded from the response of the commanding officer that recordings were delivered to the NMPT in an original form without any modifications in order to avoid allegations about possible interference with the copied video material. The commanding officer presented the need to replace the video recorder with a one that allows for playing the footage on the newest operational systems to the relevant Police organizational unit⁴³.

After the inspection visit at the Police station in Ząbki, the NMPT requested the President of the District Court in Wołomin to lend the files of a criminal case pertaining to one of the detainees who, as the NMPT could establish, sustained injuries during Police intervention. Article 20 OPCAT⁴⁴ was quoted as the basis for lending the files.

Vice-president of the District Court in Wołomin refused to lend the case files. In her view, 20 OPCAT does not entitle the Commissioner for Human Rights to demand the submission of files of judicial proceedings. Furthermore, the possibility to demand the presentation of files of judicial proceedings prior to the completion of criminal proceedings is not provided for in the act on the Commissioner for Human Rights. According to the Vice-president of the District Court in Wołomin the prerequisite for Commissioner's demands to inspect the files in his Office is the conclusion of the proceedings and passing of the ruling in compliance with Article 13 (1)(3) of the act on the CHR. Given that the criminal case to which the request pertained was not concluded and no ruling was passed, its files were not lent to the NMPT⁴⁵.

Since 2017⁴⁶ the Commissioner for Human Rights has been informing the Minister of Justice about the systemic problem concerning the lack of access to a defense counsel from the moment of apprehension⁴⁷. Unfortunately, the Minister failed to respond to the general interventions submitted by the Commissioner. This situation is a cause of concern since pursuant to the OPCAT, national authorities should maintain an ongoing dialogue with the NMPT aimed at the implementation of recommended solutions.

⁴³ Cf. Response of the Commander-in-Chief of the Police station Warszawa-Wawer of 13 February 2020, ref. no. L.dz. KP-7211/20/40/20.

⁴⁴ Cf. Letter to the President of the District Court in Wołomin of 9 December 2019, file no. KMP.570.28.2019.RK.

⁴⁵ Cf. Response of the President of the District Court in Wołomin of 11 February 2020, ref. no. ADM.0152-36/19.

⁴⁶ Cf. General Intervention of the CHR to the Minister of Justice of 18 April 2017 and 27 September 2018, KMP.570.3.2017.RK.

⁴⁷ The systemic problem is described in part V concerning Police units.

PART IV

– Situation in places of detention

Police units – police stations and rooms for detained persons

In 2019 the NMPT visited 10 rooms for detained persons or persons brought for sobering-up within the organizational units of the Police⁴⁸ (hereinafter: RDP) and 20 Police headquarters⁴⁹ (hereinafter: PH).

One of the above visits took place *ad hoc* to verify the method of treating persons apprehended by the Police in connection with the protest that was held in front of the Municipal Police Station in Konin. The protest was organized in response to the death of a 21-year-old man sustained as a result of firearm's use by a Police officer⁵⁰.

SYSTEMIC PROBLEMS

Systemic problems mentioned by the NMPT in the annual report for 2018 still persist and await resolution that the Commissioner was arguing for⁵¹. Additionally, what is considered a systemic problem by the NMPT is the staffing situation in the Police, given the risk that this situation brings in relation to persons remaining under Police supervision. The overview of systemic problems alongside international standards in that regard is presented below.

Staffing situation in the police

What constitutes a major problem in inspected units is the staffing situation. The number of officers on duty in police stations is too low in relation to actual needs. That situation is particularly evident in those communes that report significant economic growth in which the actual number of residents is much higher than the number of individuals who are actually registered as residents.

⁴⁸ RDP Zgierz (KMP.570.2.2019); RDP Przysucha (KMP.570.3.2019); RDP Myślibórz (KMP.570.6.2019); RDP Gniezno (KMP.570.7.2019); RDP Działdowo (KMP.570.11.2019); RDP Żyrardów (KMP.570.15.2019); RDP Nowy Dwór Gdański (KMP.570.23.2019); RDP Warszawa II KRP Ursynów (KMP.570.26.2019); RDP Wałbrzych (BPW.570.1.2019); RDP Konin (KMP.570.33.2019).

⁴⁹ Police station in Marki (KMP.570.1.2019); Police station in Kruszwica (KMP.570.8.2019); Police station in Serock (KMP.570.9.2019); Police station in Wieliszewo (KMP.570.10.2019); Police station in Wrocław-Krzyki (KMP.570.12.2019); Police station VI in Łódź (KMP.570.14.2019); Police station II in Łódź (KMP.570.13.2019); Police station III in Lublin (KMP.570.17.2019); Police station in Jabłonna (KMP.570.5.2019); Police station Warszawa-Wawer (KMP.570.4.2019); Police station in Nasielsk (KMP.570.20.2019); Police station in Nieporęt (KMP.570.21.2019); Police station IV in Łódź (KMP.570.19.2019); Police station III in Łódź (KMP.570.22.2019); Police station I in Łódź (KMP.570.24.2019); Police station in Ziębice (KMP.570.25.2019); Police station in Iłża (KMP.570.27.2019); Police station in Ząbki (KMP.570.28.2019); Police station in Zielonka (KMP.570.32.2019); Police station in Piaski (KMP.570.31.2019).

⁵⁰ RDP Konin (KMP.570.33.2019).

⁵¹ Cf. Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2018.

Economic growth in cities alongside with construction investment constitute a huge challenge for the Police, not only in terms of statutory duties but also from the point of view of communication, e.g. in case of procedures performed with the participation of foreigners.

Vacancies and long-term sick leaves also constitute problems. In some Police stations, the representatives of the NMPT could hear accounts indicating that in crisis situations officers take sick leaves to be able to rest for some time. There are also units, located at a significant distance from the RDPs, in which detained persons are accommodated. In practice, the need to escort such individuals for many hours excludes officers from their duties that they would normally be performing in their precincts, which increases the workload of other policemen.

That alarming staffing situation results in police officers being additionally overloaded with work, exhausted and frustrated by the lack of systemic solutions to this problem. Participation in training is frowned upon since it creates additional workload for remaining police officers. The staffing situation also affects the perception of their own profession by the officers themselves. It can be concluded from officers' accounts that the profession of a policeman – due to remuneration, stress and the nature of work – has ceased to be an attractive one.

The NMPT views the above situation as alarming. The appropriate staffing level may, namely, affect the quality of officers' work, their professional capabilities, motivation and regime in relation to persons deprived of their liberty. Staff shortages create the risk of inappropriate behavior and facilitate occupational burnout.



It is essential to improve the staffing situation in the Police, so that police officers can perform their duties in a professional manner without running the risk of inappropriate conduct.



SPT

The Subcommittee is concerned about the observed staff shortages experienced by the Police in Poland. The number of vacancies may not be commensurate with the required number of employees. Salaries remain on a low level, which contributes to even bigger problems with recruiting new personnel. The STP recommends that Poland should perform an analysis of the number of employees required for the professional fulfilment of Police duties and offer compensation that corresponds with required qualification and tasks of that occupational group to ensure relevant motivation, as a general preventive measure⁵².

⁵² Cf. Report of the SPT visit to Poland, CAT/OP/POL/ROSP/1, Art. 42-43.



Staffing level in places of detention directly translates not only on the safety and protection of both, the detained and the personnel but also on the possibilities of the staff to organize everyday work and maintain the regime of the institution as a whole. Appropriate staffing level also prevents the cases of burnout among staff and allows them to enjoy full working capability instead of only concentrating on everyday tasks⁵³.

Medical examination of the detained

There is no obligation in Poland to subject every detained person to a medical examination. The list of individuals who are obligatorily subject to such an examination is specified in the regulation of the Minister of the Interior⁵⁴. In practice, therefore, police officers bring to examinations only those individuals who are required by law to undergo such a procedure.

Independent medical examination and proper documentation of injuries established in the course of such an examination constitute a fundamental guarantee for the prevention of torture. It also protects officers as such from false allegations that injuries were sustained during one's stay in the police unit. Furthermore, the awareness that possible signs of violence may be determined and documented may act as a deterrent to those considering the use of violence



All detained persons should be subject to compulsory medical examinations.



SPT

The Subcommittee recommends that Poland should take appropriate steps in order to ensure that all arrested persons are subject to a free examination performed by a medical specialist who can work independently without the presence of a police officer. In compliance with the Istanbul Protocol such medical specialists should be trained in the field of examining persons who could have been subjected to torture or ill-treatments and documenting such instances⁵⁵.



CAT

Poland should take effective measures to ensure that apprehended individuals are subjected to a confidential medical examination by an independent doctor within 24 hours from their arrival to the detention place. They should also be entitled to request an independent medical examination at any time⁵⁶.

⁵³ Cf. Report from the SPT visit to Sweden, CAT/OP/SWE/1, Art. 139-140.

⁵⁴ Cf. Regulation of the Minister of the Interior of 13 September 2012 on medical examinations for persons detained by the Police (Journal of Laws [Dz. U.] of 2012, item 1102), Article 1(3).

⁵⁵ Cf. Report of the SPT visit to Poland, CAT/OP/POL/ROSP/1, Art. 55.

⁵⁶ Cf. Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, Art. 16.

Lack of access to a defense counsel from the beginning of detention

In practice, not every detained individual has access to a defense counsel from the moment of detention (e.g. due to lack of funds). The request for the appointment of a public defender may, in turn, only be submitted following the first hearing as a suspect and not immediately upon detention. Prior to the establishment of the first contact between the defense counsel and the client, police officers conduct their work-related duties involving the detained (e.g. interrogation, preliminary hearing). Such a situation results in a high risk of torture, especially if police duties are not recorded and police rooms are not monitored and the procedures are not attended by a third person and the law fails to provide for the obligatory medical examination following apprehension.

The NMPT emphasizes that detainee's access to a lawyer is a broader concept that goes beyond the provision of legal aid and ensuring defense in criminal proceedings. It constitutes a fundamental torture-prevention guarantee. Additionally, a defense counsel has a positive impact on the quality of proceedings and professional conduct of officers, he/she improves the relationships and cooperation with the Police and detainees, which proves beneficial for the investigation and the whole justice system.



Every detained individual, irrespective of the reason for detention and his/her financial situation, should have practical access to a public defender from the moment of detention and in the course of the whole period of deprivation of freedom.



CPT

The possibility to exercise the right to a defense counsel by persons detained by the Police remains to be a problem in Poland. Polish legislation lacks, namely, regulations that provide for the appointment of an *ex-officio* defender prior to the initiation of court proceedings. As a result, detained individuals, who are not able to afford legal aid, are virtually deprived of the access to a defense counsel⁵⁷.



SPT

The Subcommittee is alarmed by the lack of a relevant legal aid system available in Poland for persons who cannot afford a private lawyer. Poland should take effective steps in order to ensure that all persons deprived of their liberty, in compliance with the law and in practice, from the moment of apprehension, have the right to quick access to an independent lawyer and, in case of need, to legal aid in compliance with international standards⁵⁸.

⁵⁷ Cf. CPT report from the visit to Poland, CPT/Inf (2018) 39, Art. 23.

⁵⁸ Cf. Report of the SPT visit to Poland, CAT/OP/POL/ROSP/1, Art. 51-52.



CAT

Persons deprived of their liberty in Poland still do not use, in practice, their fundamental legal guarantees from the moment of detention, such as quick access to a lawyer or attorney-at-law prior to the first hearing. The Committee recommends taking effective measures to ensure that all detained individuals have access to quick legal aid, including lawyers and attorneys-at-law on duty, provided by legal aid financed by the state prior to the first hearing⁵⁹.

The aforementioned systemic problem has already been brought to the attention of the Minister of Justice by the Commissioner for Human Rights⁶⁰. Regrettably, since 2017 the Minister has failed to respond to the general interventions submitted by the Commissioner⁶¹.

Placement in RDPs of persons detained for sobering-up

The vast majority of persons who arrive in RDPs are persons brought for sobering-up. This situation occurs due to the lack of sobering-up stations on the territory of particular communes and the lack of agreements between local self-government units and sobering-up stations located in neighboring areas. The lack of relevant systemic solutions results in the need to place such individuals in Police RDPs. The NMPT also observed situations when the local psychiatric hospital refused to admit intoxicated individuals who were apprehended in connection to a suspected suicide attempt due to their intoxication. Therefore, such persons had to be placed in RDPs and only after sobering up were they subjected to psychiatric observation. Such an occurrence entails high risk of dangerous situations, also for officers.

In the opinion of the NMPT, RDPs are not prepared to care for intoxicated individuals. They do not, namely, employ a doctor who could provide emergency medical help in case the life or health of the detained is in danger. The responsibility for the safety of the above-mentioned individuals rests on the shoulders of police officers who, in case of emergency, are only capable of providing first aid and calling an ambulance in the hope for a quick and effective proper medical intervention. Such a solution, however, fails to fully guarantee the safety of the intoxicated and requires systemic changes. It also generates additional costs borne by the Police and associated with the provision of care to the intoxicated. Such costs result from, among others, the need to purchase bed linen, disinfect facilities. Furthermore, possible health problems of persons brought for sobering-up (e.g. epilepsy) and body reactions which are difficult to predict (e.g. vomiting) make the supervision over such individuals a hugely absorbing task for officers. Given the lack of relevant personnel this task is difficult to combine with other duties.

⁵⁹ Cf. Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, Art. 15 and 16.

⁶⁰ Cf. General Intervention of the CHR to the Minister of Justice of 18 April 2017 and 27 September 2018, KMP.570.3.2017.RK.

⁶¹ See more Part III of the Report – *Difficulties with the execution of the NMPT's mandate*.

Lack of proper staff in RDPS

It is the officer on duty in the facility who needs to ensure safety to individuals placed in RDPS and at the same time allow them to exercise their rights. Pursuant to current legislation, the head of the unit needs to organize work in such a way to make sure that there is at least one police officer on duty in the RDPS⁶².

The findings of the NMPT made in the course of performed inspections indicate, however, that one person is not able to carry out procedural duties (completing documentation), control tasks and at the same time make sure that detainees can exercise their rights (e.g. to use a sanitary facility). Under such circumstances it may also be particularly difficult to respond to extraordinary incidents, including suicide attempts. The current work organization may result in restricted exercise of detainees' rights and their ill-treatment. Therefore, the National Mechanism for the Prevention of Torture has consistently been arguing for amending applicable regulations.



CPT

Establishment of a separate, specialized group of officers who will only be responsible for taking care of persons in police detention offers a number of benefits. Among other things, it leads to higher specialization, professionalism and effectiveness of officers as well as to the increased sense of responsibility for persons in Police detention. Such a practice may help to break the sense of solidarity in case of ill-treatment and enhance procedural safeguards which are supposed to protect one from ill-treatment. An officer may, for example, check at the moment of placement whether the detained has been informed about all his/her rights and whether they are clear to him/her. It also constitutes the first opportunity for the detained to file an official complaint against apprehending officers in relation to, for instance, excessive use of force at the moment of apprehension. In some countries visited by the CPT every detained person, prior to the initiation of any procedural steps, is introduced to a designated, experienced officer working in the pre-trial detention centre. That officer is responsible for checking the physical and mental state of the detained and for offering him/her the possibility to inform a person of choice about the detention and contact a lawyer. Designated officers have been trained to ask appropriate questions as well as to determine and record symptoms which may indicate the need to ensure special support and care to the detained. This is clearly a good practice⁶³.

⁶² Cf. Order no. 130 of the Commander-in-Chief of the Police dated 7 August 2012 on the methods of performing work in the room for detained persons or intoxicated persons who are placed there for the purpose of sobering up (Dz. U. KGP of 2012, item 42, as amended), Art. 2(2).

⁶³ Cf. CPT 28th General Report, CPT/Inf (2019) 9, Art. 83-85.

Personal search, preventive search

In connection with the ruling of the Constitutional Tribunal of 14 December 2017⁶⁴ concerning the inconsistency with the Constitution of the lack of statutory definitions of a *body search* and *personal search* on 14 December 2018 the Sejm amended the act on the Police. As a result of the amendment the notions of a *personal search* and *preventive search*⁶⁵ have been precisely defined.

Yet, what still needs to be amended are the implementing acts, including the regulation of the Minister of the Interior of 4 June 2012 on rooms for detained persons or intoxicated persons brought for sobering-up, transitional facilities and police emergency centers for children, as well as rules and regulations on the stay in such facilities and procedures for image recordings of those facilities in which the broadly defined search is performed. Currently, the lack of relevant legislative actions results in the inconsistency of legal regulations.

Lack of legal measures to protect whistle-blowers

Effective prevention of torture requires the creation of a relevant legal framework and institutional culture which would enable police officers to report cases of improper conduct of their colleagues without the risk of retaliation or imputation of disloyalty towards their occupational group.

The visits of the NMPT demonstrated that the Police still lacks relevant procedures which would ensure that officers have a confidential and safe method for reporting cases of ill-treatment by other policemen. Theoretically, an officer may notify his/her supervisor about the incident or draw up a memo. However, that reporting method makes officers fear that their actions would be viewed as a sign of disloyalty and they may face possible, further consequences. The delegation of the NMPT was under the impression that the Police itself should take effort to build a proper institutional culture which will encourage officers to actively oppose inappropriate treatment and inform about cases of violence on duty.

The need to provide legal protection to whistle-blowers and promote the culture acknowledging their vital role in the society is also emphasized by the Committee of Ministers of the Council of Europe⁶⁶, the European Parliament⁶⁷ and non-governmental organizations. What is also noteworthy is the fact that on 26 November 2019 a directive of the European Parliament and the Council (EU) 2019/1937 of 23 October 2019 on the protection of persons reporting violations of the EU law was published in the Official Journal of the European Union. The directive entered into force on 16 December 2019. From that point on Poland has two years to transpose it to domestic legal regulations.

⁶⁴ Cf. Ruling of the Constitutional Tribunal of 14 December 2017, ref. K 17/14 (Journal of Laws [Dz. U.] of 2017, item 2405).

⁶⁵ Cf. Act of 14 December 2018 on the amendment of the Police act and several other acts (Journal of Laws [Dz. U.] of 2018, item 2399).

⁶⁶ Cf. Protection of whistleblowers: recommendation CM/Rec (2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 and explanatory memorandum.

⁶⁷ Cf. European Parliament resolution of 24 October 2017 on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)).

The actions of whistle-blowers may act as an early warning signal and may help in revealing irregularities, which otherwise would remain undisclosed, and in identification of responsible individuals⁶⁸. Such actions are also beneficial for the organization as such, as they help to understand that making the whistle-blowing process easier and safer lies in its interest⁶⁹.

It is of particular significance in case of services that enforce the law, since improper conduct of an officer may shed a negative light on the whole formation as well as respect for the law and the institution of the state. Implementation of internal irregularity reporting mechanisms is conducive, on the other hand, to the creation of high standards of service and risk management⁷⁰. Protection of whistle-blowers is also a tool for facilitating control mechanisms⁷¹.

On 16 April 2018 the Commissioner for Human Rights requested the President of the Council of Ministers to take steps aimed at ensuring effective legal protection to whistle-blowers in uniformed and special services⁷².



CPT

It is necessary to develop a clear model for reporting cases of ill-treatment of detainees to separate bodies from beyond the structure of the unit in which such ill-treatment occurred and to prepare a framework allowing for the provision of legal protection to whistle-blowers⁷³.

⁶⁸ Cf. Explanatory memorandum, Introduction. The importance of whistleblowing and protecting whistleblowers in Europe, item 1 and 3.

⁶⁹ Ibid, item 8.

⁷⁰ Ibid, item 9.

⁷¹ Cf. Resolution of the Parliamentary Assembly of the Council of Europe on the protection of whistle-blowers No. 1729 of 29 April 2010.

⁷² Cf. General intervention of the CHR to the President of the Council of Ministers of 16 April 2018, ref. KMP.570.1.2018.RK.

⁷³ Cf. CPT report from the visit to Poland, CPT/Inf (2014) 21, Art. 24. and the 14th General Report of the CPT, CPT/Inf (2004) 28, Art. 26; CPT report from visit to Ukraine, CPT/Inf (2013) 23, Art. 21; CPT report on the visit to Macedonia, CPT/Inf (2016) 8, Art. 93; CPT report on the visit to Bulgaria, CPT/Inf (2015) 36, Art. 14; CPT report on the visit to Greece, CPT/Inf (2016) 4, Art. 23; CPT report on the visit to Germany, CPT/Inf (2017) 13, Art. 20; CPT report on the visit to Ukraine, CPT/Inf (2017) 15, Art. 16, CPT 28th General Report CPT/Inf (2019) 9, Art. 71.

Penitentiary establishments

In 2019 the NMPT visited 9 penitentiary establishments⁷⁴: six prisons and three pre-trial detention centres.

Visits to two penitentiary facilities⁷⁵ were paid *ad hoc*; their aim was to identify inmates suffering from serious physical disorders and to verify on site whether their rights to appropriate medical care are secured.

SYSTEMIC PROBLEMS

A problem of medical examination of inmates of penitentiary facilities and absence of procedures in case of reporting tortures and inappropriate documentation of injuries

Not every person about to be detained is subject to a medical examination. Only those „newly” detained are examined; inmates who change penitentiary facilities are not. Although they are initially interviewed by a nurse who refers them to a doctor if necessary, there is no provision for obligatory physical examination of all first time detainees, including inspection.

Currently applicable legislation does not impose an obligation on penitentiary facilities to carry out such an examination in respect of inmates transported from other detention facilities. The shortcomings of such a solution are well demonstrated by the following case encountered during one of the visits⁷⁶.

An inmate from another penitentiary facility arrived at the Dzierżoniów pre-trial detention centre. During an interview with a nurse he did not report any medical problems, so the nurse did not refer him to a doctor. However, a correction officer who interviewed the inmate noticed symptoms in him which could point to physical abuse. The doctor was already gone, so the inmate was taken to a public healthcare facility. A doctor did not find any external injuries. Since the symptoms occurring in the inmate still arouse prison officers' concern, they took him to a forensic pathologist at another location. The pathologist not only confirmed lip crush injury, crush injury of ribs and a burn wound on the back of his hand, but also suggested that, in line with the inmate's testimony, those injuries could have been a result of violence inflicted by other inmates of the former facility. As a result of the physical examination, prosecution bodies were notified of a suspected crime.

⁷⁴ Prisons: ZK Opole Lubelskie (KMP.571.3.2019); ZK Zaręba (KMP.571.5.2019); ZK no 2 in Łódź (KMP.571.6.2019); ZK Kłodzko (BPW.571.3.2019); ZK Zamość (KMP.571.7.2019); ZK Siedlce (KMP.571.2.2019); Temporary Detention Centres: AŚ Dzierżoniów (BPW.571.2.2019); AŚ Sosnowiec (BPK.571.1.2019); AŚ Radom (KMP.571.1.2019).

⁷⁵ ZK Siedlce and AŚ Radom.

⁷⁶ AŚ Dzierżoniów.

In the above mentioned case, identification of injuries was possible thanks to sensitivity of the pre-trial detention centre personnel and their determination to establish the inmate's injuries and their causes. However, there are no measures within the system, which would make it possible to find out about injuries of newly arriving inmates regardless of individual behaviour of pre-trial detention centre personnel who suspects physical abuse of an inmate concerned.

The postulate of the National Mechanism, expressed in the 2016, 2017 and 2018 Annual Reports, to introduce procedures defining how penitentiary facility personnel should act if an inmate reports experiencing torture or violence, or there is a suspicion of such an inmate being a victim of torture or violence, is still waiting to be fulfilled⁷⁷. Prison officers, including prison doctors, have no procedures to follow. Injuries are often documented very generally and medical personnel's knowledge of the Istanbul Protocol is deficient.



SPT

Initial physical examination of all the inmates should be carried out while using a standard questionnaire which, apart from general questions about health, should include descriptions of all the recent acts of violence experienced by the inmate concerned. A doctor should carry out a full physical examination, including inspection of the whole body. If the doctor has reasons to suspect tortures or other forms of abuse, they should inform appropriate authorities immediately. The same should apply to injuries which occurred in detention.



Moreover, the Sub-Committee reminds a recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to introduce procedures in order to make sure that always when the injuries recorded correspond to the inmate's account of abuse (or which point to such abuse even if no account has been given by the inmate), the account should be forwarded to competent authorities regardless of the inmate's request. The results of such physical examination should also be available to the inmate concerned, and to his/her defence counsel⁷⁸.

As far as appropriate documentation of inmates' injuries is concerned, in 2019 Human Rights Commissioner acting as the National Mechanism for Torture Prevention referred to the Director General of the Penitentiary Service⁷⁹, which was described in the Chapter on *General Interventions*.

⁷⁷ See e.g. Report of Commissioner of Human Rights on the operation of the National Mechanism for Torture Prevention 2018.

⁷⁸ SPT Report on the visit to Poland, CAT/OP/POL/ROSP/1, paragraphs 106 and 107.

⁷⁹ General Intervention of CHR to Director General of Penitentiary Service of 29 January 2019, KMP.571.6.2017.

Small living space for inmates in cells

Unfortunately, despite the NMPT efforts to increase the cell size per capita described in the 2017 and 2018 Annual Reports, the Ministry of Justice does not see a need to make such changes⁸⁰.

According to the regulations applicable in Poland, an inmate is guaranteed a minimum of 3 m² of a cell area. The legislation also allows for a reduction in this standard⁸¹. **In such cases an individual is unable to function normally.** The Polish standard is contrary to international standards and practices of the majority of the European countries⁸².

Since 1996 Polish authorities have been called by international organizations such as European Committee for the Prevention of Torture and Unhuman and Degrading Treatment or Punishment (CPT), UN Committee against Torture (CAT), UN Sub-Committee against Torture (SPT) to ensure minimum 4 m² of cell space to prisoners.



CPT

CPT repeatedly calls the Polish authorities to increase minimum standards of accommodation for inmates to minimum 4 m² in multi-person cells (except for toilet zone) and 6 m² in single cells⁸³.



CAT

Poland should take actions, including those aimed at increasing prison capacity, in order to ensure compatibility with the European standard of at least four square metres of accommodation area for each inmate⁸⁴.



SPT

According to repeated recommendations of the European Committee for the Prevention of Tortures and Unhuman Treatment or Degrading Treatment of Punishment, the Sub-Committee recommends that the State Party increase the minimum standard of accommodation per one inmate to at least four square metres in multi-person cells (not counting toilet zone) and six square metres in single cells.



This problem is additionally aggravated by the fact that prisoners who work or do not participate in correctional schemes may usually spend minimum one hour daily outside⁸⁵.

⁸⁰ See the 2018 Report of Commissioner for Human Rights on the operation of the National Mechanism for Torture Prevention.

⁸¹ Art. 110 of the Act of 6 June 1997 – Code of Enforcing Judgments in Criminal Cases (Journal of Laws (Dz. U.) of 2020, item 523 as amended).

⁸² See The Report of the Commissioner of Human Rights on the operation of the National Mechanism for the Prevention of Torture in 2018.

⁸³ CPT Report on the visit to Poland, CPT/Inf (2018) 39, paragraph 59.

⁸⁴ Committee against Torture, Concluding observations on the combined fifth and sixth periodic reports of Poland, 23 December 2013, CAT/C/POL/CO/5-6, paragraph 19.

⁸⁵ SPT Report on a visit to Poland, CAT/OP/POL/ROSP/1, paragraphs 80 and 81.

Body search of prisoners should be subject to court assessment

Proceedings opened upon a motion of the Commissioner for Human Rights filed to the Constitutional Tribunal in 2016 for rendering Article 116(6) of the Code of Enforcing Judgments in Criminal Cases in relation to Article 7(1) of the same Code unconstitutional was dismissed on 26 November 2019 in the scope in which it does not provide for issuing a decision on inmate's body search (Case ref. no K 5/16)⁸⁶.



The National Mechanism for the Prevention of Torture underlines that it is important that justification for and method of inmates' body search be subject to external verification. Court verification fulfils preventive role and may be a deterrent to those who want to carry out body search where it is unnecessary.

It is worth to note that situations occurred in the past, when a decision to carry out body search was not justified from the point of view of security, which has already been pointed out by the European Court of Human Rights in Strasbourg in judgments against Poland.



ECHR

Every day body search of inmates involving the need to strip down naked did not result from any specific security needs and were not related with suspicions resulting from inmate's behaviour. Such practice must have made the inmate concerned feel humiliated, depressed and must have caused suffering which exceeded the unavoidable amount of humiliation and deprivation related with imprisonment⁸⁷.



Domestic legislation applied in practice did not ensure an effective measure for inmates to appeal against a decision to carry out body search. Due to a lack of such an effective measure it is difficult to enforce a country-wide obligation of sufficient justification for body search or frisking involving stripping down nude⁸⁸.

⁸⁶ Constitutional Tribunal held that the grounds for the motion for rendering unconstitutionality presented by the Commissioner of Human Rights are very terse. Thus, the motion cannot be examined as to its merit and as a consequence the proceeding must be dismissed as no judgment is admissible. A different opinion was presented by judge Piotr Pszczółkowski, in whose opinion the CHR motion fulfilled formal requirements which are a precondition for the examination of the motion as to its merit and the proceeding should have ended with a judgment, according to which Article 116 § 6 of the Act of 6 June 1997 – Code of Enforcing Judgments in Criminal Cases (Dz. U. of 2019, item 676 as amended) construed to mean that inmates' body search does not require a decision of a detention facility manager which should be verified by court does not conform with Article 45.1 and Article 77.2 of the Constitution of the Republic of Poland.

⁸⁷ Judgment in the case Świdorski versus Poland of 16 February 2016, complaint no 5532/10, paragraphs 60-61.

⁸⁸ Judgment in the case Milka versus Poland of 15 September 2015, complaint no 14322/12, paragraphs 30 and 48.

The National Mechanism for the Prevention of Torture does not undermine the justification for body control, however, due to the above mentioned issues related with appealing against it, the matter is being monitored. On 18 July and 20 August 2019 the Commissioner for Human Rights presented remarks to a proposal for amendments to the Code of Enforcing Judgments in Criminal Cases, which included i.a. the above mentioned issues⁸⁹.

The standard concerning forensic psychologists

According to the NMPT, the delivery of psychological services in prisons is insufficient. The standard determined by Director General of Penitentiary Service provides for a provision of one psychologist to a group of 200 inmates⁹⁰. Having so many prisoners to attend to, psychologists are unable to deliver their services effectively.

Moreover, the above mentioned requirement provided in the Decision of Director General of Penitentiary Service of 14 April 2016 is not fulfilled in all the facilities. In a Temporary Detention Centre in Zaręb, as a consequence of maternal leave of one psychologist, 382 inmates had to rely on 1 psychologist.

Since 2016 this problem was reported to Director General of Penitentiary Service⁹¹.

The situation of inmates suffering from physical disorders

According to NMPT, inmates with reduced physical capacity belong to a risk group in terms of torture, inhuman and degrading treatment. Imprisonment of those suffering from chronic reduction of physical capacity is impacted by the amended Ordinance of the Minister of Justice of 23 June 2015 concerning administrative actions related with the execution of pre-trial detention as well as penalties and coercion measures resulting in imprisonment and with documentation of those actions⁹², as a consequence of which, since 1 July 2015 penitentiary facilities should also accept *individuals who require instant hospitalization due to direct life- or health threat or women from the 28th week of pregnancy*. Moreover, the problem is inseparably linked with demographic changes taking place in Poland. As an ageing society we are facing the problem of decreasing cognitive and physical ability among both free and imprisoned citizens.

Having regard to the NMPT mandate, representatives of the National Mechanism pay special attention to the situation of inmates who can be treated while in prison and who, while not fulfilling the disability requirements, require standing support of fellow inmates due to their health condition. There is only one hospital department within the Polish prison system, which is dedicated to such individuals, i.e. The Chronic Diseases Department in the Czarne Prison. As a result of a limited number of places in that facility, inmates sometimes wait for admission for more than one year.

⁸⁹ <https://www.rpo.gov.pl/pl/content/opinia-rpo-o-zmianach-w-kodeksie-karnym-wykonawczym>; <https://www.rpo.gov.pl/pl/content/sposob-oceny-przeprowadzenia-kontroli-osobistej-wiezni-dodatkowa-opinia-rpo-donowelizacji-kodeksu>.

⁹⁰ Order no 19/16 of Director General of the Penitentiary Service dated 14 April 2016 concerning detailed rules for the organization of the prison operation and job descriptions of prison officers and therapists, § 3 (2).

⁹¹ See chapter on *General interventions*.

⁹² Journal of Laws (Dz. U.) of 2015, item 927.

In 2019, the Commissioner for Human Rights conducted two visits in order to investigate the situation of inmates suffering from chronic physical disorders⁹³. Results of the investigation were included in an Intervention of the Commissioner for Human Rights to Director General of Penitentiary Service⁹⁴. It was underlined in the intervention that penitentiary facilities lack appropriately trained teams of specialists having broad medical experience and they lack appropriate medical equipment. The facilities lack places adjusted to special accommodation and treatment needs of such inmates. Moreover, personnel of the facilities do not engage such inmates in stimulating activities, the lack of which leads to aggravating apathy and further dependence on other inmates. A need was pointed out to take account of specific needs of such inmates, especially the needs related to the inmates' age and health condition, which results from a rule of individualized treatment as defined in Article 67 of the Code of Enforcing Judgments in Criminal Cases. In the CHR's opinion, some of the inmates suffering from chronic physical disorders should not be imprisoned. If, however, there are objective constraints which make it impossible to release them, one should ensure that the conditions of imprisonment ensure security of their human dignity.

In his response, the Director General of the Penitentiary Service indicated that the problem invoked by the CHR is well-known to the Penitentiary Service which provides necessary medical healthcare and treatment within the limits of funds allocated to it from the state budget and within the possibilities constrained by those funds. The Penitentiary Service struggles with a lack of funds and insufficient number of healthcare professionals, including nurses, as well as with insufficient collaboration of non-penitentiary entities.

The NMPT wishes to underline that attempts to cope with the problem concerned at the level of ordinary penitentiary facilities by means of engaging inmates to take care of the fellow inmates struggling with reduced physical capacity are only an ad hoc solution which has been challenged by the European Court of Human Rights in the past.



ECHR

Participation of fellow inmates in everyday hygiene, dressing and undressing of disabled inmates must cause their anxiety and make them feel inferior in front of their fellow inmates⁹⁵.



It is unacceptable to imprison individuals suffering from serious physical disorders in the conditions which are inappropriate to their health condition or to leave those individuals to be dependent on fellow inmates for showering, dressing or undressing. This is a humiliating treatment⁹⁶.

⁹³ KMP.571.2.2019.JJ; KMP.1.2019.TG.

⁹⁴ IX.517.532.2019.

⁹⁵ Judgment in the case Farbtuhs versus Latvia of 2 December 2004, complaint no 4672/02.

⁹⁶ Judgment in the case D. G. versus Poland of 12 February 2013, complaint no 45705/07.



During a visit to one prison a 70-year old inmate was seen walking on crutches after a stroke suffered from in prison, who as a consequence required assistance of third parties in everyday routine activities. Due to a limited number of places in the Chronic Diseases Department in the Czarne Prison he was waiting for a very long time to be admitted there. Despite interventions made by the facility director and repeated requests to move the inmate to Czarne due to his health condition, it was impossible because the waiting list of inmates with equally serious health conditions was very long.



In the NMPT opinion, a solution to be taken account of by the Penitentiary Service in order to meet the needs of inmates suffering from chronic physical disorders is to increase the number of hospital departments such as the one in Czarne to be located within prisons.

A poor offer of cultural and educational activities addressed to the inmates of pre-trial detention facilities



CPT

calls Polish authorities to take actions necessary to develop programmes of such activities for those temporarily arrested as well as for prisoners. The aim should be to ensure that every inmate can spend a reasonable part of day (eight or more hours) outside the cell while engaging in various activities (work, education, vocational training, sport, etc.)⁹⁷.

The offer of activities addressed to inmates is very poor. Inmates of pre-trial detention centres may spend their time in cells and in day centres, they can watch TV, read books from a library, they can play board games and table football. In practice, interviews with inmates during a visit revealed that they spend most of their time in cells and leave them only to take a walk, which is the most attractive form of activity for them. The facilities may organize various interesting meetings, concerts or performances, but such events are only incidental.

The problem of poor cultural and educational offer for temporarily detained individuals was diagnosed by the NMPT already in 2014 and presented in a thematic report concerning the situation

⁹⁷ CPT Report on a visit to Poland, CPT/Inf (2014) 21, paragraph 43; CPT Report on a visit to Poland, CPT/Inf (2018) 30, paragraph 73.

of inmates of pre-trial centres and therapeutic facilities⁹⁸. Visits conducted in 2019 confirm that the situation has not improved⁹⁹.



SPT

Programmes of activities for inmates play an important role in ensuring security and wellbeing of inmates and prison officers. Forced idleness increases tensions in prison and may have serious consequences to inmates' health and wellbeing, as well as to future re-integration after leaving the prison. Total idleness forced on prisoners in the long term may be deemed a manifestation of inhuman treatment¹⁰⁰.



It is recommended that the State Party takes measures aimed at further increasing a possibility to work for prisoners and ensuring that paid work is available for all the inmates, including those kept in pre-trial detention centres, while making sure that no inmate is forced to work at the same time¹⁰¹.

Location of sinks outside toilet zones

In some penitentiary facilities sinks in cells were located outside a toilet zone without any separator from the remaining part of the cell.

According to § 29.1 of the *Ordinance of the Minister of Justice of 21 December 2016 defining regulations for enforcing a penalty of imprisonment*¹⁰² and §34 of the *Ordinance of the Minister of Justice of 21 December 2016 r. defining regulations for enforcing pre-trial arrest*¹⁰³, necessary sanitary appliances in a prison cell should be located so that an inmate can use them without embarrassment. A sink is commonly regarded a necessary sanitary appliance, so it should also be located so that an inmate can use it without embarrassment. The understanding of the minimum needs of the inmates in this scope is also demonstrated by the wording of §3.7 of *Guidelines no 3/2011 of Director General for the Penitentiary Service of 4 October 2011 on technical and security requirements for inmates accommodation buildings*, which provides that a toilet zone in a cell shall include a WC and a sink which are connected to water supply/sewage discharge system. The method of toilet zone construction must fulfil the requirement of ensuring intimacy during the use of the toilet facilities. Gravity ventilation – separate for the toilet zone and for the rest of the cell – must ensure appropriate air circulation. According

⁹⁸ More information concerning the observance of the rights of inmates of pre-trial detention centres can be found in the NMPT thematic report Visits of the NMPT to therapeutic units for individuals suffering from non-psychotic mental disorders or mentally handicapped and units for those temporarily arrested which is available at the NMPT website in a bookmark Annual Reports and Publications.

⁹⁹ See a Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2018.

¹⁰⁰ SPT Report on a visit to Benin, CAT/OP/BEN/1, paragraph 273.

¹⁰¹ SPT Report on a visit to Poland, CAT/OP/POL/ROSP/1, paragraph 87.

¹⁰² Journal of Laws (Dz. U.) of 2016, item 2231.

¹⁰³ Journal of Laws (Dz. U.) of 2016, item 2290.

to the Commissioner for Human Rights, in the cells in which a sink is located outside a separated toilet zone and it is the only device of that type in a cell, intimacy of inmates who want to wash themselves is not ensured.



SPT

It is recommended that the State Party continue renovation, improvement and modernization of accommodation conditions in detention facilities in order to ensure that conditions in prisons conform at least to the UN standard minimum rules of handling prisoners (Mandela Rules)¹⁰⁴.

National Centre for the Prevention of Dissocial Behaviours

Between 8–11 April 2019 the National Mechanism for the Prevention of Torture conducted a visit to the National Centre for the Prevention of Dissocial Behaviours in Gostynin (hereinafter as NCPDB)¹⁰⁵. The facility was established pursuant to the Act of 22 November 2013 on handling individuals suffering from mental disorders who pose threat to other peoples' lives, health or sexual freedom¹⁰⁶. **This is the only such facility in Poland.** The Act defines that this is a healthcare facility, the aim of which is to deliver therapy to dangerous individuals accommodated there. NCPDB is funded by the state and answers to the Minister of Health. NCPDB inmates are placed there based on court decisions.

SYSTEMIC PROBLEMS

Principles of referring patients to NCPDB

NCPDB is not a psychiatric hospital, so mentally ill people should not be accommodated there. This is a facility for people who are to be treated due to personality disorders, sexual preference disorders or mental handicaps.

However, as a result of an analysis of one case it was found out that one of NCPDB patients was a person who was diagnosed with a mental disease in the prison mental hospital. Despite this fact the court decided to place the person in NCPDB. NCPDB director applied to the Provincial Court in Płock many times to release that person due to the fact that this is a mentally ill person, and NCPDB does not provide psychiatric treatment. Despite this, the subsequent opinions of experts called by the Provincial Court in Płock were divergent with the opinion of NCPDB personnel who works with such a patient every day. Concerns about the person were also raised by CPT delegation who visited the Gostynin facility in 2017:

¹⁰⁴ SPT report on a visit to Poland, CAT/OP/POL/ROSP/1, paragraph 83.

¹⁰⁵ KMP.574.1.2019.

¹⁰⁶ Consolidated text in Journal of Laws (Dz. U.) of 2019, item 2203.



CPT

The delegation expresses concern with the situation of the only female patient of NCPDB. According to the personnel she should not have been admitted to NCPDB: although psychosis was not diagnosed in her formally, the medical personnel is of the opinion that she may suffer from paranoid schizophrenia and she voluntarily takes antipsychotic medications¹⁰⁷.

Apart from the problem concerning referrals to NCPDB of mentally ill people, according to the NMPT attention should also be paid to two other problems resulting from the same piece of legislation. First of all, considering that NCPDB is to fulfil a therapeutic function, one has to remember that such work involves caring after patient's resources, including cognitive and intellectual ones. Thus, one should ponder whether referring those intellectually disabled or those with significantly lowered cognitive functions to NCPDB is justified. Due to limited possibilities of such people to analyse their actions, they will not benefit in any case from therapies offered, and their stay will fulfil merely the function of isolation.

The second major issue would be to introduce – at the central level – a possibility to verify the grounds for referring people to NCPDB. Unfortunately, despite numerous appeals of the CHR¹⁰⁸, a comprehensive law concerning court appointed experts has not been introduced in Poland yet. As a consequence, there are cases when court appointed experts' opinions are of a low quality. Undoubtedly in case of opinions which may impact a long-term isolation lasting for years, it is necessary to ensure the highest standards possible in this scope. According to the NMPT a good solution would be to establish a special expert committee in case of people referred to NCPDB, the members of which would specialize in the assessment of probability of committing acts of violence. There is a need for substantive assessment of court appointed experts' opinions and for implementing Structured Professional Judgment Approach to Violence Risk Assessment with HCR20 v3 and SAPROF tools, according to standards based on that method. What is important, such an analysis should be conducted by persons not only trained in its scope but also having a great deal of experience in making such assessments. Such an analysis not only enables to define a real level of probability of a repeated crime, but also to define strategies which may be used in order to minimize the risk, not necessarily by placement in NCPDB.

Determining patients' rights and obligations contrary to constitutional rules

According to Article 31.3 of the Constitution of the Republic of Poland *any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, 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*

¹⁰⁷ CPT Report on a visit to Poland, CPT/Inf (2018) 39, paragraph 122.

¹⁰⁸ CHR intervention to the Prime Minister of 6 December 2018, VII.510.20.2015.

the essence of freedoms and rights. However, the Act of 22 November 2013 only mentions the rights of patients. A key document which defines the principles of the facility operation, including patients' rights and obligations, is a document titled „Internal Rules and Regulations of Patient's Stay in NCPDB”, which was issued pursuant to Article 23 of Healthcare Operations Act of 15 April 2011¹⁰⁹. According to this provision matters concerning methods and terms for rendering healthcare services by a healthcare facility which have not been regulated statutorily or by the facility's constitution are defined by rules and regulations developed by a facility manager. One has to underline that the very Act of 22 November 2013 does not include a provision which authorizes the facility director to issue internal rules and regulations. This is a clear legislative gap.

Thus, one has to assume that according to current legislation, the facility manager is competent only to define the method and terms of rendering healthcare services, i.e. therapies to be delivered to patients staying at the facility. The above mentioned provision does not authorise NCPDB manager to define i.a. sanctions to discipline patients, methods of surveillance or rules for participation in religious practices, and in the Internal Rules and Regulations concerned such issues have indeed been defined.

This is a particularly flagrant violation, as the sources of commonly applicable law have been clearly defined by the legislator in the Constitution to include: the Constitution, statutes, ratified international agreements and regulations, local acts of law as well as regulations equivalent to statutes which are issued by the President during martial law. An unequivocal statement in this case was voiced by the Constitutional Tribunal which pointed out that *the legal situation of citizens (...) may be regulated only by means of commonly applicable acts of law*¹¹⁰. Thus, there cannot be any doubts that detailed regulation of NCPDB patients' rights and obligations in the Internal Rules and Regulations of the facility violates Article 7 of the Constitution, which says that *the organs of public authority shall function on the basis of, and within the limits of, the law*.

In this context one has to note that the CHR commissioned an eminent expert in the constitutional law, dr hab. Ryszard Piotrowski from the Warsaw University to prepare an opinion whether the Internal Rules and Regulations of Patient's stay at NCPDB in Gostynin conform with the Polish Constitution. In his opinion delivered on 14 March 2019, Mr. Piotrowski unequivocally stated that **due to lack of the basis – required by the Constitution – for establishing the Rules and Regulations, the entire document does not conform with Article 7 of the Constitution of the Republic of Poland**.

A big problem is also that the Rules and Regulations are subject to frequent modifications, as a result of which new amendments are made which provide a different regulation of a given issue and new rules of the facility operation. During the visit, Rules and Regulation dated 4 January were valid, but they were modified twice on 8 April 2019, the amendments being introduced within a weekly interval. This surely demonstrates that there is incoherence between the concept of NCPDB operation and the provisions of the Act and its implementing regulations concerning NCPDB. Its patients

¹⁰⁹ Consolidated text: Journal of Laws (Dz. U.) of 2020, item 295.

¹¹⁰ Judgment of the Constitutional Tribunal of 9 November 1999, case no K. 28/98.

and staff should have clarity as to what rights are had by people placed there and which disciplinary measures may be applied if the rules of order and security are violated. However, continuous modifications of the rules and unsurety translate into unfavourable relations among patients and NCPDB employees, which also distorts therapeutic process. Moreover, according to patients, the Rules and Regulations are changed without their participation, often for reasons which are incomprehensible to them, and often on the next day. This is perceived by patients as a manifestation of persecution and application of collective responsibility for some people's misdemeanours. This creates further therapeutic constraints, may cause resistance and negativism in patients, along with confrontative behaviour which makes it difficult to conduct an effective therapy.

Apart from that, in the above mentioned opinion Ryszard Piotrowski, PhD, points out that frequent modifications of the Rules and Regulations and introduction of numerous Amendments undermine their importance as a standard and point to a lack of coherence between the concept of the facility operation and the provisions of the Act on handling individuals suffering from mental disorders which cause risk of life, health or sexual freedom of other individuals and the Ordinance setting out detailed terms and procedures of rendering healthcare services to persons placed in the National Centre for the Prevention of Dissocial Behaviours.



According to the NMPT, a need arises to amend the currently applicable Act in the scope of detailed definition of the rights and obligations of NCPDB patients. Those issues must not be defined in the facility's internal Rules and Regulations which are subject to constant modifications.

Legality of stay

The NMPT raises doubts about the legality of stay at NCPDB of a mentally ill person, which has already been pointed out in the section concerning referral to the facility.

Moreover, during the visit, there were 5 patients who were placed in the facility under the so called temporary security measure pursuant to the Code of Civil Procedure. The measure results from Article 2(3) of the Act of 22 November 2013. In these cases no valid judgment has been rendered yet which would regard those patients as dangerous, but their prison sentences have already ended. One has to remember that in such case the Act also provides for a measure which is alternative to imprisonment, such as e.g. preventive surveillance (without detention at the Centre). The choice of measures is decided by a civil court.

In this context it is worth, however, to point out that on 30 January 2019 the Supreme Court issued a resolution in which it was pointed out clearly that, unless relevant provisions of the Code of Civil Procedure concerning security measures apply in the proceedings opened based on the Act of 22 November 2013, it is *unacceptable to apply a security measure in the form of placement of a per-*

son concerned in the National Centre for the Prevention of Dissocial Behaviours¹¹¹. A similar opinion was voiced by the Commissioner of Human Rights who joined the proceedings¹¹². The CHR pointed out that Article 2.3 of the Act may be the basis for applying the provisions of the Code of Civil Procedure on security measures, provided that this does not lead to deprivation or limitation of personal freedom of the participant of the proceedings.

In this context one cannot forget about the role of prison managers filing motions to courts based on Article 9 of the Act. They should act sufficiently in advance, so that a valid court decision is issued prior to the end of penalty execution and release of a person concerned. The postulate of efficiency of proceedings relates also to courts (in the scope of their operation) which examine prison manager motions and appeals in the case concerned.

As far as the need to amend currently applicable legislation, Commissioner of Human Rights applied to the Prime Minister on 27 February 2019¹¹³.

Psychiatric hospitals

In 2019, the National Mechanism for the Prevention of Torture conducted visits to 2 psychiatric hospitals for adults¹¹⁴, as well as to the National Centre for Forensic Psychiatry for Minors in Garwolin (conclusions from the visits were described in the part of this Report concerning the rights of minors). The NMPT delegation's aim was to verify the application of a security measure involving the placement of a perpetrator of a criminal act in a psychiatric facility due to his/her insanity while committing the act concerned (Article 93a § 1 (4) of the Criminal Code).

¹¹¹ Supreme Court resolution of 30 January 2019 (Case no III CZP 75/18). The Supreme Court also pointed out that there should not be any doubts that orders and prohibitions within security measure application proceedings cannot interfere with personal freedom which is guaranteed by the Constitution. In the Supreme Court's opinion a reference included in Article 2.3 of the Act cannot be construed as an authorisation to imprisonment for in principle unlimited time and without subjective and objective assumptions being clearly defines. The Supreme Court also underlined that in the Act itself one cannot find provisions ensuring adequate standards of controlling the stay of a person at the Centre during security measure application proceedings. At the same time the Supreme Court noticed that there may be situations where an isolation of a participant – in the period following release from prison and before a valid termination of proceedings to be placed in the Centre – shall become justified or even necessary. To this end one has to change the applicable laws. In the Supreme Court's opinion, the legislator should fulfil an existing gap with clear and precise regulations which do not raise any doubts in terms of conformity with the Constitution, axiology or interpretation. Moreover, the Supreme Court held that art. 23 et. seq. of the Mental Health Protection Act of 19 August 1994 (consolidated text: Journal of Laws (Dz. U.) of 2017, item 882) may be applied ad hoc (if it is justified by statute).

¹¹² CHR submission dated 29 November 2018, Case no IV.567.4.2018.

¹¹³ General intervention of CHR of 27 February 2019, IX.517.1702.2017. The CHR pointed out i.a. that despite the fact that, since the passing of the Supreme Court resolution, no court has written to the Centre manager to release the patient who was placed there based on the Act of 22 November 2013, one should be aware of the state's liability for damages in all those cases.

¹¹⁴ Jan Mazurkiewicz Mazowieckie Specialized Healthcare Centre based in Pruszków (hereinafter MSCZ), (KMP.574.2.2019); Mieczysław Kaczyński Neuropsychiatric Hospital in Lublin (KMP.574.3.2019).

SYSTEMIC PROBLEMS

Shortage of funds, overcrowding, no space

Observations made during the 2019 visitations paint a dramatic picture of conditions in which inmates of psychiatric hospitals are kept. Patients are accommodated in corridors, in day centres, maximum capacity of patient bedrooms is increased, access to patients' beds from three sides is limited, etc.

Apart from purely financial factors, also judges are liable for overcrowding at psychiatric wards, as they issue decisions to place a person there without getting an opinion of a Psychiatric Committee for Security Measures. This results in placing people in hospitals which have reported that they cannot admit more patients.

As a consequence of the above mentioned shortcomings the inmates in whose periodic opinions doctors recommended their transfer to facilities with basic security measures are kept at wards featuring reinforced security measures as there is no space in hospitals indicated by the Psychiatric Commission for Security Measures which ensure basic security measures. This leads to limitation of inmate's civil liberties, delays his/her leaving the hospital, prolongs detention, makes it impossible to use leaves which are admissible at the basic security ward and causes break in therapy. It is not recommended for a patient – who has been admitted to be detained at a basic security ward – to be kept in the increased security ward. In such case it is necessary to at least transfer patients to a basic security ward or to a general psychiatric ward, in order to ensure more freedom to inmates and relevant rights which result from being kept in the basic security ward.



The courts should absolutely consult the Psychiatric Committee for Security Measures and take account of its opinions concerning admission to hospitals which provide treatment in secured conditions.

Since 2012 the National Mechanism for the Prevention of Torture has been raising the issue of underfunding of psychiatric hospital treatment and consequences thereof¹¹⁵. According to the findings of the CHR and the NMPT, the crux of the problem is in the National Health Fund's failure to take account in its financial assumptions of the fact that apart from psychiatric treatment the hospital must also ensure more costly physical disorder treatment (which is necessary especially for elderly people), medications (medicinal products, insulin for diabetics, etc.), as well as transportation to necessary appointments.

¹¹⁵ See Reports of the Commissioner for Human Rights on the operation in Poland of the National Mechanism for the Prevention of Torture, <https://www.rpo.gov.pl/kategoria-prawna-i-organizacyjna/krajowy-mechanizm-prewencji-raporty-rpo>.



The NMPT has been underlying for years that accommodation in corridors obviously limits the inmates' right to privacy. The same applies to too big a number of inmates in hospital bedrooms. It negatively impacts treatment while generating tensions among patients. In case of patients who are subject to a security measure, hospitalization in such conditions may take many years ¹¹⁶.



CPT

The establishment of a positive therapeutic environment includes in the first place ensuring appropriate living space to patients (...). Special attention must be paid to decoration of patients' rooms dedicated for rest, in order to provide visual stimulation to them. It is highly recommended to equip the rooms in tables and night tables next to the beds; moreover, patients should be allowed to keep certain personal belongings (pictures, books, etc.). One must also underline the importance of ensuring certain place to patients in which they can keep their belongings locked; a lack of such a solution may undermine patient's feeling of security and autonomy.¹¹⁷.

Video Surveillance in psychiatric hospitals

Video surveillance of other rooms than isolation rooms has not yet been regulated statutorily in Poland.¹¹⁸ Despite the Minister of Health's announcements¹¹⁹ of intention to introduce appropriate regulations to the Mental Health Protection Act, this question remains unresolved.



For video surveillance of patients' safety in hospitals to be legal, the justification to apply it must be provided statutorily.

Absence of regulations concerning convoys of inmates subject to security measure

Statutory definition of who, in what cases, using what direct coercion measures and by what type of vehicles may convoy detainees who stay in hospitals instead of prisons is a minimum as far as safety of such detainees is concerned. The issue remains unresolved¹²⁰.

¹¹⁶ See a Report of the Commissioner for Human Rights on the operation in Poland of the National Mechanism for the Torture Prevention in 2017.

¹¹⁷ See CPT Standards, CPT /Inf/E (2002) 1 - Rev. 2011.

¹¹⁸ See Article 18e (2) of the Mental Health Protection Act of 19 August 1994 (Journal of Laws (Dz. U.) of 2018, item 1878, consolidated version).

¹¹⁹ General Intervention of CHR to the Minister of Health of 5 October 2018, KMP.574.8.2015.

¹²⁰ The issue has been described since 2013 in Commissioner of Human Rights' Reports on the operation of the National Mechanism for the Prevention of Tortures.



The NMPT has for a few years been calling for introducing statutory regulations concerning the principles of conveying the inmates of hospitals and psychiatric wards who are subject to a security measure outside those facilities to a medical appointment, examination or procedure.

Nurse call system

Safety of inmates of psychiatric facilities, which should be treated as a priority, is one of the elements of patients' protection rights which is verified every year by the NMPT during visits to psychiatric establishments.

According to the NMPT, efficiently operating nurse call system easily accessible to each inmate must not be overestimated in this respect. Although since 2015¹²¹ the NMPT has been calling for regulating this issue statutorily, it has remained unresolved.

Personnel vacancies

Psychiatric hospitals visited in 2019 had serious problems with ensuring sufficient number of staff, including doctors, nurses or psychologists. Underfunding of the healthcare sector results in fluctuation of personnel who, having acquired experience and education, go away to better paid facilities. Vacancies are filled with less experienced staff. Significant staff rotation may distort treatment continuity. However, such a situation is not to do with malicious behaviour of the management of the facilities visited; It results from lack of funds to ensure appropriate levels of salaries.

Placing minors together with adults in psychiatric facilities

On 12 February 2018 Undersecretary of State at the Ministry of Health wrote a letter to the President of the National Health Fund, in which he informed that due to a growing number of psychiatric patients below 18 years of age who require hospitalization and due to insufficient number of places in paediatric/youth psychiatric wards one should enable the provision of guaranteed healthcare services for minors in the facilities for adults. Thus, on 13 March 2019 the Director of Healthcare Department of Mazovia Province Office in Warsaw sent a letter to the hospitals, informing that due to a difficult situation of the sector of psychiatric services for children and youth, it is admissible to place minors above 17 years of age together with adults.

The proposed solution is objected by the NMPT due to a need to provide for specific security conditions to children and youth placed in psychiatric wards. A case of raping minor inmates of a psychiatric ward for adults of the Provincial Psychiatric Hospital in Gdańsk in 2019, which was broadcasted throughout Poland is the best demonstration of threats lurking for the young people who require psychiatric hospitalization and who are hospitalized together with adults. Such situations are particularly dangerous, also due to the above mentioned staff vacancies.

¹²¹ See Commissioner of Human Rights' Reports on the operation of the National Mechanism for the Prevention of Tortures for the years: 2015, 2016, 2017 and 2018.

The use of handcuffs during transportation

Patients assisted by policemen, who are transported by ambulance to external consultations, are transported in handcuffs (sometimes joined with feet cuffs). This practice, seen in many hospitals, applies to all the detainees in order to avoid their escape.

The practice of handcuffing patients arouses a lot of doubt of the NMPT representatives. *Mental Health Protection Act* of 19 August 1994¹²² lists measures by means of which the use of direct coercion is allowed. They include holding (ad-hoc and short-time immobilization of a person with the use of physical force), forced use of drugs, immobilization with the use of belts, grips, bed covers or straitjacket and isolation. Handcuffs are not listed there.

CPT standards forbid the use of handcuffs when immobilizing psychiatric patients¹²³. Thus, one can assume that in such cases handcuffs are used pursuant to the *Direct Coercion Measures and Firearms Act* of 24 May 2013¹²⁴, according to which a police officer may apply direct coercion if his/her safety, life or health is at risk. The risk must be of a specific kind, though, and coercion must always be treated as an ultimate solution if other, lighter measures fail in order to achieve the intended purpose or specific behaviour¹²⁵.

However, article 46a of *Mental Health Protection Act* provides directly that when executing court decisions concerning admission to a residential care home or a psychiatric hospital, direct coercion is to be used based on the *Mental Health Protection Act*. Direct coercion measures provided by other legislative provisions may be applied in exceptional situations only after the previous use of direct coercion provided by that Act was to no effect or if the use thereof would be to no effect.

Thus, handcuffs may be used only with respect to detainees who are placed in a psychiatric hospital based on a court decision, and in respect of whom the use of direct coercion measures listed in *Mental Health Protection Act* is to no effect or proves to be impracticable.



Handcuffing every patient (only because he/she is a psychiatric patient) conveyed to a hospital or outside the hospital is a blatant abuse which is not justified by law.

Body search

Patients' body search are carried out not only upon admission to the ward, but also e.g. after visitations. Body search is carried out in one stage (patient must strip naked) and not in two stages (first the patient takes off top clothes, after than he/she puts on their top clothes again and takes off

¹²² Consolidated text: *Journal of Laws* (Dz. U.) of 2018, item 1878.

¹²³ See item 3.3. *Coercive Measures in Psychiatric Facilities for Adults*. Standards of the European Committee for the Prevention of Torture and Unhuman or Degrading Treatment or Punishment [CPT/Inf(2017)6].

¹²⁴ Consolidated text: *Journal of Laws* (Dz. U.) of 2018, item 1834.

¹²⁵ Zob. L. Dyduch, K. Świerczewski, W. Biedrzycki, *Użycie lub wykorzystanie środków przymusu bezpośredniego przez policjantów, [The use of direct coercive measures by policemen]* Legionowo 2014, pp. 15–16.

bottom clothes), which should be applicable towards detainees. Patients may not lodge a complaint as to the justification and method of body search. They are not protected by any law in this respect.

While examining a motion of the Commissioner of Human Rights, the Constitutional Tribunal in its judgment of 21 April 2015¹²⁶ held that there is no legislation which should define the procedure of body search of people admitted to a psychiatric facility and there is no legal basis for introducing temporary limitations of telephone conversations for detainees. An Ordinance of the Ministry of Health of 16 January 2017 on psychiatric committee for security measures and execution of security measures in psychiatric establishments¹²⁷, issued as a result of implementing the Tribunal's judgment, has not led to detailed regulation of that issue at the level of an implementing legislation. Chapter 13 of the Code of Enforcing Judgments in Criminal Cases has not been supplemented to include the necessary provisions. As a consequence, the rules concerning lives of inmates in psychiatric facilities are still defined by managers of the psychiatric facilities in internal rules and regulations, which violates Article 31.3 of the Constitution of the Republic of Poland.



According to the CHR there is no legal basis for intervention in patient's privacy by carrying out body search in psychiatric hospitals in which a security measure is executed.

Having regard to the above, the CHR called the Minister of Justice to amend the Code of Enforcing Judgements in Criminal Cases so that statutory provisions define the rights, limitation thereof and obligations of persons subject to security measure in the form of placement in a psychiatric facility¹²⁸. In his response, the Vice-Minister of Justice held that in his opinion there was no need to amend the Code of Enforcing Judgements in Criminal Cases as the issues raised by the CHR are already regulated in the Healthcare Act of 15 April 2011 and in Mental Health Protection Act of 19 August 1994¹²⁹.

Preparing opinions on psychiatric detainees

When preparing an opinion on a psychiatric detainee which is the basis for a detainee's stay at the hospital or release, one should remember that in case of a long-lasting proceedings (sometimes exceeding one year) it is necessary to verify the patient's mental condition in terms of further need to apply the security measure involving the placement in a psychiatric hospital. It happens that – throughout the period of the proceedings – the patient was treated systematically, his mental health improved and he does not require hospitalization any more. Moreover, in case of isolation in a psychiatric hospital, which is a measure which significantly limits civic liberties of the inmate, it is necessary

¹²⁶ Case no U 8/14.

¹²⁷ Journal of Laws (Dz. U.) of 2017, item 119.

¹²⁸ General Intervention of the CHR to the Minister of Justice of 8 April 2019, IX.517.961.2018.

¹²⁹ A letter of the Secretary of State at the Ministry of Justice of 20 January 2020, DLPK-I.053.6.2019.

to make a detailed analysis into the patient's condition and into assumptions necessary for security measures to be used; it is particularly important to examine and assess the risk of the inmate's committing a serious social crime. Court appointed experts *de facto* do not assess the level of social crime seriousness, this belongs to court, however, they use this phrase and as a consequence "relieve" the court of doing so.

NMPT suggests the following solutions:



It is necessary to make decisions to change the status or to end detention based on a risk assessment of a probability to commit violence to be carried out by means of HCR20 v3 and SAPROF tools. Such an assessment enables more holistic look at a patient and more reliable and professional assessment in a form of a description, taking account of which measures to apply in order to prevent violation in the future, without applying detention.



Verification of court and psychiatric opinions of people against whom application of a security measure was recommended, by means of establishing special provincial commissions including experts in psychiatry and psychology; such commissions should be composed of at least one person who is experienced in carrying out violence risk assessment by means of HCR20 v3 and SAPROF tools.



Ordering the courts to verify qualifications of court appointed psychiatric and psychology experts, not only those who are listed in provincial courts, but all the experts who issue psychiatric opinions for court use, mainly those issuing opinions in "a particular case".



Verification of the qualifications of experts listed in provincial courts, as very often they are retired people who do not practice any more. It is recommended that they undergo periodic examinations or other forms of verifying their knowledge by eminent authorities in a given field.



Calling the court appointed experts to stop giving opinions on the level of social crime seriousness, as such an assessment is reserved to courts. After assessing violence risk, they can, as experts, assess the risk of committing crimes with the use of violence.



Ensuring that the Psychiatric Commission for Security Measures includes a person who is an expert in assessing the risk of violence by means of applying HCR20 v3 and SAPROF tools, thanks to which the Commission assessments and decisions about the level of security could be more exact.

Release from detention

The National Mechanism for the Prevention of Torture pointed to a problem of ending detention if patients are not provided with support of their families and they cannot function on their own. In such cases, depending on patient's condition, a hospital director moves to a court to accommodate the patient in a residential care home. Although there is no major problem apart from a long waiting time if a patient agrees to such a solution, problems appear if accommodation at such a residential care home is against the patient's will. It happens that courts refuse to issue a decision to accommodate a patient at a residential care home while requiring a decision about termination of detention first. This is not possible, however, as due to certain circumstances, such as e.g. insufficient insight into patient's files, lack of support, homelessness, ending the detention would result in an increased risk of committing a forbidden act again. This causes unnecessary prolongation of detention, stress and disorientation in patients.

This issue was also tackled by the CPT, which noticed that in some countries patients who do not require a forced accommodation in a psychiatric facility, still stay there due to a lack of adequate attendance or accommodation in the outside world¹³⁰.



CPT

Continuing detention of a person due to lack of adequate conditions in the outside world is a highly questionable practice.

¹³⁰ See CPT Eighth General Report [CPT/Inf (98)], paragraph 57.



According to the NMPT a psychiatric ward/hospital should not fulfil a double role, namely being a diagnostic and therapeutic institution for persons who have indications for hospitalization and, at the same time – also a place of living for people who do not require hospitalization but need standing institutional care at the same time. For multiannual residents of a psychiatric facility a place at residential care home should be found or another type of accommodation, e.g. a secured apartment, hostel, etc.

Social care homes and other long term care facilities

In 2019 the National Mechanism for the Prevention of Torture conducted visits to:

- 2 long term care facilities for physically disabled elderly¹³¹,
- 7-24 hour care facilities for the elderly¹³²,
- 6 social care homes¹³³, including 2 repeated inspections¹³⁴.

SYSTEMIC PROBLEMS

Unfortunately not all systemic problems faced by long term care facilities have been solved. Many problems, although they have been reported for many years, still remain unresolved. The NMPT still expects that the legislator take appropriate legislative measures concerning the following issues:

Legality of stay in such facilities of persons who are not incapacitated and whose health condition makes it impossible for them to sign a contract

Those who act on behalf of a person who has not been incapacitated are not legitimized in any way in light of currently applicable legislation to decide about placing such a person in a long-term care facility or a nursing home, even if such a person is in a bad physical and mental condition and as such is unable to sign a contract for services.

¹³¹ ZOL „Dom Rodzinny” in Nowy Dwór Mazowiecki (KMP.573.8.2019); ZOL in Warsaw, 8, Olchy st. (KMP.573.21.2019).

¹³² Nursing Home „70 Plus” in Konstancinów Łódzki (KMP.573.1.2019); Nursing Home Elite Prestige at Licz (KMP.573.13.2019); „Labirynt” at Olsztyna (KMP.573.9.2019); Nursing Home „TIM” in Marki (KMP.573.10.2019); Nursing Home „Willa Seniorówka” in Strzelce (KMP.573.17.2019); Nursing Home „Osmolice” in Osmolice (KMP.573.16.2019); Nursing Home „Zielone Wzgórze” in Koleczkowo (BPG.573.2.2019).

¹³³ This chapter describes the results of visits at a Nursing Home for War Veterans in Warsaw (KMP.575.1.2019); Nursing Home „Nad Potokiem” in Radom (KMP.575.2.2019); Nursing Home for Mentally Ill Adults of the Albertine Brothers in Częstochowa (KMP.575.4.2019); Nursing Home „Leśny” in Warsaw (KMP.575.6.2019).

¹³⁴ Nursing Home for Education Sector Employees in Warsaw (KMP.575.2.2015); Nursing Home „Pod Brzozami” in Warsaw (KMP.575.18.2014).

It would thus be desirable to regulate this issue by commonly applicable law, e.g. by introducing measures which are analogous to a court's surrogate consent to provide a healthcare service, provided for in the *Physician and Dentist Professions Act*¹³⁵ or a consent to a placement in a psychiatric hospital¹³⁶.

Use of direct coercion measures in 24 hour care facilities

According to the NMPT there is a lack of a provision to regulate the use of direct coercion measures in 24 hour care facilities. The NMPT holds that if direct coercion measures are used by the personnel of such facilities, this is illegal and may be deemed a forbidden act (violating bodily integrity or unlawful detention). This matter was referred to the Minister of Family, Labour and Social Polish by the Commissioner for Human Rights in 2016, but despite the Minister's declaration to take actions concerning amendments to legislation, this issue still remains unresolved¹³⁷.

Video surveillance

On one hand, installing video cameras is undoubtedly good for improving security at a facility, but on the other hand it may result in interference with inmates' and personnel's privacy as well as the privacy of other people who are present at the facility subject to surveillance. For such measures to be used legally it is necessary that they meet the requirements defined by Article 31.3 of the Constitution, including the requirement of limitation by statute. This is especially important in the context of respecting the right to privacy defined in Article 47 of the Constitution.

The staff of social care homes acting as legal guardians of the incapacitated persons

A legal guardian should monitor whether his/her ward is provided with appropriate care and whether his/her dignity is not violated. The personnel of social care homes may have it difficult to be objective when acting as legal guardians of the inmates¹³⁸.

Alcohol abuse by some inmates and insufficient number of facilities for inmates suffering from alcohol issues

Inmates with alcohol issues live in the majority of social care homes for the elderly or for those suffering from chronic physical disorders (ok. 10% of the inmates). They are not provided with appropriate care there and they distort the operation of such facilities. Despite change of law which enables

¹³⁵ See Art. 32 of Physician and Dentist Professions Act of 5 December 1996 (Journal of Laws (Dz. U.) of 2020 item 514 consolidated text).

¹³⁶ This issue was described in more detail i.a. in the Report of Commissioner of Human Rights on the operation of the National Mechanism for the Prevention of Torture in 2018.

¹³⁷ *ibid*

¹³⁸ *ibid*

the establishment of social care facilities for people with alcohol issues, the number of such facilities is still insufficient throughout Poland¹³⁹.

Cooperation of nursing home with psychologist

The applicable provisions do not oblige directors of social care homes to employ a psychologist; they are only obliged to ensure inmates' contact with a psychologist. According to the NMPT, ensuring continuous and undisturbed contact of social care home inmates with a psychologist is a pillar of appropriate care at nursing homes.¹⁴⁰

Insufficient audit of social care homes by family court judges

The applicable legislation obliges court to audit legality of admission to and stay at a social care home of people suffering from mental disorders or those intellectually disabled¹⁴¹. However, these people may also be admitted to other type of social care facilities which are not subject to such audits although they may house people suffering from mental disorders or intellectual disability¹⁴².

Detention of minors

In 2019, the National Mechanism for the Prevention of Torture conducted visits to the following 11 facilities for minors:

- National Centre for Forensic Psychiatry of Minors in Garwolin¹⁴³.
- 11 youth care centres (MOW)¹⁴⁴ (including one repeated visit¹⁴⁵),
- 2 juvenile detention centres¹⁴⁶,
- 1 police emergency centres for youth¹⁴⁷.

NATIONAL CENTRE FOR FORENSIC PSYCHIATRY OF MINORS IN GARWOLIN

This facility is the only one psychiatric hospital of this type in Poland which is dedicated to the detention of youth while providing the most secured level of custody.

¹³⁹ *ibid*

¹⁴⁰ *Ibid*

¹⁴¹ Art. 43.1 of Mental Health Protection Act.

¹⁴² See CHR Report on the operation of the National Mechanism for the Prevention of Torture in 2018.

¹⁴³ KMP.574.5.2019.

¹⁴⁴ Centre for Socially Unadjusted Youth (MOW) Antoniewo KMP.573.5.2019, MOW Augustów KMP.573.18.2019, MOW Józwiów KMP.573.4.2019, MOW Kraków (dedicated to saint Sister Faustine) BPK.573.1.2019, MOW Mrowiny KMP.573.20.2019, MOW Renice KMP.573.3.2019, MOW Rusinów Konecki KMP.573.2.2019, MOW Strzelno KMP.573.6.2019, MOW Warsaw (5, Strażacka st.) KMP.573.19.2019, MOW Wrocław (dedicated to Mother Teresa Potocka) KMP.573.7.2019.

¹⁴⁵ MOW Kwidzyn BPG.573.1.2019. – See chapter on Repeated audits.

¹⁴⁶ Juvenile Detention Centre (ZP) Studzieniec KMP.573.11.2019, ZP Witkowo KMP.573.15.2019.

¹⁴⁷ PID Warsaw KMP.570.34.2019.

SYSTEMIC PROBLEMS

There is no commission which could refer to an appropriate facility in which therapeutic measure could be enforced; powers of such a committee, mode of operation and funding should be defined by statute

When issuing a judgement about detention in a therapeutic institution for juveniles, a court has no obligation to apply for an opinion to a psychiatric committee, which is the same as in case of adults, with respect of whom a judgment of placement in a psychiatric hospital is rendered as a security measure¹⁴⁸.

In practice, a psychiatric commission to support judges in juvenile cases does not even exist. According to the hitherto findings of the Commissioner for Human Rights, the operation of such a commission was suspended not long after its establishment, which was the subject of the CHR's intervention in 2008.¹⁴⁹ As a consequence of the absence of such a commission, courts refer juveniles to such facilities only based on their own knowledge and experience, without consulting an expert body.

Temporary placement of juveniles based on art. 26 of Juvenile Delinquency Proceedings act¹⁵⁰

Placement under the above mentioned article takes place if the court deems it necessary in order to prevent demoralization. Measures provided in the article are applied during the proceedings (after they have commenced). The court may place a minor at once at a psychiatric hospital for the time of the proceedings. The court may also do this upon a motion of a manager of a correctional or foster institution¹⁵¹, in which the minor concerned has been placed temporarily. Judges follow such a procedure if proceedings are carried out to change a correctional measure to a therapeutic measure¹⁵².

As a consequence of currently applicable legislation perpetrators of dangerous forbidden acts (e.g. manslaughter) can be accommodated at the same place as minors demonstrating demoralized behaviour (e.g. skipping school) and those subject to pre-trial proceedings which aim at determining whether they have committed a crime or whether they engage in demoralizing behaviour. At this stage it is also unknown for sure whether the minor requires psychiatric hospitalization, as prior to being placed temporarily in the psychiatric there is no obligation to ask for experts' opinion.

¹⁴⁸ Art. 201 of the Code of Enforcing Judgments in Criminal Cases clearly defines that a minister competent for health establishes a psychiatric commission for security measures. The Code defines the commission's tasks, i.a. issuing opinions for competent courts or other authorised institutions concerning admission, release or transfer of perpetrators in respect of whom a preventive measure in the form of placement in a psychiatric hospital has been decided, analysing information about the number of places at psychiatric facilities dedicated for enforcement of security measures.; the Code also defines the principles of remunerating the committee members and reimbursement of their expenses.

¹⁴⁹ White Book. A Report on letter exchange and contacts between the Commissioner for Human Rights and the Minister of Health on observation of the citizens' rights to healthcare in the period from 14 January 2006 to 30 April 2009, Warsaw 2009, p. 254.

¹⁵⁰ Juvenile Delinquency Proceedings Act of 26 October 1982 (consolidated text in Journal of Laws (Dz. U.) of 2018, item 969).

¹⁵¹ Juvenile Hostel, Centre for socially unadjusted youth, foster home.

¹⁵² These are situations in which minors who are placed in a centre for socially unadjusted youth or in a juvenile detention facility need more therapeutic than correctional actions (in practice these are minors who do not follow rules and regulations of the correctional centres).

Legal framework defining the age of a minor patient

Minimum age

Legislative provisions define the minimum age of 13 only in respect of those minors who have been convicted as perpetrators of forbidden acts¹⁵³. However, in case of minors demonstrating demoralizing behaviour there is no minimum age. This means that psychiatric hospitals may be facilities in which perpetrators of crimes who are more than 13 years old may be kept together with demoralized minors below 13 (skipping school, abusing taboo words, alcohol and drug abuse).

Maximum age

According to the law, a stay in a psychiatric hospital is terminated by statute if a minor turns 18¹⁵⁴. A problem appears if, after turning 18, in doctor's opinion, the patient still requires hospitalization and remains dangerous. In such case courts cannot extend the hospitalization period¹⁵⁵.

Lack of legislation which regulates minor patients' contacts with individuals from outside the hospital (visits, telephone calls, letters)

The Act on Patient Rights and the Commissioner for Patient Rights¹⁵⁶ provides that a manager of a healthcare facility or a doctor authorised by him/her may limit patient's rights in case of a risk of epidemics and due to patients' health safety, and in case of the right to personal contact, telephone calls or letters – also due to the facility's organizational capability.

Other rules which could regulate visits or limitation thereof do not exist. Hospital directors – as in cases of body search and frisking – introduce such regulations in internal by-laws and procedures.



There is a need for statutory regulation of minor patients' contacts with individuals from outside the hospital (visits, making telephone calls, letters). Every instance of limiting contacts with persons from outside the facility should be subject to court audit, which is important from the point of view of protection against arbitrary and unauthorized conduct of the facility management and prevention of abuse in this area. It is necessary to indicate assumptions based on which restrictions may be introduced, as well as a procedure to be followed in such situations.

¹⁵³ Art. 1 §1.2 of Juvenile Delinquency Proceedings Act of 26 October 1982 (consolidated text in Journal of Laws (Dz. U.) of 2018, item 969).

¹⁵⁴ See a definition of „minors” Art. 1 (2)(1) of Juvenile Delinquency Proceedings Act of 26 October 1982, (consolidated text in Journal of Laws (Dz. U.) of 2018, item 969); a minor can be placed in the National Centre for Forensic Psychiatry of Minors (KOPSN) pursuant to Art. 12, Art. 25a and Art. 26 of that Act.

¹⁵⁵ On 31 January 2019 the Commissioner for Human Rights made a general intervention to the Minister of Health, in which he described a problem of a lack of systemic measures concerning the scope and forms of support for disabled children and youth who suffer from a mental crisis, and who, having become of age and having left the healthcare facility still require comprehensive and specialized support, and their families are not in the position to ensure appropriate attendance and therapy; see: <https://www.rpo.gov.pl/pl/content/panstwo-nie-wspiera-rodzicow-dziecka-z-niepelnosprawnoscia-w-kryzysie-psychicznym-gdy-skonczy-18-lat>.

¹⁵⁶ Article 5 of the Act on Patient Rights and the Commissioner for Patients' Rights (consolidated text in Journal of Laws (Dz. U.) of 2019, item 1127 as amended).

The use of handcuffs during transport

The NMPT delegation found that patients are transported by ambulance assisted by the police, i.e. the policemen handcuff the patients (sometimes also including feet cuffs) and leave them in the ambulance attended by a medical rescue team and follow the ambulance in a police car. Handcuffs are taken off only at the Emergency Department. It was found that this is a routine practice (encountered by many hospitals) used towards all patients – detainees in order to prevent escape¹⁵⁷.

The practice of installing CCTV (surveillance) in such facilities is very common. The issue has been described in the chapter: *Psychiatric Hospitals – Systemic Problems*.

No legal basis for body search

Body search is carried out as a one-stage procedure (patient must strip naked), instead of a two-stage procedure (patients take off their top clothes, after the search they put on their top clothes and take off their bottom clothes), which is applicable in respect of detainees. This issue has been described in details in the chapter: *Psychiatric Hospitals – Systemic Problems*.

YOUTH CARE CENTRES AND JUVENILE DETENTION CENTRES

SYSTEMIC PROBLEMS

Drafting new legislation concerning juvenile delinquency proceedings

Drafting a new act concerning juvenile delinquency proceedings¹⁵⁸ is the most important issue from the point of view of minors staying at MOWs (youth care centres) and ZPs (juvenile detention centres).

According to the NMPT the new act should regulate issues concerning the access of inmates to healthcare (including also specialized healthcare for pregnant minors), the use of video surveillance, drug and alcohol tests, contacts with parents, legal guardians or attorneys.

In 2019, the NMPT presented comments to a juvenile delinquency bill of 8 March 2019, which was described in the chapter on *Delivering opinions on legislative acts*.

Lack of systemic measures concerning the situation of pregnant minors and minor mothers and their new born babies



Minor mothers who are detained should be able to permanently stay with their babies, to build emotional and family bonds rather than be allowed to occasionally see their babies who are under a custody of other people.

¹⁵⁷ See the description of systemic problem in the chapter on *Psychiatric Hospitals* herein.

¹⁵⁸ This problem has been highlighted by the NMPT for years, see i.a. a Report of the Commissioner for Human Rights on the operation in Poland of the National Mechanism for the Prevention of Torture in 2018.

Unfortunately, despite systematic description of this issue in the NMPT annual reports since 2012, reporting a need to resolve the problem in general interventions addressed to the Ministry of National Education and the Ministry of Justice and despite attracting attention to the need to introduce appropriate legislation when being asked to deliver an opinion on bills, the problem still remains unresolved¹⁵⁹.

Lack of specialized re-socialization institution such as youth care centres (MOWs)

In a current legal system places like MOWs are divided into the ones providing re-socialization and the ones teaching minors with light degree of intellectual disability. There is a lack of profiled facilities dedicated for minors suffering from mental disorders, alcohol or drug abuse (as it is in case of juvenile detention centres).

According to the NMPT, consideration should be given to the establishment of profiled MOWs dedicated to minors suffering from mental disorders, who are addicted to psychoactive drugs or alcohol. Such profiled MOWs should contribute to better custody of such minors.



Lack of specialized facilities is a big problem, as addicts or persons with mental disorders require particular attendance and attention. Personnel of such facilities is very often not prepared to work with such minors and instead of being treated chiefly by means of an individual therapy, such minors are treated chiefly by means of occupational therapy.

During a visitation to one MOW, the NMPT delegation learned about a case of one minor who was particularly troublesome.



This was a 14-year-old boy who was admitted to the facility at the end of 2018. The opinion on the minor, issued for the purposes of the District Court, provides that he lives in a village, in a reconstructed family featuring distorted relations and pathologic behavioural patterns (mother's alcoholism, unstable family situation, unstable living conditions, poverty). The boy faced late development problems since early childhood (he started talking and walking when he was 3). When he was 5 he started going to appointments to psychologists and educational experts. He was supervised by a psychologist and educator in the first year of primary school. It was at that time that he was hospitalized for the first time at Provincial Hospital for the Mentally Ill, where he was diagnosed with hyperkinetic conduct disorder. After he had left the hospital further treatment was recommended at a Mental Health Clinic. In 2015

¹⁵⁹ See: Reports of the Commissioner for Human Rights on the operation in Poland of the National Mechanism for the Prevention of Torture 2012 – 2018.

he was hospitalized again due to escalating aggression and arson attempt. After leaving the hospital further treatment was recommended at the Mental Health Clinic together with cognitive and behavioural therapy. In 2016 the minor was admitted to a Social Therapy Centre for Youth, where – while staying there since mid-November to mid-December he was hospitalized again due to escalating aggression towards his fellow inmates whom he would beat up, kick and intimidate; he often skipped classes, he also kicked a teacher who did not want to let him out of the classroom. In September 2017 he was again taken to hospital urgently for abusing medications and threatening to strangle himself with a belt, and due to aggressive sexual behaviour towards girls whom he harassed, i.a. by touching their breasts and buttocks. In December he was again admitted to a mental hospital. He was discharged at the end of January 2018 with a recommendation to engage him in behavioural therapy, therapeutic and educational classes, further treatment at Mental Health Clinic and placement in MOW due to escalating demoralization.

Interviews with the facility personnel revealed that he is a continuous trouble. He is described as „difficult“, his mental state is unstable, he is often loud, uses coarse language, he prompts conflicts and behaves in a dangerous way. During classes he often demonstrates oppositional defiance. Due to his frequently unpredicted behaviour he is not liked by his mates. During the visit it was found out that he was beaten up by the inmates twice, probably because of his aggressive behaviour towards other inmates. The analysis of documentation also revealed that the minor takes on average 14 psychotropic pills per day. During the visit, the NMPT representatives witnessed the boy becoming aggressive under the influence of his inmates' aggression towards him, he wanted to attack one of the inmates, after which he started hitting his head against the wall. According to information provided after the visit, as the facility ran out of measures to influence the boy's behaviour, at a June meeting the facility Team for psychologic and educational support applied for transferring the boy to another facility.

Bedroom searching and body search

The NMPT representatives underline that the applicable legislation does not authorise MOW personnel to frisk inmates and do body search.

One has to bear in mind that body search is a very invasive and potentially humiliating measure which strongly interferes in inmate's feeling of dignity. Applying such a measure does not contribute to the achievement of educational goals, makes it difficult to build appropriate relations of personnel with inmates, makes the facility thought about as more rigorous and similar to a prison.

In youth detention centres body search is done based on the provisions of an ordinance rather than provisions of an act¹⁶⁰. Moreover, the ordinance does not indicate persons authorised to conduct body search, or justification for such search, or it does not provide a measure of appeal against body search.



Body search in youth detention centres should be regulated by a statute.

POLICE EMERGENCY CENTRES FOR CHILDREN (PID)

SYSTEMIC PROBLEMS

No obligatory medical examination of youth detained and documenting injuries

This issue, despite its having been described in the previous annual NMPT Report¹⁶¹, still remains unresolved. One has to indicate that a medical examination of those detained and appropriate accounting for injuries discovered out during the examination are deemed an essential and minimal guarantee which protects those persons against torture and violence which is strongly underlined by international institutions for monitoring the treatment of detainees¹⁶².



CPT

During its last visit to Poland in 2017 the CPT recommended that each newly admitted minor be examined by a doctor as soon as possible and not later than 24 hours after being admitted to the facility. According to the CPT, a doctor should interview and examine the minors after their admission to a detention centre; apart from exceptional circumstances an interview/examination should be conducted on the day of admission. However, the minor may contact a qualified nurse first who then will report to a doctor¹⁶³.

¹⁶⁰ Ordinance of the Minister of Justice of 17 October 2001 concerning youth detention centres and temporary youth hostels (consolidated text in Journal of Laws (Dz. U.) of 2017, item 487).

¹⁶¹ Report of the Commissioner for Human Rights on the operation in Poland of the National Mechanism for the Prevention of Torture in 2018.

¹⁶² See for example the Second CPT General Report, CPT/Inf (92) 3, paragraphs 36-38; CPT Report on a visit to Poland, CPT/Inf (2014) 21, paragraph 26, 30; CPT Report on a visit to Poland, CPT/Inf (2018) 39, paragraph 27.

¹⁶³ See the CPT Report on a visit to Poland, CPT/Inf (2018) 39, paragraph 27.

Access to a defence attorney as of the moment of detention



A legal status of a minor who is not represented by an attorney poses a number of risks. Detained minors might not be aware of the consequences of statements made by them or actions carried out with their participation or they are not aware of how the evidence collected in the case will be assessed. That is why it is so important that also a defence attorney can apply for contacting a minor detained in the detention centre run by the police.

The fact of the right not being executed is a problem which has been highlighted by the NMPT for some time¹⁶⁴. In the PID visited, there was one room dedicated to meetings with a defence attorney where those present could have a conversation which was not overheard by the policemen, but according to the personnel of the facility, such meetings in principle do not take place. The facility did not have a list of defence attorneys to be made available to the minors or their guardians who want to execute the right to defence.



CPT

The right to a defence attorney should be ensured from the very beginning of detention. The period directly following the moment of detention is the time when the risk of being threatened and maltreated is the greatest. Due to this fact the possibility to access a defence attorney by those detained by the Police is of key importance in preventing against abuse. The existence of such a measure discourages the officers who could abuse a detainee; apart from that an attorney will be able to take appropriate measures if abuse did take place¹⁶⁵.

According to the *Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings* Member States ensure that children may use the support of defence attorneys without undue delay after being informed that they are suspected or accused persons. In each case children use the services of attorneys, started from the earlier of the following:

- a) before they are interrogated by the Police or another law enforcement or judicial body,
- b) when bodies which conduct pre-trial proceedings or other bodies carry out investigation and interrogations or other actions related with harvesting evidence pursuant to para. 4(c),
- c) without undue delay after detaining a minor,
- d) if they were subpoenaed by a criminal court within a relevant time before they appear before the court.

¹⁶⁴ See i.a. a Report of the Commissioner for Human Rights on the operation in Poland of the National Mechanism for the Prevention of Torture in 2018.

¹⁶⁵ CPT Standards, CPT/Inf/E (2002) 1 – Rev. 2003.

Notification of detention

According to the applicable legislation, parents of the detained must be informed by the policemen who detain the youth concerned and place him/her in PID. The young detainee is forthwith informed about the causes of detention and about his/her rights, including the right to use attorney services, the right to refuse providing explanations or answers and the right to complain about actions which violate his/her rights. The detainee must be interrogated immediately. Upon their request, detainees can call their parent or guardian or attorney. Moreover, the Police informs the detainee's parents or guardians promptly¹⁶⁶.

Upon admission of the detainee to PID the policemen do not have a statutory obligation to notify parents about admission to PID, and the detainee him/herself is not in the position to inform them about it. This may result in a situation where a parent/guardian does not know where his/her child is kept and in what condition he/she is.



The detainee should be able to notify an elected person about his/her detention on his/her own (e.g. by phone), and only in specific cases justified by specific circumstances should the notification obligation be carried out by a policeman.

Sobering-up centres

In 2019 the National Mechanism for the Prevention of Torture conducted a visit to one sobering-up centre which operates under the Centre for Helping People with Alcohol Issues in the city of Częstochowa.

¹⁶⁶ See Article 32g § 3 and § 5 of the Juvenile Delinquency Proceedings Act of 26 October 1982 (consolidated version: Journal of Laws (Dz. U.) of 2018, item 969).

SUMMARY

In Poland 75 thousand inmates are kept in the correctional institutions themselves, whereas persons covered with the mandate of the National Mechanism for the Prevention of Torture are kept also in temporary detention centres of the police, psychiatric hospitals, residential care centres, facilities for the disabled elderly or facilities for minors. All those facilities are regularly visited by the National Mechanism representatives.

The Report of the Commissioner for Human Rights on the operation in Poland of the National Mechanism for the Prevention of Torture in 2019 is a picture of how detention facilities operate from the perspective of observing the detainees' rights. One has to remember that human dignity, innate and inalienable, as well as human life and health require particular protection in detention. As a country which upholds citizen rights, we must ensure and control the observance of those rights also in detention facilities.

The impact of the NMPT depends chiefly on financial abilities, and on persuading the government about the need to implement the recommendations of the National Mechanism as well as national and international standards. The funds allocated for the operation of the national prevention mechanism should be treated as an investment which will result in the increase of the feeling of safety in citizens and of their trust in the state authorities. Meanwhile, in 2019, as in the previous years, the funding earmarked for preventive actions was insufficient in relation to the implementation of tasks faced by the NMPT and by OPCAT.

A number of the NMPT recommendations issued in 2019 as a result of its operation were taken account of by the management of particular facilities immediately after the visits. It is important as it contributes to building collaboration in the spirit of dialogue and understanding. Unfortunately, according to this Report, detention facilities are still places where inmates are treated in unhuman and humiliating way or punished. This raises a lot of concerns, but on the other hand, it also shows the importance of the National Mechanism for the Prevention of Torture, thanks to the operation of which state authorities and citizens are informed what happens behind closed doors of detention facilities.



National Mechanism for the Prevention of Torture runs a social campaign entitled *State without torture*. The campaign partners are: Council of Europe, Office for Democratic Institutions and Human Rights / Organization for Security and Co-operation in Europe, Association for the Prevention of Torture in Geneva (APT), Kantar Millward Brown, Supreme Bar Council, National Chamber of Legal Advisers. Within the campaign, the National Mechanism for the Prevention of Torture seeks to make the society aware of the problem of torture and conduct training courses and lectures on the issue.

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