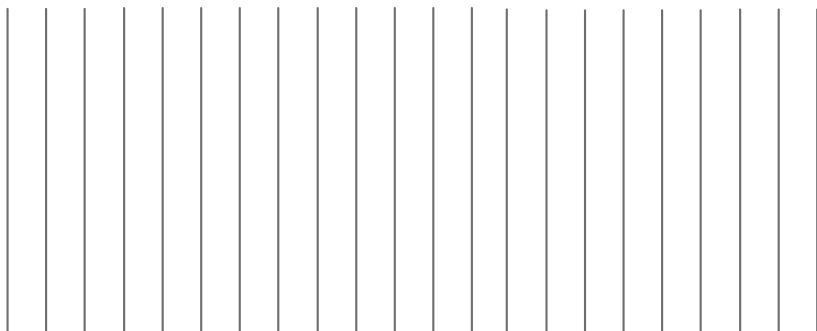




REPORT  
OF THE HUMAN  
RIGHTS DEFENDER  
(OMBUDSMAN)  
on the activities  
OF THE NATIONAL  
PREVENTIVE MECHANISM  
IN POLAND  
in 2012

Warsaw, August 2013



**HUMAN RIGHTS DEFENDER BULLETIN 2013, No 5**

**SOURCES**

**Report of the Human Rights Defender (Ombudsman)  
on the Activities of the National Preventive Mechanism in Poland in 2012**

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**Published by:**

Office of the Human Rights Defender

al. Solidarności 77, 00-090 Warsaw

[www.rpo.gov.pl](http://www.rpo.gov.pl)

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Warsaw 2013

Cite as:

<b>HRD Bulletin. Sources 2013, No 5</b>
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ISSN 0860-7958

Submitted for typesetting in August 2013.

Authorised for publication in August 2013.

Cover design:

ADV. Michał Gońda Agencja Reklamowa

[www.adv.net.pl](http://www.adv.net.pl)

DTP, proofreading, printing and binding:

Agencja Reklamowo-Wydawnicza A. Grzegorzczak

[www.grzeg.com.pl](http://www.grzeg.com.pl)

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## Abbreviations:

APT	- Association for the Prevention of Torture, based in Geneva
PTDC	- Pre-Trial Detention Centre
PIB	- Public Information Bulletin
CPT	- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CBPS	- Central Board of the Prison Service
SCC	- Social Care Centre
ECHR	- European Court of Human Rights in Strasbourg
Frontex	- European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
HFHR	- Helsinki Foundation for Human Rights
IMAP	- Independent Medical Advisory Panel to the Council of Europe
ISP	- individual support plans
SS	- Sobering-up Station
CPP	- Act of 6 June 1997 Code of Penal Procedure (Dz. U. No 89, item 555, as amended)
EPC	- Act of 6 June 1997 Executive Penal Code (Dz. U. No 90, item 557, as amended)
NPM	- National Preventive Mechanism
YSC	- Youth Sociotherapy Centre
YCC	- Youth Care Centre
SAC	- Supreme Administrative Court
NHF	- National Health Fund
OSCE	- Organization for Security and Co-operation in Europe
OPCAT	- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dz. U. of 2007, No 30, item 192)
PDR	- Police detention rooms for detained persons or persons brought to sober up
PECC	- Police Emergency Centre for Children
JS	- Juvenile Shelter
SPT	- UN Subcommittee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
PS	- Prison Service
HRD	- Human Rights Defender
EU	- European Union
AAPP	- Act of 6 September 2001 on access to public information (Dz.U. No 112, item 1198, as amended)
APMH	- Act of 19 August 1994 on the protection of mental health (Dz. U. of 2011, No 231, item 1375, as amended)
APJC	- Act of 26 October 1982 on proceedings in juveniles cases (Dz. U. of 2010, No 33, item 178, as amended)
UW	- University of Warsaw
Pr	- Prison
JDC	- Juvenile Detention Centre

# Introduction

Human dignity, as well as human life and health, require special protection in the case of deprivation of liberty.

The Republic of Poland is one of 68 States-Parties that ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: the OPCAT or Protocol), adopted by the General Assembly of the United Nations in New York on 18 December 2002. Poland is also one of 47 countries that have designated their National Preventive Mechanisms<sup>1</sup> to visit the places of detention.

The objective of the Protocol is to establish a system of regular visits carried out by independent international and national bodies to all places where persons are deprived of their liberty. The aim of these measures is to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Torture is one of the gravest violations of fundamental human rights. In spite of the fact that there is a general ban on torture in the international law, it is still used. Regular visits to places of detention are considered to be one of the most effective measures for prevention of torture and other prohibited forms of treatment of inmates. As a non-judicial control mechanism, the visits are to supplement the court control system, managed in this respect by the European Court of Human Rights in Strasbourg.

It is of utmost importance that such visits are carried out in Poland. The year 2012 was the fifth year when the Human Rights Defender performed the tasks of the National Prevention Mechanism. Despite scarce human resources, the representatives of Human Rights Defender visited 124 various detention centres across the country, including prisons, rooms for detained persons, sobering-up stations or social care centres. The places were selected taking into account their type, size and location in the country. All available information on the problems of individual institutions was also taken into consideration.

Presenting the fifth report on the activities of the National Preventive Mechanism, I would like to emphasize that no instances suggesting the use of torture have been found in the territory of the Republic of Poland. Unfortunately, there are situations in the places of detention that may be considered inhuman or degrading treatment or punishment. The experience proves that the visits under the National Preventive Mechanism are important for prevention and should be in-

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<sup>1</sup> Data as of 23 May 2013 – [www.apr.ch/opcat](http://www.apr.ch/opcat)



tensified. However, this will only be possible when sufficient financial and human resources appropriate for the tasks are allocated for the activities of the National Preventive Mechanism. With her current personnel and given the number of places of detention (approximately 1800), within the meaning of Article 4 of OPCAT<sup>2</sup>, the Human Rights Defender is unable to ensure that the minimum international standards on the frequency of visits are met<sup>3</sup>. This would require 38 full-time jobs, given the population of the country. Each year we try, thanks to the decisions of the Parliament, to systematically increase the number of employees. Currently we have 12 employees on 11 full-time equivalents.

The Report has been divided into two parts. The first one discusses the organisational issues regarding the functioning of the Mechanism, activities in cooperation with other entities, both at the national and at the international level, and presents the legal acts on which the representatives of the NMP have given their opinion. The second part of the Report includes a description of the methodology of work applied by the NPM members and conclusions from visits organised in the analysed year, broken down by specific types of places of detention. I encourage you to thoroughly analyse those conclusions.

The Report is also available at the website of the Human Rights Defender ([www.rpo.gov.pl](http://www.rpo.gov.pl)) in English which allows international institutions to obtain information about the activities of the National Preventive Mechanism in Poland.

I hope that the “Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2012” will be an important source of information for you and will contribute to improving the functioning of individual places of detention in Poland.

Irena Lipowicz  
Human Rights Defender

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<sup>2</sup> Pursuant to Article 4(1) of the OPCAT, it is any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

<sup>3</sup> According to the UN Special Rapporteur on torture, ad hoc preventive visits under the NPM should be carried out once in several months, and comprehensive visits once in five years. According to minimum standards defined by the APT, comprehensive visits to organisational units of the Police, pre-trial detention centres and to places of detention of people particularly vulnerable to threats or aggression, such as women and foreigners, should be carried out at least once a year.



# Part I









## 1. Operation of the National Preventive Mechanism

In 2012 the activities of the National Preventive Mechanisms were performed by the Team VII of the Office of the Human Rights Defender comprising 12 employees on 11 full-time equivalents.<sup>4</sup> The NPM Team visits all types of places of detention referred to in Article 4 of the OPCAT. The personnel of the Offices of Local Representatives of the Human Rights Defender in Gdańsk, Wrocław and Katowice also participated in the visits. From February 2012, the visiting teams have consisted also of external experts: psychiatrists and clinical psychologists.<sup>5</sup>

## 2. Financing

Pursuant to Article 18(3) of the OPCAT, *the States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.*

The expenditure for the activities of the National Preventive Mechanism is covered by the budget of the Human Rights Defender. In 2012, the budget of the Human Rights Defender amounted to PLN 38.019 million, of which PLN 1.629 million were allocated for the activities of the Team of the National Preventive Mechanism.

The experience proves that the visits under the National Preventive Mechanism are important for prevention and should be intensified. However, this will only be possible when sufficient financial and human resources appropriate for the tasks are allocated for the activities of the National Preventive Mechanism.

As in the previous years, also in 2012 the financing allocated for the activities of the National Preventive Mechanism was insufficient to implement the tasks of the NPM defined by the OPCAT.

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<sup>4</sup> As of 31 December 2012.

<sup>5</sup> The list of experts along with their biographical notes, see Part II, point 10.



### 3. Cooperation with NGOs

On 2 March 2012, a meeting was held between the Human Rights defender, the Team of the National Preventive Mechanism and the representatives of the Coalition for the implementation of the OPCAT. The discussion focused on the debate on employment of inmates and persons released from prisons, scheduled on 13 September 2012. Other issues raised at the meeting were problems related to penitentiary system, i.e. the treatment of inmates' families by the Prison Service or the serving of custodial sentences by Poles in other countries. The participants of the meeting also discussed suicide attempts of the Prison Service officers or the problem posed by digitalisation of television for penitentiary establishments. The meeting focused on cooperation between the NPM and the Coalition, which undertook to support the Team in developing action plans and strategies and disseminating the recommendations of the NPM. Furthermore, the Coalition proposed to organise once a year a meeting with experts who would share their knowledge with the members of the Mechanism. The first such meeting took place on 11 January 2013 and the experts present were Professor Z. Lasocik and Professor A. Rzepliński.



## 4. Attendance at domestic meetings and conferences

The participation in conferences is an opportunity for the representatives of the NPM to raise social awareness about freedom from torture and inhuman treatment. On 20 January and 27 March 2012, a representative of the NPM delivered a lecture for the students of the Institute for Social Prevention and Resocialisation at the University of Warsaw, as part of the seminar on fundamental human rights and freedoms.

During the working meeting held at the Police Training Centre in Legionowo<sup>6</sup> with the Plenipotentiaries for the Human Rights Protection working at the Voivodeship Headquarters and the Warsaw Headquarters of the Police, which focused on exchanging experience in broadly understood human rights protection, the representative of the Mechanism presented the rules of operation of the NPM and the role of preventive visits.

The analyses being the result of the work of the Human Rights Defender as the National Preventive Mechanism were presented to the participants of two meetings organised by the Ministry of Justice. During the first meeting, the representative of the NPM discussed the issues related to execution of verdicts in penal proceedings finished with custodial sentences and the observance of the rights of inmates. At the second meeting, the representatives of the Human Rights Defender presented the methodology of work of the NPM representatives, international standards binding for penitentiary establishments, general motions of the Human Rights Defender concerning custodial sentences and temporary detention. They also presented a report entitled *Places of detention in the light of reports of penitentiary judges on example of 10 reports from visits to penitentiary establishments and rooms for detained persons*. The following issues pointed to the superficial nature of the reports:

- ignoring the “human factor”, i.e. prisoners, detained persons, during the verification of individual aspects covered by the visit of a penitentiary judge;
- underestimating the role of cultural and educational classes, which are particularly important in view of the decrease in employment and the constant growth of the number of inmates;
- insufficient information about the population of inmates in penitentiary establishments in the cases when the capacity of the visited place has been exceeded;

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<sup>6</sup> 26 January 2012.



- no reference to the execution of the award provided for in Article 138 § 1(3) of the Executive Penal Code;
- no discussion on self-inflicted injuries of prisoners, their reasons and activities of the administration;
- ignoring the issue of adaptation of the places of detention to the needs of disabled persons;
- no information about the situation of prisoners who are foreigners;
- ignoring other sources of information i.e. CCTV recordings (admission rooms, coercive measures);
- lack of conclusions stemming from the activities performed during the visit to the place of detention;
- no reference to international legal standards;
- lack of identification of system deficiencies which have an impact on the conditions of detention.

On 8 May 2012, external experts of the National Preventive Mechanism took part in the training delivered by Ms Marzena Ksel, a member of CPR and an IMAP expert.<sup>7</sup> In the analysed year, the experts participated in 50 visits under the National Preventive Mechanism.

During the meeting with the heads of youth care centres organised by the Centre for Education Development<sup>8</sup>, a representative of the NPM discussed the results of the work of the Team of the National Preventive Mechanism with regard to youth care centres.

On 27 June 2012, a conference was held in the Office of the Human Rights Defender which focused on discussing the Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2011. The meeting included the presentation of information about visits to places of detention, as well as conclusions and recommendations on, *inter alia*, necessary amendments to the law. The meeting was attended by representatives of the Ministry of Justice, the Ministry of National Defence, the Ministry of the Interior, the Ministry of National Education, General Police Headquarters, Border Guard, Prison Service, NGOs and academic circles.

One of the most important events in the analysed year was a debate on *Employment of convicted persons during their serving of custodial sentences and afterwards*, which was organised at the Office of the Human Rights Defender on 13 September

<sup>7</sup> International Medical Advisory Panel the task of which is to provide answers to general NPM questions, e.g. on systemic medical issues.

<sup>8</sup> A meeting entitled *Youth care centres as a link of the social prevention and rehabilitation system in Poland* – 6 September 2012.



2012. The participants of the debate included the representatives of the Prison Service, non-governmental organisations, an entrepreneur employing convicted persons and the persons who served a custodial sentence. The participants of the conference tried to find out whether the employment of prisoners had declined significantly after the judgment of the Constitutional Tribunal of 23 February 2010 (file No P 20/09) which rules that the remuneration of inmates should be at least equal to the minimum salary. The participants presented conclusions pointing to the need to amend the legal regulations and findings which do not require the change of regulations.

As part of the annual Human Dimension Implementation Meeting organised by the Office for Democratic Institutions and Human Rights, on 26 September 2012 a representative of the NPM took part in the discussion entitled *Sharing OPCAT Experience in OSCE Countries* and a panel on prevention of torture. Moreover, since the conference was attended also by the representatives of the Association for the Prevention of Torture, a member of the NPM met with Mark Thomson, Secretary General of APT, and Audrey Oliver Murlat, OPCAT Programme Officer.

A representative of the NPM Team took part in the academic conference entitled *The Role of Human Rights in the Polish Penitentiary System. Education, Rehabilitation, Humanitarianism*<sup>9</sup> held on 10-12 October 2012. The meeting focused on human rights in the Polish penitentiary system.

On 29 November 2012, training was organised for the Penitentiary Studies Group of Students of the University of Łódź during which a representative of the NPM Team presented the activities of the National Preventive Mechanism. The training also included the discussion on the functioning of the Prison Service. The students had an opportunity to ask questions and extend their knowledge in the area of penitentiary law.

On 30 November 2012, a representative of the NPM participated in a seminar organised by the Helsinki Foundation for Human Rights and entitled *Prison health service. Current discussion and directions of reforms*. The representative of the NPM presented the conclusions on healthcare in prisons stemming from preventive visits under the NPM and highlighted positive developments in the access to health services. He also pointed to irregularities in this regard, such as the attitude of medical personnel to inmates (brusqueness, filing request for punishment too freely) or the lack of separate patient rooms or using the existing patient rooms to accommodate healthy inmates in order to reduce overcrowding in a given establishment.<sup>10</sup>

<sup>9</sup> The conference was organised by the Prison Service Training Centre in Kule.

<sup>10</sup> Cf. <http://www.hfhrpol.waw.pl/zdrowiewwiezieniu/images/stories/file/OpiekaZdrowotna.pdf>

## 5. International cooperation

The members of the NPM Team attended international conferences dedicated to the prevention of torture. As in the previous years, the representatives of the National Preventive Mechanism took part in two series of thematic workshops organised by the Council of Europe.<sup>11</sup>

The workshop in Geneva on 20 – 21 March 2012 focused on removal process monitoring<sup>12</sup>, while the ninth workshop in Belgrade on 12 – 13 June 2012 was devoted to illegal migrants<sup>13</sup>. The meeting was attended by the representatives of Frontex, APT, SPT, CPT national preventive mechanisms and organisations to which the states entrusted the task of removal process monitoring.<sup>14</sup> The workshop focused on territorial jurisdiction of removal monitoring authorities and responsibility for removals organised by Frontex.

Between 19 and 22 March 2012, a general annual meeting of the International Coordinating Committee of National Human Rights Institutions was held at the United Nations Office in Geneva. A representative of the NPM Team delivered a speech about the implementation of the OPCAT and the operations of the Mechanism in Poland.

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<sup>11</sup> The workshops were organised under the programme “Setting up an active network of national preventive mechanisms against torture, an activity of the Peer-to-Peer Network.”

<sup>12</sup> The immigration removal process and preventive monitoring. (The workshop included a discussion on minimum standards to be ensured to deported inmates, from the moment of preparation to the removal procedure (fit-to-fly), through transport to the airport, stay at the airport, entry on board an aircraft and the flight. Furthermore, particular attention was paid to the revocation of the removal procedure and the return of a prisoner to the place of detention (the so-called failed removal), use of coercive measures and medical issues).

<sup>13</sup> The workshop focused on territorial jurisdiction of removal monitoring bodies and responsibility for removals organised by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

<sup>14</sup> Poland has not implemented the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (the so-called “Returns Directive”) yet, although the deadline for its implementation expired on 24 December 2010. The new draft Act on foreigners implementing the provisions of the Returns Directive entrusts the task of monitoring the removals to the following non-governmental organisations: The Halina Nieć Legal Aid Center, (its representative participated in the workshop), the Helsinki Foundation for Human Rights and the Association for Legal Intervention). It should be noted that, pursuant to Article 4 of the OPCAT, national preventive mechanisms have the right to monitor the process of removal of foreigners.



The SPT addressed the Human Rights Defender with a proposal to establish cooperation in exchange of information. In reply, the Human Rights Defender presented the rules of operation of the National Preventive Mechanism in Poland, including its financing, the most common problems and the action plan for 2012.

A representative of the Polish NPM took part in an international conference entitled “5 years of the operation of the National Preventive Mechanism in Moldova” held in Chisinau on 26 and 27 July 2012. She presented the legal grounds, organisation and rules of operation of the Mechanism in Poland. A speech on the same subject was also delivered by a representative of the NPM at the Fourth East European Conference on National Preventive Mechanism against Tortures and Ill-treatment<sup>15</sup> in Odessa.<sup>16</sup>

On 26 November 2012, the representatives of the NPM Team met with the representatives of the Ombudsman’s office in Uzbekistan. The meeting was an opportunity to present the Polish NPM model. The participants of the meeting visited one of the largest pre-trial detention centres in Poland, i.e. Pre-trial Detention Centre Warsaw – Mokotów.

On 11 December 2012, a representative of the Team met with Peter Tyndall, the Public Services Ombudsman for Wales. The meeting included the presentation of the Polish NPM model and of the main problems identified in places of detention, as well as the presentation of the Welsh system of monitoring the places of detention<sup>17</sup>.

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<sup>15</sup> The Fourth East European Conference on National Preventive Mechanism Against Tortures and Ill-treatment was held on 15-16 November 2012 in Odessa (Ukraine).

<sup>16</sup> Since Ukraine must choose a model of NPM for itself, the invited guests were asked to present the models functioning in their countries.

<sup>17</sup> The Public Services Ombudsman for Wales pointed to the differences in the approach to state support for elderly persons and the physically or intellectually disabled. While in Poland such persons are referred to social care centres, in Wales they remain at their homes and receive appropriate assistance in running their households and handling their business. Only in very serious cases such persons are referred to special centres. The care for mentally ill persons is organised according to the similar pattern – they stay at home and have a psychiatrist assigned who visits them at home.

## 6. Thematic reports

In 2012, the representatives of the NPM drew up two thematic reports which were published on the website of the Human Rights Defender, namely, *The Report of the Human Rights Defender on visits to the Police emergency centres for children carried out by the National Preventive Mechanism*<sup>18</sup> and *Visual monitoring in places of detention. Report by the National Preventive Mechanism*<sup>19</sup>.

The first Report highlighted the major problems encountered in the Police emergency centres for children which require improvement/change, such as:

1. lengthy stay of juveniles in the Police emergency centres for children after the court issues a decision on using the appropriate measure<sup>20</sup>;
2. the failure to ensure that all newly admitted juveniles undergo immediate medical examination and that they are regularly visited by a doctor or a nurse;<sup>21</sup>
3. the lack of detailed regulations on contacts (including by phone) of juveniles with their families and external world;
4. elimination of inappropriate practices of the officers on duty in the emergency centres, such as operational and investigatory activities, infringement of the rule that personal searches are performed by a person of the same sex or use of prohibited coercive measures (straitjackets) or handcuffs without sufficient grounds for using them;
5. elimination of inappropriate (i.e. in breach of the Ordinance<sup>22</sup>) disciplinary measures towards juveniles consisting in filing reports on inappropriate behaviour of juveniles to family courts, schools, etc., ban on watching television, partial or total ban on visits of parents or guardians, making relevant entries in the documentation concerning juveniles. The representatives of

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<sup>18</sup> <http://www.rpo.gov.pl/pl/content/raport-z-wizytacji-w-policyjnych-izbach-dziecka-przeprowadzonych-przez-krajowy-mechanizm>

<sup>19</sup> <http://www.rpo.gov.pl/pl/content/monitoring-wizyjny-w-miejscach-pozbawienia-wolno%C5%9Bci-raport-krajowego-mechanizmu-prewencji>

<sup>20</sup> The proposed relevant legislative amendments are included in the draft Act amending the Act on juvenile delinquency proceedings and the Act – Law on the organisation of common courts of 7 January 2013.

<sup>21</sup> Cf. [§ 44 CPT (2005)3]. Apart from a change in order to carry out medical examinations of all juveniles admitted to the Police emergency centres for children, another change required is an adjustment to constitutional standards, since the medical examination of some persons, as an interference into privacy of an individual, should be regulated in an act and not as it is now in an ordinance.

<sup>22</sup> Pursuant to § 6 of the Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in Police emergency centres for children (Dz. U. No 10, item 104, as amended), the disciplining measures in the emergency centre are oral praise or reprimand.





- the NPM are of the opinion that the isolation procedure<sup>23</sup> should be regulated in an act (Act on juvenile delinquency proceedings), since it is a procedure interfering to a significant extent into juveniles' rights and freedoms;
6. extending the offer for juveniles to include a greater number of educational and cultural classes.

The second thematic report also presents the practices and legislations that require improvement<sup>24</sup>. The conclusions presented in the report were as follows:

1. the use of CCTV in the places of deprivation of liberty and the following infringement of the constitutional right to privacy is not always regulated in an act;
2. new legal regulations on the use of CCTV in prisons and pre-trial detention centres provided for in the Executive Penal Code of 2009 give rise to doubts with regard to observance of the constitutional principle of proportionality;
3. despite the new legal regulations, the use of CCTV in the Police establishments is insufficiently regulated;
4. the assumption that the larger number of cameras, the lower risk of extraordinary events, can lead to a wrong conviction about unquestioned reliability of visual monitoring;
5. direct control of the behaviour of persons deprived of liberty is replaced by the control by cameras;
6. the images transmitted from the rooms where CCTV is installed are not always protected against the access of third persons;
7. in some establishments the preventive function of video surveillance is not used;
8. there are places in the analysed establishments where CCTV cameras are not installed although these places are of utmost importance for ensuring security;
9. persons deprived of liberty are not always informed that they are in a room with video surveillance;
10. numerous persons responsible for operating the CCTV systems in the places where people are deprived of liberty did not undergo the appropriate training and are not prepared to perform their functions;
11. the use of dummy cameras is inappropriate;
12. the development of legal regulations concerning the restriction of constitutional rights and freedoms should to a greater extent take into account the opinions and positions of experts.

<sup>23</sup> Cf. § 9 of the abovementioned Ordinance.

<sup>24</sup> The report describes the situation of persons monitored in prisons, pre-trial detention centres, juvenile detention centre, juvenile shelter, sobering-up stations, Police detention rooms, Police emergency centre for children, youth care centres and youth sociotherapy centres.

## 7. Assessment of legal acts

The obligation to issue opinions about legal acts, both applicable legal acts and drafted legislation, by the entity acting as a national preventive mechanism stems from Article 19(c) of the OPCAT.

In 2012, opinions on 11 draft legal acts were issued, with no reservations voiced in 6 cases and comments presented in 5 cases. All opinions on draft legal acts were published on the website.

Comments were made to the following draft legal acts:

1. draft *Ordinance of the Minister of Justice on the methods of protection for the organisational units of the Prison Service*;<sup>25</sup>
2. draft *Ordinance of the Minister of the Interior on the rooms for detained persons or persons brought to sober up, transition cells, temporary transition rooms and Police emergency centres for children, the regulations governing the stay in those rooms, cells and centres, and the method for processing images recorded in those rooms, cells and centres*;<sup>26</sup>
3. draft *Ordinance of the Minister of Justice amending the Ordinance on penitentiary measures in prisons and pre-trial detention centres*;<sup>27</sup>
4. draft *Act amending the Act on upbringing in sobriety and preventing alcoholism*;<sup>28</sup>
5. draft *Act amending the Act – Penal Code and certain other acts*.<sup>29</sup>

No reservations were made with regard to the following draft legal acts:

1. draft *Ordinance of the Minister of the Interior on medical examinations of persons detained by the Police*;
2. draft *Ordinance of the Minister of Health on the method of using and documenting coercive measures and the assessment of the justification for their use*;

<sup>25</sup> <http://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20RPO-R-071-10-2012%20z%20dnia%2013.03.2012%20do%20Ministra%20Sprawiedliwo%C5%9Bci.pdf>

<sup>26</sup> <http://www.rpo.gov.pl/pl/content/wyst%C4%85pienie-do-ministra-spraw-wewn%C4%99trznich-w-sprawie-opinii-do-projekt%C3%B3w-rozporz%C4%85dze%C5%84>

<sup>27</sup> <http://www.rpo.gov.pl/pl/content/wyst%C4%85pienie-do-ministra-spraw-wewn%C4%99trznich-w-sprawie-opinii-do-projekt%C3%B3w-rozporz%C4%85dze%C5%84>

<sup>28</sup> <http://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20RPO-R-023-3-2012%20z%20dnia%2006.11.2012%20do%20Przewodnicz%C4%85cego%20Komisji%20Ustawodawczej%20Senatu%20RP.pdf>

<sup>29</sup> <http://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20RPO-R-023-4-2012%20z%20dnia%20%2003.12.2012%20do%20Podsekretarza%20Stanu%20w%20Miniserstwie%20Sprawiedliwo%C5%9Bci.pdf>



3. draft *Act amending the Act on the prosecutor's office and certain other acts*;
4. draft *Ordinance on detailed method of performing their duties and rights by probation officers and by associations, organisations, institutions and persons, to whom the probation was entrusted, as well as on the method and procedure of probation performed as a result of adjudged penalties, penal, protective and preventive measures, and the procedure for appointment of representatives by associations, organisations and institutions; Ordinance amending the Ordinance on juvenile detention centre and juvenile shelters*;
5. draft *Ordinance of the Minister of Justice amending the Ordinance on juvenile detention centres and juvenile shelters*;
6. draft *Assumptions for the draft Act on coercive measures and firearms*.





## Part II





# 1. Methodology

All visits under the National Preventive Mechanism are unannounced. The objective of monitoring any place of detention is to obtain the most accurate image of the visited establishment. If such visits were announced in advance, they could provide a distorted image of everyday life in the place of detention, since their announcement would give the administration time to prepare and, possibly, to conceal real problems. An unannounced visit to an establishment allows the visiting team to see the reality, and collect facts about the observance of the rights of detainees or kinds of violations of such rights.

In all the visited establishments, the National Preventive Mechanism operates based on the same methodology. The first stage is to establish the composition of the visiting group. According to OPCAT, experts of national preventive mechanisms should have the required capabilities and expertise. The visiting team usually consists of several persons, with one person performing the role of the group coordinator. Two persons, including the team coordinator responsible for drawing up the report from the visit, perform the inspection of the premises and buildings of the establishment, while others conduct individual conversations with prisoners. In order for groups to be interdisciplinary, the visits are also performed by experts in general medicine, psychiatrists and psychologists. They draft an expert opinion which is incorporated in the visit report. The duration of a visit depends on the size of the visited establishment and on the problems encountered on site. It usually lasts for one to three days. The visits of the National Preventive Mechanism have the following stages:

- A conversation with the management;
- Inspection of all rooms;
- Individual and group conversations with the detainees;
- Conversations with the personnel;
- Analysis of documents;
- Formulation of post-visit recommendations during the conversation summing up the visit, and receiving explanations from the management.

During the visits, the National Preventive Mechanism representatives use measuring and recording devices, namely a CEM DT-8820 multimeter, Makita LD060P laser distance meter, and a camera.

If an inmate reports an unlawful event, he/she has the opportunity to lodge an official complaint. Yet if the person does not consent to addressing the issue



officially, the visitors consider the information as a report to be investigated in a way that prevents identifying the source. If the unlawful event is confirmed, the members of the visiting team report their findings to the director of the visited establishment and the complainant remains anonymous if he/she does not file an official complaint. If the visitors are unable to confirm the complainant's charges, these are reported during the summarising conversation as unverified reports, and it is the establishment director's duty to investigate them.

When the visit is completed, a report is drawn up which describes all the findings and conclusions, as well as recommendations for the body managing the visited establishment and for its supervisory bodies. If the establishment's management does not agree with the recommendations, the NPM representatives request the supervisory bodies to issue their opinion and position on the matter.

If the visitors reveal torture or inhuman, degrading treatment or punishment, the visitors file a notification of a suspicion of a crime following the visit. In each case, the victim must consent to having his/her personal data revealed and to referring the case to law enforcement bodies. In drastic cases, it is admitted to depart from the rule, and the decision is made personally by the Human Rights Defender who signs the notifications of a suspicion of a crime.

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



## 2. Prisons and pre-trial detention centres

### 2.1 Introduction

Year 2012 was devoted to thematic visits to penitentiary units. The purpose of the visits was to examine the observance of the rights of prisoners serving the penalty of imprisonment in the therapeutic system for inmates with non-psychotic mental disorders, and the rights of remand prisoners. According to the annual schedule, visits covered a total of 24 penitentiary units, including 20 prisons and 4 pre-trial detention centres. In two of the establishments, visits were intended to check if the NPM recommendations issued following previous controls were introduced.

As the NPM has an insufficient number of experts in psychology, who are necessary for evaluating the operation of therapeutic wards, at its disposal, out of the 14 planned thematic visits to units with such wards only 11 were strictly thematic visits.

The thematic visits will continue in 2013.

### 2.2 Systemic problems

The visits allowed identifying general problems resulting from imperfections of the law that regulates the rights and obligations of people deprived of their liberty. The major imperfections are:

#### 1. Overpopulation of penitentiary units.

The Human Rights Defender, who plays the role of the NPM, highlighted the problem of overpopulation of penitentiary units, which has not been solved yet. The undesirable phenomenon of 'hiding' overpopulation arises from applying practices that are inappropriate in the view of the NPM representatives, but are nonetheless admitted by the law. Community rooms continue to be adapted for residential cells,<sup>30</sup> and the number of residential cells includes patient rooms adapted for residential purposes; the stay of some inmates in transition cells is extended; sometimes

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<sup>30</sup> According to statistical data, thanks to adapting community rooms the Prison Service managed to create the following numbers of places for inmates: in January 2013 – 2,566; in February 2013 – 2,612; and in March 2013 – 2,783.





persons who are not dangerous are placed in cells for such prisoners and in cells intended for isolation. In one of the visited units,<sup>31</sup> the NPM representatives revealed a practice that consisted in placing inmates in cells where the surface area per one person was smaller than 3 m<sup>2</sup> without issuing a relevant decision on such placement.

The analysis of the problem of overpopulation of penitentiary units on the basis of materials gathered during preventive visits of the NPM representatives in 2012 shows that the practice consisting in using rooms other than residential cells for housing prisoners continues. Seeing an opportunity to eliminate hiding overcrowding in amending the provisions that allow the use of additional rooms to house prisoners in pre-trial detention centres and prisons, on 29 March 2012 the Human Rights Defender again petitioned the General Director of Prison Service<sup>32</sup> and cast doubt on the wording of the provisions of Order No 7/2012 of the General Director of the Prison Service of 30 January 2012 on determining the capacity of penitentiary units. In his reply of 23 April 2012, the Director did not share the Defender's opinion and stated that the solution suggested in the Defender's petition would result in increasing the population of residential wards that would be at variance with the facts, and it would result in not stating the actual places of stay of inmates who are temporarily placed in residential cells outside the residential ward. Most probably, the position of the Prison Service results from fear of tackling the problem of overcrowding, which would become visible at the national level from one day to the next.<sup>33</sup> Pursuant to the regulations that would apply then, decisions should be issued on placing inmates in cells where the surface area per one person is smaller than 3 m<sup>2</sup>.

<sup>31</sup> Pre-Trial Detention Centre in Chelmno.

<sup>32</sup> RPO-665674-VII/11, <http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1635173>

<sup>33</sup> Cf. Paragraph 2 of the Ordinance of the Minister of Justice of 25 November 2009 setting out the procedures for competent authorities to follow where prison or pre-trial detention centre population exceeds, countrywide, their overall capacity (Dz. U. [Journal of Laws] No 2002, item 1564), which sets out the methodology of calculating the inmate population:

1. *If the number of inmates at prisons or pre-trial detention centres and their external wards, hereinafter referred to as "establishments," exceeds their total capacity nationwide, the General Director of Prison Service, within seven days from exceeding the capacity, shall present a relevant information, hereinafter referred to as "information," to the Minister of Justice, regional directors of the Prison Service and establishment directors.*

2. *To achieve the objective referred to in Paragraph 1, the general capacity of the establishments shall not include:*

1) *Accommodation places in residential cells located in hospital wards, wards and cells listed in Article 88a(1) and Article 212a(2) of the Act of 6 June 1997 – Executive Penal Code, hereinafter referred to as "Executive Penal Code," the isolation cells referred to in Article 143(1)(8) of the Executive Penal Code, patient rooms and rooms located in homes for mothers with children and wards for temporary housing of inmates;*

2) *Inmates accommodated in the places listed in paragraph 1.*



Apart from the chaos that would inevitably result from the need to implement the decisions (granting additional walks, additional cultural and educational activities), the State Treasury could face paying damages for a radical deterioration of the conditions of serving a prison sentence due to claims lodged by prisoners.

The situation will undoubtedly deteriorate, especially as several thousand convicts are evading serving their sentence, and also because Poland, as a European Union Member State, must implement the Framework Decision of the Council of the European Union in line with which since 2016 the Republic of Poland will be under the obligation to accept Polish prisoners sentenced to imprisonment from EU countries.<sup>34</sup> Item 11 of the Framework Decision says that Poland is not ready to accept Polish prisoners from the EU, so it received derogation for accepting Polish inmates who committed a crime in the EU to Polish prisons for five years. Bearing in mind that the Decision entered into force on 5 December 2011, the derogation period expires on 5 December 2016.<sup>35</sup> Thus, Poland will be obliged to admit Polish citizens convicted to imprisonment in EU countries (ca. 12,000 people) to Polish prisons. According to statistics of the Central Board of Prison Service, in December 2012 there were 37,050 people who failed to show up to serve their sentence of imprisonment, while in January 2013 the figure was 35,355. According to the above reply of the Minister of Justice, about 2/3 of the people do not serve the penalty of imprisonment because they evade it. In order to acquire full information, it should be verified how law enforcement bodies manage to find those evading punishment.

In the opinion of the NPM representatives, the attempts to expand the infrastructure of penitentiary units or the current solutions that consist in using all the space available in the units are not a sufficient remedy to overcrowding. An

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<sup>34</sup> See: Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27).

<sup>35</sup> The justification for the Act of 16 September 2011 amending the Act – Code of Penal Procedure, the Act on the prosecution and the Act on the National Criminal Register (Dz. U. No 240, item 1430) says it should be assumed that all people serving imprisonment sentence in other EU Member States (ca. 3,700) and all people temporary arrested in these countries (ca. 8,000) may be transferred to Poland in the years 2017-2021. Thus, ca. 11,700 people may be transferred to Poland in the period in question. However, we should not expect that these people would be transferred to Poland in equal numbers over the years making up the period in question. To the contrary, Member States will attempt to transfer inmates to Poland as soon as possible. Even considering that some prisoners would be transferred from Poland to other Member States (it is estimated this would be 300 people over two years), we should expect that the net transfer to Poland in the years 2017 and 2018 would be 11,400 people, i.e. 5,700 people a year. In the years 2018-2021, as a result of transferring all the convicts serving the penalty of imprisonment, the number of people transferred to Poland is expected to return to the norm from before 2017, i.e. to about 250 people a year.



equally non-prospective idea, which results in permanent extension of the “queue to prisons,” is postponing penalties of imprisonment of up to two years which, as 2016 is approaching, may become massive. In the Defender’s opinion, a good solution would be to change the penal policy to encourage the judiciary to impose non-isolation penalties more often and to analyse the need of penalising certain offences thoroughly.<sup>36</sup> The change in the penal policy has been discussed for many years now, but to no avail.<sup>37</sup> The “development” of the electronic supervision system is considered legitimate. Yet we should bear in mind that it is not enough to achieve considerable improvement in terms of penitentiary unit overcrowding, especially as we should remember about the scarcity of residential area per one inmate, and strive to enlarge it. After every visit to Poland (1996, 2000, 2004 and 2009), the CPT emphasised it was necessary to provide at least 4 m<sup>2</sup> of surface area for every prisoner, as the standard provided for in the Executive Penal Code does not ensure sufficient space to live, and additionally it belongs to one of the lowest as compared to the norms in the penitentiary systems of other European countries (e.g. in Austria it is 6 m<sup>2</sup>, in Belgium – 9 m<sup>2</sup>, Bosnia and Herzegovina – 4 m<sup>2</sup>, Cyprus – 9.5 m<sup>2</sup>, Czech Republic – 3.5 m<sup>2</sup>, Denmark – 6-7 m<sup>2</sup>, Greece – 10 m<sup>2</sup>, Spain – 6 m<sup>2</sup>, Netherlands – 10 m<sup>2</sup>, Ireland – 6-10 m<sup>2</sup>, Germany – 7 m<sup>2</sup>, Portugal – 7 m<sup>2</sup>, Turkey – 8-9 m<sup>2</sup>, Scotland – 6-8 m<sup>2</sup>, Italy – 5 m<sup>2</sup>).

## **2. Insufficient or ineffective supervision of penitentiary judges over serving the penalty of deprivation of liberty.**

The insufficient or ineffective supervision of penitentiary judges over serving the penalty of deprivation of liberty was discussed by the NPM representatives with the circles of penitentiary judges.<sup>38</sup> The problem most often raised was the lack of thoroughness and reliability during visits to places of detention, expected of penitentiary judges who are supposed to supervise serving the penalty of deprivation of liberty. The issue was the subject of the motion of the Human Rights

<sup>36</sup> The issue was regarded as a systemic recommendation by the HRD Bulletin. Źródła 2012, vol. 5, p. 138. Undersecretary of State in the Ministry of Justice referred to the matter in the statement of 15 October 2012, <http://www.rpo.gov.pl/pl/content/raport-rpo-z-dzia%C5%82alno%C5%9Bci-w-polsce-kmp-w-roku-2011-0>

<sup>37</sup> According to the reply of the Undersecretary of State in the Ministry of Justice of 28 February 2013 (cc: RPO-R-071/17/12, link as above), the Criminal Law Codification Commission to the Ministry is working intensively to amend the Criminal Code. The amendments will cover a vast change in the provisions of the Code’s general part in order to change the penal policy by imposing very severe non-isolation penalties more frequently.

<sup>38</sup> For more on the subject, see: Part I, item 4.



Defender in 2011.<sup>39</sup> It said that the penitentiary supervision fails to eliminate irregularities in serving the penalty of deprivation of liberty in terms of individual complaints, and it fails to cover all issues significant from the point of view of serving the penalty of imprisonment during visits to places of detention. The Minister of Justice did not share the Defender's view and position.<sup>40</sup> Analysis of reports from visits to places of detention by penitentiary judges, performed by the NPM representatives, and asking inmates about their "experience" with contacts with penitentiary judges allow concluding that the penitentiary supervision system is not working correctly yet. This is confirmed by the results of studies carried out by the Association for Legal Intervention. According to the study authors, the "fundamental weaknesses of the current supervision system lie in its 'softness' where its efficiency is concerned (i.e. its influence on incidental and structural errors in serving a penalty in the visited prison) and in invisibility to prisoners whom it is supposed to serve in the first place. The weaknesses affect its reliability and efficiency of the actions taken by judges – the actions that require time and money."<sup>41</sup>

### 3. Lack of the possibility on the part of people temporarily arrested to call their defence attorneys or attorneys.

Another systemic issue is preventing people temporarily arrested from calling their defence attorneys or attorneys. The issue has been discussed in detail in the reports for 2010<sup>42</sup> and 2011.<sup>43</sup> It has been three years since the Defender's first petition on the issue,<sup>44</sup> i.e. from 30.03.2010. In this period, the Executive Penal Code has been amended several times, and the most recent explanations do not

<sup>39</sup> RPO-599333-II-710/08/JM of 15 July 2011: <http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1579764>.

<sup>40</sup> The reply of 24 August 2011 stated that the judges appointed for penitentiary visiting judges are selected from among judges with extensive expertise and experience in supervision from a given regional and appellate court. Meetings of penitentiary judges are held on a regular basis, during which they exchange their experience.

<sup>41</sup> See: M. Nielączna, *Penitentiary supervision in Poznań court district. Report from pilot studies*. Analizy, Raporty, Ekspertyzy Vol. 2/2012, p. 35.

<sup>42</sup> Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2010, pp. 56-57, hereinafter: HRD Bulletin. Źródła 2011, vol. 3: [http://www.rpo.gov.pl/sites/default/files/Biuletyn%20RPO%202011%2C%20nr%203.%20%C5%B9r%C3%B3d%C5%82a\\_0.pdf](http://www.rpo.gov.pl/sites/default/files/Biuletyn%20RPO%202011%2C%20nr%203.%20%C5%B9r%C3%B3d%C5%82a_0.pdf).

<sup>43</sup> Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2011, pp. 45-46, hereinafter: HRD Bulletin. Źródła 2012, vol. 5: [http://www.rpo.gov.pl/sites/default/files/Biuletyn%20RPO%202012%2C%20nr%205.%20%C5%B9r%C3%B3d%C5%82a\\_0.pdf](http://www.rpo.gov.pl/sites/default/files/Biuletyn%20RPO%202012%2C%20nr%205.%20%C5%B9r%C3%B3d%C5%82a_0.pdf).

<sup>44</sup> RPO-637904-VII-7004.2/7008/10/JZ <http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1473026>.



solve the general systemic problem,<sup>45</sup> they only promise another amendment.<sup>46</sup> It should be noted that the amendment, declared for a long time now, will not entail an increase in expenditure.

#### 4. Absence or a poor offer of cultural and educational activities for remand prisoners and convicts.

Another example of systemic shortcomings affecting remand prisoners is the absence of broadly understood cultural and educational activities for this category of inmates. The visits carried out by the NPM representatives in 2012 prove that apart from the possibility to go to community rooms (only in establishments where community rooms have been set up), there are no other activities outside residential cells for remand prisoners. Thus in practice, apart from the everyday walk, remand prisoners spend 23 hours a day in their cells. The situation of convicts is similar as community rooms are adapted for residential purposes.

It should be emphasised that the problem of the lack of community rooms and the poor offer of cultural and educational activities for inmates was also highlighted by CPT in its recommendations for the Polish government issued after visits to Polish places of detention in 2009. The Committee concluded that in order to improve the situation of prisoners in this respect, strenuous efforts should be made to develop the programme of activities for remand and sentenced prisoners: *The aim should be to ensure that both categories of prisoner are able to spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activity of a varied nature.*<sup>47</sup> The shortcomings in the area of inmates' access to

<sup>45</sup> Drafting the 5<sup>th</sup> and 6<sup>th</sup> Interim Report of the Republic of Poland on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for 1 October 2004 – 15 October 2011 (with particular emphasis on the period 1 May 2007 – 15 October 2011), the Ministry of Justice argued that: *“the rights of remand prisoners, referred to in Article 215(1) of the Executive Penal Code, concern also communication with the defence attorney or attorney by mail or by phone. The provision of Article 217a of the Executive Penal Code, which stipulates that the correspondence of remand prisoners shall be withheld, censored or supervised, does not apply in this situation. Also the provision of Article 217c of the Executive Penal Code, which prohibits remand prisoners to use the phone and other means of wired or wireless communication, does not apply to communication with the defence attorney or attorney.”* It should be noted that the above information provided to international bodies is incomplete as it has not been added that, in fact, remand prisoners may not exercise the right to call their defence attorneys or attorneys.

<sup>46</sup> Letter of the Undersecretary of State in the Ministry of Justice of 28 February 2013 (DWMPC-III-070-5/12/82), p. 5: <http://www.rpo.gov.pl/pl/content/raport-rpo-z-dzia%C5%82alno%C5%9Bci-w-polsce-kmp-w-roku-2011-0>.

<sup>47</sup> Cf. § 112 Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 November to 8 December 2009 [CPT/Inf (2011) 20].



cultural and educational activities and the process of adapting community rooms for residential purposes, revealed by National Preventive Mechanism members during visits to penitentiary units, thus prove that the Prison Service continues to underestimate the role of these activities for prisoners.

#### **5. Insufficient provision of hygiene products to inmates and insufficient frequency of showers for men.**

Another systemic problem in penitentiary units is insufficient provision of hygiene products to inmates and insufficient frequency of taking showers by men. The Human Rights Defender became aware of these problems and highlighted them in her general petitions of 8 December 2011<sup>48</sup> and of 1 February 2012.<sup>49</sup> In the opinion of the NPM representatives, it is necessary to change the provisions of Appendix 1 to the Ordinance of the Minister of Justice of 17 October 2003 on the living conditions of inmates of prisons and pre-trial detention centres<sup>50</sup> entitled “Set 1/H Hygiene products for inmates.” As to a change in the frequency of showers, an amendment to provisions is not necessary as the current provisions allow more than one shower a week for men. As to both issues, the Minister of Justice expressed an opinion that the necessary amendments must be introduced, yet in the first case the time frame has not been defined. As to the latter issue, he stated that showers in penitentiary units will be modernised in 2013-2015. Therefore, it should be reminded that issues related to personal hygiene should be given priority.<sup>51</sup>

#### **6. Serving penalty of deprivation of liberty in the therapeutic system.**

Thematic visits to therapeutic wards for inmates with non-psychotic mental disturbances revealed a number of problems significant from the point of view of the NPM Department, i.e. the cohesion of the legal system in terms of ensuring the protection of the rights of inmates in such wards from torture or other inhuman treatment or punishment. In the opinion of representatives of the National Preventive Mechanism, in order to strengthen the actual protection of the rights of prisoners serving their imprisonment sentences in therapeutic wards it is necessary to:

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<sup>48</sup> RPO-641650-II-702/10/JN

<http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1610730>.

<sup>49</sup> RPO-550137-II-702/07/MM

<http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1621857>.

<sup>50</sup> Dz. U. No 186, item 1820.

<sup>51</sup> The draft Ordinance of the Minister of Justice of 7 March 2013 on the living conditions of inmates of prisons and pre-trial detention centres has been published at the Prison Service's website. It should be noted that its entry into force would 'handle' the Defender's petition RPO-550137-II -702/07/MM.



- Introduce additional norms defining the maximum number of people placed in one residential cell in a therapeutic ward, or actual organisation of cells dedicated to a lower number of convicts in therapeutic wards, into universally binding regulations. The NPM experts pointed out that a higher number of people staying in one cell (shared cells) results in a higher number of conflicts. This may result from the specific nature of the disturbances of the inmates staying in therapeutic wards. The clash of different characters, personality disorders and different methods of coping with stress is the reason behind the intensification of conflicts. In addition, the higher number of people in one cell in a therapeutic ward, intended for persons with personality disorders of a different magnitude, as well as persons with intellectual disabilities, may result in intensification of abuse;
- Not to limit the activities in therapeutic wards for convicts with non-psychotic mental disturbances to psychoeducation, individual psychological support and elements of individual therapy. It is advised to offer long-term and in-depth psychotherapy, based on a long-term therapeutic relationship and focused on work on diagnosed psychological disturbances. The NPM experts pointed out that many studies have proven that long-term therapy is more efficient than ad hoc, short-term psychotherapy and psychoeducation.<sup>52</sup> The above elements can be considered to support in-depth insight therapy. Short-term psychotherapy is an ad hoc measure during a crisis in a patient's life, while long-term therapy stands for work to achieve deeper insight and understanding of oneself, which results in a change in character. Due to the specific nature of therapeutic wards (the majority of convicts have personality disorders), ad hoc therapy does not help inmates to achieve considerable changes by understanding the unconscious motives driving their actions. In order to achieve a change, a therapeutic alliance must be forged. The specific problems troubling the persons in therapeutic wards make it difficult for them to establish social relationships. It takes time to forge an effective therapeutic alliance that would bring about mutual trust and in-depth work that results in lasting changes;
- Amend the Ordinance of the Minister of Justice of 11 February 2011 *on positions and ranks of Prison Service officers*<sup>53</sup> by introducing the require-

<sup>52</sup> The Journal of the American Medical Association 2008;300(13):- Falk Leichsenring, DSc; Sven Rabung „Effectiveness of Long-term Psychodynamic Psychotherapy.”

<sup>53</sup> Dz. U. No 36, item 189.



ment that the director of a therapeutic ward must be a psychologist by education. It will allow better insight in and understanding of the processes taking place within a therapeutic ward (between inmates, between inmates and personnel) and within the personnel. A person with a background in psychology would understand the requirements of the post better, and would treat the inmates in the therapeutic ward in accordance with their disorders. If the director has a degree in another field, it is possible he/she may not understand the dynamics of psychological processes, which may affect his/her decisions that may be made to the detriment of the inmates. In addition, due to their background in psychology, such persons would be better equipped to handle frustration and stress thanks to a better understanding of the situation. A director who is a psychologist can support and help his/her team, working in demanding conditions, better;

- Set up Occupational Therapy Workshops in penitentiary units with therapeutic wards, in cooperation with the State Fund for Rehabilitation of Disabled Persons (PFRON). The solution could be beneficial from the point of view of resocialisation thanks to contacts with non-convicts and learning socially accepted behaviour from them;
- Transport prisoners from therapeutic wards to units located in the vicinity of the courts where their cases are heard that would not only meet the criterion of being located nearby the court, but primarily have therapeutic wards. The current situation in this area shows that, due to lengthiness of court proceedings, prisoners who are subject to therapeutic influence in their mother units on an everyday basis are devoid of therapy from one day to the next, frequently for periods of several months, when they serve their penalties in regular systems waiting for proceedings to be completed. Thus, the entire progress worked out at the therapeutic ward is ruined. In the opinion of representatives and experts of the NPM, in order for therapeutic influence to be continuous, it is necessary to work out solutions that would allow continuing therapy, at least at the minimum level, during the convicts' stay in a unit where they are moved to participate in court proceedings. This objective could be achieved by referring prisoners to units with therapeutic wards that are located as close to the court as possible, or by providing at least minimum forms of therapy in a unit without such a ward where convicts are moved.<sup>54</sup>

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<sup>54</sup> A separate report will be drafted from the visits to therapeutic wards of penitentiary units.





## 7. Prisoners' access to public information.

In her general petitions to the Minister of Justice and the Minister of the Interior and Administration of 10 February 2011 and 9 February 2011,<sup>55</sup> the HRD pointed out that the problem of prisoners' access to public information needed to be solved. Pursuant to Article 10(1) of the Act on access to public information, *public information that has not been published in the Public Information Bulletin is provided upon request*. In accordance with the provision in its current form, the body which has the obligation to provide public information may refuse to provide it upon request if the information requested by the applicant has been published in the Bulletin. This position is presented by both the doctrine and the case law of administrative courts. The said provision is interpreted by public authorities in different ways as some of them do consent to providing public information published in the Bulletin upon the request of an applicant if the applicant is a prisoner.

Inmates indeed have no access to public information as the information published in the Bulletin does not have to be provided to them upon their request and they have no access to the Internet and thus to the Bulletin. The status quo may breach sentence 1 of the Article 61(1) of the Polish Constitution which stipulates that *"a citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions."* The restriction stipulated by Article 10(1) of the Act on access to public information will not turn into absolute deprivation of inmates of access to public information only if they acquire access to the Bulletin in penitentiary units or if the Act is amended by obliging competent bodies to provide public information published in the Bulletin, also upon the request of an applicant, if the applicant is unable to access the Bulletin for objective reasons (such as serving a sentence of imprisonment or temporary arrest).

Despite the above petitions of the HRD, the problem remains unsolved. In addition, the case law of administrative courts may become unfavourable to inmates as in its judgment<sup>56</sup> of 21 June 2012 the Supreme Administrative Court stated that: *"a person deprived of his/her liberty and staying in prison may not be considered a person systemically deprived of access to public information by deprivation of access to the Internet, and thus to the Public Information Bulletin."* In addition, the Court concluded that *"a person sentenced to imprisonment can enforce his/her rights in terms of access to public information on general terms, using the*

<sup>55</sup> Both petitions under one number: RPO-111649-II-713/92/MM,  
<http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1545911>  
<http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1597995>

<sup>56</sup> I OSK 730/12.



*instruments provided for in the Executive Penal Code.*” The assumptions presented by the above judgment may not be considered valid for the reasons stated in HRD petitions.

### 2.3 Strengths of and good practices in penitentiary units.

The training for Prison Service officers carried out in the Prison in Rzeszów is recommendable and praiseworthy as a good practice. The training concerned shaping correct interpersonal relations of officers with inmates and eliminating the emotional tensions between convicts.

It should also be highlighted that the Prison in Chełmno appointed a Social Council for Post-Penitentiary Support composed of prison counsellors from the establishment, professional court-appointed custodians and a social worker from the local Poviats Family Support Centre. According to the information provided by prison management, Council members provide practical information on the possibility of obtaining help after detention ends and organise monthly meetings to discuss the current needs of persons prepared for release. The Council provides support to about 40 people a year. Considering the wide range of problems faced by persons released from penitentiary units, the NPM representatives appreciate the officers’ initiatives that serve facilitating inmates’ transition from penitentiary isolation to life at liberty.

It should be emphasised that the management of the Prison in Wronki cares for the intimacy of inmates during showers well. Each shower is separated by a plastic curtain, which ensures that inmates use the showers in private.<sup>57</sup>

Analysing the previous year in terms of strengths of penitentiary units, it is worth to praise the Prison in Czarne that has adequate infrastructure for sport, cultural and educational activities. The prisoners serving imprisonment in the unit can use facilities to practice a number of sports, such as football, volleyball, basketball, beach football, badminton, football tennis and running; there is also a gym. The unit organises many family meetings, e.g. for Children’s Day and Mother’s Day for inmates and their families, and meetings with famous athletes. Christmas Eve meetings of the unit’s personnel with inmates, during which they have a Christmas meal together, are a well-entrenched tradition.

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<sup>57</sup> It is worth to reiterate the position of the Central Board of Prison Service. In the letter of 15.03.2010 r. (BPR-0510/932/10/Z-1), it informed the Office of the Human Rights Defender that after controls of prisons and pre-trial detention centres, the representatives of the Quartermaster and Investment Bureau of the Central Board of Prison Service each time highlight it is necessary to install partition walls between showers so that each convict occupies a separate stall.



## 2.4 Areas requiring improvement

### 1. Treatment

During the visits to penitentiary establishments in 2012, the representatives of the National Preventive Mechanism did not find any cases of torture of inmates.

In one of the prisons<sup>58</sup>, the representatives of the NPM found clear and numerous signals indicating inhuman and degrading treatment. According to the prisoners interviewed by the employees of the NPM, newly admitted prisoners are regularly beaten up. The inmates even named the practise of the prison officers after the name of the place where the prison is located, calling it a “Siedlce method”. The Prison Service officers beat the prisoners in the feet using rubber baton in order to “soften up” the prisons at the beginning of their stay in the establishment. The prisoners report that violence is also used at the therapeutic ward of the prison against the perpetrators of crimes specified in Article 207 of the Penal Code. The inmates from the ward stated that the Prison Service officers thus mete out “additional justice” to perpetrators of those crimes. One of the inmates requested the visiting team to report, on his behalf, a crime against him and presented the marks of beating on his body. The report was sent to competent authorities and the case is pending. The Human Rights Defender will also ex officio analyse the preparatory proceedings initiated as a result of reports filed by the prisoners from the establishment, which were discontinued or not instigated.

During the interviews with the representatives of the NPM, the inmates complained about some officers from the security department who, according to the inmates, did not address them politely and in the appropriate form.<sup>59</sup> The prisoners complained that apart from the officers from the said department, the personnel of the prison health care service also addressed them brusquely.<sup>60</sup>

During the visit to the therapeutic ward of one of the prisons<sup>61</sup>, the employees of the NPM paid attention to the method of providing meals to inmates from this ward. Being aware that prison authorities have the right to order that the meals are provided through food hatches in the cell doors for security reasons, the representatives of the Mechanism questioned the use of this restriction in all the wards. Their concern was caused by the fact that this way of meal supply was common and restrictive also for prisoners with respect to whom such precautions were not necessary.

<sup>58</sup> Prison in Siedlce.

<sup>59</sup> Prison in Tarnów-Mościce, Prison No 2 in Łódź, Prison in Warszawa-Białoleka, Prison in Nowy Wiśnicz, Prison in Rawicz, Prison in Rzeszów, Prison No 2 in Strzelce Opolskie, Prison in Sztum, Pre-trial Detention Centre in Kielce, Prison in Stargard Szczeciński, Prison in Siedlce.

<sup>60</sup> See point 2.4 Areas requiring improvement, section 2 – Access of inmates to health care.

<sup>61</sup> Prison in Wronki.



The analysis of the use of direct coercive measures revealed irregularities in 6 establishments.<sup>62</sup> The irregularities consisted in continued use of coercive measures despite the cessation of reasons for doing so; the use of handcuffs each time when an inmate left the security cell; the lack of reaction to the prisoners' requests for using the toilet or for something to drink; the failure to provide prison uniforms for inmates staying in the security cell; inappropriate addressing of inmates while using coercive measures and the bad quality of video recordings presenting the use of coercive measures. Therefore, appropriate recommendations were issued on lawful use of coercive measures.

## 2. Access of inmates to health care

The National Preventive Mechanism noted an improvement in access of persons deprived of liberty to health care during their stay in prison or pre-trial detention centre. A similar evaluation of the prison health care service is presented in the Report of the Supreme Audit Office.<sup>63</sup>

However, there are still incidents demonstrating the need for further monitoring of this issue by the NPM Team.

The problems most often reported by inmates interviewed by the representatives of the Mechanism included<sup>64</sup>: brusqueness of medical personnel in contacts with inmates, the failure to take the reported ailments seriously, no basic examination during the visit to the doctor, long waiting time for medicines when their supplies are over, being brushed aside by doctors and long waiting time for a visit to a specialist.

The prisoner-doctor relations are a systemic problem and stems from the fact and doctors are often and nurses almost always the officers of the Prison Service.

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<sup>62</sup> The analysis of CCTV recordings provided by the Prison Service and presenting the use of coercive measures revealed irregularities in the following penitentiary establishments: Prison in Stargard Szczeciński, Prison in Rzeszów, Prison in Racibórz, Prison in Wołów, Prison in Rawicz, Pre-trial Detention Centre in Kielce.

<sup>63</sup> The Supreme Audit Office issued a positive opinion, despite the irregularities found, on the activities of the Prison Service aimed at ensuring the right of persons deprived of liberty to health care. The assessment was performed using a four-level scale, i.e. positive, positive with minor irregularities, positive with significant irregularities, negative. Cf. *Providing health care services to persons deprived of their liberty*, ref. No 180/2012/P/12/122/KZD, p. 6, <http://www.nik.gov.pl/plik/id,4619,vp,6181.pdf>

<sup>64</sup> Prison in Tarnów – Mościce, Prison in Warsaw-Białoleka, Prison in Kwidzyn, Prison in Nowy Wiśnicz, Prison in Płock, Prison in Racibórz, Prison in Rawicz, Prison in Rzeszów, Prison No 2 in Strzelce Opolskie, Prison in Sztum, Prison in Wołów, Pre-trial Detention Centre in Kielce, Prison in Wronki, Prison in Stargard Szczeciński, Prison No 2 in Łódź.



This issue was raised by the experts participating in the seminar on prison health care service.<sup>65</sup> This element of the prison health care service should be changed.

The problem found in visited establishment was the lack of personnel in the prison health care service, mainly the lack of medium-level medical personnel, ophthalmologist and psychiatrist. The doctors make use of the fact that the Prison Service is uncompetitive as an employer and obtain approval for shorter working time or using unpaid leave to conduct medical practice in other health care institutions.

As regards the access to doctors, the Mechanism is of the opinion that the presence of non-medical staff during the provision of health care services to inmates should be exceptional, and should take place only when it is required to ensure safety of person providing the health care services, upon explicit request of the medical personnel. In comparison with the previous years, the situation in this regard in 2012 has improved, with the presence of an officer during the provision of health care services to persons deprived of liberty recorded only in 5

<sup>65</sup> M. Ksel (a member of the CPT) declared that one of the criteria for evaluation of the prison health care service is quality. Analysing this issue, the CPR examines whether a doctor was kind or brusque. According to her, “the guarantee for appropriate health care is continuous education of doctors and evaluation of their professional qualifications which should be performed by supervisory authorities as part of specialist consultation.” Presenting the motivation for transferring the health care service in prison to the supervision of the Ministry of Health, she stated that “the most important reason was to improve the quality of health care for prisoners. The fact that the health care personnel is independent from the prison authorities is also a guarantee for inmates that their human rights will be observed.” See M. Ksel, *Kierunki reform więziennej służby zdrowia* [Reforms of the prison health care service] (in:) *Więzienna służba zdrowia. Obecny stan dyskusji i kierunki reform* [Prison health care service. Current discussion and directions of reforms], p. 15. Z. Lasocik (then member of the SPT) stated that the reform of the prison health care service should begin with changing the paramilitary nature of the service. According to him, “a doctor who is an officer and an officer who is a doctor does not have any dilemma – who do they see when a patient enters their office? They see a prisoner who happens to have some ailments. It cannot be any other way, since the officer receives remuneration at the end of the month for ensuring that it is a prisoner not a patient.” See Z. Lasocik, *O potrzebie reformy więziennej służby zdrowia* [On the need to reform the prison health care service] (in:) as above, pp. 16-17. T. Bulenda also stated that “medical personnel should be civilian”, Cf. T. Bulenda, *Wątpliwości prawne dotyczące prawa więźniów do opieki medycznej. Kontekst reformowania więziennej służby zdrowia* [Legal doubts concerning the right of prisoners to health care. The context of the prison health care service reform] (in:) as above, p. 18. The representative of the Helsinki Foundation for Human Rights signalled the problem while presenting legal rules applicable to temporary detained inmates, concluding that “medical procedures should be transferred to the Ministry of Health”, See P. Kładoczny, P. Kubaszewski, *Opieka medyczna w więzieniach – perspektywa więźnia* [Health care in prisons – from the perspective of the prisoner] (in:) as above, p. 10. Without going into the reasons for conflicts between doctors and patients, M. Nielączna stated that “in the letters we receive [Association for Legal Intervention] from prisoners and in interviews conducted with prisoners, they often state that they do not have problems with access to health care, but with inappropriate, despicable approach of doctors to inmates as patients”, See M. Nielączna, *Problemy systemu penitencjarnego – ocena Stowarzyszenia Interwencji Prawnej* [Problems of the penitentiary system – assessment of the Association for Legal Intervention] (in:) as above, p. 5.



visited establishments.<sup>66</sup> The behaviour of the prison officers in one of the establishments<sup>67</sup> who commented on ailments reported by prisoners to doctors during medical consultation was deemed totally unacceptable.

The CPT also expressed its doubts concerning the issue. The Committee acknowledged that *special security measures may be required during medical examinations in a particular case. However, there can be no justification for prison guards being systematically present during such examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in each case of a security threat. The steps should be taken to bring practice in line with the above considerations. If necessary, the law should be amended accordingly*<sup>68</sup>

### 3. Disciplinary procedure

The employees of the National Preventive Mechanism did not find any infringements of the law with regard to the prisoners' right to use the means of appeal against penalties or the negligence of the Prison Service in informing the persons deprived of liberty about the existence of such means of appeal. The frequency of using disciplinary measures by prison authorities and the proportion of those measures to rewards did not raise any doubts of the Mechanism.

However, the visiting team questioned the alarming practice found in semi-open prisons. During the interviews in two such establishments<sup>69</sup>, the inmates complained that the officers were disciplining them verbally, each time threatening them with using disciplinary measures. According to the inmates, such practice leads to restriction on the use of their rights in fear of "falling into disfavour with prison officers" which may result in disciplinary measures against inmates. The representatives of the NPM believe that some kind of promotion consisting in the possibility to serve one's sentence in a semi-open prison is in itself a sufficient opportunity to verify the self-discipline of inmates. Prisoners are well aware of the fact that they are in such an establishment as a result of positive criminological prognosis and know very well that if they breach the

<sup>66</sup> Prison in Chełm, Prison in Grodków, Prison in Rzeszów, Pre-trial Detention Centre in Chełmno, Prison in Wołów.

<sup>67</sup> Prison in Rzeszów.

<sup>68</sup> Cf. § 123 CPT/(2011)20. It should be remembered that in her motion addressed to the Constitutional Tribunal on 18 October 2010 (RPO-637905-VII-10/MC <http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1519794>) the Human Rights Defender requested to declare Article 115 § 7 of the Executive Penal Code to be in compliance with Article 47 in conjunction with Article 31(3) of the Polish Constitution. However, the motion of the Defender has not been examined yet.

<sup>69</sup> Prison in Tarnów-Mościce, Prison in Nowy Wiśnicz.



applicable regulations, they may be transferred to a closed prison. Therefore, constant verbal disciplining of inmates in the said prisons is inadvisable, since it results in an unjustified increase in severity of the deprivation of liberty.

#### 4. Right of access to information

Some detainees and prisoners pointed out that they have not received comprehensive information about their rights and obligations during initial interviews with supervisors.<sup>70</sup> As a result of insufficient knowledge about the rules applicable in the establishment, these persons sometimes breached the bans or orders in place, thus placing themselves at risk of disciplinary measures. The representatives of the Mechanism are of the opinion that the obligation to inform detainees about their rights and duties (Article 210 of the Executive Penal Code, § 9(2) and (3) of the Ordinance of 25 August 2003 on organisational and order regulations on temporary detention) cannot be treated narrowly only as presentation of regulations, but is much broader and includes also the provision of appropriate guidelines and clarifications, taking into account the intellectual abilities of inmates, their knowledge, education, etc.<sup>71</sup>

During the visits, the representatives of the NPM also found the inappropriate practice of informing the prisoners about the results of their requests.<sup>72</sup> In view of the need to protect personal data of prisoners, the said practice must be eliminated and inmates must be informed about the results of their requests individually, orally or in writing, in line with the relevant regulations.<sup>73</sup>

#### 5. Right to file complaints, requests, applications

In general, the Mechanism's opinion on providing the prisoners with the possibility to exercise one of their basic rights was positive. In two visited establishments, the employees of the NPM found that the Prison Service officers failed to fulfil the obligation of providing replies in writing to requests and applications

<sup>70</sup> Prison in Rzeszów, Prison in Stargard Szczeciński, Prison in Chełm, Prison in Płock, Prison in Warsaw-Białoleka.

<sup>71</sup> Cf. S. Lelental, *Kodeks karny wykonawczy. Komentarz* [Executive Penal Code. Commentary], Warsaw 2010, p. 427; Z. Hołda, K. Postulski, *Kodeks karny wykonawczy. Komentarz* [Executive Penal Code. Commentary], Gdańsk 2005, p. 399. According to the European Prison Rules: *At admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison.* (Rule 30.1).

<sup>72</sup> Placing the information about the results of request, along with personal data of prisoners, in the corridors of the wards where the prisoners live (Prison in Czarne, Prison in Grodków), issue of collective lists with information about acceptance or refusal of the request, where identification numbers of authors were provided instead of personal data (Prison in Nowy Wiśnicz).

<sup>73</sup> See § 9(1) and (2) of the Ordinance of the Minister of Justice of 13 August 2003 on the method of handling applications, complaints and requests of inmates of prisons and pre-trial detention centres (Dz. U. No 151, imte 1467, as amended).

filed by persons deprived of liberty, if the replies were not granted immediately after the requests and applications were filed.<sup>74</sup>

## 6. Right to contact with the outside world

During the visits, the representatives of the NPM found that in numerous establishments there were no separate rooms where the reward stipulated in Article 138 § 1(3) of the Executive Penal Code, i.e. a visit in a separate room, without any supervising person present, could be provided.<sup>75</sup> The lack of such a room in an establishment means that this reward cannot be granted, even if inmates meet all criteria for obtaining the reward. A recommendation was made to assign such rooms in all places lacking them.<sup>76</sup>

During the visits, the employees of the NPM also found cases of using CCTV in rooms for unsupervised visits.<sup>77</sup> It should be emphasized that the issue was the subject of the motion of the Human Rights Defender.<sup>78</sup> The Human Rights Defender is of the opinion that cameras in those rooms are in contradiction to the intention of the legislator introducing the reward. Stipulating that this is an unsupervised visit, the legislator ordered to abandon supervision of the inmate and persons visiting the inmate, thus granting them more freedom and more privacy during the visit.

The visiting team also pointed out that the bond between family members is fostered *inter alia* thanks to the tradition of meetings on specific days of the years (public holidays). Furthermore, persons who are employed often do not work during public holidays which gives them a rare opportunity to visit their family members who are deprived of liberty. The revealed incidence gave rise to the request of the Human Rights Defender to the Director General of the Prison Service to consider the introduction of the rules harmonising the practice of visits in penitentiary establishments in order to respect the right of inmates to maintain the contact with their families and closed ones.<sup>79</sup>

<sup>74</sup> Prison in Nowy Wiśnicz, Prison in Tarnów-Mościce, Prison in Płock, Prison in Kwidzyn.

<sup>75</sup> The furnishing of such rooms was specified in Annex (Table 20) to the Ordinance of the Minister of Justice of 17 October 2003 on living conditions of inmates in prisons and pre-trial detention centres (Dz. U. No 186, item 1820).

<sup>76</sup> Prison in Warsaw-Białoleka, Prison in Sztum, Prison in Grodków, Prison in Kwidzyn, Prison in Nowy Wiśnicz, Prison No 1 in Grudziądz, Prison in Rawicz, Pre-trial Detention Centre in Prudnik, Prison in Siedlce, Prison in Stargard Szczeciński.

<sup>77</sup> Prison in Grodków, Pre-trial Detention Centre in Dzierżoniów.

<sup>78</sup> Motion of 6 September 2012 RPO-680042-II-704. 3/11/PM

<http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1668757>

<sup>79</sup> Motion of 26 March 2013 RPO-701427-VII-720.5/12/DK

<http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1710717>

In reply of 25 April 2013, the Director General of the Prison Service stated that he would order the directors of penitentiary establishments to specify in the internal regulations the days of visits which fall on important church holidays, regardless of the denomination, and on other public holidays.





## 7. Living conditions

Apart from the clear need to carry out ongoing repairs in the visited establishments, the representatives of the NPM noted the lack of cells adjusted to the needs of disabled persons. Since such persons may also serve custodial sentences in penitentiary establishments, the representatives of the NPM recommend adjusting at least one residential cell (in particular for a person on a wheelchair) to the needs of the disabled<sup>80</sup>. It should also be emphasized that the existence of a cell adjusted to the needs of the said category of prisoners does not fulfil the requirement of ensuring that such persons can serve a custodial sentence. The closest infrastructure of the cells must also be adjusted to allow the inmates with reduced mobility to exercise their other rights referred to in the regulations on serving the punishment in the form of penitentiary isolation (right to visits, right to a walk, right to practice religion, right to cultural and educational classes).

Compared to 2011, the number of cells accommodating more than one inmate, where sanitary areas were walled off, has increased. However, the representatives of the Mechanism still point to the need to wall off sanitary areas in their recommendations presented in the reports from visits to penitentiary units. The analysis of the implementation of the recommendation reveals two main systemic problems, namely, insufficient funds to cover the costs of renovation and the fact that separation of sanitary area results in the reduction of the living area of the cell.

Another recommendation still occurring in the reports by the NPM is to equip upper bunk beds with ladders and safety rails. According to the representatives of the NPM, the lack of such elements may result in falls (i.a. of persons who did not reveal that they suffer from such conditions as epilepsy) and potential injuries of persons who climb the beds using available structures, which are not adjusted to such use, or who try to jump onto the bed. For persons with reduced physical fitness, it may be very difficult or virtually impossible to climb up to a bunk bed.

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<sup>80</sup> The lack of such cells was found in Prison No 2 in Łódź, Pre-trial Detention Centre in Prudnik, Prison in Warsaw-Białoleka, Prison in Chełm, Prison in Grodków, Prison in Kwidzyn, Prison No 1 in Grudziądz, Prison in Oleśnica, Prison in Płock, Prison in Rawicz, Prison in Rzeszów, Prison in Sztum, Prison in Siedlce. It is also worth mentioning that the European Court of Human Rights in Strasbourg in its judgment of 2006 in *Vincent v. France* (Application No 6253/03) ruled that to detain a handicapped person in a prison where he cannot move about and, in particular, cannot leave his cell independently, amounted to „degrading treatment” within the meaning of Article 3 of the European Convention on Human Rights.



## 3. Youth care centres and youth sociotherapy centres

### 3.1 Introduction

In 2012, the representatives of the National Preventive Mechanism performed visits to 8 youth care centres, of which 2 were revisits, and 4 youth sociotherapy centres, of which one revisit.

### 3.2 Systemic recommendations

#### 1. Necessity to draw up a new Act on juvenile delinquency proceedings

The analysis of legal regulations on the functioning of youth care centres led the representatives of the NPM to the conclusion that the Act on juvenile delinquency proceedings is not appropriate and is insufficient for the current level of legal protection of juveniles. Executive proceedings, which determine the use of educational, therapeutic and corrective measures, must be further defined more precisely. According to the representatives of the NPM, relevant actions should be taken or work should be restored on the new Act on juvenile delinquency proceedings. Executive proceedings with regard to both formative and corrective measures should take into account the progress in the area of protection of human rights, in particular the rights of juveniles. The examples of issued which should be regulated in the Act on juvenile delinquency proceedings, and are not regulated in any generally binding legal acts or are regulated in ordinances, include:

- strip searches of juveniles;<sup>81</sup>
- use of CCTV;
- inspection of places used by juveniles;
- access to fixed line and wireless means of communication and the method and forms of control while using them;
- use of punishments/penal measures;
- possibility to wear own clothes and footwear and applicable restrictions;
- use of procedures consisting in isolating a juvenile from the educational group;
- granting of leaves and holiday leaves;
- medical (preventive and obligatory) treatment of juveniles;
- use of direct coercive measures;

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<sup>81</sup> It concerns only the juveniles staying in juvenile detention centres and juvenile shelters.



- granting juveniles the right to appeal themselves against some decisions of directors in executive, educational/corrective proceedings, etc.

The representatives of the NPM are of the opinion that since the above issues interfere in the rights of juveniles, they should be regulated in an act as they concern the right to freedom, privacy in a broad sense or dignity.

## 2. Lack of generally binding regulations on disciplining juveniles.

The representatives of the NPM are currently in correspondence about regulating a part of the Act on juvenile delinquency proceedings concerning the formative measure, i.e. punishments for juveniles placed in youth care centres. During the visits to those places, the visiting team had reservations about the systems for punishing juveniles which were laid down in the statutes of those establishments, in line with § 8(3) of Annex 3 to the Ordinance of the Minister of Justice of 7 March 2005 on framework statutes of public establishments.<sup>82</sup> The representatives of the Mechanism pointed out that punishments imposed on juveniles placed in your care centres beyond any doubt concern the personal freedom of an individual, protected by Article 41(1) of the Constitution of the Republic of Poland, which stipulates that every regulation concerning personal freedom must be explicitly regulated in an act. The Act of 7 September 1991 on the education system<sup>83</sup>, which established youth care centres, does not include any regulation on rewards and punishments imposed on juveniles staying in such centres. Nor does the Act on juvenile delinquency proceedings. Punishments and rewards for juveniles, which often intrude on their personal freedom, are therefore regulated not in the generally binding legal acts but only in internal regulations which stands in contradiction to Article 41(1) of the Polish Constitution. Therefore, the Human Rights Defender filed a request to the Minister of National Education<sup>84</sup> on 21 March 2012 for legislative initiative in this regard. In reply, the Defender was informed that the issue had been analysed by the Ministry of National Education and referred to the Ministry of Justice which coordinates the work on the Act on juvenile delinquency proceedings. Since the issue was not resolved as requested by the Defender, it is monitored by the NPM.

<sup>82</sup> Dz. U. No 52, item 466.

<sup>83</sup> Dz. U. of 2004, No 256, item 2572, as amended.

<sup>84</sup> RPO-699184-VII-720.8.4/11/MC

<http://www.spraw-y-generalne.brpo.gov.pl/szczegoly.php?pismo=1633495>.

Further correspondence concerning the issue was also marked with the same reference number, <http://www.spraw-y-generalne.brpo.gov.pl/szczegoly.php?pismo=1648658>



### **3. Lack of systemic solutions concerning the situation of pregnant juveniles and juveniles and their children.**

Pursuant to Article 18 of the Polish Constitution, marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.

Pregnant juveniles are increasingly often found in establishments for juveniles. Their legal situation is not regulated in the Act on juvenile delinquency proceedings, though they require special protection (appropriate diet, basic and specialist health care) and support, both psychological and social. The legal status of juveniles and their children is not properly regulated as well. In view of the fact that juveniles often come from dysfunctional families, their families cannot act as foster families. The juveniles cannot decide about the fate of their children on their own. Therefore, juveniles and their children are often separated which most certainly is not good for any of them. According to the representatives of the National Preventive Mechanism, the situation of pregnant juveniles and juveniles who just gave birth to their children in rehabilitation centres requires systemic changes to ensure that the juveniles and their motherhood and parenthood was indeed under the protection and care of the Republic of Poland. It seems that rehabilitation establishments should have homes for mother and child, as do penitentiary units, where juvenile mothers and their children could stay with their children in appropriate conditions and with their status regulated by law.

#### **3.3 Strengths of establishments and good practices**

The visits have shown that the right of juveniles places in youth care centres and youth sociotherapy centres to education was fully complied with. Within the establishments, there were properly equipped schools and qualified staff. In the afternoon juveniles could participate in remedial programmes and could get assistance from their tutors in their homework.

Furthermore, the representatives of the NPM did not see any cases of juveniles staying in conditions infringing their dignity; just the opposite, the juveniles had optimal conditions for study, rest and recreation.

The visiting team praised the offer of formative, therapeutic and preventive classes in visited establishments. The juveniles could participate in various extracurricular activities, such as sociotherapeutic workshops, activity clubs, trips, sports and could also work as volunteers.

The employees of the NPM found the following ideas and practices observed in youth care centres and youth sociotherapy centres to be particularly worthy of mention.



- The juveniles of the youth sociotherapy centre in Białystok worked in an apiary located within their centre. In 2010, they could participate in a special training in bee-keeping and apiculture. Each juvenile taking part in the training received a course completion certificate. The honey from the apiary was collected for the first time in 2011, poured into jars which were then distributed in parishes as fundraising. The income from sales was allocated for joint holiday and integration trips.
- The youth care centre in Cerekwica implemented a project entitled „When I become a mum”, co-financed by the local voivodeship government. The participants of the project were 16 girls who took care of dolls imitating infants. The representatives of the NPM praised the activities of the centre aimed at specialisation and employment of new personnel to take care of pregnant girls and young mothers.
- The youth care centre in Brzeg Dolny implemented numerous projects financed i.a. by the Gmina Committee for the Prevention of Alcohol-Related Problems: “Prevention and education through art”, “It is time to get on the road”, “I know you can” or the programme of adaptation and care over newly admitted juveniles. The establishment also participated in the programme entitled „Safe and friendly school” which provided funds for purchasing modern equipment for the establishment and for numerous repairs.

## 3.4 Areas requiring improvement

### 1. Treatment

First of all, it should be emphasised that in most establishments visited juveniles interviewed by the representatives of the National Preventive Mechanism did not complain about the way they were treated by the centre’s staff and frequently spoke very highly about their tutors and teachers.

However, it should be noted that in two centres<sup>85</sup> instances were reported of inhuman and degrading treatment of juveniles by the tutor, including grievous bodily harm by hitting them in the back and pulling, as well as using vulgar language. In addition, in one of the establishments<sup>86</sup> the staff resorted to the help of juveniles in dealing with other, unruly juveniles (for example, a juvenile refused to

<sup>85</sup> Youth Sociotherapy Centre in Dobrodzień, Youth Sociotherapy Centre in Gliwice.

<sup>86</sup> Youth Sociotherapy Centre in Dobrodzień.



go to school and, according to the duty book, the tutor asked other boys for help). The NPM employees assessed such behaviour as unacceptable since it leads to situations where the centre's staff allow juveniles to exert pressure on or use physical force against other juveniles. In another establishment<sup>87</sup>, the problem of frequent searches of rooms was reported to the NPM representatives. According to the juveniles the searches were conducted because tutors were angry or as a form of collective punishment.

The visiting team had a number of reservations about the functioning of the re-adaptation group in one of the establishments<sup>88</sup>. The group was organised in a separate building and the bedroom for the members of the re-adaptation group was equipped only with beds. The visiting team found that it lacks not only any other furniture (like bedside tables) but also a pleasant home-like décor. Additionally, juveniles were isolated from other residents of this centre and were obliged to wear orange trousers. The re-adaptation group consisted of both newcomers and juveniles recognised as particularly difficult cases. Moreover, juveniles did not have any daily outdoor activities. The case was referred to Professor Marek Konopczyński – a specialist in social rehabilitation (hereinafter “the expert”) who was asked to give an opinion on pedagogic and rehabilitation grounds for establishing a re-adaptation group. In his opinion, isolation of the group does not teach the juveniles anything and is not justified from the rehabilitation point of view. It should not take place in youth care centres. The representatives of the NPM and the expert also voiced their reservations about the mixed composition of the group (newly arrived boys and boys recognised as difficult). Furthermore, the expert could not find any reasons to justify the obligation to wear orange trousers by members of the re-adaptation group. The obligation was a stigmatising factor and thus did not serve the purpose of social reintegration, while the re-adaptation process is to introduce mechanisms of individual and social destigmatisation of juveniles. Summing up, the expert believes that the organisational formula of the “re-adaptation group” is in fact a “penal incarceration group”, which is not foreseen in the methodology of rehabilitation interventions or in existing legal standards governing the functioning of youth care centres in Poland. Representatives of the NPM were of the opinion that the cumulative impact of the social conditions and the regime resulting from the nature of the group in the establishment that is a care centre constituted undue severity and inhuman treatment. Therefore, the authorities were requested to change the operational formula of the re-adaptation

<sup>87</sup> Youth Care Centre in Brzeg Dolny.

<sup>88</sup> Youth Care Centre in Trzciniec.



group to adjust it to the requirements of the principle of legality and pedagogic intervention.

The employees of the National Preventive Mechanism also examined the issue of strip searches in care centres and sociotherapy centres, emphasising that there were no legal grounds for such searches in the establishments of this kind. According to the NPM representatives, where it is suspected that a juvenile is concealing (is in the possession of) prohibited items, the employees of youth care centres/youth sociotherapy centres should ask the police for help.

## 2. Health care

The employees of the National Preventive Mechanism praised the organisation of health care in the visited establishments. The centres collaborated with outpatient clinics or other health care centres, thus providing their residents with access to an internist and doctors of different specialities. However, the visiting team noted the lack of preventive screening. This issue was also emphasised in previous reports<sup>89</sup>. The importance of preventive screening and health education in establishments for juveniles was also emphasised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 9th General Report<sup>90</sup>. The visiting team also noted that each newly arrived juvenile should undergo medical examination. In the opinion of the NPM representatives such examination is necessary to assess the health of the juvenile and to detect possible diseases. A health certificate issued on the basis of such examination should subsequently be included in the personal records of the juvenile.

In establishments where neither a nurse nor a hygienist<sup>91</sup> was employed, the NPM employees recommended that the management of those entities should take effort to obtain funds to employ one more member of the full-time medical personnel and, in centres with no patient rooms, they recommended establishing such a room.

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<sup>89</sup> It should be reminded that the failure to provide preventive health care violates the provisions of the Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures (hereinafter: European Rules for juvenile offenders), i.e. Rule 71: *juveniles shall be given preventive health care and health education* and Rule 75: *Health care in juvenile institutions shall not be limited to treating sick patients, but shall extend to social and preventive medicine and the supervision of nutrition.*

<sup>90</sup> CPT/Inf (99)12.

<sup>91</sup> Youth Sociotherapy Centre in Białystok, Youth Care Centre in Augustów.



### 3. Disciplinary procedure

Regrettably, reservations voiced by the visiting team are analogous to those reported in the previous years<sup>92</sup>. The NPM employees point to the fact that the catalogue of sanctions should not include disciplinary measures in the form of a transfer to another centre, work for the centre (or additional shifts), or suspension of rights of the juvenile. In each case the relevant international recommendations were provided.

Punishment in the form of reduced food rations (no dessert or lunch), which was found in one of the establishments<sup>93</sup>, is unacceptable.

In addition, the NPM representatives are of the opinion that juveniles who commit self-injury should not be punished (particularly those who do so as a result of strong emotional stress). The members of the visiting team do not question the need for preventing intentional self-injury, but emphasise that someone who cannot cope with difficulties should not be subjected to additional severity from the personnel. Autoaggressive behaviour of a juvenile means that he/she should receive support and undergo intensified therapy.

The NPM employees also had reservations about the isolation of juveniles as a disciplinary measure. The members of the visiting team admit that there may be a need to separate a juvenile from his/her peers; however, this concerns situations and behaviours threatening life and health of the juvenile or of other people, or for the sake of ongoing proceedings. Moreover, a separated juvenile must be in the custody of a tutor<sup>94</sup>.

When visiting youth care centres and youth sociotherapy centres, the visiting team found frequent instances of collective responsibility or punishments not provided for in the regulations such as ban on going outdoors, obligatory physical exercise, copying some sentences. In one of the visited centres<sup>95</sup> the behaviour of tutors and the application of sanctions that served to humiliate the child, i.e. by forcing the juveniles to sleep in the corridor or placing them in a room that, as was explained to the NPM representatives, was called a “slum room”, because it had once been occupied by boys who did not observe personal hygiene, were recognised as reprehensible and unacceptable. Each time the visiting team recom-

<sup>92</sup> HRD Bulletin. Sources 2011, No 3, pp. 104–105, Human Rights Defender Bulletin. Sources 2012, Nr 5, pp. 89-92.

<sup>93</sup> Youth Sociotherapy Centre in Dobrodzień.

<sup>94</sup> Rule 91.4 of the European Rules for juvenile offenders provides that: *isolation in a calming down cell as a means of temporary restraint shall only be used exceptionally and only for a few hours and in any case shall not exceed twenty-four hours.*

<sup>95</sup> Youth Sociotherapy Centre in Białystok.





mended eliminating the use of degrading sanctions and sanctions not provided for in the regulations.

It should be emphasised that the NPM employees also questioned the use of restrictions of the right of juveniles to contact with persons from outside the establishment (see this chapter point 5) as a disciplinary measure.

#### **4. Right of access to information**

The right of access to information at youth care centres and youth sociotherapy centres is respected. In principle, immediately after being admitted the residents of youth care centres and youth sociotherapy centres were acquainted with the establishment's regulations, their rights and obligations, as well as the rules of stay. Reservations in this area concerned individual cases of juveniles not being acquainted with the regulations of the youth care centre/youth sociotherapy centre or the lack of information in personal records of a juvenile that he/she was acquainted with the regulations.

Moreover, the visiting team found that in several centres<sup>96</sup> the contact details to institutions protecting human and civil rights, namely contact details of the Human Rights Defender, the Ombudsman for Children, the Helsinki Foundation for Human Rights, and family judges, were not presented in an easily accessible place. What is more, the statutes of the visited establishments not always laid down a procedure for submitting complaints and lodging appeals against sanctions, as indicated in Article 8(2) and (3) of Annexe 3 to the Ordinance on the framework statutes of public establishments.

#### **5. Right to contact with the outside world**

When analysing the observance of the rights of juveniles to contact with outside world, the representatives of the National Preventive Mechanism invoked, in particular, Article 66(4) of the Act on juvenile delinquency proceedings, which, when specifying the rules for contacts of the juvenile, uses the expression "people from outside the detention centre", but does not impose an obligation to prove the degree of kinship with such people. However, in the visited centres it was often reported that juveniles might be visited by parents/legal guardians or close relatives of an established degree of kinship, while the visits by other persons had to be approved by the director<sup>97</sup>. The consent for visits to juveniles by non-family mem-

<sup>96</sup> Youth Sociotherapy Centre in Gliwice, Youth Sociotherapy Centre in Białystok, Youth Care Centre in Cerekwica, Youth Care Centre in Sobótka.

<sup>97</sup> Youth Care Centre in Piaseczno, Youth Sociotherapy Centre in Dobrodzień, Youth Care Centre in Augustów.



bers frequently depended on the score obtained under the rehabilitation system or on the degree of socialisation, and thus was treated as a privilege of the juveniles, which they could lose if they infringed the regulations. Moreover, in some establishments the ban on contacts with friends and even family was explicitly included in the catalogue of sanctions<sup>98</sup>.

The visiting team stressed that a juvenile should have the right to maintain contacts with both his/her family and people from outside the establishment as a rule. The only reasons for restricting or prohibiting contacts of a juvenile with people outside the establishment were stipulated in the abovementioned provision and concern only cases when such contact would pose a threat to the legal order or safety of the establishment, or could adversely affect the course of the ongoing proceedings or social reintegration of the juvenile. In such case, the director of the establishment is obliged to promptly notify the juvenile and the relevant family court about the reasons of his decision. The court may overrule the decision made by the director. Therefore, restricting contacts of the juveniles with their family or their peers, e.g. *by not allowing them to make phone calls or receive correspondence from their friends*, should also be deemed unacceptable.

The NPM employees also recommended that juveniles should have ensured the intimacy allowing them to speak freely during visits and phone calls, i.e. that the right to privacy of the juveniles be respected. This concerns situations where a juvenile was forced to make phone calls within the hearing range of the tutor or when the visits by his/her parents took place in the presence of an employee of the establishment<sup>99</sup>.

## 6. Educational, therapeutic, cultural and educational measures

The visiting team paid attention to the execution of the right of juveniles to daily outdoor activities. Although the said right is provided for in the national legislation<sup>100</sup>, in several centres juveniles reported that they cannot go to the yard every day<sup>101</sup>. They explained that it depended on the tutor and on the number of interested juveniles. Each time the NPM representatives stressed that the personnel of an establishment had to ensure that the juveniles may spend some time

<sup>98</sup> Youth Care Centre in Cerekwica, Youth Sociotherapy Centre in Dobrodzień, Youth Care Centre in Sobótka.

<sup>99</sup> Youth Care Centre in Brzeg Dolny, Youth Care Centre in Cerekwica.

<sup>100</sup> Cf. Art. 17 of the Ordinance of the Minister of National Education of 12 May 2011 on types and detailed rules of operation of public establishments, on living conditions of children and juveniles in these establishments, and on the amount and rules of payment by parents (Dz. U. No 109, item 631).

<sup>101</sup> Youth Care Centre in Brzeg Dolny, Youth Care Centre in Cerekwica, Youth Sociotherapy Centre in Dobrodzień, Youth Care Centre in Trzciniec.



outdoors each day, and recommended that the catalogue of the rights of the juveniles laid down in the statutes of the visited establishments should be extended to include the right to daily outdoor activities.

## 7. Right to religious practices

The most frequently observed breach of the right of juveniles to freedom of thought, conscience and denomination was an obligation imposed on juveniles to participate in religious practices, such as daily prayer or Sunday mass.<sup>102</sup> However, it should be noted that the NPM also recorded opposite situations where restrictions were imposed on religious practices of juveniles<sup>103</sup>. For example, a juvenile wishing to participate in a Sunday mass was not allowed to do so for the lack of a person who could accompany the juvenile to the church.

The freedom to profess or adopt religion of personal choice is provided for in a number of acts of international law (Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, Convention on the Rights of the Child, UN Rules), but above all the right is ensured in the Constitution of the Republic of Poland (Article 53). Therefore, each time the NPM reminded that each establishment is obliged to respect the right of juveniles to freedom of denomination and conscience, and to organise the work at the centre so as to take into consideration the juveniles' freedom of choice of their religion and their freedom to participate in religious practices.

## 8. Staff

Personnel of the visited establishments had adequate qualifications and improved their skills by attending additional courses and trainings. However, the representatives of the Mechanism stressed that the personnel of youth care centres and youth sociotherapy centres should also attend trainings on the application of coercive measures and on the protection of rights of the child as stipulated in international and national law. Undoubtedly, such establishments should seek to employ therapists with additional qualifications in psychotherapy of children and youth and in clinical psychology.

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<sup>102</sup> Youth Care Centre in Augustów, Youth Sociotherapy Centre in Piaseczno, Youth Sociotherapy Centre in Białystok.

<sup>103</sup> Youth Care Centre in Sobótka. Youth Sociotherapy Centre in Dobrodzień, Youth Care Centre in Brzeg Dolny.

## 9. Living conditions

In some establishments the representatives of the Mechanism recommended that the rooms and bathrooms should be renovated since there was damp and mould on walls or signs of considerable wear and tear<sup>104</sup>. The interviewed juveniles occasionally complained that their rooms were insufficiently equipped or that their bunk beds lacked safety barriers and their rooms – ornaments.

During the inspection of the rooms in the visited centres, the visiting team also examined whether the sanitary facilities provided conditions ensuring intimacy when taking a bath. The fact that only in one establishment the above right of juveniles was breached due to the lack of curtains in the shower cubicles should be assessed as positive<sup>105</sup>. In the remaining centres the juveniles had access to sanitary facilities guaranteeing their privacy.

However, it should also be noted that the visited establishments were not adjusted to the needs of disabled persons. Due to the specificity of the care or sociotherapy centre it is justified to assume that such establishments may also have to accommodate e.g. a person on a wheel-chair. If the conditions in those establishments do not change, such persons will not be able to use sanitary facilities or move around the premises on their own. The Mechanism recommended that the establishments should be adjusted to the needs of people with reduced mobility.

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<sup>104</sup> Youth Sociotherapy Centre in Gliwice, Youth Care Centre in Brzeg Dolny, Youth Care Centre in Podborsk, Youth Care Centre in Sobótka.

<sup>105</sup> Youth Care Centre in Brzeg Dolny.



## 4. Juvenile detention centres and juvenile shelters

### 4.1 Introduction

In 2012, the representatives of the National Preventive Mechanism visited one juvenile detention centre<sup>106</sup>. It was a follow-up visit to verify the implementation of the recommendations issued as a result of visits to the detention centre in 2008<sup>107</sup> and 2010<sup>108</sup>.

### 4.2 Systemic problems

A significant systemic problem, diagnosed as a result of the visits carried out in the previous years as well as the revisit to the juvenile detention centre in 2012, is the already voiced need to align the provisions on the implementation of the correctional measure with the contemporary achievements in the area of the protection of human rights.

In 2012, the Human Rights Defender<sup>109</sup> again addressed the Minister of Justice informing him that since 2009 she had repeatedly voiced the need for a legislative initiative to adequately regulate the rules and conditions of placing juveniles in transition rooms and ensuring that, while they stay in a detention centre or a juvenile shelter, they enjoy the right to daily outdoor activities.

A transition room in detention centres or shelters is a separate room equipped only with the most essential furniture (a table, a bed, a chair), with more austere conditions than other rooms where juveniles live. A juvenile can be placed in a transition room for two reasons. Firstly, newly arrived juveniles are placed in

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<sup>106</sup> Juvenile Detention Centre in Białystok. For the report from the visit to the Juvenile Detention Centre in Białystok in 2012 and the correspondents with the competent authorities go to <http://www.rpo.gov.pl/pl/content/krajowy-mechanizm-prewencji-przeprowadzi%C5%82-wizytacje-w-zak%C5%82a-dzie-poprawczym-oraz-w-katolickim>.

<sup>107</sup> For the report from the visit to the Juvenile Detention Centre in Białystok in 2008 and the correspondents with the competent authorities go to <http://www.rpo.gov.pl/pl/content/krajowy-mechanizm-prewencji-przeprowadzi%C5%82-wizytacji%C4%99-w-zak%C5%82a-dzie-poprawczym-w-bia%C5%82ymstoku>.

<sup>108</sup> For the report from the visit to the Juvenile Detention Centre in Białystok in 2010 and the correspondents with the competent authorities go to <http://www.rpo.gov.pl/pl/content/przedstawiciele-rzeczniczka-praw-obywatelskich-z-zespo%C5%82u-prawa-karnego-wykonawczego-3>.

<sup>109</sup> Motion of 22 February 2012 <http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1626355>.



a transition room for the period of 14 days in order to subject them to preliminary medical examination, personal background check, hygiene and sanitary treatment, etc. Secondly, national legislation provides a basis for placing a juvenile in a transition room or a separate room for a specified period of time also to ensure safety and order in the establishment. The NPM representatives are of the opinion that the provisions are not precise in this regard, since they do not specify the maximum duration of isolation, the rules governing the stay of the juvenile in the room or explicit reasons for isolation.

In the numerous letters exchanged, the Minister of Justice assured that he could see the need for changes and therefore the plans for comprehensive amendment of the Act on juvenile delinquency proceedings and its implementing regulations were being developed. At that time, the guarantees were to take into consideration the issues discussed in the letters from the Human Rights Defender, i.e. the precise specification of the maximum duration of and the grounds for placing juveniles in transition rooms, as well as ensuring their right to daily outdoor activities. However, these issues have not been regulated yet, either in the Act on juvenile delinquency proceedings or in the Ordinance of the Minister of Justice of 17 October 2001 on juvenile detention centre and juvenile shelters<sup>110</sup>, hereinafter: the Ordinance on juvenile detention centres.

However, the Ministry of Justice developed harmonised procedures including a procedure for placing residents of detention centres in a transition room. It contains a provision stipulating that a juvenile should at least once a day leave the transitional room to take a walk. He/she may perform small maintenance work on the premises of the establishment or participate in educational activities. The procedures are published on the website of the Ministry of Justice. In the opinion of the NPM representatives, the development of such a procedure is undoubtedly a good guideline for the directors of establishments, but the issue requires changes in the existing general legislation.

In 2012, the Human Rights Defender also requested the Constitutional Tribunal to declare that the provisions on punishing and rewarding juveniles placed in detention centres and juvenile shelters are incompliant with the Constitution<sup>111</sup>. The problem concerned the creation of a system of punishments and rewards by an ordinance without an explicit statutory authorisation. The request was granted and in its judgement of 2 October 2012 the Constitutional Tribunal declared the provisions on rewarding and punishing to be incompliant with the Constitution<sup>112</sup>.

<sup>110</sup> Dz. U., No 124, item 1359, as amended.

<sup>111</sup> Request of 28 February 2012 <http://www.sprawny-generalne.brpo.gov.pl/szczegoly.php?pismo=1627569>.

<sup>112</sup> Judgment of the Constitutional Tribunal of 2 October 2012 (file No U 1/12), Dz. U. of 2012, item 1114.



## 4.3 Strengths

In the opinion of the National Preventive Mechanism, juveniles placed in the visited establishment have very good living conditions. The bedrooms and classrooms are adequately equipped and adjusted to the needs of the boys. Moreover, the appropriately managed and maintained technical and educational base of the workshops should also be noted. All the visited rooms were neat and tidy. Their condition raised no reservations.

## 4.4 Areas requiring improvement

### 1. Placing juveniles in transition rooms and separate living premises

As a result of the implementation of the previous recommendations of the NPM representatives, the juveniles in the transition rooms and separate living premises of the visited establishment were no longer required to say a welcome command and the buckets that served the juveniles to fulfil their physiological needs were removed.

However, the reasons for placing juveniles in transition rooms still raised reservations. The NPM representatives repeatedly emphasised that the practice of placing juveniles in transition rooms as a punishment or when, for example, the juvenile resigns from school or the group programme, demonstrates that the interpretation of the regulations on the use of transition rooms is too broad and lacks sufficient justification. Therefore, the recommendation concerning the elimination of placing juveniles in a transition room for reasons not specified in the existing legal regulations remains valid.

Moreover, another alarming practice is that the director of the Detention Centre asks parents of the newly arrived juveniles placed in transition rooms to abstain from visiting their children since at this time the activities related to the admission of the juvenile should proceed uninterrupted. The practice was evidenced in the documents of the establishment. This means that the concept of the establishment is to discourage the family from contacting the juvenile during the initial period (of up to 14 days) of the juvenile's stay in the establishment. In the opinion of the visiting team this practice is unacceptable since the juveniles placed in transition rooms should enjoy the right to contacts with their family to the same extent as other juveniles. Therefore, the NPM representatives recommended that the director of the Detention Centre should cease to ask parents of juveniles to abstain from visiting their children.



During the previous visits, one of the main reservations voiced by the NPM representatives concerned the isolation of juveniles in transition rooms for safety reasons for as long as several months. Five transition rooms in the Detention Centre were transformed into separate living premises. They are furnished in a very pleasant, home-like way. On the day of the visit, all separate living premises were occupied by juveniles, most of whom refused to participate in the educational group (the period spent in these conditions ranged from several weeks to 4 months).

The reservations of the visiting team about placing juveniles in separate living premises mostly related to the long period of their isolation – juveniles spend most of the day in the room. The provisions in the rules of the Detention Centre and the situation of the juveniles placed in separate living premises suggest that they may stay there even for several months. They stay outside the room for about 1 to 1.5 hour daily. They leave the room only to go for a half-hour walk, to go to the toilet or to clean the corridor and receive meals. The only persons they maintain contact with are the guards, the tutor and, should the need arise, a nurse/doctor. The phone calls are made in the corridor always in the presence of a guard. They have no contact with their peers from the group and they can communicate with the colleague living next room only by letter (all letters are read by the staff). In the morning, before they are given breakfast, they have to make 20 push-ups and 20 knee bends in front of the guard. This is called a “morning warm-up”. They are disciplined for not performing it. Moreover, juveniles are threatened that, if they behave badly, their personal items will be taken from them (letters, a pencil case, books) or they will be deprived of certain pieces of equipment (such as the chair).

On the basis of international law standards, the representatives of the National Preventive Mechanism recognise such treatment as inhuman and degrading. The conditions and functioning of juveniles staying in transition rooms and separate living premises of the Detention Centre do not meet international standards<sup>113</sup>. Therefore, the visiting team recommended to the director of the Detention Centre that juveniles should be placed in separate living premises only when it is necessary to ensure safety and order in the detention centre, and for the shortest period possible. In addition, the NPM recommended that juveniles placed in separate living premises should have the same rights as other juveniles when it comes

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<sup>113</sup> See: United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113) hereinafter Resolution 45/113 stipulate that „*The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities ...*” (Rule 32).





to maintaining contact with their family, the right to privacy and being provided with stimuli necessary for appropriate development and rehabilitation.

## 2. Treatment of juveniles

Based on the results of the visit to the establishment in 2012, as well as the previous visits, the NPM representatives assess the treatment of juveniles in the Detention Centre as highly inappropriate. There is a noticeable tense atmosphere between the staff and the juveniles. The visiting team received reports that the tutors are not exactly friendly, that during their shifts they spend a lot of time watching TV, they shout and do not care about the problems of the juveniles.

Educational measures in the establishment often boil down to breaking physical and psychological resistance of juveniles rather than supporting them in the rehabilitation process. Juveniles are forced to submit requests concerning the most obvious matters, such as requests for washing away the sweat from their body in the shower, borrowing books from the library, going to school, sociotherapy, receiving an additional soup, having briefs and socks in the transition room, etc. In the opinion of the NPM the methods applied in the Detention Centre cause torments and suffering to the extent and of intensity exceeding what is needed from the disciplinary point of view.

## 3. Access of the juveniles to daily outdoor activities

The visit to the establishment revealed that, during their stay in the transition room, juveniles are not allowed to go outdoors during the daytime. The regulations of the transition rooms do not include a provision ensuring such a possibility to. Therefore, the representatives of the National Preventive Mechanism recommended that the right of juveniles to have daily one-hour outdoor activities should be included in the regulations of the transition room.

The programme of the educational groups shows that juveniles of one of the groups may go outdoors once a week, and those from other groups – three times a week. In the opinion of the visiting team, daily outdoor activities have a positive impact on psychophysical development of youth and in particular of youth residing in closed establishments, i.e. in establishment where their freedom is restricted. Spending some time in the walking yard is often an excellent occasion to compensate for the deficiency of physical exercise of the juveniles<sup>114</sup>.

<sup>114</sup> See: Rule 81 of the European Rules for juvenile offenders.



#### 4. Disciplinary procedure

In the visited establishment, there is a catalogue of rewards and disciplinary measures, as well as a system of progressive assessment of attitudes and conduct of juveniles, indicating that the conduct assessment has a direct impact on the rewards and privileges of the juveniles. The analysis of the documentation reveals that the conduct assessment and the therapeutic level also have an impact on the contact with the outside world, i.e. the visits of persons other than close relatives and the granting of passes and leaves.

In the opinion of the visiting team the issues such as the contact of juveniles with people from outside the detention centre or the possibility to obtain a pass or a leave should not depend on the conduct of the juvenile. Granting rewards or applying disciplinary measures related to the fundamental freedom of an individual, such as personal freedom, may not be regulated by sub-statutory legal acts, let alone by internal acts of a given establishment. Therefore, the recommendation was made to the director of the Detention Centre to eliminate the provisions that make the right to maintain contacts by juveniles with people from outside the detention centre and to receive passes and leaves conditional on the conduct assessment and the therapeutic level from internal documents of the centre.

During the visit some complaints were received about the evaluation system in one of the groups. The rules of the system are not explicitly laid down in the documents of the establishment which raises serious concern of the visiting team. Based on this system, juveniles may receive or lose points and their score has a significant impact on their privileges. The information gathered by the NPM employees reveal that the tutors use the system to maintain discipline among juveniles by introducing practices that are unjustifiable from the point of view of rehabilitation, since the points are deducted in the following situations: if a juvenile does not fill in the kettle with 1.7 l. of water in the room of the tutors (points are deducted from the score of the juvenile who cleans the room), if he does not switch on the light in front of a walking tutor, if he does not use a knife and a fork, if he does not keep his wrists straight on the table, if he does not put down his cutlery in a “5 o'clock” position or does not leave an immaculately clean room after tidying (the tutor tests if the floor is clean with his bare hand).

Although the members of the visiting team do not question the need to teach the juveniles, *inter alia*, how to behave properly at the table, they consider the methods used to instil the knowledge in juveniles to be discouraging and excessively strict. Therefore, the representatives of the Mechanism recommended that the staff should cease to use educationally unjustified practices to maintain excessive discipline in this group, and that the scoring system in this group and its rules should be explicitly specified.



## 5. Right to complain

The visiting team established that in 2011 the director of the visited Detention Centre filed 5 notifications of suspicion of criminal offences committed by its residents to the prosecutor's office or to the police. According to the director the offences included: making unlawful threats to a tutor, using vulgar language towards a teacher and provocative and aggressive behaviour, destroying separate living premises, making a phone call and giving false information about a riot in the Detention Centre or smashing a window. Moreover, in 2011 an employee of the Detention Centre and the director brought two actions for the protection of personal rights after the residents of the establishment filed complaints that the subsequent examination by supervisory authorities proved to be groundless. The claimants requested for that the effects of the infringement of personal rights be removed and the rights protected, *inter alia*, by ordering the defendant juveniles to submit to the Minister of Justice, the Regional Prosecutor's Office and the District Team for Educational Supervision an official apology and a statement saying that their accusations against the claimants are false and the complaints filed to the public authorities were groundless and resulted from ill will and a wish to make a joke. The visiting team is of the opinion that the aim of bringing action to the court in response to complaints by juveniles is to discourage juveniles from filing complaints to public authorities and to show potential complainants the possible consequences of lodging complaints. It should be emphasised that anyone deprived of liberty has the right to file requests and complaints to the authority responsible for the institution where they are held, and they should not suffer any negative consequences and sanctions for exercising this right.

## 6. Living conditions

The living conditions in the establishment were very good: the rooms of the juveniles, toilets, entertainment rooms and classrooms looked good and were adequately equipped. The Mechanism had no reservations in this regard. However, the provision of underwear to juveniles proved to be a serious problem. The report from the visit to the establishment in 2010 stated that juveniles receive only one pair of socks and underwear per month (without an opportunity to replace) and, therefore, at the time of washing and drying, they are forced to go without underwear. In response to the recommendation to change this situation, the director of the Detention Centre issued an order allowing the juveniles to receive, upon a written request, their private underwear and socks kept in the deposit. However, the NPM employees believe that this does not solve the problem. The juveniles who have no possessions are still left with only one pair of socks and briefs. The representatives of the National Preventive Mechanism are of the opinion that the establishment should



provide every juvenile with clothes, underwear and shoes suitable for the current season, if the juveniles do not use their own clothing. It was recommended that juveniles should be provided with an appropriate amount of underwear necessary for maintaining personal hygiene, i.e. with at least 2 pairs<sup>115</sup>.

## 7. Personal possessions

In the visited establishment all personal items of juveniles are locked in the deposit and juveniles have no access to their belongings except for 3 family pictures. In addition, it was found that randomly selected personal records of juveniles contained documents demonstrating that the belongings of juveniles are destroyed under supervision, i.e. protocols of the destruction of such items as toothpaste, a sponge, a bathing gel, a nasal stick or an antiperspirant. The regulations of the Detention Centre stipulate that a juvenile can receive packages containing: books, clothes, shoes and other items for personal use. A juvenile cannot receive packages with food, cosmetic products and other items that may be used to smuggle intoxicants or items posing a threat to the safety of the detention centre and the juveniles. Such items are returned to the sender. Pursuant to Article 61(9) of the Ordinance on juvenile detention centres, during his stay in the detention centre, a juvenile should leave the items the possession of which is prohibited by the regulations, the documents and valuables in the deposit. Article 4 of Annex 2 to the above Ordinance, *Managing the documentation of the stay of juveniles in a detention centre and a shelter*, clearly stipulates that a detention centre is obliged to keep documents, personal items and valuables of juveniles remaining in custody in the deposit. Therefore, destroying personal belongings of juveniles is an illegal practice which must be eliminated. It was therefore recommended that juveniles should be allowed to keep their personal items<sup>116</sup>.

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<sup>115</sup> Cf. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113) stipulates that “*To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.* (Rule 36) and Recommendation 66.2 European Rules for juvenile offenders, which provides that juveniles who do not have sufficient suitable clothing of their own shall be provided with such clothing by the institution.

<sup>116</sup> Pursuant to Rule 35 The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition, Resolution 45/113.



## 8. Work performed by juveniles

During the visit to the establishment it was also found that juveniles staying in the Detention Centre spend most of their time cleaning up. The NPM representatives understand that the juveniles must fulfil the obligations resulting from the Ordinance on juvenile detention centres which concern such issues as keeping the rooms where they live clean and tidy and performing auxiliary cleaning work related to the functioning of the detention centre. However, the NPM representatives found some abuses in this respect in the visited establishment. The daily schedule of one of the groups indicated that the juveniles spent 11 to 14.25 hours cleaning up the establishment (the figures show the minimum and the maximum number of hours of work performed by juveniles as provided for in the daily schedule; the work includes cleaning the staircase of the administration unit, cleaning shifts on the ground floor, the staircase and in the corridor, shifts within the group). Moreover, the daily schedule in the separate living premises indicates that the juvenile spends at least 2 hours a day performing cleaning and socially useful works for the establishment. The work is the duty of juveniles and they do not receive any remuneration for it. The representatives of the National Preventive Mechanism recommended limiting the number of hours of obligatory non-remunerative work performed by the residents of the Detention Centre to the limit provided for in Article 95f(2) of the Act on juvenile delinquency proceedings (*The juvenile is not entitled to receive remuneration for cleaning work performed for a detention centre or a shelter for a maximum of 30 hours a month; if the work is duly performed, juveniles may receive financial rewards*). At the time of the visit, juveniles worked for a minimum of 44 hours and a maximum of 57.40 hours a month.

## 5. Rooms for detained persons (PDRs)

### 5.1 Introduction

In 2012, the representatives of the National Preventive Mechanism visited 48 rooms within the Police organisational units for detained persons or persons brought to sober up, of which 3 were revisited.

### 5.2 Systemic problems

#### 1. Delegating the responsibility for taking charge of intoxicated persons to the Police.

Representatives of the National Preventive Mechanism believe that delegating the obligation and the responsibility to take charge of intoxicated persons to the Police is a systemic problem relating to the functioning of PDRs. This results from closing down sobering-up stations, which currently are still operating only in large cities. It should be noted that PDRs are not prepared for providing care to intoxicated persons since they do not employ a doctor/paramedic, who would watch over the health of those sobering-up<sup>117</sup>.

#### 2. Medical examination of detained persons.

Medical examination of persons placed in detention rooms is another important issue requiring systemic changes. In a vast majority of the visited establishments medical services are provided as stipulated by the Polish legislation<sup>118</sup>, i.e. when detained persons have visible bodily injuries, when they state that they suffer from diseases requiring constant or periodic treatment and when they request medical help. Persons brought to sober up also undergo medical examination. However, it should be noted that those who have the status of a detained person and are under the influence of alcohol are not subject to obligatory medical examination. This means that persons in analogous situations (intoxicated detainees must sober up to take part in legal proceedings and those brought to sober up must do so to be released) are, according to the law, treated differently insofar as the obligatory medical examination is concerned. In both cases the aim of medi-

<sup>117</sup> For more information on the subject see: Sobering-up Stations (6.2 Systemic Problems).

<sup>118</sup> Ordinance of the Minister of the Interior of 13 September 2012 on medical examinations of persons detained by the Police (Dz. U. of 2012, item 1102) and the previous Ordinance of the Minister of Interior and Administration of 21 June 2002 on medical examinations of persons detained by the Police (Dz. U. No 97, item 880).



cal examination should be to establish whether the said person may stay in the PDR or whether he/she should be, for example, in hospital where specialist care is provided.

The current legal regulations on medical examination of persons detained by the Police do not take into consideration the recommendations of the CPT, which in its report for the Polish Government from its 2004 visit to Poland recommended ensuring *that all new arrivals are medically screened without delay and that the establishments receive regular visits by a doctor or a nurse*<sup>119</sup>. This is supported by international recommendations<sup>120</sup>.

In her motion to the Police Commander-in-Chief<sup>121</sup>, the Human Rights Defender pointed to the necessity to ensure medical examination of all detainees. The issue was not resolved as recommended by the Defender, and thus the NPM will continue to monitor the issue to find whether other powers of the Human Rights Defender may be used.

In addition, the said solution must be changed, since the medical examination of certain individuals interferes with the privacy of an individual and as such should be regulated by a statutory act.

### 3. Insufficient personnel in PDRs.

The representatives of the National Preventive Mechanism believe that the Order No 130 of the Police Commander-in-Chief of 7 August 2012 on the methods and the form of performing tasks in the room for detained persons or persons brought to sober up should also be amended. Pursuant to Article 2(2) of the Order, the head of the unit shall organise the service so that there is at least one police officer on duty in the room.

In practice, it is frequently the case that one police officer is on duty at the PDR and he/she is, at the same time, a deputy for the duty officer at the Police headquarters and has to perform certain duties ordered by the latter. It is physically impossible for one person to ensure safety and control in the detention room. While performing certain duties, such as admitting a detained person, the police officer will not be able to notice an accident, which may occur in one of the rooms,

<sup>119</sup> Article 44 CPT (2005)3.

<sup>120</sup> Pursuant to Rule 24 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (Resolution of the General Assembly of the UN No 43/173 of 9 December 1988) *a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.*

<sup>121</sup> RPO-687961-VII/11, <http://www.sprawcy-generalne.brpo.gov.pl/szczegoly.php?pismo=1625408>.

nor will he/she be able to respect the rights of the detained person or a person brought to sober up. This is demonstrated by extraordinary incident occurring in such places. The NPM representatives are aware that the proposed solution will not eliminate the extraordinary incidents in these rooms, but it most probably would contribute to reduction of their number and would prevent professional burnout of the police officers working in these rooms and assigned with numerous tasks of great responsibility.

### 5.3 Strengths and good practices

The visits have shown that in an overwhelming majority of establishments the police officers treated the detained persons in a polite and respectful way. In almost all establishments the detained persons interviewed by the NPM representatives reported that the police officers react quickly when they use the call system. Moreover, the detainees emphasised that they had not experienced any inappropriate treatment by the police officers on duty in the detention room.

In PDR in Brzozowo a good practice is to perform medical examination of all detained persons in the admission room, regardless of the grounds for their detention or the declared health status.

### 5.4 Areas requiring improvement

#### 1. Treatment

Although in most of the establishments the detained persons did not complain about their treatment, the NPM representatives found a case of inhuman treatment<sup>122</sup>. A secured recording from the CCTV camera shows a police officer on duty in the PDR pulling a detainee by an ear.

Moreover, the visiting team formulated accusations against this particular establishment relating to the use of a coercive measure. The CCTV recording shows a detainee in a straitjacket with his legs tied and lying on the floor who is then incapacitated like this, dragged along the floor. While being placed in the room for detained persons, the detainee was not provided with a mattress and a pillow. In relation to the suspicion of a criminal offence against the detainee, and fulfilling her duty under Article 304(2) of the Code of Penal Procedure, the Human Right

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<sup>122</sup> PDR in Piastów.





Defender filed a notification of a suspicion of a criminal offence to the prosecuting authority. Coercive measures were not used in other establishments or the visiting team did not find any infringements in their application.

Strip searches are another area of interest for the NPM representatives when examining the treatment of detainees. In some detention rooms<sup>123</sup> the practice found by the visiting team was to carry out strip searches in a place under CCTV surveillance or in connecting area (corridors, halls) accessible for other people. The CCTV surveillance of detained persons during strip searches is a gross invasion of their privacy. The NPM employees are of the opinion that carrying out strip searches under CCTV surveillance or in the presence of other people is unacceptable and may constitute degrading treatment of a detained person.

During each visit the NPM employees also examine the scope and content of trainings for the staff. They found that the professional trainings usually focused on the knowledge of legal regulations concerning the functioning of these rooms and the service performed in PDRs. Considering the above, the visiting team found that there was a need to extend the scope of the trainings to include additional subjects so that the staff of a detention room know how to work with difficult detainees without harming them, how to provide first aid to persons in various physical or mental states, how to cope with stress and aggression, how to systematically update this knowledge and, finally, how to improve their skills.

## 2. Right to health care

Apart from problems classified as systemic, an issue that still requires improvement is the documentation of health care services provided to detained persons. In some of the visited establishments the NPM employees found that medical examination was performed even though the police officers indicated in the detention protocols that a person that was sober did not report any health problems<sup>124</sup>. The NPM representatives reiterate that in order to establish whether detained persons and persons brought to sober up were provided with adequate health care, it is also necessary to keep reliable documentation, both the referral to medical examination and a book of medical visits. The visiting team found that the medical records lacked the date and time of medical examinations, the signature of a doctor and even personal details of the person examined<sup>125</sup>.

<sup>123</sup> PDR in Końskie, PDR in Jędrzejów, PDR in Trzebnica, PDR in Tczew, PDR in Żary.

<sup>124</sup> PDRs: Warszawa IV, Kościerzyna, Zgorzelec, Warszawa Wawer, Wałbrzych, Tuchola, Ostróda, Oleśnica, Końskie, Jędrzejów, Biskupiec, Łódź.

<sup>125</sup> PDRs: Żagań, Zgorzelec, Wałbrzych, Trzebinia, Środa Śląska, Olsztyn, Oleśnica, Jędrzejów, Brzozowo, Biskupiec.



Pursuant to Article 4(6) of the Rules of Procedure concerning the stay of persons placed in rooms for detained persons or persons brought to sober up (hereinafter: the Rules of Procedure), *the course and results of medical examination carried out in a room shall be recorded by the physician in the book of medical visits*. A statement on the lack or the existence of contraindications for the detainee's further stay in the PDR should also be understood as a result of medical examination referred to in the said provision. This is particularly important for the health and life of the detained person/person brought to sober up. The NPM representatives recommend that the Police officers should influence/oblige the health care professionals to keep thorough and reliable documentation.

In some establishments<sup>126</sup> the visiting team observed that a Police officer was always present during medical examination. In the opinion of the NPM employees medical services should be provided outside the hearing range and the view of the Police officers unless their presence is requested by the physician. Otherwise, the right of detainees to intimacy and respect for their dignity, as well as the right to medical secrecy are breached.

### 3. Right to information about the legal rights

During the visits to the Detention Rooms, reservations of the visiting team were raised by the way detainees were acquainted with the Rules of Procedure. Detainees were acquainted with the Rules of Procedure during admission-related activities, before being placed in the room. In the opinion of the NPM representatives the method of acquainting the detainees with the content of the Rules of Procedure concerning the stay in PDRs should be changed so that it ensured that detainees can familiarise themselves with the Rules of Procedure without hurry and without the need to perform any other actions. Moreover, the Rules of Procedure should be displayed in a place that is easily accessible to and visible for all detainees so that reading it would not depend on the decision of the Police officers or other factors. The NPM proposed that the information on the rights of detainees and the rules of their stay in the establishment should be placed inside the rooms where detainees are kept, which would guarantee them the possibility to read the Rules of Procedure without hurry. Taking the above recommendation of the NPM representatives into consideration, in Article 16(2) of the Ordinance of 4 June 2012 on the rooms for detained persons or persons brought to sober up, transition cells, temporary transition rooms and Police emergency centres for

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<sup>126</sup> PDRs: Warszawa Wawer, Tuchola, Świdnica, Poznań Stare Miasto, Piaseczno, Olsztyn, Dzierżonów, Biskupiec.



children, the regulations governing the stay in those rooms, cells and centres, and the method for processing images recorded in those rooms, cells and centres<sup>127</sup>, hereinafter the Ordinance on the PDRs, the Minister of Interior stated that a copy of the Rules of Procedure concerning the stay of persons placed in rooms for detained persons or persons brought to sober up, as well as the list of institutions protecting human rights, shall be placed in the room for detained persons or persons brought to sober up in such a way that the documents cannot be destructed or used for the purposes of an assault. The said amendment to the Ordinance on the PDRs undoubtedly strengthened the detainees' rights of the access to information. However, in some visited centres the Rules of Procedures and the list of the addresses of the institutions protecting human rights were not placed in the rooms of the detainees<sup>128</sup>.

Access to a lawyer was another issue verified during the visits to the establishments<sup>129</sup>. The NPM employees believe that this right is one of the safeguards against ill-treatment of detained persons. Most of the visited establishments did not have a list of lawyers practicing in the court district of the Centre concerned. Where such a list was lacking, its preparation was recommended.

#### 4. Living conditions

The living conditions varied from one visited establishment to another. Apart from those newly built<sup>130</sup> and those entirely<sup>131</sup> or partially<sup>132</sup> renovated, most Detention Rooms had shown signs of many years of use. In one of the establish-

<sup>127</sup> Dz. U. of 2012, item 638.

<sup>128</sup> PDRs: Gdańsk, Biskupiec, Trzebnica, Oleśnica, Kościerzyna, Dzierżonów, Piastów, Piaseczno, Wałcz.

<sup>129</sup> The Human Rights Defender also addressed a general motion of 15 January 2013 to the Minister of Justice, questioning the fact that the detainee cannot access legal aid provided by a court-appointed legal advisor (RPO-543260/06/II/207.5). In his reply of 8 February 2013, the Minister of Justice did not agree with the reservations voiced by the Defender, indicating that a participant in the criminal proceedings who is not party to these proceedings, may, pursuant to Article 87(2) of the Code of Penal Procedure, appoint a representative and, under Article 78(1) of the Code of Penal Procedure and in conjunction with the second sentence of Article 88 of the Code of Penal Procedure, request a court-appointed attorney. The Minister of Justice believes that it should be assumed that, when the existence of circumstances laid down in Article 78(1) of the Code of Penal Procedure is demonstrated, the President of the Court must appoint an attorney for such a person. Pursuant to Article 16(2) of the Code of Penal Procedure, a detainee should be instructed about his/her right to request a court-appointed attorney, <http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pi-smo=1694495>.

<sup>130</sup> PDRs in Człuchów, Żagań, Kartuzi.

<sup>131</sup> Rooms for detained persons: Zgorzelec, Wrocław, Oleśnica, Końskie.

<sup>132</sup> PDR in Środa Wielkopolska – toilets, Elbląg, Chojnice – repainted rooms for detainees.



ments<sup>133</sup> the living conditions were so appalling (strong odour of urine coming from the walls and the floor of the rooms soaked with urine) that, according to the NPM representatives, keeping people in such conditions for a long period should be considered inhuman treatment. In another Detention Room<sup>134</sup> the visiting team found that the condition of the rooms, and in particular of the toilets, could lead to a breach of the rights of detained persons, and thus the NPM employees recommended carrying out a major renovation.

In several establishments the condition of sanitary facilities posed a major problem<sup>135</sup>. Shower screens were frequently installed too low, or there were no screens at all, and persons taking a shower did not have sufficient intimacy ensured.

Only 2 of the visited establishments<sup>136</sup> were adjusted to the needs of disabled persons and only one was equipped with a wheelchair<sup>137</sup>. As disabled persons may be placed in Detention Rooms, the NPM representatives recommended that the need for the modernisation of PDRs be included in the investment plans because, if the conditions in those establishments do not change, such persons will not be able to use sanitary facilities or move around the premises on their own.

In some establishments a necessary recommendation was to provide soap, towels or feminine hygiene products to detainees<sup>138</sup>. Due to the poor condition of the mattresses, blankets or pillowcases, the NPM employees recommended the purchase of new equipment or regular cleaning or washing of the items provided to detainees<sup>139</sup>.

The lighting of the rooms was another issue requiring change in some Detention Rooms. In some of the rooms for detained persons the light switched on at night was as intense as during the daytime<sup>140</sup>. According to the NPM representatives, using less bright light for surveillance of the rooms at night would allow detainees to rest at night.

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<sup>133</sup> PDR in Wałbrzych.

<sup>134</sup> PDRs: Tuchola.

<sup>135</sup> PDRs: Kościerzyna Żagań, Wałbrzych, Wejherowo, Warszawa-Wawer, Tczew, Poznań-Stare Miasto, Gdańsk, Dzierżoniów, Brzozowo, Kartuzy, Łódź.

<sup>136</sup> PDRs in Warszawa VI, Końskie.

<sup>137</sup> PDR in Elk.

<sup>138</sup> PDRs: Środa Śląska, Wejherowo, Warszawa-Wawer, Tuchola, Końskie, Człuchów, Warszawa IV, Ostróda.

<sup>139</sup> PDRs: Gdańsk, Toruń, Ostróda, Olsztyn, Dzierżoniów, Piastów, Trzebnica, Iława.

<sup>140</sup> PDRs: Środa Śląska, Olsztyn, Trzebnica, Oleśnica.



In several establishments the visiting team found that detainees were not allowed to use tobacco products<sup>141</sup> due to the lack of rooms that could be used for this purpose. The NPM representatives are of the opinion that the stress associated with being detained in conjunction with the lack of a possibility to smoke may pose an additional, unjustified inconvenience. Therefore, the NPM employees recommended the designation of an appropriate room where detainees would be allowed to smoke cigarettes.

In several visited establishments the NPM representatives recommended that the Detention Room should be equipped in the lacking tables and stools in the number corresponding to the capacity of the rooms<sup>142</sup>.

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<sup>141</sup> PDRs: Wałcz, Olsztyn, Piaseczno, Wałbrzych, Biskupiec, Piastów.

<sup>142</sup> PDRs: Biskupiec, Dzierżonów, Wałbrzych, Iława, Wałcz.

## 6. Sobering-up stations

### 6.1 Introduction

In 2012 the representatives of the National Preventive Mechanism visited 14 sobering-up stations, of which one was revisited.

### 6.2 Systemic problems

#### 1. Lack of a legal obligation to establish sobering-up stations (sobering-up establishments).

The most significant systemic problem concerning the functioning of a sobering-up station is the low number of such establishments and the fact that they are not adapted to the current system. The first problem results from the wording of Article 39 of the Act of 26 October 1982 *on upbringing in sobriety and preventing alcoholism*<sup>143</sup> (hereinafter: Anti-alcohol Act) stipulating that *local authorities in towns with a population of over 50 000 inhabitants and powiat authorities may establish and run sobering-up stations*. Such wording leads to the situation where for different, also financial, reasons local authorities close down sobering-up stations, knowing that the Police will have to take care of the intoxicated persons. Article 39 of the Anti-Alcohol Act should require gmina or powiat administration to run such establishments. The Human Rights Defender<sup>144</sup> believes that sobering-up stations should be upgraded to specialised units of a new type, which will serve as a sobering-up station, a therapeutic centre and a family assistance centre. Joint efforts should be undertaken to amend the Act on upbringing in sobriety so that it contains a provision for an obligatory allocation of funds from alcohol licenses to centres for fight against alcoholism. The Human Rights Defender is of the opinion that the functioning of the comprehensive Support Centre for People Addicted to Alcohol and their Families is an appropriate resolution of the deadlock concerning the situation of the intoxicated persons, local authorities and the central administration<sup>145</sup>.

<sup>143</sup> Dz. U. of 2012, item 1356.

<sup>144</sup> See: *The Human Rights Defender requested a Sejm committee to address the issue of sobering-up stations*, Rzeczpospolita of 18 February 2013.

<sup>145</sup> See: I. Lipowicz, *Sobering-up stations from the point of view of the Human Rights Defender [Izby wytrzeźwień w perspektywie Rzecznika Praw Obywatelskich]* (in): T. Gardocka, J. Sobczak (ed.) *Izby Wytrzeźwień a prawa człowieka [Sobering-up Stations and Human Rights]*, Wyd. Adam Marszałek, Toruń 2013, pp. 19-20.



## 2. Regulations infringing constitutional standards (e.g. CCTV surveillance in sobering-up stations).

In 2012, the Human Right Defender focused on the problem of installing CCTV cameras in sobering-up stations and addressed a motion to the Minister of Health<sup>146</sup> pointing out that although the CCTV surveillance of the rooms at the stations improves the safety of persons staying therein and helps prevent extraordinary incidents, it also limits the constitutionally protected right to privacy, which may be limited only by means of an act of law. It should be noted that the Anti-Alcohol Act does not contain any provision providing for the use of CCTV in sobering-up stations. The Human Rights Defender requested for initiating a legislative process to stipulate legal standards concerning the use of CCTV in sobering-up stations in an act and to introduce specific regulations in this area.

The Anti-Alcohol Act does not specify the authorities authorised to escort inebriated individuals to the sobering-up stations, while this issue is regulated in the Ordinance of the Minister of Health of 4 February 2004 on the methods of escorting, accepting and discharging inebriated individuals and on organization of sobering-up stations and other establishments created or indicated by a local government unit<sup>147</sup> (hereinafter: Ordinance on sobering-up stations). The Constitution requires that all elements which interfere with the right to personal freedom should be laid down in an act.<sup>148</sup>

### 6.3 Strengths and good practices

The fact that some local authorities run establishments which, apart from the sobering-up function (sobering-up stations *sensu stricto*), carry out additional preventive, informative, medical, care or educational activities is worth noting and recommending.

Such an establishment operates in Opole. The rules of procedure of the Centre list running a sobering-up station as one of its tasks. Other tasks include the provi-

<sup>146</sup> Motion of 28 August 2012 RPO-638402-VII-7013/12/JJ, <http://www.sprawny-generalne.brpo.gov.pl/szczegoly.php?pismo=1667005>.

<sup>147</sup> Dz. U. No 20, item 192, as amended.

<sup>148</sup> Article 11(1)(7) of the Act of 29 August 1997 on gmina guards (Dz. U No 123, item 779, as amended) stipulates that “*the tasks of the guards shall in particular include escorting intoxicated persons to a sobering-up station or to the place of their residence when the latter commit an immoral act in a public place, are in a life or health threatening situation or threaten the life or health of other people*”. Act of 6 April 1990 on the Police (Dz. U. of 2011, No 287, item 1687, as amended) does not provide for similar powers of the Police.

sion of a night shelter for the homeless, first aid in emergency situations and preventive consultative, informative and educational activities. The Centre also carries out activities in the area of prevention of alcoholism and early therapeutic intervention.

The statute of the Centre in Chorzów stipulates that its main tasks include running a sobering-up station and, *inter alia*, providing addiction consultancy, addiction therapy, preventive health care and training and educational activities, as well as promoting sobriety.

In Suwałki the sobering-up station operates a Hotline for Persons with an Alcohol or Drugs Problem, or Involved in Domestic Violence (800 137 200). The hotline operates from 1:00 p.m. until 6:00 p.m., Monday through Friday. The number may be reached toll free via the landline as well as any mobile network.

## 6.4 Areas requiring improvement

### 1. Treatment

During the visits to sobering-up stations, the representatives of the NPM each time analyse whether the practice in the given station is to require the admitted persons to undress or not. In the majority of visited stations, the intoxicated persons cannot remain in their own clothes.<sup>149</sup> The fact that they take off their clothes themselves and voluntarily is of secondary importance with regard to the fact that the majority of stations do not allow those persons to remain in their own clothes. The representatives of the NPM also recorded a case of an intoxicated person being forcibly undressed from his clothes.<sup>150</sup> It should be noted that in some sobering-up stations the patients did not receive any substitute clothes<sup>151</sup> or substitute footwear<sup>152</sup>. In one of the visited stations, the persons admitted had to take off only their trousers<sup>153</sup> while in others all of their clothes. The most extreme case encountered by the employees of the NPM was the requirement to deposit also the underwear.<sup>154</sup> This latter practice was considered to be degrading treatment of persons deprived of liberty.

<sup>149</sup> Sobering-up Station in Zamość, Sobering-up Station in Białystok, Sobering-up Station in Toruń, Sobering-up Station in Włocławek, Sobering-up Station in Piła, Sobering-up Station in Konin, Sobering-up Station in Chorzów, Sobering-up Station in Warsaw, Sobering-up Station in Opole.

<sup>150</sup> Sobering-up Station in Chorzów.

<sup>151</sup> Sobering-up Station in Konin, Sobering-up Station in Zamość, Sobering-up Station in Białystok, Sobering-up Station in Włocławek.

<sup>152</sup> Sobering-up Station in Chorzów, Sobering-up Station in Konin, Sobering-up Station in Warsaw.

<sup>153</sup> Sobering-up Station in Opole.

<sup>154</sup> Sobering-up Station in Chorzów.





Pursuant to § 10 of the Ordinance on sobering-up stations, *persons admitted to sobering-up stations or similar establishments may be given a set of substitute clothes for the duration of their stay*. However, the above provision does not require every person admitted to the station to undress or change into substitute clothes. It explicitly stipulates that provision of substitute clothes to patients of the stations is only an option which should be used in the case of threat to security, or when the own clothes of the patient are very dirty or damaged. In such cases, the European Court of Human Rights reiterates that, as in the case of strip searches, the requirement to undress should result from the need to ensure security.<sup>155</sup>

According to the representatives of the Mechanism, the procedure followed in numerous sobering up stations, consisting in requiring the admitted persons to undress, is inappropriate. All safety measures (here undressing), which are interfering so strongly in human freedom and privacy, should be regulated in an act and should be confined to the necessary minimum and exceptional situations.

In one of the stations<sup>156</sup>, substitute clothes given to the homeless patients did not ensure intimacy. The clothes were made of transparent interlining which does not mask intimate parts of the body. The station did not provide substitute footwear as well. The recommendation was made to eliminate these irregularities.

From among the visited stations, five did not require the patients to undress<sup>157</sup>, but one required them to take off their shoes and hand over the things that may be used in an inappropriate way, such as a trouser belt<sup>158</sup>. Since the said station does not provide substitute clothes or footwear, the patients must move around the premises wearing socks instead of shoes.

As regards the attitude to and the treatment of patients by the personnel, in one of the stations<sup>159</sup> the patients complained to the visiting team that the person on duty was rude and his reaction to their requests and questions boiled down to threatening them with strapping. The analysis of CCTV recordings in another station revealed inappropriate behaviour of one of the carers who pushed a patient dressed only in the underwear from a bench and dragged him by hand along the floor. Regrettably, a similar situation occurred in another station where a woman was dragged by hand along the floor. In the opinion of the

<sup>155</sup> See judgment of the ECHR of 31 March 2009 in the case of *Wiktorko v. Poland*, Application No 141612/02.

<sup>156</sup> Sobering-up Station in Warsaw.

<sup>157</sup> Sobering-up Station in Olsztyn, Sobering-up Station in Suwałki, Sobering-up Station in Nowy Sącz, Sobering-up Station in Katowice.

<sup>158</sup> Sobering-up Station in Olsztyn.

<sup>159</sup> Sobering-up Station in Zamość.



visiting team, such behaviour of the personnel is unacceptable and should be considered degrading.

Analysing the CCTV recordings, the representatives of the Mechanisms also noticed the inappropriate behaviour of the Police officers who brought a man to the station. In order to change the handcuffs fastening they brought him down and pinned him against the floor with their knees. As a result, the man was lying in the waiting room of the sobering up station on his abdomen for 20 minutes, in the presence of the outsiders.

## 2. Application of coercive measures

The visiting team each time analysed the CCTV recordings from the use of coercive measures.

In two sobering-up stations, the representatives of the NPM voiced reservations concerning the method of restraining the patients with straps. In the first of the stations<sup>160</sup>, the patients' hand were twisted back and pulled up to shoulder blades, while in the latter<sup>161</sup> the patients were put into an uncomfortable position, as they had to lie on their back with outstretched hands and legs. The visiting team were also critical of the fact that the beds for restraining the patients were equipped with handcuffs which is in breach of the binding regulations. According to the employees of the NPM, the said methods of immobilising the patients constituted inhuman treatment that could result in bodily harm. Furthermore, in several stations<sup>162</sup> the physical force used during restraining the patients with straps was inadequate to the situation. Pursuant to the case law of the ECHR in Strasbourg, the use of force against persons deprived of liberty, except for cases when it has been made strictly necessary by the patients' own conduct and is not excessive, is an infringement of Article 3 of the European Convention on Human Rights, since it diminishes human dignity.

The visiting team also had certain doubts concerning the cases of using coercive measures against persons whose behaviour did not pose any threat to their own life or health or the life or health of other persons. The management of the station<sup>163</sup> was reminded each time that the use of coercive measures was regulated in Article 42(1) of the Act on the upbringing in sobriety and counteracting alcoholism.

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<sup>160</sup> Sobering-up Station in Toruń.

<sup>161</sup> Sobering-up Station in Konin.

<sup>162</sup> Sobering-up Station in Zamość, Sobering-up Station in Toruń, Sobering-up Station in Konin, Sobering-up Station in Warsaw.

<sup>163</sup> Sobering-up Station in Włocławek, Sobering-up Station in Katowice, Sobering-up Station in Chorzów.



The representatives of the Mechanisms also voiced reservations about the lack of regular monitoring of the physical condition of immobilised persons<sup>164</sup> which is in breach of § 11(1c) and (1d) of the Ordinance on sobering-up stations. It must be emphasized that the employees of the station have an obligation to ensure safety of the patients. No control of the condition of intoxicated persons, in particular those immobilised, increased the risk of extraordinary events and may lead to inhuman treatment.

### 3. Right of access to information

Some of the visited sobering-up stations did not have written regulations specifying the rights and obligations of patients<sup>165</sup> or such regulations were not placed on the walls in the rooms for patients.<sup>166</sup> As a result, when the patients sober up they have no possibility to read the regulations without any hurry.<sup>167</sup> The visiting team also pointed to the need to orally instruct the patients about their fundamental rights, since the awareness of such rights is one of the safeguards against ill-treatment.

The employees of the NPM also analysed whether the persons admitted to the sobering-up stations were informed about the possibility of filing a complaint with request for examining the grounds and lawfulness of them being taken to the station, as well as the decision about detention and its appropriate execution. The inspection of the rooms<sup>168</sup> available to patients revealed that the relevant information was not presented in a well-visible place.<sup>169</sup>

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<sup>164</sup> Sobering-up Station in Zamość, Sobering-up Station in Suwałki, Sobering-up Station in Toruń, Sobering-up Station in Włocławek, Sobering-up Station in Katowice, Sobering-up Station in Sosnowiec, Sobering-up Station in Warsaw.

<sup>165</sup> Sobering-up Station in Zamość, Sobering-up Station in Opole, Sobering-up Station in Włocławek.

<sup>166</sup> Sobering-up Station in Białystok, Sobering-up Station in Nowy Sącz, Sobering-up Station in Piła, Sobering-up Station in Katowice, Sobering-up Station in Olsztyn.

<sup>167</sup> Pursuant to Principle 13 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (UN General Assembly Resolution of 9 December 1988), *any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.*

<sup>168</sup> Sobering-up Station in Zamość, Sobering-up Station in Białystok, Sobering-up Station in Włocławek.

<sup>169</sup> Pursuant to § 14 of the Ordinance on sobering-up stations, *persons released from a station, establishment or a Police room shall be informed in writing about the possibility to file a complaint concerning the grounds for and lawfulness of their admission and the execution of the decision on detention and admission to the station, establishment, health care centre or a Police room.*



In the majority of visited establishments<sup>170</sup>, there was no information presented about institutions to which patients can turn when their rights are being violated.

#### 4. Right to health care

The analysis of the CCTV recordings from admission of patients revealed that in three establishments<sup>171</sup> some persons were not subject to medical examination. The representatives of the Mechanism emphasize that all intoxicated persons should be examined by a physician to ensure their safety. The above obligations also stems from the regulations in place.

The visiting team also noted that in two stations<sup>172</sup> the medical examination took place in a room with CCTV cameras and often in the presence of the Police officers<sup>173</sup>. The employees of the NPM are of the opinion that the presence of the Police officers should be limited to the necessary cases justified by circumstances, namely to situations of justified concern about safety of medical personnel. In order to ensure the right to intimacy of each patient during medical examinations, the examinations should be performed in specially designated rooms with no CCTV cameras. Furthermore, the regulations on obligatory medical examinations, as activities strongly interfering with the right to privacy, should be included in the Act on the upbringing in sobriety and counteracting alcoholism.

#### 5. Right to intimacy and privacy

The analysis of selected CCTV recordings of the admission of patients to the stations revealed some cases of degrading treatment consisting in the necessity to undress and change clothes in the presence of the Police officers<sup>174</sup> or in the monitored room<sup>175</sup>. The visiting team continue to emphasize that a separate place, inaccessible to third persons and not monitored, screened off, where patients can change their clothes, with any infringement of their right to intimacy and privacy.

<sup>170</sup> Sobering-up Station in Zamość, Sobering-up Station in Białystok, Sobering-up Station in Toruń, Sobering-up Station in Włocławek, Sobering-up Station in Piła, Sobering-up Station in Konin, Sobering-up Station in Olsztyn, Sobering-up Station in Warsaw.

<sup>171</sup> Sobering-up Station in Toruń, Sobering-up Station in Suwałki, Sobering-up Station in Włocławek.

<sup>172</sup> Sobering-up Station in Piła, Sobering-up Station in Chorzów.

<sup>173</sup> Sobering-up Station in Białystok, Sobering-up Station in Nowy Sącz, Sobering-up Station in Suwałki, Sobering-up Station in Włocławek, Sobering-up Station in Katowice, Sobering-up Station in Olsztyn, Sobering-up Station in Warsaw.

<sup>174</sup> Sobering-up Station in Białystok, Sobering-up Station in Konin.

<sup>175</sup> Sobering-up Station in Białystok, Sobering-up Station in Nowy Sącz, Sobering-up Station in Włocławek, Sobering-up Station in Piła, Sobering-up Station in Konin, Sobering-up Station in Katowice, Sobering-up Station in Chorzów.



The representatives of the Mechanism also found that in two stations the Police officers and male personnel<sup>176</sup> were present during the actions taken towards women, also while the women were changing their clothes<sup>177</sup>. Such conduct of the personnel violates the patients' right to intimacy and breaches the applicable regulations.<sup>178</sup>

## 6. Living conditions

During the inspection of the sobering-up stations, the employees of the NPM each time verify the compliance with § 19(4) of the Ordinance on sobering-up stations.<sup>179</sup> The examination of the establishments revealed that many of them were not adjusted to the needs of the disabled.<sup>180</sup>

In two of the visited stations, toilets were placed in the rooms where the patients stay. The representatives of the Mechanism are critical of such solutions, since there is no need for toilets in such rooms. In one of the stations<sup>181</sup> the toilets were not screened off with any curtains or partitions and placed right under a camera, thus not allowing any intimacy while using them. In another establishment<sup>182</sup>, the toilets were separate with a wall, but using them infringed the right to intimacy. The best solution recommended by the visiting team is to remove the toilets from the rooms where the patients stay.

In two visited stations<sup>183</sup>, the showers were separated with metal bars which were the remains of forced washing practice. The visiting team stated that forced washing was degrading treatment and recommended immediate removal of the bars as the objects raising justified doubts when assessing the observance of human rights during hygiene and sanitary practices.

During the visits, the representatives of the Mechanisms learned that in two establishments<sup>184</sup> there was a rule according to which scruffy persons were not

<sup>176</sup> Sobering-up Station in Katowice.

<sup>177</sup> Sobering-up Station in Warsaw.

<sup>178</sup> Pursuant to § 24(5) of the Ordinance on sobering-up stations, *activities related to admission of women to a station or an establishment and direct care over them during their stay shall be performed solely by female personnel of the station or the establishment, with the exclusion of health care services.*

<sup>179</sup> Rooms of the stations for admitted persons are equipped with devices for persons with reduced mobility.

<sup>180</sup> Sobering-up Station in Zamość, Sobering-up Station in Opole, Sobering-up Station in Włocławek, Sobering-up Station in Konin, Sobering-up Station in Katowice, Sobering-up Station in Chorzów, Sobering-up Station in Olsztyn, Sobering-up Station in Warsaw.

<sup>181</sup> Sobering-up Station in Konin.

<sup>182</sup> Sobering-up Station in Warsaw.

<sup>183</sup> Sobering-up Station in Włocławek, Sobering-up Station in Zamość.

<sup>184</sup> Sobering-up Station in Suwałki, Sobering-up Station in Konin.



given bed linen. In the opinion of the visiting team, no group of persons can be discriminated and they should be treated as all others. Since in one of the stations bed linen was not given at all, the visiting team reminded that bed linen should be provided to all patients.

## 7. Staff

The visits of the NPM revealed that not all of the visiting stations employed a psychologist.<sup>185</sup> Consequently, the objectives set out in § 18(5) of the Ordinance on sobering-up stations are implemented in a limited scope. The visiting team recommended hiring a psychologist or a therapist specialising in treatment of addictions whose work would focus on preventive conversations with the patients motivating them to undergo a specialist treatment.

In view of irregularities concerning the treatment of patients, the representatives of the Mechanism emphasize that, due to difficulties of work in sobering-up stations, it is of utmost importance to select appropriate personnel, ensure appropriate training and close supervision by directors of the establishments.

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<sup>185</sup> Sobering-up Station in Zamość, Sobering-up Station in Białystok, Sobering-up Station in Konin.



## 7. Social care centres

### 7.1 Introduction

In 2012 the representatives of the NPM carried out visits to 16 social care centres.<sup>186</sup>

### 7.2 Systemic problems

#### 1. The lack of appropriate organisation of care over mentally ill persons and elderly persons and referring persons with mental disorders to inappropriate centres.

During the visits, the representatives of the NPM found cases of referring persons with mental disorders to inappropriate types of centres. In two establishments, there were persons with mental disorders during the visits, although the centres were not adjusted to provide care for such persons.

The analysis of the documents of residents in the establishments for persons with mental disorders revealed that in the majority of cases the main reason for placing them at the centre was the inability to satisfy the basic living needs which means that some of the residents could live outside the centre, if there was a better organised system of care for persons with mental disorders.

#### 2. Contact with the outside world.

During the visits, the representatives of the Mechanism noted the problem consisting in restrictions on the residents' going out of the Social Care Centre buildings. The visiting team found that the restrictions were imposed in particular on chronically mentally ill persons, mentally disabled persons, persons abusing alcohol or those admitted pursuant to a decision of the court. The restrictions in the visited establishments had various form, starting from discouraging the residents from going out on their own, allowing them to go out only during the working hours of the administrative personnel or granting passes for going out. The most far-reaching restriction found was the locking of the doors to the building. A different procedure was followed in one of the social care centres where the head of

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<sup>186</sup> The issue of visits to social care centres, which initially raised doubts of supervisory authorities, was clarified and described in the Bulletin of the Human Rights Defender. Sources 2011, No 3, pp. 180-181.



the care and medical treatment department or a nurse on duty decide whether the physical and mental condition of the resident enables him or her to leave the centre on their own or whether the residents must be accompanied by a carer. The persons who can go out on their own must each time specify the purpose of going out and the predicted time of return.

The discretion in the procedures governing the leaving of the centres by residents is due to the lack of legal regulations in this area. The regulations in place do not stipulate how to proceed with persons who were placed in social care centres as a result of a court's judgment, who do not pose a threat and are referred to the centres because they are unable to meet their basic needs and with the persons who stay in a given centre voluntarily, but their physical and mental condition does not allow them to leave the centre. The analysed issue is regulated in part in Article 40(3) of the Act on the protection of mental health. Pursuant to the provision, if the mentally ill or mentally disabled person behaves in a way putting at risk his or her life or health, or life or health of other persons, coercive measures may be used against such persons, also to prevent them from leaving the social care centres. According to the representatives of the NPM, the provision does not provide grounds for permanent or temporary isolation of residents or even for requiring consent of the personnel of the social care centre for the residents' going out of the centre. Therefore, due to the lack of relevant legal regulations, the solutions introduced in the visited centres must be considered to unlawfully restricting the personal freedom of the residents. This conclusion stems from the analysis of Article 31(3) of the Constitution of the Republic of Poland which lists grounds required to apply restrictions on the use of constitutional rights and freedoms.

### 3. Psychological and psychiatric care

Pursuant to § 6(2)(2) of the Ordinance on social care centres<sup>187</sup>, the contact with a psychologist must be provided for residents and the contact with a psychiatrist for persons staying in a centre for chronically mentally ill people. However, the provisions do not specify the frequency of such contacts and do not stipulate whether social care centres must employ psychologists and psychiatrists or whether they should work full or part-time at the centres. The current legal situation results in too far-reaching discretion in ensuring psychological and psychiatric care by social care centres to their residents. The problem is well illustrated by the findings of the representatives of the Mechanism revealing that a part of visited centres did not employ a psychologist at all, employed a psychologist only part-time (2 shifts for 2 hours

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<sup>187</sup> Dz. U. of 2012, item 964.





for 170 people, 0.5 of FTE for 98 residents, 0.5 of FTE for 97 residents) or employed a psychologist based on a contract of mandate (4 hours a week for 216 residents).

The visiting team found similar problems with psychiatric care. The personnel of social care centres informed the representatives of the NPM that the mental health outpatient clinics planned to reduce the number of psychiatric consultations for residents of social care centres or had already introduced such reductions.

According to the employees of the NPM, in part of the visited social care centres the only option is to undertake potential intervention measures, but it is impossible to offer continuous therapy which should be a standard, in particular in the social care centres for chronically mentally ill and mentally disabled persons.

### 7.3 Strengths and good practices

The overwhelming majority of visited centres provided an extensive offer of therapeutic, cultural and educational activities to their residents. Available therapies included occupational therapy, bibliotherapy, art therapy, music therapy, silvotherapy, ergotherapy or memory enhancement therapy. The cultural and educational activities available usually include games, plays, excursions, going to the cinema or to the theatre, artistic performances organised in the centres, meetings with invited guests, talks, dancing parties, picnics, meetings with residents of other social care centres and organisation of special events.

In some social care centres, there were rehabilitation and physiotherapy rooms with state-of-the-art equipment.

The representatives of the NPM also assessed the living conditions in social care centres as good. During the visits, the rooms of the residents were clean, free from unpleasant odours and furnished with furniture and equipment adjusted to the residents' needs. In some centres, the residents could decorate their rooms according to their own tastes and interests.

A good practice followed in all visited centres was to employ nurses, although no such requirement is included in the applicable regulations.

The initiatives in some social care centres deserve mentioning as worth implementing in other centres.

- The Social Care Centre in Chorzów developed a three-stage system of assistance in becoming independent. The first basic stage consists in learning simple self-care activities from all spheres of personal and social life. The second extended stage (carried out in a study) covers the practicing of self-care activities, the strengthening the skills of functioning in a group of peo-



- ple, simple cooking supervised by the carer, the use of kitchen appliances in practice, learning how to move around the city and extending the circle of acquaintances in one's social environment. The third advanced stage (also carried out in a study) is to establish the acquired skills and teach and practice the running of a household on one's own, the rules of co-existence among neighbours and local community, moving around the city on one's own and participation in handling official matters and formalities.
- The Social Care Centre in Chorzów also established bilateral cooperation with a corresponding German centre, consisting in organisation of several-day long exchanges of groups of residence and the traineeships of the employees of one centre in another. The said exchanges have been organised since 2007. In 2011, the German partner submitted a proposition to the City Office in Chorzów to jointly implement the EU's "Inclusion" programme for 2012-2014 with the Social Care Centre "Republika". The programme, which covers three modules divided between the programme partners from Germany, Poland and Hungary, namely, living in the community, education and work of the disabled, is currently being implemented.
  - The residents of the Social Care Centre No 1 in Grudziądz may keep pets which do not pose any threat to or inconvenience for other residents. The residents of the Social Care Centre *Pogodna Jesień* in Łódź take care of a parrot and an aquarium with fish in the living room.
  - In some of the visited centres, the practice is to enable the persons to be admitted to the centre or their guardians to visit the centre earlier, read the regulations and learn the rules in place in the given centre (Social Care Centre in Chorzów, Social Care Centre No 1 in Grudziądz, Social Care Centre in Olkusz) or a social worker visits the future resident of the centre in his/her place of living or treatment in order to collect information about his/her health, fitness, interests, etc. (Social Care Centre in Choroszcz, Social Care Centre in Racibórz).
  - The Social Care Centre in Wieleni upon Noteć provides round the clock health care for its residents.
  - The management of the Social Care Centre in Pleszew undertook to establish a special unit for persons with the drinking problem within a ward for chronically mentally ill patients. The patients will stay for up to 6 months in the unit. The personnel were trained by the specialists from the State Agency for the Prevention of Alcohol-Related Problems (PARPA) in Warsaw. The therapy in the unit will include individual talks, with the focus being on resources and skills instead of problems and additional classes being of-



ferred for the residents. The training of new social skills and of assertiveness in drink refusal is also planned. The stay in the unit will not be a substitute for treatment, but will allow to look at drinking alcohol from a different perspective, to expand knowledge about reasons and consequences of drinking; it may also motivate to make some changes in the life of the given resident of the centre, provide an opportunity to acquire numerous individual and social skills, as well as to encourage and better prepare the resident to take part in a therapy in an addiction treatment centre. In order to conduct a therapy, the unit will have its separate organisational regulations including the prohibition of drinking alcohol in the unit. The unit will be available for all social care centres in the Wielkopolska region, and also from other regions, which will be able to place their residents with a drinking problem in the unit on a rotation basis<sup>188</sup>.

## 7.4 Areas requiring improvement

### 1. Legality of stay

In three visited centres<sup>189</sup> intended only for chronically mentally ill persons, there were also mentally disabled persons, although there was no separate type of the centre there. Pursuant to Article 56a(2) of the Act on social assistance, certain

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<sup>188</sup> In 2012, the Act of 12 March 2004 on social assistance (Dz. U. of 2013, item 182) did not provide for the possibility to create a special type of centre for alcoholics. Therefore, such persons were referred to other types of centres where they often violated the principles of social interaction due to their addiction. In order to combat drinking alcohol by the residents in a way disturbing the functioning of the centres and to offer help in fighting the addiction, some of the visited centres implemented a number of valuable initiatives, i.e. organised meetings with therapists, offered courses for alcoholics who wanted to combat their addiction or created support groups. However, the said objectives also provided the grounds for infringement of the rights of persons battling alcohol addiction and for their inappropriate treatment (see: contact with the outside world, treatment and discipline). In some centres where this problem occurred there were no measures introduced for alcoholics, persons abusing the alcohol or with risky drinking habits, apart from the maintenance therapy in the form of talks. The legislator noticed the problem and on 22 February 2013 the draft Act amending the Act on social assistance and certain other acts (print No 1026) was passed which provides for the establishment of social care centres for persons addicted to alcohol. The said Act was published on 26 April 2013 in the Journal of Laws of 2013, item 509, and will enter into force 14 days after its publication (Article 5 of the Act). Pursuant to Article 59(7) of the Act, the decision on referral and placement in a social care centre referred to in Article 56(7) (for persons addicted to alcohol) shall be made for a specified period of time, not exceeding 12 months, with a possible extension to 18 months in justified cases.

<sup>189</sup> Social Care Centre in Choroszcz, Social Care Centre in Racibórz, Social Care Centre in Ruda Śląska.



types of centres may be combined provided that each of them is located in a separate building which was not the case in the visited social care centres.

In one of the social care centres<sup>190</sup> all residents were staying voluntarily (at the time of the visit). However, the contact with some of them was impossible or very difficult due to their problems with autopsychic and allopsychic orientation. Therefore, there are doubts as to whether the residents were able to consciously consent to their stay in the centre.

In another social care centre<sup>191</sup> an expert of the NPM (psychiatrist) noticed that schizophrenia was diagnosed in some residents right before their admission to the centre, although previously, for many years, they have been diagnosed as mentally disabled or having personality disorders. The documentation at the social care centre did not allow the expert to verify her suspicion that such a sudden diagnosis of schizophrenia could serve as a justification for admission of those persons to the specific type of social care centre. It is particularly alarming if the admission takes place based on the court's decision.

## 2. Treatment

Despite the good atmosphere in all visited establishments, the personnel's knowledge about needs and preferences of individual residents and assurance of the majority of residents that they are well taken care of, the representatives of the Mechanism received some signals about incidents of inappropriate treatment of the residents by the employees of the social care centres. They received information about the cases of the violation of bodily integrity, e.g. pulling somebody's hair, urging<sup>192</sup>, pushing<sup>193</sup>, inappropriate addressing of residents<sup>194</sup>, calling the residents by their first names<sup>195</sup>.

The representatives of the NPM each time remind that using physical violence constitutes inhuman treatment and as such it is unacceptable. Addressing the residents in a way violating their dignity should be eliminated and the calling by first names should be only on a reciprocal basis and with consent of the resident.

During the visit to one of the centres<sup>196</sup>, the representatives of the Mechanisms found out that one of the residents, who abused alcohol, was on numerous

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<sup>190</sup> Social Care Centre in Mogilno.

<sup>191</sup> Social Care Centre in Grudziądz.

<sup>192</sup> Social Care Centre in Ruda Śląska.

<sup>193</sup> Social Care Centre in Olkusz.

<sup>194</sup> Social Care Centre in Ruda Śląska, Social Care Centre in Koronowo.

<sup>195</sup> Social Care Centre in Choroszcz, Social Care Centre in Racibórz.

<sup>196</sup> Social Care Centre in Olkusz.



occasions punished by being confined to bed for the entire week – she could not leave the bed since her wheelchair was taken away from her. Other inappropriate methods of preventing drinking of alcohol included the prohibition of dressing for many days, the ban on participation in parties, the presence of an employee of the centre during the private meetings of the resident with the resident's friends from outside the social care centre. The representatives of the Mechanism recommended the abandonment of the above practices.

In yet another social care centre<sup>197</sup>, the residents told the visiting team that smokers who do not have money to buy cigarettes were offered cigarettes for cleaning the place. The visiting team recommended eliminating the said practice due to the risk of creating a submission of the resident towards the personnel. In the same centre, the team also challenged the placement (due to the specific nature of the disorder consisting in eating various objects) of a resident in an isolation room, i.e. a room with bars in the windows, furnished only with a divan bed and located at a considerable distance from other residential rooms. According to the representatives of the NPM, the disorder of the resident and the resulting inconvenience for other residents did not justify the separation and placement of the resident in a room of a significantly lower standard. The visiting team recommended that the said resident should be transferred to the ward and put under special care.

### 3. Disciplinary procedure

During the visits, the representatives of the NPM received alarming information about punishing the residents of the centres, e.g. by banning the residents who do not return at a specific time or who return under the influence from leaving the centre<sup>198</sup>, prohibiting the residents from leaving the premises<sup>199</sup>, transfer to another room<sup>200</sup>, not allowing the residents to receive sweets or coffee<sup>201</sup>, the obligation of cleaning<sup>202</sup>, reprimanding<sup>203</sup>, ignoring while granting awards<sup>204</sup>, banning the persons abusing the alcohol from participation in special events and ex-

<sup>197</sup> Social Care Centre in Choroszcz.

<sup>198</sup> Social Care Centre in Grudziądz, Social Care Centre in Racibórz.

<sup>199</sup> Social Care Centre in Chorzów, Social Care Centre in Olkusz.

<sup>200</sup> Social Care Centre No 1 in Grudziądz, Social Care Centre *Pogodna Jesień* in Łódź, Social Care Centre in Olkusz.

<sup>201</sup> Social Care Centre in Chorzów.

<sup>202</sup> Social Care Centre in Chorzów.

<sup>203</sup> Social Care Centre No 1 in Grudziądz, Social Care Centre in Koronowo.

<sup>204</sup> Social Care Centre in Koronowo.

cursions<sup>205</sup>, not taking the residents to events taking place outside the centre<sup>206</sup>, or banning them from going shopping with their guardians<sup>207</sup>.

In the opinion of the employees of the NPM, internal regulations of social care centres cannot include provisions on punishing the residents. The punishments, including those listed above, are related to constitutional freedoms and rights of an individual. As it has already been mentioned, pursuant to Article 31(3) of the Polish Constitution, limitations on exercising the constitutional rights and freedoms can be introduced only by way of an act and only when it is necessary in a democratic state to protect 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 cannot violate the essence of freedoms and rights. There is no such authorisation in the current legislation, since the Act on social assistance pursuant to which social care centres are established does not regulate the issue.

#### 4. Coercive measures

According to the information provided to the representatives of the Mechanism, coercive measures were not used at all or were used only sporadically in the visited centres intended specially for chronically mentally ill persons. However, this does not waive the obligation of the centres<sup>208</sup> to keep a register of the cases where coercive measures were used<sup>209</sup>.

The interviews with the staff of some<sup>210</sup> visited centres revealed that they only consider immobilisation to be coercion and do not consider holding the residents down or forced administration of medications to be such. In one of the centres<sup>211</sup>, unsuccessful attempts were made to use a coercive measure in the form of restraining straps against an agitated patient, but the fact was not recorded in any document apart from the nurse report book. According to the personnel, holding the residents down or attempting to immobilise them cannot be considered the use of coercive measures. The analysis of procedures in one of the centres<sup>212</sup> revealed that coercive measures were actually used, since they

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<sup>205</sup> Social Care Centre No 1 in Grudziądz.

<sup>206</sup> Social Care Centre in Koronowo.

<sup>207</sup> Social Care Centre in Koronowo.

<sup>208</sup> Social Care Centre in Ruda Śląska, Social Care Centre in Pleszew.

<sup>209</sup> See: § 15 and Annex 1 to the Ordinance of the Minister of Health of 28 June 2012 on using and documenting the coercive measures and the assessment of the justification for their use (Dz. U. of 2012, item 740).

<sup>210</sup> Social Care Centre No 1 in Grudziądz, Social Care Centre in Ruda Śląska.

<sup>211</sup> Social Care Centre No 1 in Grudziądz.

<sup>212</sup> Social Care Centre in Pleszew.



allowed to isolate a person who brawled or disturbed the peace as a result of abusing alcohol or other intoxicants.

The reservations of the representatives of the Mechanisms also concerned the documentation of the coercive measures used, namely, too general grounds for using the measure, the lack of notes on restraint report cards which would evidence that the doctor was informed about the nurse's decision to use the measure, no documentation demonstrating that the resident had been informed about the possibility of a coercive measure being used against him<sup>213</sup>. The analysis of medical records in one of the centres<sup>214</sup> revealed that the personnel did not understand the idea of using coercive measures, since their use was prescribed as a routine measure for almost all residents<sup>215</sup>.

Pursuant to Article 18 of the Act on the protection of mental health, the use of coercive measures against a person with mental disorders, while performing the activities provided for in the said Act and in the specific circumstances, consists in holding a person down, forced administration of drugs, restraining or isolation. Apart from specifying the persons deciding about and approving the use of coercion, the said provision stipulates that each case of using coercion and warning about its use must be recorded.

Therefore, the visiting team recommended using coercive measures in line with the Act, including appropriate documentation of their use, and appropriate training of the personnel having direct contact with the residents.

## 5. Right of access to information

The representatives of the NPM noted infringements of the residents' right of access to information in the visited establishments; they included the failure to present the organisational regulations in a place available to all<sup>216</sup>, the fact that the residents were presented the regulations only when they have infringed them<sup>217</sup>, the vagueness of the regulations<sup>218</sup>. In one of the centres<sup>219</sup> the residents were not informed about the use of CCTV.

<sup>213</sup> Social Care Centre in Racibórz.

<sup>214</sup> Social Care Centre in Choroszcz.

<sup>215</sup> The same problem was discussed in a report by T. Gardocka, *Problematyka umieszczania osób chorych psychicznie i upośledzonych umysłowo w domu pomocy społecznej (w kontekście gwarancji procesowych)* [The placement of mentally ill and mentally disabled persons in social care centres (in the context of procedural guarantees)], *Prawo w działaniu*, 2011/9, p. 37.

<sup>216</sup> Social Care Centre in Mogilno, Social Care Centre in Ruda Śląska, Social Care Centre in Wieleń upon Noteć – only information about where the regulations can be found.

<sup>217</sup> Social Care Centre in Mogilno.

<sup>218</sup> Social Care Centre in Choroszcz.

<sup>219</sup> Social Care Centre No 1 in Grudziądz.



The employees of the Mechanism did not find contact details to institutions protecting human rights placed in an easily accessible place in any of the visited social care centres.

The right of access to information is inherently connected with the right to complain. In some of the visited centres, the oral complaints lodged by the residents were not even recorded<sup>220</sup>. The visiting team is of the opinion that oral complaints of residents should be registered, since some of them are unable to file a complaint in writing.

## 6. Therapeutic and care services

In two visited social care centres<sup>221</sup> the residents could participate in a vast range of cultural and entertainment activities, but there was no actual psychiatric and psychosocial rehabilitation. The activities performed focused on providing care rather than strengthening the abilities of residents and promoting their activity.

The representatives of the NPM were critical of individual support plans for residents which they analysed in a part of the centres. In some cases, the visiting team found out that individual support plans were drawn up without observing a 6-month period from admission of a resident, stipulated in the Ordinance on social care centres<sup>222</sup>, and also without taking into account the individual situation of the resident<sup>223</sup> and the correlation between the objectives of the individual support plan and the deficits diagnosed in the resident<sup>224</sup>. In one of the centres<sup>225</sup> the individual support plan contained only the analysis of the deficits and a very detailed description of each resident, while in another<sup>226</sup> some individual support plans were too general, lacked specific objectives, their verification and did not describe exhaustively the residents and the problems they were diagnosed with.. In one of the centres<sup>227</sup> individual support plans were not drawn up at all.

The representatives of the NPM are of the opinion that although the structure of individual support plans is not regulated by law, such plans should be action plans aimed at achieving specific objectives and thus should include information about the methods of promoting the resident's activity, plans for individual stages, evaluation of the plan and the report on the resident's activity areas.

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<sup>220</sup> Social Care Centre in Mogilno, Social Care Centre in Olkusz, Social Care Centre *Serce* in Łódź, Social Care Centre in Pleszew, Social Care Centre in Ruda Śląska.

<sup>221</sup> Social Care Centre No 1 in Grudziądz and Social Care Centre in Ruda Śląska.

<sup>222</sup> Social Care Centre in Olkusz.

<sup>223</sup> Social Care Centre in Olkusz, Social Care Centre in Psary, Social Care Centre in Ruda Śląska.

<sup>224</sup> Social Care Centre in Pleszew.

<sup>225</sup> Social Care Centre in Chorzów.

<sup>226</sup> Social Care Centre in Choroszcz.

<sup>227</sup> Social Care Centre in Mogilno.





## 8. Psychiatric hospitals

### 8.1 Introduction

In 2012, the representatives of the NPM visited 8 psychiatric hospitals intended for implementing preventive measures, of which 5 under basic security conditions, 2 under enhanced security conditions and one under maximum security conditions. The visiting team paid special attention to the situation of the perpetrators of criminal offences who are placed in a psychiatric institution (hereinafter the detained patients or patients) as a preventive measure.

### 8.2 Systemic problems

#### 1. Insufficient funding of psychiatric wards

According to the directors of visited establishment, the costs of the functioning of psychiatric wards in multi-specialty hospitals are underestimated in the contracts with the National Health Funds which translates into a lower standard of health care services provided in those wards. The funds allocated by the National Health Fund for the functioning of a given ward should correspond to actual costs, but the personnel of the visited hospitals often claimed that this was not the case. Moreover, the National Health Fund does not pay psychiatric hospitals for other types of treatment than psychiatric treatment. This concerns, *inter alia*, the so-called psychogeriatric patients or patients with somatic disorders whose treatment is not refunded to the hospitals.

The problem which requires a systemic solution is the necessity to admit all patients referred for treatment in the detoxification ward, while many of them are patients with the so-called double diagnosis (diagnosed with an addiction and other mental disorder at the same time). This results in considerable organisational and therapeutic complications, increased incidence of aggressive and auto-aggressive behaviour. As a result, the therapy of patients diagnosed only with an addiction is insufficient. This entails the need to increase spending on the therapy, which is not reflected in the refund from the National Health Fund.

Somatic disorders treated in psychiatric wards are not additionally refunded, while in the wards of internal medicine and other specialist wards their cost is calculated and the performed procedures refunded. The National Health Fund pro-

vides less funds for geriatric patients, patients with somatic disorders and detox patients in general psychiatric wards than for such patients treated in detoxification or psychogeriatric wards.

According to the representatives of the Mechanisms, the above situations result in debts of the establishments providing round-the-clock psychiatric care. Furthermore, they also constitute discrimination against mentally ill patients in the health care system in Poland, thus posing a significant systemic problem.

## 2. Lack of legal regulations on detained patients

The treatment of persons subject to preventive measures consisting in the placement in a closed psychiatric institution is also a source of discrimination in terms of their rights as patients and persons deprived of liberty.

Pursuant to Article 41(1) of the Polish Constitution, personal liberty may be restricted only by a statutory legal act. However, important principles concerning detained persons are left to the discretion of the hospital management and stipulated in the regulations of hospitals or of their individual wards drawn up without reference to any legal act. While drawing up their own normative acts, hospitals often step into the area reserved for the acts of law. The exceptions are the organisational regulations for establishments with enhanced and maximum security which are laid down in the domestic legislation<sup>228</sup>, but only in very general statements and referring the detained patient to the regulations of a given hospital.

A detained patient in a psychiatric hospital must therefore observe the organisational regulations of the said hospital<sup>229</sup>, although the legal status of detained patients is totally different than that of ordinary patients and thus the use of the same normative acts (regulations) results in significant difficulties.

The Executive Penal Code does not include regulations on detained patients concerning in particular their right to refuse treatment and therapy, their contacts with the outside world, religious practices or the regulations on leaves from detention to which other patients and prisoners are entitled.

The representatives of the NPM paid special attention to the problem noted in each visited establishment and consisting in detained patients being refused leaves or experiencing considerable difficulties in obtaining them.

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<sup>228</sup> See: § 10(3) and Annex 6 to the Ordinance of the Minister of Health of 10 August 2004 *laying down the list of psychiatric and rehabilitation facilities where preventive measures are to be applied, as well as on the composition, appointment procedure and tasks of psychiatric commission for preventive measures* (Dz. U. No 179 item 1854, as amended).

<sup>229</sup> See: § 10(2) of the abovementioned Ordinance.



In § 54 of its 8th General Report, the European Committee for the Prevention of Torture stated that for hospital patients *the maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint*<sup>230</sup>. The lack of leaves may hamper or even prevent appropriate diagnosis and therapy of detained patients. The refusal to grant the leaves to patients for important events, such as death of a relative, wedding, etc., violates the principles of therapeutic procedure, may deteriorate the mental condition of the patient and has an adverse impact on the therapy. The patients must be granted leaves before the final completion of the hospitalization (which sometimes lasts a very long time) and discharge from the hospital. This is necessary to assess the psychosocial functioning of the patient in the community where the patient will live after being discharged from hospital. The lack of such a possibility violates basic principles of environmental psychiatry as the optimal form of psychiatric treatment (bringing the greatest therapeutic and rehabilitation benefits). In the case of somatic health problems in hospitalized patients which require diagnosis or treatment in health care centres other than hospital (e.g. necessary hospitalization at the internal medicine ward for diagnosis and treatment of cardiovascular diseases), the responsible persons (heads of wards, management of the hospital) may be subject to legal liability (from the judiciary) and, in the case of failing to perform such actions, to professional liability and civil lawsuits from patients or persons acting on behalf of patients. The Human Rights Defender submitted a request to the Minister of Justice to undertake legislative initiatives to address the problem.<sup>231</sup>

### 3. Lack of coherent systemic procedures allowing to place detained patients in social care centres.

The representatives of the National Preventive Mechanism pointed to the fact that some patients stay in psychiatric hospitals for years which means that care for them must be provided, while there is a deficit of places in social care centres. The issue was also raised by the European Committee for the Prevention of Torture which had found, *in a number of countries, that patients whose mental state no longer required them to be detained in a psychiatric establishment nevertheless*

<sup>230</sup> [CPT/Inf (98) 12].

<sup>231</sup> See: Motion of 6 March 2013, RPO-726171-V-13/GH. In the response of 17 May 2013, the Minister of Justice agreed with the Human Rights Defender on the need to introduce relevant legal solutions in an act. The issue will probably be regulated as part of the more extensive amendment of the Executive Penal Code planned by the Minister of Justice, following consultation with psychiatrists.

See: <http://www.sprawny-generalne.brpo.gov.pl/szczegoly.php?pismo=1706559>



remained in such establishments, due to a lack of adequate care/accommodation in the outside community<sup>232</sup>. During their visits to psychiatric hospitals, the representatives of the Mechanisms also encountered patients no longer required to be detained in a psychiatric establishment, but still needed treatment and/or care in the outside community. The CPT stated that for persons to remain deprived of their liberty as a result of the absence of appropriate external facilities is a highly questionable state of affairs.

The National Preventive Mechanism is of the opinion that a psychiatric ward/hospital should not at the same time be a place of diagnosis and therapy for patients requiring hospital treatment and a place of living for persons who do not require hospital treatment but permanent institutional care. Patients staying in the ward for many years should be transferred to e.g. social care centres. A detained patient cannot be admitted to a social care centre as long as the decision on applying a preventive measure consisting in the placement in a psychiatric establishment is not overruled. Therefore, in order to ensure continuous care and supervision, the decision on detention should be repealed and the decision on placement in a social care centre for chronically mentally ill should be made at the same time. However, this is difficult to achieve since the decision repealing the preventive measure and the decision on placement in a social care centre are made by two different, independent courts: criminal court and family court.

#### **4. Failure to appoint the Ombudsman for Psychiatric Hospital Patients' Rights in some hospitals.**

The representatives of the NPM found out that the Ombudsman for Psychiatric Hospital Patients' Rights referred to in Article 10a-10d of the Act on the protection of mental health was not appointed in a part of visited establishments. The European Committee for the Prevention of Torture on numerous occasions emphasized that *an effective complaints procedure is a basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.*<sup>233</sup> The representatives of the National Preventive Mechanism are of the opinion that all establishments providing psychiatric care should employ the Ombudsman for Psychiatric Hospital Patients' Rights who would provide support to and run the affairs of mentally ill persons which would improve the observance of their rights.

<sup>232</sup> § 57 of the 8th General Report CPT/Inf (98).

<sup>233</sup> § 53 of the 8th General Report CPT/Inf (98).



## 5. Placement of patients in observation rooms/observation and diagnosis sections as an informal coercive measure.

Pursuant to Article 3(6)(d) of the Act on the protection of mental health, isolation as a coercive measure consists in placing a person, alone, in a closed and appropriately adapted room. Duration, procedure and place of isolation are clearly specified.<sup>234</sup> However, Part VIII paragraph 6(1) of Annex 1 to the Ordinance of the Minister of Health of 26 June 2012 on *specific requirements to be met by rooms and facilities of the entity providing medical treatment*<sup>235</sup> stipulates that observation and diagnosis sections or observation rooms shall be designated in a psychiatric ward. The Act on the protection of mental health does not determine the purpose of observation sections or rooms and in practice they are used as shared isolation rooms, with the duration and procedure governing the patients' stay in those places not specified and isolation not registered or described as it is the case with coercive measures. In practice, the placement in observation sections or rooms is often used as punishment for violation of the hospital regulations (e.g. for sneaking alcohol into hospital) and the sections and rooms are used to accommodate detained persons and those for whom there is not enough beds in other rooms.

The rooms are in fact shared isolation rooms with the placement in them not being subject to any clear criteria and not limited in time and with the personnel not following any rules applicable to coercive measures. The visiting team recommended establishing special (one person) isolation rooms to use coercive measures in the form of restraint or isolation. The representatives of the NPM also recommended replacing the constant and direct observation of patients placed in observation rooms by a member of the personnel sitting on a chair in the door, which violates the patients' right to intimacy, with the CCTV monitoring or the observation via a one-way mirror.

## 6. Total ban on smoking in hospitals.

Pursuant to Article 5(1)(1) of the Act of 9 November 1995 on the protection of health against the consequences of using tobacco and tobacco products<sup>236</sup>, smoking is prohibited, subject to Article 5a, on the premises of entities providing medical treatment and in the rooms of other facilities where health care services are provided. Apart from Article 5a, the said provision does not allow for any exceptions to the ban on using tobacco products. The total ban on smoking is in

<sup>234</sup> See: Ordinance of the Minister of Health of 28 June 2012 on using and documenting the coercive measures and the assessment of the justification for their use (Dz. U. of 2012, item 740).

<sup>235</sup> Dz. U. of 2012, item 739.

<sup>236</sup> Dz. U. of 1996 No 10, item 55, as amended.

practice not observed in the places where patients (e.g. detained persons) stay for several years and are in fact unable to leave them. Such persons who are factually and legally deprived of liberty should be allowed to use tobacco products, since currently their situation is worse than of those serving custodial sentences who can use tobacco products in all types of establishments where they are placed.

### 8.3 Strengths and good practices

#### 1. Therapy in the establishment in Gorzów Wielkopolski

The quality of therapy offered in the majority of visited hospitals was quite poor. Therefore, the therapeutic programme implemented in the ward with enhanced security in Gorzów Wielkopolski by a therapeutic team consisting of the head of the ward, doctors, psychologists, addiction therapists, occupational therapists, a social worker and nurses deserves praise. The programme consists of 3 stages:

Stage I – treatment of severe symptoms, formation of insight and cooperation;

Stage II – acceptance of treatment and cooperation in therapy;

Stage III – proper therapy, work on personal problems, individual and group therapy adjusted to the type and progression of mental disorders, work with the family to prepare them to support the patient discharged from hospital (psychoeducation).

Each patient is classified into one of the three stages by a therapeutic team on the basis of his/her mental condition, psychological diagnosis, assessment of functioning and deficits. The team meets every three months, analyses the progress of therapy in each patient, their functioning and changes, and classifies the patients into subsequent stages of therapy. The stage may also be repeated or a patient may be moved back to an earlier stage.

The representatives of the National Preventive Mechanism praise the said programme highly, appreciating in particular its informative function. The programme enables patients to monitor their own progress required to pass through the programme's subsequent stages and in consequence to change the security conditions under which the preventive measures to which they are subject are implemented from enhanced to basic. The praise of the visiting team for the programme is also supported by favourable opinions of the patients interviewed by the representatives of the NPM during the visit to the said establishment.



## 2. Intense activity of the Ombudsman for Psychiatric Hospital Patients' Rights in Warta

The Ombudsman for Psychiatric Hospital Patients' Rights takes part in community meetings in individual wards of the psychiatric hospital in Warta once a week, providing information to patients about their rights and obligations. During the second part of such meetings, when the employees of the hospital leave the room, the Ombudsman talks to patients about the situation in their wards. Apart from group meetings, the patients are always informed that they can talk to the Ombudsman in private. The interviewed patients declared that those meetings were very valuable and provided important information.

### 8.4 Areas requiring improvement

#### 1. Legality of stay

The representatives of the Mechanism found a case of a person staying in a visited psychiatric hospital<sup>237</sup> who was admitted without the required court's decision on the use of a preventive measure.

The representatives of the NPM point out that similar irregularities were found in a part of visited establishments<sup>238</sup> in the years 2011-2012. They were described in the reports of visiting judges who described the cases of the lack of valid decisions on continued use of the preventive measure, delays in discharge of patients from detention upon the receipt of the original order to discharge them or admission of patients whose complete documentation was not provided by the court.

The content of some opinions did not reflect the ongoing medical observations recorded in the case history and court and psychiatric opinions were repeated (they were copies of the previous opinions). Therefore, the verification of the patient's health and thus the need to continue the preventive measure in some hospitals is only an illusion.

#### 2. Treatment

The interviewed patients of psychiatric hospitals usually did not report incidents of ill-treatment on the part of the hospital staff, such as physical or verbal aggression (with the exception of one establishment<sup>239</sup>, where two persons complained that they had been hit by a staff member, but the visiting team was unable to verify whether such a situation had really happened).

<sup>237</sup> Dr Józef Babiński Specialist Psychiatric Hospital Health Care Centre in Łódź.

<sup>238</sup> Voivodeship Psychiatric Hospital in Warta, Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż, Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola

<sup>239</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola.



The observations and interviews by the representatives of the Mechanism do not allow to consider the treatment of patients by personnel in all visited hospitals to be appropriate. The representatives of the Mechanism were critical of various rules in place in individual establishments. The controversial rules should be eliminated, also from the internal regulations, since they violate the patients' rights and are excessively severe (e.g. the ban on patients visiting other patients in other rooms of the same ward or ordering patients to go for a walk, or the locking of toilets when certain activities take place).

In some establishments<sup>240</sup>, a part or all patients had to wear pyjamas all day and night (in line with an unofficial rule)<sup>241</sup>. In one of the hospitals<sup>242</sup>, the representatives of the Mechanism witnessed the transportation of a juvenile patient dressed only in pyjamas and a dressing gown, despite the cold November weather.

The staff members of the visited hospital try to be helpful and fulfil the patients' requests concerning e.g. shopping, but their attitude is not always appropriate in the opinion of the representatives of the NPM. In one of the establishments<sup>243</sup>, detained patients reported that the staff called them by their first names or by surnames without using the appropriate polite form of address (Mr/Ms) and sometimes yelled at them. In another establishment<sup>244</sup>, the patients stated that they were not treated as adults and one of them complained about spiteful comments of the staff about his looks. The majority of the interviewed patients were unable to find a person among the staff whom they trusted and could talk to about their problems.

The visits also revealed frequent undesirable incidents in the form of conflicts between the patients, thefts or destruction of property, auto-aggression or attempted auto-aggression, mainly caused by the mental condition of the patients (although it must be remembered that the lack of appropriate activities is conducive to the development of aggressive behaviour). The visiting team emphasized that the personnel must react immediately to such behaviour to prevent damage. In two hospitals<sup>245</sup>, the representatives of the NPM pointed to the lack of quick response to and the ignoring of reports on incidents, as well as the failure to record oral notifications of patients concerning i.a. theft.

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<sup>240</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola, Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż

<sup>241</sup> The CPT emphasizes that *the practice of continuously dressing patients in pyjamas/nightgowns is not conducive to strengthening personal identity and self-esteem; individualisation of clothing should form part of the therapeutic process* [Excerpt from the 8th General Report (CPT/Inf (98))].

<sup>242</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż.

<sup>243</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola.

<sup>244</sup> Regional Forensic Psychiatry Centre in Gostynin.

<sup>245</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż, Voivodeship Psychiatric Hospital in Olsztyn





### 3. Coercive measures

The practice followed in the visited establishments is to use coercive measures against aggressive patients by restraining them with safety straps and administration of sedatives. In the majority of the cases, sedatives prove to be sufficient, so restraint as a coercive measure is used rarely and only in exceptional cases.

However, the representatives of the Mechanism found that the documentation of the use of coercive measures in several establishments was inconsistent or kept unreliably, e.g. the extension of restraint was recorded before the actual decision on extension was made<sup>246</sup>, the duration of coercive measure application and the time when it started were not recorded, the reasons for the relevant decision were presented with various degrees of precision, the doctors did not extend the measure at required intervals<sup>247</sup>, the documents lacked the stamp or the signatures of the doctors<sup>248</sup> and the invalid coercive measure report cards were used<sup>249</sup>.

The analysis of CCTV recordings revealed that the entries in the documents (patient restraint checklists) were untrue. The restrained patients were not examined, although the entries confirming the examination were made in the checklist. In yet another case, the analysis of CCTV recordings revealed that the time of controls performed did not correspond to the time recorded in the checklists<sup>250</sup>.

The representatives of the Mechanism also drew the attention of the hospital staff to the need to ensure intimacy to patients while using coercive measures. In some establishments<sup>251</sup> patients restrained with straps were staying in the common rooms and were not separated in any way (e.g. with a screen) from other patients in the same room<sup>252</sup>.

### 4. Disciplinary procedure

The detained patients in psychiatric hospitals should not be disciplined, since it is not for the medical staff to react to potential misdeeds and offences. The visiting team only allows for financial liability for damages caused by the patient who is an adult.

However, in some of the visited establishments various forms of usually unconstructive punishments are used, including collective responsibility which the

<sup>246</sup> Voivodeship Psychiatric Hospital in Warta

<sup>247</sup> Voivodeship Psychiatric Hospital in Warta, Voivodeship Psychiatric Hospital in Olsztyn

<sup>248</sup> Regional Forensic Psychiatry Centre in Gostynin.

<sup>249</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola.

<sup>250</sup> Autonomous Public Voivodeship Hospital in Gorzów Wielkopolski

<sup>251</sup> Autonomous Public Voivodeship Hospital in Gorzów Wielkopolski, Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola, Voivodeship Psychiatric Hospital in Olsztyn

<sup>252</sup> See: § 7(2) of the Ordinance of the Minister of Health on using and documenting the coercive measures and the assessment of the justification for their use (Dz. U. of 2012, item 740).



representatives of the Mechanism recommended to eliminate immediately. For example, after one of the patients hurt himself using the elements of the radio set, all patients were prohibited from having their own radio sets, or all patients were banned from going out for walks after one of them escaped several days earlier<sup>253</sup>. Another example is the ban on going for a walk for a week imposed on all patients from the ward after one of them infringed the applicable regulations of the ward<sup>254</sup>.

The representatives of the Mechanism are of the opinion that the patients in hospitals should be assessed and motivated to actively participate in various activities<sup>255</sup>. However, some establishments had no system of assessing and rewarding the patients for their progress.

## 5. Right of access to information

All visited hospitals followed the rule that a nurse informed the newly admitted patient about the patients' rights in the admission room. Only one hospital<sup>256</sup> drew up a brochure setting out its routine<sup>257</sup>.

With one exception<sup>258</sup>, the regulations, daily agenda and other important organisational information were presented in places available to all patients in the wards of the visited hospitals, although only one establishment provided complete information to its patients<sup>259</sup>. The representatives of the Mechanism recommended adding contact details of institutions protecting human rights, such as the Human Rights Defender, the Helsinki Foundation for Human Rights and the penitentiary judge and the family judge, to the information boards.

The employees of the NPM had some reservations concerning the ensuring of patients' right of access to information in the internal regulations and other normative acts drawn up by the establishments. Very few hospitals clearly defined and formulated the patients' rights and obligation in an easily understandable way in their documents. A part of analysed regulations required correction or specifi-

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<sup>253</sup> Regional Forensic Psychiatry Centre in Gostynin, Public Health Care Centre in Łuków

<sup>254</sup> Dr Józef Babiński Specialist Psychiatric Hospital Health Care Centre in Łódź.

<sup>255</sup> See also: Ordinance of the Ministry of Health and Social Welfare of 20 October 1995 on the organisation of rehabilitation activities in psychiatric hospitals and rewarding the participants of the activities (Dz. U. No 127, item 614). Became ineffective on 12 February 2013.

<sup>256</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż.

<sup>257</sup> The CPT emphasizes that an introductory brochure setting out the establishment's routine and patients' rights should be issued to each patient on admission, as well as to their families. Any patients unable to understand this brochure should receive appropriate assistance [§ 53 of the 8th General Report CPT/Inf (98)].

<sup>258</sup> Public Health Care Centre in Łuków

<sup>259</sup> Autonomous Public Voivodeship Hospital in Gorzów Wielkopolski



cation e.g. by indicating the entity examining complaints and requests of the patients or organising the issues and information found in various documents and annexes<sup>260</sup>. The documents in one of the establishments<sup>261</sup> were particularly poor, since apart from the abovementioned flaws, they included the information about the patients' rights and obligation taken from the national legislation but modified to the detriment of the patients. As a result the patients of the hospital did not have the right to call anyone by phone and had to clean not only their rooms but also the area of the ward.

In the same establishment, the visiting team criticised also the application of the internal regulations to patients detained in the enhanced security ward instead of the organisational regulations concerning the preventive measures laid down in the national legislation<sup>262</sup>.

## 6. Right to health care and therapy<sup>263</sup>

Apart from psychiatric treatment, the patients in the visited hospitals also receive necessary help regarding their somatic condition (although in some establishments there are problems with access to certain specialists, such as a dentist or an ophthalmologist).

The patients interviewed by the representatives of the NPM knew why they were in hospital and what they were diagnosed with (although they not always agreed with the diagnosis). They had access, upon request, to information about their health and to their medical records. The majority of detained patients praised the availability of both basic and specialist health care services

Apart from one establishment<sup>264</sup>, the visited hospitals did not apply high risk procedures (insulin coma, atropine coma and electroconvulsive therapy).

<sup>260</sup> Regional Forensic Psychiatry Centre in Gostynin, Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż.

<sup>261</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż.

<sup>262</sup> Annex 6 to the Ordinance of the Minister of Health of 10 August 2004 *laying down the list of psychiatric and rehabilitation facilities where preventive measures are to be applied, as well as on the composition, appointment procedure and tasks of psychiatric commission for preventive measures* (Dz. U. No 179 item 1854, as amended).

<sup>263</sup> According to the recommendations of the CPT: Psychiatric treatment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient. It should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work (§ 37 of the 8th General Report [CPT/Inf (98)]).

<sup>264</sup> Autonomous Public Voivodeship Hospital in Gorzów Wielkopolski

Apart from one hospital<sup>265</sup>, where treatment with *rispolept consta* was not initiated because it was considered too expensive, the representatives of the NPM did not find any limitations on access to medications for patients, including new-generation psychotropic drugs and other medications.

The analysis of medical records provided to the representatives of the NPM showed that in five visited establishments<sup>266</sup> the records were kept inappropriately<sup>267</sup>. In the opinion of the visiting team, the flaws may translate into inappropriate treatment of patients and their prolonged stay in hospital under detention.

Another irregularity found in the majority of visited establishment is the failure to develop multi-profile therapeutic plans taking into account the diagnosis of mental and somatic condition and psychosocial functioning and to establish the corresponding therapies. In a part of establishments, individual therapeutic plans for detained patients are not drawn up at all<sup>268</sup> or a systematic individual therapy is not conducted<sup>269</sup>.

In some wards for detained patients, the community meetings, group forms of psychotherapy, psychoeducation, life and social skills training are not organised. The employees of the NPM are of the opinion that efficient treatment of patients cannot consists of pharmacotherapy alone, but requires a wide range of activities preparing the patients to perform their social roles.

Apart from one hospital<sup>270</sup>, the visited psychiatric wards did not have a coherent, comprehensive therapeutic programme, covering all types of therapies and all

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<sup>265</sup> Public Health Care Centre in Łuków

<sup>266</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż, Public Health Care Centre in Łuków, Voivodeship Psychiatric Hospital in Olsztyn, Dr Józef Babiński Specialist Psychiatric Hospital Health Care Centre in Łódź, Voivodeship Psychiatric Hospital in Warta.

<sup>267</sup> Cf. Ordinance of the Minister of Health of 21 December 2010 on the types and scope of medical records and their processing (Dz. U. No 252, item 1697)

<sup>268</sup> Pursuant to Article 202 of the Executive Penal Code, an offender subject to a preventive measure shall undergo appropriate treatment, therapy, rehabilitation and resocialisation aimed at improving his health and behaviour to the extend enabling him to function in the society and to undergo further treatment outside the establishment. According to the recommendations of the CPT, psychiatric treatment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient. *It should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work* [CPT/Inf (98) 12].

<sup>269</sup> Voivodeship Psychiatric Hospital in Warta, Voivodeship Psychiatric Hospital in Olsztyn, Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola, Dr Józef Babiński Specialist Psychiatric Hospital Health Care Centre in Łódź, Public Health Care Centre in Łuków, Regional Forensic Psychiatry Centre in Gostynin.

<sup>270</sup> Autonomous Public Voivodeship Hospital in Gorzów Wielkopolski



members of the therapeutic team. There was no regular communication between individual personnel groups in the ward and no agreed therapeutic arrangements. The wards do not have a system which would comprehensively determine the objectives and treatments constituting the entire therapeutic activity of the ward and also for individual patients.

The representatives of the Mechanism also found that insufficient resources are allocated for therapy in the majority of establishments. However, the quality of therapeutic activities was often unacceptable, e.g. some patients who attended organised therapy in the ward played electronic games (with their themes not being specially chosen) which can hardly be considered therapy.

An alarming example of this problem is the treatment of sexual offenders<sup>271</sup>. A psychologist who completed the Postgraduate Studies in Sexology conducts individual meetings with patients on sexual education once a week for an hour. A meeting with one patient lasts approximately 20 minutes. At each meeting a new subject is presented to the patient (e.g. psychosexual development of human beings, the concept of norms in sexology, impact of psychogenic factors on sexual disorders, social and cultural determinants and the role of sex, myths and stereotypes related to human sexuality), who also receives written materials and signs document to confirm that he/she has read them. Each subject is described on 1-2 pages of academic material presented in a way difficult to understand for someone who is not an expert in the field. According to an expert of the NPM, such sexual education for the patients of the ward is highly controversial and unlikely to be effective, and in the case of some psychotic patients it can even be dangerous. It will most certainly not replace the appropriate individual therapy.

The visits also revealed problems with exchange of information between establishments if the level of detention is changed which disrupts the continuity of treatment and thus reduces its effectiveness.

Some hospital discharge papers lacked any information on therapy or psychotherapy of the patient at the establishment and/or guidelines on psychological and psychotherapeutic activities which would allow to continue psychotherapy rather than start it from scratch in another establishment.

In two establishments<sup>272</sup> the visiting team found violations of the patients' right to intimacy and privacy during medical examinations, namely, the psychiatrist talked to patients only during the ward round, in the presence of other staff and patients, and a guard was present during all examinations taking place outside the establishment.

<sup>271</sup> Regional Forensic Psychiatry Centre in Gostynin.

<sup>272</sup> Voivodeship Psychiatric Hospital in Warta, Regional Forensic Psychiatry Centre in Gostynin.

## 7. Right to contact with the outside world

During their stay in hospital, all patients, including detained patients, should have ensured the contact with the outside world in the form of uncensored and unread correspondence (also by electronic means, using their own devices with access to mobile internet), unsupervised talks by phone (also using their own mobile phones) and visits without the presence of the hospital staff<sup>273</sup>.

The right to contact, related to the patients' right to respect for their private and family life<sup>274</sup>, was often violated in the visited establishments.

The visiting team found that in some establishments<sup>275</sup> the patients newly admitted to the hospital or transferred from other establishments did not have the possibility to use any form of contact with the outside world or such a possibility was very limited. The problem concerned also the patients placed in the observation rooms or sections.

In half of the visited establishments<sup>276</sup> the employees of the Mechanisms found considerable limitations of the rights of detained patients with regard to telephone calls, such as restrictions on use of their own mobile phones and calls from payphones.

In only one of the visited establishments, the patients, with the exception of those placed in observation rooms, could use laptops with access to mobile internet without any limits.<sup>277</sup>

The representatives of the Mechanism found out that, to protect children against traumatic experiences related to a visit to the psychiatric ward, three visited hospitals<sup>278</sup> did not allow or did not recommend the contact of detained persons with children up to 14 years of age, and in one establishment with children up to 7 years of age. Such restrictions are not grounded in the applicable legal

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<sup>273</sup> Pursuant to Article 13 of the Act on the protection of mental health, a person with mental disorders staying at the psychiatric hospital has the right to contact his family and other persons without any restrictions.

<sup>274</sup> Article 22(1) of the Act of 6 November 2008 on patient's rights and the ombudsman for patients rights (Dz. U. of 2012, item 159).

<sup>275</sup> Regional Forensic Psychiatry Centre in Gostynin, Voivodeship Psychiatric Hospital in Olsztyn, Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż.

<sup>276</sup> Regional Forensic Psychiatry Centre in Gostynin, Autonomous Public Voivodeship Hospital in Gorzów Wielkopolski, Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż, Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola.

<sup>277</sup> Voivodeship Psychiatric Hospital in Olsztyn.

<sup>278</sup> Public Health Care Centre in Łuków, Autonomous Public Voivodeship Hospital in Gorzów Wielkopolski, Dr Józef Babiński Specialist Psychiatric Hospital Health Care Centre in Łódź.



provisions, nor is the limit of 7 or 14 years of age.<sup>279</sup> They may also have an adverse impact on therapeutic process and violate the patients' and their families' right to respect for their family. In one of the hospitals<sup>280</sup>, the rule was that a guard was present during the visits to the patient. The representatives of the Mechanism are of the opinion that the infringements found constitute excessive restrictions on the patients' rights, when their health does not prevent the contact with the outside world.

## 8. Right to participate in cultural and educational activities

Detained patients spend most of their time in the wards. In the majority of establishments, the only activities which are not a part of therapy (treatment) include watching TV (TV sets are in entertainment rooms in all establishments), listening to music or radio, and reading books/press.

The NMP found out that two hospitals<sup>281</sup> restricted illegally even this poor offer of activities for patients by means of punishing juvenile patients for having CDs with music or films, imposing a ban on having radio sets or MP3 players in the entire ward for detained patients or unclear rules governing the granting of permits to detained patients for recreational activities, such as watching TV.

Numerous hospitals do not have appropriate rooms to organise larger events, and even if they do, such facilities are usually located outside the wards for detained patients and thus such patients cannot take part in the events.

## 9. Living conditions

Very good living conditions were provided to patients in only one of the visited hospitals<sup>282</sup>. Some establishments require repairs or at least freshening up of the interiors and replacement of worn-out furniture.

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<sup>279</sup> The representatives of the NPM suggest that in such a situation a separate room outside the ward should be designated for the patients' meetings with their children. This solution ensures that children are protected against any traumatic experiences, while at the same time it guarantees that the patient has contact with the outside world.

<sup>280</sup> Regional Forensic Psychiatry Centre in Gostynin.

<sup>281</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż, Regional Forensic Psychiatry Centre in Gostynin.

<sup>282</sup> Regional Forensic Psychiatry Centre in Gostynin.



In a part of establishments<sup>283</sup>, there is not enough room around the patients' beds and the rooms are overcrowded<sup>284</sup>.

The average space for one patient in the room with beds is slightly more than 3 m<sup>2</sup>, but additional beds are placed in the rooms if necessary. In some rooms, the beds are put so close together that patients are as if on one common bed or beds are put in the passage or in the door, or next to a sink. It can be dangerous, if the patients must be quickly evacuated or there is a need to get to a lying patient (also the necessary access to a bed from 3 sides, including 2 longer ones, is not guaranteed). It also has an adverse impact on mental conditions of the patients who not only cannot move freely around their beds, but also, suffering from their ailments, are in an uncomfortable situation of being too close physically to strangers in various condition. Long-term confinement to a small space, partial isolation and the related reduction of positive incentives are not conducive to recovery and put the patients off psychiatric treatment in hospitals. In the case of unplanned admissions, the patients are sometimes placed on beds in the corridors which they consider to be unequal treatment.

The rooms with beds in all hospitals are austere decorated (also in the visited wards for children)<sup>285</sup>.

As regards personal belongings, the patients usually only had small unlockable bedside tables to store them. The patients who had more stuff had to keep their belongings in a sack or a bag under the bed. The representatives of the Mechanism noted, however, that in some establishments<sup>286</sup> at least a part of the patients did not even have bedside tables; this concerned in particular the persons in observation rooms or sections.

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<sup>283</sup> Voivodeship Psychiatric Hospital in Olsztyn, Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola, Public Health Care Centre in Łuków, some rooms in the wards for juveniles in the Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż.

<sup>284</sup> This is in breach of § 18 and 19 of the Ordinance of the Minister of Health of 26 June 2012 on specific requirements to be met by rooms and facilities of the entity providing medical treatment (Dz. U. of 2012 item 739).

<sup>285</sup> The CPT states that *particular attention should be given to the decoration of both patients' rooms and recreation areas, in order to give patients visual stimulation. The provision of bedside tables and wardrobes is highly desirable, and patients should be allowed to keep certain personal belongings (photographs, books, etc). The importance of providing patients with lockable space in which they can keep their belongings should also be underlined; the failure to provide such a facility can impinge upon a patient's sense of security and autonomy* [§ 34 of the 8th General Report CPT/Inf (98) 12].

<sup>286</sup> Public Health Care Centre in Łuków, Voivodeship Psychiatric Hospital in Olsztyn, Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż.





The representatives of the NPM established that two hospitals did not provide appropriate sanitary facilities to patients, i.e. one of them<sup>287</sup> had an insufficient number of sanitary facilities (e.g. the ward for 60 patients had only 2 showers for women), while the other<sup>288</sup> had bathrooms for women and men at the same time in one of the wards.

In some establishments, rooms designated for occupational therapy are too small<sup>289</sup> or simply non-existent<sup>290</sup>.

Some hospitals<sup>291</sup> do not have isolation rooms and in one of the visited establishments there was no separate admission room<sup>292</sup>.

Some establishments were not adapted to the needs of persons with reduced mobility<sup>293</sup>, and the related facilities in the establishments that had them were not sufficient to consider these establishments to be fully adjusted to the needs of persons with reduced mobility or other types of disability (e.g. blind persons).

As regards food, the visiting team received several complaints from the patients about the monotony of the menu, taste or size of meals. The most alarming report received during the visits was the information that some patients did not receive full meals in one establishment<sup>294</sup> due to the lack of the adequate number of portions.

## 10. Right to religious practices

Although the patients did not complain much about the lack of possibility to practice their religion during their stay in hospital, the employees of the Mechanism are of the opinion that the detained patients' right to religious practice is not fully respected in all establishments. The representatives of the NPM found that in two establishments<sup>295</sup> the patients who did not receive the consent for leaving

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<sup>287</sup> Voivodeship Psychiatric Hospital in Olsztyn.

<sup>288</sup> Public Health Care Centre in Łuków.

<sup>289</sup> Autonomous Public Voivodeship Hospital in Gorzów Wielkopolski, Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż.

<sup>290</sup> Dr Józef Babiński Specialist Psychiatric Hospital Health Care Centre in Łódź.

<sup>291</sup> Voivodeship Psychiatric Hospital in Olsztyn, Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż.

<sup>292</sup> Autonomous Public Voivodeship Hospital in Gorzów Wielkopolski.

<sup>293</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola, Public Health Care Centre in Łuków.

<sup>294</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Lubiąż.

<sup>295</sup> Voivodeship Psychiatric Hospital in Olsztyn, Autonomous Public Voivodeship Hospital in Gorzów Wielkopolski.

the ward could not attend mass, while in another establishment<sup>296</sup> the detained patients could attend mass only once a month and reported that the hospital chaplain had not visited them.

## 11. Staff

During the visits to hospitals, the NPM representatives found that some of them did not comply with the obligation to ensure a specific number of employees in the wards where preventive measures are implemented which would be appropriate for the needs of the entire hospital<sup>297</sup>.

Some hospitals lacked employees of particular specialisation, e.g. a social worker, or of particular gender, e.g. male nurses on the wards for men<sup>298</sup>. Where no social worker was employed, the corresponding tasks were delegated to other employees (e.g. to nurses), which could lead to deterioration of nursing care. It was also observed that a social worker did social work for over 400 patients, which also seems rather impossible to be done properly.

The NPM representatives are of the opinion that the failure to employ personnel of the same gender in the ward designated exclusively for patients of a particular gender constitutes an infringement of the patients' right to intimacy.

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<sup>296</sup> Dr Józef Babiński Specialist Psychiatric Hospital Health Care Centre in Łódź.

<sup>297</sup> The Ordinance of 10 August 2004 *laying down the list of psychiatric and rehabilitation facilities where security measures are to be applied, as well as on the composition, appointment procedure and tasks of psychiatric commission for preventive measures* (Dz. U. No 179 item 1854, as amended), version in force until 30 January 2013, stipulated that the number of staff employed in a psychiatric establishment with a reinforced security system should be twice as high as the capacity of the establishment. In maximum security hospital wards the number of staff should be at least two and a half as high as the capacity of the establishment, and the number of employed guards of criminal offenders should correspond to at least one-third of the capacity of the establishment. Starting from 31 January 2013 Article 4(1)(4) of the above Ordinance has been replaced and now it stipulates that psychiatric establishments with a reinforced security system shall ensure that the staff, including security personnel, are constantly present within the premises of the establishment or – when only part of the establishment is under reinforced security system – of that part of the establishment during the day (from 7:00 a.m. until 10:00 p.m.) – when the number of staff should correspond to at least one-third of the capacity of the whole or part of the establishment respectively, and at night (from 10:00 p.m. until 7:00 a.m.) – when the number of staff should correspond to at least one-sixth of the capacity of the whole or part of the establishment respectively. Pursuant to Article 16(5) of the Ordinance of the Minister of Health of 20 April 2005 *on specific rules on referring, admitting, transferring, releasing and holding juveniles in public health care centres* (Dz. U., No 79, item 692), the safety and adequate conditions of the stay of juveniles in an establishment with reinforced security shall be ensured, inter alia, by employing at least twice as many staff working with juveniles as the capacity of the establishment.

<sup>298</sup> Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola, Voivodeship Psychiatric Hospital in Warta, Dr Józef Babiński Specialist Psychiatric Hospital Health Care Centre in Łódź.



The documents made available to the visiting team by the management of individual hospitals, including plans for trainings of their subordinate staff, usually demonstrated that trainings carried out in 2011 and 2012 were comprehensive in terms of their scope and type. In two<sup>299</sup> of the visited establishments<sup>300</sup> the NPM representatives noted the lack of specialist trainings for all or a part of the staff within the last several years, *inter alia*, in the area of patients' rights, rights of the child, application of coercive measures, preventing professional burnout, interpersonal communication or therapeutic and rehabilitation activities.

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<sup>299</sup> Public Health Care Centre in Łuków, Voivodeship Hospital for Neurotic and Psychiatric Patients in Suchowola.

<sup>300</sup> As emphasised by the CPT, bearing in mind the challenging nature of their work, it is of crucial importance that auxiliary staff be carefully selected and that they receive both appropriate training before taking up their duties and in-service courses. Further, during the performance of their tasks, they should be closely supervised by – and be subject to the authority of – qualified health-care Staff [Article 28 of the 8th General Report CPT/Inf (98)].



## 9. NPM visiting team (in alphabetical order)

**Magdalena Chmielak** – until the end of May 2012 deputy Director of the Team “National Preventive Mechanism” in the Office of the Human Rights Defender. A lawyer, graduate of the Cardinal Stefan Wyszyński University in Warsaw and post-graduate in “Social rehabilitation” at the Department of Rehabilitation Psychopedagogy of the Maria Grzegorzewska Academy of Special Education in Warsaw. A trainee solicitor since 2011. Since 2009 until the end of May 2012, an employee of the National Preventive Mechanism in the Office of the Human Rights Defender.

**Karolina Chyła-Goral** – a social pedagogue, graduate of the Maria Grzegorzewska Academy of Special Education in Warsaw. Since 2010, employed in the Office of the Human Rights Defender, an employee of the National Preventive Mechanism.

**Bogumił Furche** – a lawyer, trainee solicitor, graduate of the University of Gdańsk. Since 2008, employee of the Office of the Human Rights Defender. He participates in the visits of the National Preventive Mechanism within the jurisdiction of the Field Plenipotentiary of the Human Rights Defender in Gdańsk.

**Zenobia Glac-Ściebura** – social pedagogue and revalidation pedagogue – oligophrenopedagogy, graduate of the Ateneum-University in Gdańsk as well as of the Kujawy and Pomorze University in Bydgoszcz. Since 2007, employee in the Office of the Human Rights Defender. Since 2011, she has participated in the visits of the National Preventive Mechanism within jurisdiction of the Field Plenipotentiary of the Human Rights Defender in Gdańsk.

**Aleksandra Iwanowska** – a doctor of law, graduate of the Faculty of Law and the Faculty of Philology at the University of Białystok with major in Russian philology with English language. Since 2012, she has been a member of the Team of the National Preventive Mechanism in the Office of the Human Rights Defender.

**Justyna Józwik** – a graduate of the Institute of Social Prevention and Rehabilitation at the University of Warsaw, currently a doctoral student at the Institute of Sociology at the University of Warsaw. Since 2008, she has been an employee of the National Preventive Mechanism in the Office of the Human Rights Defender.



**Przemysław Kazimirski** – a lawyer, graduate of the Catholic University of Lublin. Since 2002, he has been working in the Office of the Human Rights Defender – initially at the Executive Criminal Law Unit, later, since 2008, he has been employed by the National Preventive Mechanism. He represents the NPM in the EU Eastern Partnership Countries’ Ombudsman Cooperation 2009 – 2013.

**Michał Kleszcz** – a lawyer, graduate of the University of Silesia and of Post-graduate Studies of Economic and Commercial Law. A trainee solicitor since 2011. Employed in the Office since 2007. Since 2008, he has participated in the visits of the National Preventive Mechanism within the jurisdiction of the Field Plenipotentiary of the Human Rights Defender in Katowice.

**Natalia Kłaczyńska** – a doctor of legal sciences of the University of Wrocław, university teacher. Employed in the Office since 2005. She has participated in the visits of the National Preventive Mechanism within the jurisdiction of the Field Plenipotentiary of the Human Rights Defender in Wrocław.

**Karol Koch** – a lawyer, graduate of the University of Silesia. Since 1977, a lawyer at the Military Prosecutor’s Office in Gliwice. In 1987 he was transferred to serve in the Navy Prosecutor’s Office in Gdynia, and then, in 1993, to the Chief Military Prosecutor’s Office in Warsaw. Employed in the Criminal Law Department in the Office of the Human Rights Defender in Warsaw since 1997. From 2009 to 2012, employed in the Office of the Field Plenipotentiary of the Human Rights Defender in Katowice.

**Dorota Krzysztoń** – a criminologist, graduate of the University of Warsaw. A long-time civil servant, involved in the protection of the civil rights and a mediator in criminal cases. Since 2011, she has been an employee of the National Preventive Mechanism in the Office of the Human Rights Defender.

**Marcin Kusy** – a lawyer, graduate of the Catholic University of Lublin and of the School of Human Rights and Freedoms at the Institute of Legal Sciences of the Polish Academy of Sciences. He has extensive knowledge of American law; holder of a certificate of Chicago Kent College of Law. Interested in case law of the European Court of Human Rights in Strasbourg and anti-discrimination law. Since 2008, he has been an employee of the National Preventive Mechanism in the Office of the Human Rights Defender.



**Justyna Lewandowska** – Director of the Team of the National Preventive Mechanism in the Office of the Human Rights Defender. A lawyer, graduate of the University of Warsaw. In 2007, she completed the prosecutor's apprenticeship in Warsaw, and since 2010 has been a member of the Warsaw Bar Association. A long-time employee of the Helsinki Foundation for Human Rights. When at the Foundation, she focused on the rights of persons deprived of their liberty, of persons using psychoactive drugs, and of those living with HIV virus / suffering from AIDS. In 2007 and 2008, she was a member of the team working to amend the Act on prevention of drug abuse and certain other acts. The team was designated by the Minister of Justice.

**Małgorzata Molak** – a graduate of social rehabilitation, with a major in rehabilitation and family support, at the Maria Grzegorzewska Academy of Special Education in Warsaw. In 2011 she completed postgraduate studies in the field of psychological, pedagogical and legal preparation for work with difficult young people at the Alcide De Gasperi University of Euroregional Economy in Józefów. Volunteer consultant at the Hotline for People in Emotional Crisis at the Institute of the Psychology of Health. Since 2011, she has been an employee of the National Preventive Mechanism in the Office of the Human Rights Defender.

**Marcin Mazur** – deputy Director of the National Preventive Mechanism Team in the Office of the Human Rights Defender. A lawyer, graduate of the Catholic University of Lublin. In 2011 he passed his solicitor's exam and was accepted as a member of the Circuit Chamber of Legal Counsel in Warsaw. From 2003 to 2008, he pursued doctoral studies at the Faculty of Law, Canon Law and Administration in the area of legal science – penal law at the John Paul II Catholic University of Lublin. Currently, he is working on his doctoral thesis. In 2005 and 2006 he completed his postgraduate studies in the area of pedagogical preparation. Since 2004, he has been working in the Office of the Human Rights Defender – initially at the Executive Criminal Law Department, later, in the National Preventive Mechanism Team. Author of several articles on penal law.

**Wojciech Sadownik** – a lawyer, graduate of the Maria Curie-Skłodowska University in Lublin. He worked, inter alia, at the Ministry of Science and Higher Education. Since 2010, he has been an employee of the National Preventive Mechanism in the Office of the Human Rights Defender.



**Estera Tarnowska** – a lawyer, psychologist, graduate of the University of Gdańsk. In 2011, she completed her solicitor's apprenticeship in Gdańsk. Employed in the Office of the Human Rights Defender since 2007. Since 2008, she has participated in the visits of the National Preventive Mechanism within the jurisdiction of the Field Plenipotentiary of the Human Rights Defender in Gdańsk.

**Sławomir Tkacz** – a doctor of law, academic researcher at the University of Silesia. He completed prosecutor's apprenticeship. Since 2007, employee in the Office of the Human Rights Defender. He has participated in the visits of the National Preventive Mechanism within the jurisdiction of the Field Plenipotentiary of the Human Rights Defender in Katowice.

**Joanna Klara Żuchowska** – a doctor of medical sciences, second degree specialist in internal medicine. Practicing physician between 1961 and 2011. Co-author of the book "Myocardial Infarction" and 12 works issued in specialist Polish and foreign journals. A graduate of the School of Human Rights at the Helsinki Foundation for Human Rights. Co-author of the publication *Prawa człowieka w szpitalach psychiatrycznych i domach opieki społecznej* [Human Rights at Psychiatric Hospitals and Nursing Homes] (Reports, Evaluations, Opinions of the Helsinki Foundation for Human Rights No 17/1996). Between 1996 and 2001 involved in monitoring for the Helsinki Foundation for Human Rights. Since 2009 she has cooperated with the Office of the Human Rights Defender (since April 2012 she has been employed on a ¼ FTE basis).

## 10. Experts of the National Preventive Mechanism

### A. Psychiatrists

**Leszek Asman** – a psychiatrist. Currently, he is employed at the Mental Health Centre in Zabrze as medical manager, as well as the head of day psychiatric ward and the head of the outpatient clinic complex (mental health clinic, neurotic disorders clinic, home treatment team). For many years he worked as the head of psychiatric wards (Olkusz, Rybnik). For a year he was employed in the control department within the Silesian Branch of the National Health Fund. He has many years of experience as expert witness in the field of psychiatry. He finished a postgraduate school in the field of health protection management. He runs his private medical practice in Żory.

**Jolanta Paszko** – a psychiatrist. Graduate of the Medical University of Lublin. She gained professional experience in the Psychiatric Hospital in Gniezno, and later in Bródnowski Hospital and Bielański Hospital in Warsaw. Between 1992 and 2008 she was a scientific assistant in the IV Clinic at the Institute of Psychiatry and Neurology in Warsaw. Author of research publications in the area of environmental and clinical psychiatry. Currently, she is working on her PhD thesis. She completed psychodynamic psychotherapy training in Cracow.

**Katarzyna Prot-Klinger** – PhD, Professor of the Academy of Special Education, psychiatrist, psychotherapist, group analyst at the Academy of Special Education. She runs her private practice. She is particularly interested in the development of the environmental psychiatry and psychological effects of traumatic experiences.

**Maria Załuska** – associate professor, PhD, psychiatrist. She received her medical diploma in 1973 at the Medical University in Warsaw. Head of the ward and of the IV Clinic at the Institute of Psychiatry and Neurology in Bielański Hospital. Lecturer at the Faculty of Family Studies at the Cardinal Stefan Wyszyński University in Warsaw.

**Anna Rusek** – a doctor of medical sciences, graduate of the Faculty of Medicine at the Medical University of Silesia, second degree specialist in psychiatry. In 1989, she received the title of the doctor of medical sciences for her thesis on mental disorders in the burn disease. She completed her postgraduate studies in the field of HR management, entrepreneurship and career counselling – organisation of health care centres. Between 1978 and 1992, she was employed at the Psychiatric Clinic of the Medical University of Silesia in Tarnowskie Góry. Since 1992 until now, she has been employed in the Psychiatric Hospital in Toszek. Expert witness at Regional Court in Gliwice, expert witness at the Episcopal Court in Gliwice.





## B. Psychologists

**Jarosław Gliszczyński** – clinical psychologist, psychotherapy supervisor at Psychotherapy Research Section and the Family Therapy Section of the Polish Psychiatric Association, psychotherapist holding the European Psychotherapy Certificate, psychodrama therapist at the Psychodrama Institute for Europe. He is the Head of the Silesian Psychotherapy School and the President of the Silesian Psychotherapists Association.

**Stanisław Gomółka** – a psychologist with many years of experience, member of the Polish Psychological Association.

**Paweł Jezierski** – a psychotherapist working in the field of psychodynamics. Graduate of the University of Social Sciences and Humanities. A last-year student of the School of Individual Psychotherapy and the School of Group Psychotherapy – trainings organised by the Psychoeducation Laboratory. He gained his clinical experience in the Psychiatric Ward of the Voivodeship Hospital in Łomża. He worked in the Psychiatric Hospital in Choroszcz at the Forensic Psychiatry Ward with a reinforced security. He cooperated with the Psychological and Educational Centre No 6 in Warsaw. He is a co-organiser of a therapeutic group in the Psyche Clinic. Since 2011 he has been employed in Nowowiejski Hospital, initially in the Psychogeriatric Ward, and currently in the XIII Ward for Neurotic Disorders Treatment and in Neuroses Treatment Clinic. He has experience in diagnosing, consultancy, short- and long-term individual therapy as well as group therapy of therapeutic, interpersonal and training nature. He also completed a one-year ISTDP (Intensive Short-Term Dynamic Psychotherapy) seminar. He also runs his private practice.

**Katarzyna Kossobudzka** – a certified psychotherapist (European Psychotherapy Certificate and Psychotherapy Certificate of the Psychotherapy Science Section of the Polish Psychiatric Association). Since 2003 she has been employed in Dolnośląskie Centrum Zdrowia Psychicznego. Since 2008, lecturer at the University of Social Sciences and Humanities. She used to work in the Mental Health Clinic and Social Care Centre for people with mental disorders, and she delivers trainings for nurses in the psychiatry specialisation. She has recently completed her 5-year specialisation in clinical psychology.

**Agnieszka Kłosowska** – a clinical psychologist with many years of experience in the supervision of psychiatric hospitals, regional forensic psychiatry centres and social care centres. For several years she has been engaged in teaching how to organise and carry out the monitoring of the observance of the human rights.

## 11. Visits under the National Preventive Mechanism – table by units

Prisons	
Place	Date
Tarnów-Mościce – recontrol	11,13.01.2012
Nowy Wiśnicz – recontrol	12.01.2012
Grudziądz No 1	28-29.02.2012
Strzelce Opolskie No 2	14-15.03.2012
Łódź No 2	30.03.2012
Płock	10-11.04.2012
Wołów	17-18.04.2012
Warszawa-Białołęka	23-24.04.2012
Rawicz	17-18.05.2012
Sztum	04-06.06.2012
Chełm	31.07.-01.08.2012
Racibórz	09-10.08.2012
Rzeszów	18-19.09.2012
Stargard Szczeciński	25-27.09.2012
Oleśnica	02-03.10.2012
Czarne	17-19.10.2012
Grodzów	25.10.2012
Kwidzyn	21-23.11.2012
Wronki	05-07.12.2012
Siedlce	05-07.12.2012
<b>Total 20</b>	

Pre-trial detention centres	
Place	Date
Kielce	14-15.02.2012
Prudnik	24.10.2012
Chełmno	22-23.11.2012
Dzierżoniów	27-28.11.2012
<b>Total 4</b>	

Rooms within the Police organisational unit	
Place	Date
Powiat Police Headquarters in Środa Śląska	05.01.2012
Municipal Police Headquarters in Gdańsk	05.01.2012
Powiat Police Headquarters in Końskie	13.02.2012
Powiat Police Headquarters in Jędrzejów	16.02.2012
Powiat Police Headquarters in Świdnica	17.02.2012
Powiat Police Headquarters in Wąbrzeźno	27.02.2012
Powiat Police Headquarters in Toruń Rubinkowo	27.02.2012
Municipal Police Headquarters in Bytom – recontrol	09.03.2012
Powiat Police Headquarters in Kędzierzyn Koźle	16.03.2012
Powiat Police Headquarters in Wejherowo	16.04.2012
Warsaw V District Police Headquarters	08.05.2012
Police Headquarters in Warszawa-Wawer	14.05.2012
Powiat Police Headquarters in Zgorzelec	15.05.2012
Powiat Police Headquarters in Człuchów	30.05.2012
Powiat Police Headquarters in Chojnice	31.05.2012
Powiat Police Headquarters in Tuchola	31.05.2012
Police Headquarters in Poznań-Stare Miasto	11.06.2012



Municipal Police Headquarters in Gdańsk	11.06.2012
Municipal Police Headquarters in Wrocław	13.06.2012
Warsaw VI, District Police Headquarters ul. Jagiellońska	13.06.2012
Police Headquarters in Poznań-Nowe Miasto	15.06.2012
Police Headquarters in Poznań-Stare Miasto	19.06.2012
Municipal Police Headquarters in Gdańsk	19.06.2012
Warsaw IV ul. Żytnia	29.06.2012
Municipal Police Headquarters in Wałbrzych	06.07.2012
Powiat Police Headquarters in Iława	16.07.2012
Powiat Police Headquarters in Ostróda	17.07.2012
Powiat Police Headquarters in Sochaczew – recontrol	23.07.2012
Municipal Police Headquarters in Wałcz	03.09.2012
Powiat Police Headquarters in Brzozów	17.09.2012
Municipal Police Headquarters in Rzeszów	20.09.2012
Municipal Police Headquarters in Elbląg – recontrol	01.10.2012
Powiat Police Headquarters in Biskupiec	01.10.2012
Powiat Police Headquarters in Trzebnica	01.10.2012
Municipal Police Headquarters in Olsztyn	03.10.2012
Powiat Police Headquarters in Oleśnica	04.10.2012

Powiat Police Headquarters in Tczew	19.11.2012
Powiat Police Headquarters in Kościerzyna	20.11.2012
Powiat Police Headquarters in Kartuzy	20.11.2012
Powiat Police Headquarters in Rogowo	21.11.2012 (PDR not used)
Powiat Police Headquarters in Więcbork	21.11.2012 (PDR not used)
Powiat Police Headquarters in Dzierżoniów	26.11.2012
Powiat Police Headquarters in Żary	11.12.2012
Powiat Police Headquarters in Żagań	11.12.2012
Mińsk Mazowiecki	11.12.2012 (PDR not used)
Powiat Police Headquarters in Piaseczno	10.12.2012
Police Headquarters in Piastów (unit supervised by Powiat Police Headquarters in Pruszków)	12.12.2012
Powiat Police Headquarters in Elk	17.12.2012
<b>Total 48</b>	

<b>Youth Care Centres</b>	
<b>Place</b>	<b>Date</b>
Przysucha-Kolonia Szczerbacka – recontrol	16.04.2012
Brzeg Dolny	19-20.04.2012
Cerekwica	15-16.05.2012
Augustów	29-30.05.2012
Trzcinec – recontrol	04.09.2012
Podborsko	05-06.09.2012
Bystrzyca Górna	08.11.2012
Sobótka	29.11.2012
<b>Total 8</b>	



<b>Juvenile detention centres</b>	
<b>Place</b>	<b>Date</b>
Białystok – recontrol	26.01.2012
<b>Total 1</b>	

<b>Youth Sociotherapy Centres</b>	
<b>Place</b>	<b>Date</b>
Białystok	25.02.2012
Dobrodzień	15.03.2012
Piaseczno – recontrol	07.05.2012
Gliwice	21-22.05.2012
<b>Total 4</b>	

<b>Sobering-up stations</b>	
<b>Place</b>	<b>Date</b>
Toruń	01.03.2012
Opole	13.03.2012
Katowice	22.03.2012
Sosnowiec – recontrol	30.03.2012
Nowy Sącz	25.04.2012
Suwałki	28.05.2012
Warszawa	22.06.2012
Olsztyn	18.07.2012
Zamość	30.07.2012
Białystok	03.09.2012
Włocławek	10.09.2012
Chorzów	24.09.2012
Piła	08.10.2012
Konin	13.11.2012
<b>Total 14</b>	

<b>Psychiatric hospitals</b>	
<b>Place</b>	<b>Date</b>
Łódź (Dr J. Babiński Hospital)	12.04.2012
Gostynin	12-13.04.2012
Warta	04-06.06.2012
Łuków	13.07.2012
Gorzów Wielkopolski	27-31.08.2012
Olsztyn	02.10.2012
Suchowola	08-09.10.2012
Lubiąż	06-07.11.2012
<b>Total 8</b>	

<b>Social care centres</b>	
<b>Place</b>	<b>Date</b>
Grudziądz No 1	07-09.03.2012
Łódź „Serce”	28-29.03.2012
Mogilno	26.04.2012
Ruda Śląska	22-24.05.2012
Psary	04-06.07.2012
Racibórz	07-08.08.2012
Choroszcz	04-05.09.2012
Koronowo „Spokojna Przystań”	11-12.09.2012
Chorzów „Republika”	25-26.09.2012
Wieleń	09-11.10.2012
Olkusz	16-17.10.2012
Zator	17-18.10.2012
Pleszew	14-16.11.2012
Łódź „Pogodna Jesień”	05.12.2012
Koźuchów	12-13.12.2012
Lesznowola	13-14.12.2012
Kowale Oleckie „Zacisze”	18.12.2012
<b>Total 17</b>	



## 12. Visits under the National Preventive Mechanism – table by visit date

VISITS UNDER THE NATIONAL PREVENTIVE MECHANISM IN 2012					
No	Visited unit and visiting team	Place	Date	Participation of the Human Rights Defender and external experts	Participation of employees of HRD Local Representative Offices
1	<b>Police detention rooms for detained persons or persons brought to sober up within Poviát Police Headquarter</b> – Natalia Kłaczyńska	Środa Śląska	05.01.2012		Natalia Kłaczyńska Office of the Local Representative in Wrocław
2	<b>Rooms for detained persons within the Municipal Police Headquarters</b> – Bogumił Furche – Zenobia Glac-Ściebura – Estera Tarnowska	Gdańsk	05.01.2012		Zenobia Glac-Ściebura Bogumił Furche Estera Tarnowska Office of the Local Representative in Gdańsk
3	<b>Prison</b> – Przemysław Kazimirski – Karolina Chyła – Marcin Kusy – Michał Kleszcz	Tarnów-Mościce	11 and 13.01.2012	<b>Participation of the Human Rights Defender</b>	Michał Kleszcz Office of the Local Representative in Katowice
4	<b>Prison</b> – Przemysław Kazimirski – Karolina Chyła – Marcin Kusy – Michał Kleszcz	Nowy Wiśnicz	12.01.2012	<b>Participation of the Human Rights Defender</b>	Michał Kleszcz Office of the Local Representative in Katowice
5	<b>Youth Socioterapy Centre „Exodus”</b> – Justyna Józwiak – Magdalena Chmielak – Dorota Krzysztoń – Wojciech Sadownik	Białystok	25.01.2012		



6	<b>Juvenile Detention Centre</b> – Justyna Józwiak – Magdalena Chmielak – Dorota Krzysztóń – Wojciech Sadownik	Białystok	26.01.2012		
7	<b>Rooms for detained persons within the Poviast Police Headquarters</b> – Przemysław Kazimirski – Dorota Krzysztóń – Karolina Chytła – Karol Koch	Końskie	13.02.2012		<b>Karol Koch Office of the Local Representative in Katowice</b>
8	<b>Pre-Trial Detention Centre</b> – Przemysław Kazimirski – Dorota Krzysztóń – Karolina Chytła – Karol Koch	Kielce	14-15.02.2012		<b>Karol Koch Office of the Local Representative in Katowice</b>
9	<b>Rooms for detained persons within the Poviast Police Headquarters</b> – Przemysław Kazimirski – Dorota Krzysztóń – Karolina Chytła – Karol Koch	Jędrzejów	16.02.2012		<b>Karol Koch Office of the Local Representative in Katowice</b>
10	<b>Rooms for detained persons within the Poviast Police Headquarters</b> – Natalia Kłaczyńska	Świdnica	17.02.2012		<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>
11	<b>Rooms for detained persons within the Poviast Police Headquarters</b> – Wojciech Sadownik – Marcin Kusy – Magdalena Chmielak – Dorota Krzysztóń	Toruń Rubinkowo	27.02.2012		



12	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Wojciech Sadownik – Marcin Kusy – Magdalena Chmielak – Dorota Krzysztóń	Wąbrzeźno	27.02.2012		
13	<b>Prison No 1</b> – Wojciech Sadownik – Marcin Kusy – Magdalena Chmielak – Dorota Krzysztóń	Grudziądz	28-29.02.2012	<b>dr Agnieszka Kłosowska</b> – <b>clinical psychologist</b>	
14	<b>Municipal Education and Addiction Prevention Centre with a Sobering-up station</b> – Wojciech Sadownik – Marcin Kusy – Magdalena Chmielak – Dorota Krzysztóń	Toruń	01.03.2012		
15	<b>Social Care Centre No 1</b> – Dorota Krzysztóń – Justyna Jóźwiak – Estera Tarnowska	Grudziądz	07-09.03.2012	<b>dr Katarzyna Prot-Klinger</b> – <b>psychiatrist</b>	<b>Estera Tarnowska</b> <b>Office of the Local Representative in Gdańsk</b>
16	<b>Rooms for detained persons within the Municipal Police Headquarters</b> – Sławomir Tkacz – Michał Kleszcz	Bytom	09.03.2012		<b>Michał Kleszcz</b> <b>Sławomir Tkacz</b> <b>Office of the Local Representative in Katowice</b>
17	<b>Municipal Support Centre for the Homeless and Addicts with a Sobering-up station</b> – Przemysław Kazimirski – Wojciech Sadownik – Karolina Chyła	Opole	13.03.2012		



18	<b>Prison No 2</b> – Przemysław Kazimirski – Wojciech Sadownik – Karolina Chytła	Strzelce Opolskie	14-15.03.2012	<b>Stanisław Gomółka – psychologist</b>	
19	<b>Youth Sociotherapy Centre</b> – Przemysław Kazimirski – Wojciech Sadownik – Karolina Chytła	Dobrodzień	15.03.2012	<b>Stanisław Gomółka – psychologist</b>	
20	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Przemysław Kazimirski – Wojciech Sadownik – Karolina Chytła – Natalia Kłaczyńska	Kędzierzyn Kozłe	16.03.2012		<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>
21	<b>Municipal sobering- up station and Support Centre for Alcohol Addicts</b> – Sławomir Tkacz – Michał Kleszcz	Katowice	22.03.2012		<b>Michał Kleszcz Sławomir Tkacz Office of the Local Representative in Katowice</b>
22	<b>Social Care Centre „Serce”</b> – Karolina Chytła – Przemysław Kazimirski – Marcin Kusy	Łódź	28-29.03.2012	<b>Professor Maria Załużka – psychiatrist</b>	
23	<b>Prison No 2</b> – Karolina Chytła – Przemysław Kazimirski – Marcin Kusy	Łódź	30.03.2012	<b>Professor Maria Załużka – psychiatrist</b>	
24	<b>Sobering-up Station</b> – Sławomir Tkacz – Michał Kleszcz	Sosnowiec	30.03.2012		<b>Michał Kleszcz Sławomir Tkacz Office of the Local Representative in Katowice</b>





25	<b>Prison</b> – Przemysław Kazimirski – Dorota Krzysztóż – Wojciech Sadownik	Płock	10-11.04.2012	<b>dr Agnieszka Kłosowska</b> – clinical psychologist	
26	<b>Dr J. Babiński Psychiatric Hospital</b> – Justyna Józwiak – Karolina Chytła	Łódź	12.04.2012	<b>dr Jolanta Paszko</b> – psychiatrist	
27	<b>Regional Forensic Psychiatry Centre</b> – Przemysław Kazimirski – Dorota Krzysztóż – Wojciech Sadownik	Gostynin	12-13.04.2012	<b>Agnieszka Kłosowska</b> – clinical psychologist <b>Professor Maria Załuska</b> – psychiatrist	
28	<b>Rooms for detained persons within the Poviats Police Headquarters</b> – Zenobia Glac-Ściebura – Bogumił Furche	Wejherowo	16.04.2012		<b>Zenobia Glac-Ściebura Bogumił Furche</b> Office of the Local Representative in Gdańsk
29	<b>Youth Care Centre</b> – Magdalena Chmielak – Justyna Józwiak – Wojciech Sadownik	Przysucha-Kolonia Szczerbacka	16.04.2012		
30	<b>Prison</b> – Małgorzata Molak – Dorota Krzysztóż – Natalia Kłaczyńska	Wołów	17-18.04.2012	<b>Stanisław Gomółka</b> – psychologist	<b>Natalia Kłaczyńska</b> Office of the Local Representative in Wrocław
31	<b>Youth Care Centre</b> – Małgorzata Molak – Dorota Krzysztóż – Natalia Kłaczyńska	Brzeg Dolny	19-20.04.2012	<b>Stanisław Gomółka</b> – psychologist	<b>Natalia Kłaczyńska</b> Office of the Local Representative in Wrocław
32	<b>Prison</b> – Aleksandra Iwanowska – Wojciech Sadownik – Magdalena Chmielak – Przemysław Kazimirski – Marcin Kusy – Joanna Klara Żuchowska	Warsaw-Białoleka	23-24.04.2012	<b>Joanna Klara Żuchowska, MD, PhD</b> – specialist in internal diseases	



33	<b>Nowy Sącz Crisis Intervention Centre with a Sobering-up Station</b> – Marcin Kusy – Justyna Józwiak – Michał Kleszcz	Nowy Sącz	25.04.2012		Michał Kleszcz Office of the Local Representative in Katowice
34	<b>Father Pio Social Care Centre</b> – Marcin Kusy – Justyna Józwiak – Michał Kleszcz	Mogilno	26.04.2012	<b>dr Katarzyna Prot-Klinger – psychiatrist</b>	<b>Michał Kleszcz Office of the Local Representative in Katowice</b>
35	<b>Youth Sociotherapy Centre</b> – Przemysław Kazimirski – Marcin Kusy – Dorota Krzysztóż	Piaseczno	07.05.2012		
36	<b>Rooms for detained persons within the District Police Headquarters Warsaw V</b> – Marcin Kusy – Dorota Krzysztóż – Aleksandra Iwanowska	Warsaw	08.05.2012		
37	<b>Rooms for detained persons within the Police Station Warsaw-Wawer</b> – Marcin Kusy – Dorota Krzysztóż – Karolina Goral	Warsaw	14.05.2012		
38	<b>Rooms for detained persons within the Poviast Police Headquarters</b> – Natalia Kłaczyńska	Zgorzelec	15.05.2012		<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>
39	<b>Youth Care Centre</b> – Przemysław Kazimirski – Wojciech Sadownik – Aleksandra Iwanowska – Małgorzata Molak	Cerekwica	15-16.05.2012	<b>Stanisław Gomółka – psychologist</b>	



40	<b>Prison</b> – Przemysław Kazimirski – Wojciech Sadownik – Aleksandra Iwanowska – Małgorzata Molak	Rawicz	17-18.05.2012	<b>Stanisław Gomółka</b> – psychologist	
41	<b>Youth Sociotherapy Centre</b> – Karolina Goral – Wojciech Sadownik – Michał Kleszcz	Gliwice	21-22.05.2012	<b>Jarosław Gliszczyński</b> – psychologist	<b>Michał Kleszcz</b> Office of the Local Representative in Katowice
42	<b>Social Care Centre</b> – Karolina Goral – Wojciech Sadownik – Michał Kleszcz	Ruda Śląska	22-24.05.2012	<b>dr Jolanta Paszko</b> – psychiatrist	<b>Michał Kleszcz</b> Office of the Local Representative in Katowice
43	<b>Sobering-up Station</b> – Karolina Goral – Małgorzata Molak – Marcin Kusy	Suwałki	28.05.2012	<b>Joanna Klara Żuchowska, MD, PhD</b> – specialist in internal diseases	
44	<b>Youth Care Centre</b> – Karolina Goral – Małgorzata Molak – Marcin Kusy	Augustów	29-30.05.2012	<b>Joanna Klara Żuchowska, MD, PhD</b> – specialist in internal diseases	
45	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Bogumił Furche – Estera Tarnowska	Człuchów	30.05.2012		<b>Bogumił Furche Estera Tarnowska</b> Office of the Local Representative in Gdańsk
46	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Bogumił Furche – Estera Tarnowska	Chojnice	31.05.2012		<b>Bogumił Furche Estera Tarnowska</b> Office of the Local Representative in Gdańsk
47	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Bogumił Furche – Estera Tarnowska	Tuchola	31.05.2012		<b>Bogumił Furche Estera Tarnowska</b> Office of the Local Representative in Gdańsk



48	<b>Psychiatric Hospital</b> – Wojciech Sadownik – Karolina Goral	Warta	04-06.06.2012	<b>dr Jolanta Paszko</b> – <b>psychiatrist</b>	
49	<b>Prison</b> – Przemysław Kazimirski – Marcin Kusy – Aleksandra Iwanowska – Damian Kalita	Sztum	04-06.06.2012	<b>Stanisław Gomółka</b> – <b>psychologist</b>	
50	<b>Rooms for Detained Persons within the Police Station</b> – Karolina Goral – Małgorzata Molak – Przemysław Kazimirski	Poznań- Stare Miasto EURO 2012	11.06.2012		
51	<b>Rooms for detained persons within the Municipal Police Headquarters</b> – Bogumił Furche – Estera Tarnowska	Gdańsk EURO 2012	11.06.2012		<b>Bogumił Furche Estera Tarnowska Office of the Local Representative in Gdańsk</b>
52	<b>Rooms for detained persons within the Municipal Police Headquarters</b> – Natalia Kłaczyńska	Wrocław EURO 2012	13.06.2012		<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>
53	<b>Rooms for detained persons within the District Police Station Warsaw VI</b> – Wojciech Sadownik – Damian Kalita – Aleksandra Iwanowska – Dorota Krzysztoń	Warsaw EURO 2012	13.06.2012		
54	<b>Rooms for Detained Persons within the Police Station</b> – Magdalena Chmielak – Wojciech Sadownik – Aleksandra Iwanowska	Poznań- Nowe Miasto EURO 2012	15.06.2012		



55	<b>Rooms for Detained Persons within the Police Station</b> – Dorota Krzysztoń – Małgorzata Molak – Damian Kalita	Poznań- Stare Miasto EURO 2012	19.06.2012		
56	<b>Rooms for detained persons within the Municipal Police Headquarters</b> – Bogumił Furche – Eстера Tarnowska	Gdańsk EURO 2012	19.06.2012		<b>Bogumił Furche Eстера Tarnowska Office of the Local Representative in Gdańsk</b>
57	<b>Sobering-up Station</b> – Damian Kalita – Karolina Goral – Dorota Krzysztoń	Warsaw EURO 2012	22.06.2012		
58	<b>Rooms for detained persons within the District Police Headquarters Warsaw IV</b> – Marcin Kusy -Aleksandra Iwanowska	Warsaw EURO 2012	29.06.2012		
59	<b>Social Care Centre</b> – Małgorzata Molak – Przemysław Kazimirski – Dorota Krzysztoń	Psary	04-06.07.2012	<b>Joanna Klara Żuchowska, MD, PhD – specialist in internal diseases</b>	
60	<b>Rooms for detained persons within the Municipal Police Headquarters</b> – Natalia Kłaczyńska	Wałbrzych	06.07.2012		<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>
61	<b>Psychiatric Ward within the Municipal Hospital</b> – Justyna Józwiak – Wojciech Sadownik	Łuków	13.07.2012	<b>Professor Maria Załuska – psychiatrist</b>	
62	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Damian Kalita – Karolina Goral – Zenobia Glac-Ściebura	Iława	16.07.2012		<b>Zenobia Glac-Ściebura Office of the Local Representative in Gdańsk</b>



63	<b>Rooms for detained persons within the Poviatic Police Headquarters</b> – Damian Kalita – Karolina Goral – Zenobia Glac-Ściebura	Ostróda	17.07.2012		Zenobia Glac-Ściebura Office of the Local Representative in Gdańsk
64	<b>Outpatient Clinic for Intoxicated Persons with a Sobering-up Station</b> – Damian Kalita – Karolina Goral – Zenobia Glac-Ściebura	Olsztyn	18.07.2012		<b>Zenobia Glac-Ściebura Office of the Local Representative in Gdańsk</b>
65	<b>Rooms for detained persons within the Poviatic Police Headquarters</b> – Przemysław Kazimirski – Małgorzata Molak	Sochaczew	23.07.2012		
66	<b>Sobering-up Station</b> – Marcin Kusy – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Zamość	30.07.2012	<b>Joanna Klara Żuchowska, MD, PhD</b> – <b>specialist in internal diseases</b>	
67	<b>Prison</b> – Marcin Kusy – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Chelm	31.07-01.08.2012	<b>Joanna Klara Żuchowska, MD, PhD</b> – <b>specialist in internal diseases</b> <b>Paweł Jezierski</b> – <b>psychologist</b>	
68	<b>Social Care Centre „Dom św. Notburgi”</b> – Damian Kalita – Karolina Goral – Małgorzata Molak – Michał Kleszcz	Racibórz	07-08.08.2012	<b>Leszek Asman, MD</b> – <b>psychiatrist</b>	<b>Michał Kleszcz Office of the Local Representative in Katowice</b>



69	<b>Prison</b> – Damian Kalita – Karolina Goral – Małgorzata Molak – Michał Kleszcz	Racibórz	09-10.08.2012	<b>Agnieszka Kłosowska</b> – clinical psychologist	<b>Michał Kleszcz</b> Office of the Local Representative in Katowice
70	<b>Psychiatric Ward of the Independent Public Voivodeship Hospital</b> – Przemysław Kazimirski – Aleksandra Iwanowska – Wojciech Sadownik	Gorzów Wielkopolski	27-31.08.2012	<b>Professor Maria Załuska</b> – psychiatrist	
71	<b>Sobering-up Station</b> – Damian Kalita – Małgorzata Molak – Justyna Józwiak	Białystok	03.09.2012		
72	<b>Rooms for detained persons within the Municipal Police Headquarters</b> – Wojciech Sadownik – Marcin Kusy – Michał Dzikuch – Dorota Krzysztoń	Wąlcz	03.09.2012		
73	<b>Youth Care Centre</b> – Wojciech Sadownik – Marcin Kusy – Michał Dzikuch – Dorota Krzysztoń	Trzcinec	04.09.2012		
74	<b>Social Care Centre</b> – Damian Kalita – Małgorzata Molak – Justyna Józwiak	Choroszcz	04-05.09.2012	<b>dr Jolanta Paszko</b> – psychiatrist	
75	<b>Youth Care Centre</b> – Wojciech Sadownik – Marcin Kusy – Michał Dzikuch – Dorota Krzysztoń	Podborsko	05-06.09.2012		
76	<b>Sobering-up Station</b> – Przemysław Kazimirski – Karolina Goral – Michał Dzikuch	Włocławek	10.09.2012		



77	<b>Social Care Centre „Spokojna Przystań”</b> – Przemysław Kazimirski – Karolina Goral – Michał Dziduch	Koronowo	11-12.09.2012		
78	<b>Rooms for detained persons within the Poviatic Police Headquarters</b> – Wojciech Sadownik – Marcin Kusy – Aleksandra Iwanowska – Damian Kalita	Brzozów	17.09.2012		
79	<b>Prison</b> – Wojciech Sadownik – Marcin Kusy – Aleksandra Iwanowska – Damian Kalita	Rzeszów	18-20.09.2012	<b>Participation of Deputy Human Rights Defender, Agnieszka Kłosowska – clinical psychologist</b>	
80	<b>Rooms for detained persons within the Municipal Police Headquarters</b> – Wojciech Sadownik – Marcin Kusy – Aleksandra Iwanowska – Damian Kalita	Rzeszów	20.09.2012		
81	<b>Support Centre for Addicts and Their Families with a Sobering-up Station</b> – Karolina Goral – Dorota Krzysztoń	Chorzów	24.09.2012	<b>Joanna Klara Żuchowska, MD, PhD – specialist in internal diseases</b>	
82	<b>Social Care Centre „Republika”</b> – Karolina Goral – Dorota Krzysztoń – Michał Kleszcz	Chorzów	25-26.09.2012	<b>Joanna Klara Żuchowska, MD, PhD – specialist in internal diseases</b>	<b>Michał Kleszcz Office of the Local Representative in Katowice</b>





83	<b>Prison</b> – Wojciech Sadownik – Małgorzata Molak – Justyna Józwiak – Damian Kalita	Stargard Szczeciński	25-27.09.2012		
84	<b>Rooms for detained persons within the Municipal Police Headquarters</b> – Bogumił Furche – Eстера Tarnowska	Elbląg	01.10.2012		<b>Bogumił Furche Eстера Tarnowska Office of the Local Representative in Gdańsk</b>
85	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Karolina Goral – Aleksandra Iwanowska – Natalia Kłaczyńska	Trzebnica	01.10.2012		<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>
86	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Małgorzata Molak – Dorota Krzysztoń	Biskupiec	01.10.2012		
87	<b>Psychiatric Hospital</b> – Małgorzata Molak – Dorota Krzysztoń	Olsztyn	02.10.2012	<b>dr Jolanta Paszko</b> – <b>psychiatrist</b>	
88	<b>Prison</b> – Karolina Goral – Aleksandra Iwanowska – Natalia Kłaczyńska	Oleśnica	02-03.10.2012	<b>Katarzyna Kossobudzka</b> – <b>psychologist</b>	<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>
89	<b>Rooms for detained persons within the Municipal Police Headquarters</b> – Małgorzata Molak – Dorota Krzysztoń	Olsztyn	03.10.2012		
90	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Karolina Goral – Aleksandra Iwanowska – Natalia Kłaczyńska	Oleśnica	04.10.2012		<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>



91	<b>Voivodeship Hospital for Neurotic and Psychiatric Patients</b> – Małgorzata Molak – Karolina Goral	Suchowola	08-09.10.2012	<b>Anna Rusek, MD</b> – psychiatrist	
92	<b>Centre for Prevention and Solving Alcohol Problems</b> – Marcin Kusy – Przemysław Kazimirski – Wojciech Sadownik	Piła	08.10.2012	<b>Joanna Klara Żuchowska, MD, PhD</b> – specialist in internal diseases <b>Maria Sobocińska-Szeluga</b> – specialist in labour medicine	
93	<b>Social Care Centre</b> – Marcin Kusy – Przemysław Kazimirski – Wojciech Sadownik	Wieleń on Noteć	09-11.10.2012	<b>Joanna Klara Żuchowska, MD, PhD</b> – specialist in internal diseases <b>Maria Sobocińska-Szeluga</b> – specialist in labour medicine	
94	<b>Social Care Centre</b> – Dorota Krzysztoń – Justyna Józwiak – Michał Kleszcz	Olkusz	16-17.10.2012	<b>Katarzyna Kossobudzka</b> – psychologist	<b>Michał Kleszcz Office of the Local Representative in Katowice</b>
95	<b>Social Care Centre of Krakow Archdiocese Caritas</b> – Dorota Krzysztoń – Justyna Józwiak – Michał Kleszcz	Zator	17-18.10.2012	<b>Katarzyna Kossobudzka</b> – psychologist	<b>Michał Kleszcz Office of the Local Representative in Katowice</b>
96	<b>Prison</b> – Wojciech Sadownik – Małgorzata Molak – Karolina Goral – Przemysław Kazimirski	Czarne	17-19.10.2012		



97	<b>Pre-Trial Detention Centre</b> – Dorota Krzysztóń – Justyna Józwiak – Marcin Kusy	Prudnik	24.10.2012		
98	<b>Prison</b> – Dorota Krzysztóń – Justyna Józwiak – Marcin Kusy	Grodków	25.10.2012		
99	<b>Voivodeship Hospital for Neurotic and Psychiatric Patients</b> – Dorota Krzysztóń – Justyna Józwiak – Przemysław Kazimirski	Lubiąż	06-07.11.2012	<b>Leszek Asman</b> – psychiatrist	
100	<b>Youth Care Centre</b> – Dorota Krzysztóń – Justyna Józwiak – Przemysław Kazimirski	Bystrzyca Górna	08.11.2012		
101	<b>Sobering-up Station</b> – Wojciech Sadownik – Małgorzata Molak – Aleksandra Iwanowska	Konin	13.11.2012	<b>Joanna Klara Żuchowska, MD, PhD</b> – specialist in internal diseases <b>Maria Sobocińska-Szeluga</b> – specialist in labour medicine	
102	<b>Social Care Centre</b> – Wojciech Sadownik – Małgorzata Molak – Aleksandra Iwanowska	Pleszew	14-16.11.2012	<b>Joanna Klara Żuchowska, MD, PhD</b> – specialist in internal diseases <b>Maria Sobocińska-Szeluga</b> – specialist in labour medicine	



103	<b>Rooms for detained persons within the Poviatic Police Headquarters</b> – Marcin Mazur – Przemysław Kazimirski – Wojciech Sadownik – Zenobia Glac-Ściebura	Tczew	19.11.2012		Zenobia Glac-Ściebura Office of the Local Representative in Gdańsk
104	<b>Rooms for detained persons within the Poviatic Police Headquarters</b> – Marcin Mazur – Przemysław Kazimirski – Wojciech Sadownik – Zenobia Glac-Ściebura	Kartuzy	20.11.2012		Zenobia Glac-Ściebura Office of the Local Representative in Gdańsk
105	<b>Rooms for detained persons within the Poviatic Police Headquarters</b> – Marcin Mazur – Przemysław Kazimirski – Wojciech Sadownik – Zenobia Glac-Ściebura	Kościerzyna	20.11.2012		Zenobia Glac-Ściebura Office of the Local Representative in Gdańsk
106	<b>Prison</b> – Marcin Mazur – Przemysław Kazimirski – Wojciech Sadownik – Zenobia Glac-Ściebura	Kwidzyn	21-23.11.2012		Zenobia Glac-Ściebura Office of the Local Representative in Gdańsk
107	<b>Rooms for detained persons within the Poviatic Police Headquarters</b> – Karolina Goral – Aleksandra Iwanowska – Justyna Józwiak	Rogowo (PDR not used)	21.11.2012		



108	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Karolina Goral – Aleksandra Iwanowska – Justyna Jóźwiak	Więcbork (PDR not used)	21.11.2012		
109	<b>Pre-Trial Detention Centre</b> – Karolina Goral – Aleksandra Iwanowska – Justyna Jóźwiak	Chełmno	22-23.11.2012		
110	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Karolina Goral – Małgorzata Molak – Magdalena Filipiak – Marcin Kusy – Natalia Kłaczyńska	Dzierżonów	26.11.2012		<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>
111	<b>Pre-Trial Detention Centre</b> – Karolina Goral – Małgorzata Molak – Magdalena Filipiak – Marcin Kusy – Natalia Kłaczyńska	Dzierżonów	27-28.11.2012		<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>
112	<b>Youth Care Centre</b> – Karolina Goral – Małgorzata Molak – Magdalena Filipiak – Marcin Kusy – Natalia Kłaczyńska	Sobótka	29.11.2012		<b>Natalia Kłaczyńska Office of the Local Representative in Wrocław</b>
113	<b>Prison</b> – Wojciech Sadownik – Dorota Krzysztoń – Karolina Goral – Przemysław Kazimirski	Wronki	05-07.12.2012	<b>Paweł Jezierski – psychologist</b>	
114	<b>Prison</b> – Małgorzata Molak – Magdalena Filipiak – Justyna Jóźwiak	Siedlce	05-07.12.2012		



115	<b>Social Care Centre „Pogodna Jesień”</b> – Aleksandra Iwanowska – Marcin Mazur	Łódź	05.12.2012	<b>Joanna Klara Żuchowska, MD, PhD</b> – specialist in internal diseases	
116	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Wojciech Sadownik – Justyna Jóźwiak	Żary	11.12.2012	<b>Maria Sobocińska-Szeluga</b> – specialist in labour medicine	
117	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Wojciech Sadownik – Justyna Jóźwiak	Żagań	11.12.2012	<b>Maria Sobocińska-Szeluga</b> – specialist in labour medicine	
118	<b>Social Care Centre</b> – Wojciech Sadownik – Justyna Jóźwiak	Koźuchów	12-13.12.2012	<b>Maria Sobocińska-Szeluga</b> – specialist in labour medicine	
119	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Magdalena Filipiak – Marcin Kusy – Dorota Krzysztóń	Piaseczno	10.12.2012		
120	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Magdalena Filipiak – Marcin Kusy – Dorota Krzysztóń	Mińsk Mazowiecki (PDR not used)	11.12.2012		
121	<b>Rooms for Detained Persons within the Police Station</b> – Magdalena Filipiak – Marcin Kusy – Dorota Krzysztóń	Piastów (unit supervised by Poviát Police Headquarters in Pruszków)	12.12.2012		



122	<b>Social Care Centre</b> – Magdalena Filipiak – Marcin Kusy – Dorota Krzysztoń	Lesznowola	13-14.12.2012	<b>dr Jolanta Paszko – psychiatrist</b>	
123	<b>Rooms for detained persons within the Poviát Police Headquarters</b> – Aleksandra Iwanowska – Wojciech Sadownik – Justyna Lewandowska	Ełk	17.12.2012	<b>Joanna Klara Żuchowska, MD, PhD – specialist in internal diseases</b>	
124	<b>Social Care Centre „Zacisze”</b> – Aleksandra Iwanowska – Wojciech Sadownik – Justyna Lewandowska	Kowale Oleckie	18.12.2012	<b>Joanna Klara Żuchowska, MD, PhD – specialist in internal diseases</b>	

## 13. The Ombudsman Act

### **The Ombudsman Act Act of 15 July 1987 on the Human Rights Defender (consolidated text)**

#### **Article 1.**

1. The Human Rights Defender is hereby established.

2. The Human Rights Defender, hereinafter referred to as „the Defender” shall safeguard the liberties and rights of citizens as set forth in the Constitution and in other legal acts

2a. On matters concerning children the Defender shall co-operate with the Children’s Rights Defender.

3. In cases involving protection of the rights and liberties of the human being and of the citizen, the Defender shall investigate whether, due to any action or abstaining on the part of organs, organizations or institutions responsible for the observance and implementation of those rights and liberties, the law and principles of community life and social justice have been infringed.

#### **Article 2.**

The Defender must be a Polish citizen of outstanding legal knowledge, professional experience and high prestige due to the individual’s moral values and social sensitivity.

#### **Article 3.**

1. The Defender shall be appointed by the Sejm upon approval of the Senate on a motion expressed by the Speaker of the Sejm or by a group of 35 deputies.

2. Detailed procedure of nomination for the office of the Human Rights Defender shall be determined by the resolution of the Sejm.

3. The resolution of the Sejm appointing the Human Rights Defender shall be immediately conveyed by the Speaker of the Sejm to the Speaker of the Senate.

4. The Senate shall adopt resolution on the approval of the appointment of the Defender within one month of receipt of the Sejm’s resolution referred to in section 3. The Senate’s failure to adopt such a resolution within one month shall be tantamount to approval.





5. Should the Senate refuse to approve the Defender, the Sejm shall appoint another person the Defender. Provisions of sections 1-4 shall apply respectively.

6. The outgoing Defender shall perform his duties until the office is taken over by the new Defender.

#### **Article 4.**

Prior to assumption of duties, the Defender shall make the following oath before the Sejm:

*„I solemnly do swear that in performing the duties entrusted to me as the Human Rights Defender I shall keep faith with the Constitution of the Republic of Poland, safeguard the liberties and rights of the human being and the citizen, being guided by the Law and the principles of community life and social justice.*

*I pledge to perform the duties entrusted to me impartially, with the greatest of diligence and care, to safeguard the dignity of the office and to keep the State and of-fice matters in strict confidence.”*

*The oath may be taken with the sentence added „So help me God”.*

#### **Article 5.**

1. The Defender's term of office shall be five years starting from the date the oath is made before the Sejm.

2. The same person may not act as the Defender for more than two terms of office.

#### **Article 6.**

After completion of his duties, the Defender has the right to resume the position occupied before or to be offered a position equal to the previous one, should there be no legal obstacles.

#### **Article 7.**

1. The Sejm may discharge the Defender prior to the end of his term of office in the case if:

- 1) the Defender has refused to perform his function,
- 2) has become permanently incapable to perform the office due to medically certified ailment, disability or decline of strength.

2. The Sejm may also discharge the Defender before the end of the term of his appointment, should he act against his oath.

3. In the case mentioned under section 1 point 1 the Sejm, upon the motion of the Speaker, takes the resolution on discharging the Defender.



4. The Sejm takes the resolution on discharging the Defender in cases mentioned in section 1 point 2 and section 2 on the motion of the Speaker or a group of at least 35 deputies, and by the majority of at least 3/5 of votes with at least the half of the regular number of deputies present.

#### **Article 8.**

The Defender shall take measures under the present Act having acquired information indicating that liberties and rights of a human and a citizen have been violated.

#### **Article 9.**

Measures shall be taken by the Defender:

- 1) on a request of citizens or their organizations,
- 2) on a request of self-government organs,
- 3) on the Defender's own initiative.

#### **Article 10.**

An application addressed to the Defender shall be exempt from charges, and no special form shall be required; however, the identity must be indicated of the applicant and the person whose liberty and right is involved in the case, and the subject of the case must be defined.

#### **Article 11.**

Having become acquainted with each application received, The Defender may:

- 1) take up the case,
- 2) instruct the applicant as to whatever action the person is entitled to take,
- 3) convey the case according to competence,
- 4) abandon the case, against notification thereof the applicant and the person involved.

#### **Article 12.**

Having taken up a case, the Defender may:

- 1) carry out his own explanatory proceedings,
- 2) request that the case or a part thereof be explained by relevant agencies, especially agencies involved in the supervision, prosecution and State, professional or public control,
- 3) request the Sejm to commission the Supreme Chamber of Control with investigating the specific case or a part thereof.



### **Article 13.**

1. In the course of the proceedings referred to in art. 12 section 1, the Defender has the right to:

- 1) examine each case on the spot even without any prior warning,
- 2) demand explanation or presentation of files of any case handled by superior and central authorities of State administration, government administration agencies, agencies of co-operative, civic, professional or socio-professional organizations, as well as agencies of corporate organizational units, communes and organizational units of local government,
- 3) demand information on the status of a case dealt with by courts or prosecutor's office or other law enforcement agencies, and to demand that court and prosecutor files be made available to the Office of the Human Rights Defender, as well as files from other law enforcement bodies after proceedings have been completed and judgment issued,
- 4) order expertise and opinion.

2. In cases involving classified information, providing the Defender with information or access to files shall be subject to the principles and procedures set forth in relevant regulations on the protection of classified information.

### **Article 14.**

Having examined a case, the Defender may:

- 1) explain to applicant that no infringement of liberties and rights of a human and a citizen has been found,
- 2) refer to the agency, organization or institution whose activity has been found to have caused an infringement of the liberties and right of a human and a citizen; such motion may not, however, infringe upon independence of the judiciary,
- 3) request an agency superior to the one referred to in point 2 to apply measures provided by law,
- 4) demand that proceedings be instituted in civil cases, and participate in any ongoing proceedings with the rights enjoyed by the prosecutor,
- 5) demand that preparatory proceedings be instituted by a competent prosecutor in cases involving offences prosecuted ex officio,
- 6) ask for instituting administration proceedings, lodge complaints against decisions to administrative court and participate in such proceedings with the rights enjoyed by the prosecutor,
- 7) move for punishment as well as for reversal of a valid decision in proceedings involving misdemeanor, under rules and procedures set forth elsewhere,



8) lodge cassation or extraordinary appeal against each final and valid sentence, under rules and procedures set forth elsewhere.

#### **Article 15.**

1) In the motion mentioned in art. 14 point 2, the Defender shall present opinions and conclusions as to how the case could be settled, and may also demand that disciplinary proceedings be instituted or official sanctions imposed.

2) The agency, organization or institution to which such motion has been addressed must, without unreasonable delay and no later than within 30 days, inform the Defender of whatever action or view has been taken. Should the Defender disagree with such a view, he can approach the relevant superior entity for necessary actions.

#### **Article 16.**

1. In connection with the cases examined, the Defender can present to the relevant agencies, organizations and institutions opinions and conclusions aimed at ensuring efficient protection of the liberties and rights of a human and a citizen and facilitating the procedures such cases may involve.

2. The Defender may also:

1) approach the relevant agencies with proposals for legislative initiative, or for issuing or amending other legal acts concerning the liberties and rights of a human and a citizen,

2) approach the Constitutional Tribunal with motions mentioned in Art. 188 of the Constitution,

3) report participation in the proceedings before the Constitutional Tribunal in the cases of constitutional complaints and take part in those proceedings,

4) request the Supreme Court to issue a resolution aimed at explaining legal provisions that raise doubts in practice, or application of has resulted in conflicting judicial decisions.

#### **Article 17.**

1. When approached by the Defender, an agency, organization or institution is obliged to co-operate and provide to the Defender due assistance, and in particular:

1) provide with an access to files and documents under provisions set forth in art. 13,

2) providing the Defender with required information and explanations,

3) give explanation concerning the factual and legal grounds for its decisions,



4) take its attitude to the Defender's general appraisal, comments and opinions.

2. The Defender may specify the period within which measures mentioned under section 1 have to be accomplished.

#### **Article 17a.**

The Defender collaborates with associations, civic movements or other good-will societies for the protection of the liberties and rights of a human and a citizen.

#### **Article 18.**

Provisions of this Act regarding protection of the liberties and rights of a human and a citizen shall also apply, respectively, to persons of non-Polish citizenship being under the authority of the Republic of Poland in the scope of the liberties and rights they enjoy.

#### **Article 19.**

1. The Defender shall annually inform the Sejm and the Senate on the his activities and on the observance of the liberties and rights of a human and a citizen.

2. The Defender's information shall be made public.

3. The Defender may submit to the Sejm and the Senate specific matters resulting from the Defender's activities.

4. If so requested by the Sejm Speaker, the Defender shall provide information or take action in specific cases.

#### **Article 20.**

1. The Defender shall perform the Defender's duties with the assistance of the Office of the Human Rights Defender.

2. The tasks and organization of the Office shall be set forth by its statute to be conferred, on the Defender's motion, by the Speaker of the Sejm.

3. On the motion of the Defender, the Speaker of the Sejm may appoint up to three Defender's deputies, including a deputy for soldiers. The same procedure shall apply in the event of recall.

4. The Defender shall determine the scope of responsibilities of the Defender's deputy (deputies).

5. Respective regulations on the employees of government offices shall apply to the Deputy Defender and employees of the Office of the Human Rights Defender.



**Article 21.**

Disbursements involved in the operations of the Defender shall be covered by the central budget.

**Article 22.**

The Defender may, upon the Sejm's approval, establish the his local representatives.

**Convention against Torture and Other Cruel, Inhuman or Degrading  
Treatment or  
Punishment**

**Adopted and opened for signature, ratification and accession by General  
Assembly**

**resolution 39/46 of 10 December 1984**

**entry into force 26 June 1987, in accordance with article 27 (1)**

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:



## **PART I**

### **Article 1**

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

### **Article 2**

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

### **Article 3**

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

### **Article 4**

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.



2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

### **Article 5**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases: (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

### **Article 6**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence.

The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.





### **Article 7**

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

### **Article 8**

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

### **Article 9**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.



2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

#### **Article 10**

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

#### **Article 11**

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

#### **Article 12**

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

#### **Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

#### **Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the



death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

### **Article 15**

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

### **Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

## **PART II**

### **Article 17**

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person



from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

### **Article 18**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

- (a) Six members shall constitute a quorum;



(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

### **Article 19**

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

### **Article 20**

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate



in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

## Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic



procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph

(c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General



of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

## Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.





7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

### **Article 23**

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### **Article 24**

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

## **PART III**

### **Article 25**

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### **Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.



### **Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

### **Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

### **Article 29**

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering an d voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

### **Article 30**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months



from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

### **Article 31**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

### **Article 32**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

### **Article 33**

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.



**Optional Protocol to the Convention against Torture and other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**Optional Protocol to the Convention against Torture and other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**Adopted on 18 December 2002 at the fifty-seventh session of the  
General Assembly of the United Nations by resolution**

**A/RES/57/199.**

**Protocol is available for signature, ratification and accession as from  
4 February 2003 (i.e. the date upon which the original of the Protocol  
was established) at United Nations Headquarters in New York.**

**PREAMBLE**

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights, Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment, Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction, Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures, Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures, Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention, Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:



## **PART I**

### **General principles**

#### **Article 1**

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

#### **Article 2**

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

#### **Article 3**

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

#### **Article 4**

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.



2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

## **PART II**

### **Subcommittee on Prevention**

#### **Article 5**

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

#### **Article 6**

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;



(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

### **Article 7**

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.



### **Article 8**

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

### **Article 9**

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 ( d).

### **Article 10**

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.





## **PART III**

### **Mandate of the Subcommittee on Prevention**

#### **Article 11**

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

#### **Article 12**

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;



(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

### **Article 13**

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short followup visit after a regular visit.

### **Article 14**

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.



2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

### **Article 15**

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

### **Article 16**

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party

makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.



## **PART IV**

### **National preventive mechanisms**

#### **Article 17**

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 provisions.

#### **Article 18**

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

#### **Article 19**

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.



## Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

## Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

## Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

## Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.



## **PART V Declaration**

### **Article 24**

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

## **PART VI Financial provisions**

### **Article 25**

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

### **Article 26**

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.



## **PART VII**

### **Final provisions**

#### **Article 27**

1. The present Protocol is open for signature by any State that has signed the Convention.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### **Article 28**

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

#### **Article 29**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### **Article 30**

No reservations shall be made to the present Protocol.

#### **Article 31**

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under



such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

### **Article 32**

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

### **Article 33**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

### **Article 34**

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.





Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

### **Article 35**

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

### **Article 36**

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

### **Article 37**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

## 14. Photos (examples)

### I. The conditions of deprivation of liberty in places of detention that were evaluated as negative by representatives of the national Preventive Mechanism



Separate residential room in the Juvenile Detention Centre and Juvenile Shelter in Świdnica



Bed for the application of a coercive measure (immobilisation) to intoxicated persons at the Sobering-up Station in Suwałki



Toilet in the room for intoxicated persons at the Sobering-up Station in Konin



Patient room at the Psychiatric Hospital in Olsztyn



Toilet in the residential cell in the Prison in Stargard Szczeciński



Three-storey bunker bed in a residential cell of the Prison in Stargard Szczeciński



Residential cell in the Pre-Trial Detention Centre in Chełmno (view of the toilet)



Residential cell in the Prison in Płock (view of the toilet)



Toilet with a blanket instead of the door in the residential cell of the Prison in Racibórz



Community room for prisoners at the therapeutic ward of the Prison in Wronki



Isolation cell in the Prison in Płock

## II. The conditions of deprivation of liberty in places of detention that were evaluated as positive by representatives of the national Preventive Mechanism



Chapel at the Social Care Centre in Wieleń



One of the bathrooms for residents at the Social Care Centre in Wieleń



Room for residents at the Social Care Centre for children in Poznań



Room for detained persons at the PDR in Kartuzy



Toilet for detained persons at the PDR  
in Kartuzy



General bathroom with separate showers  
at the Prison in Wronki



