



REPUBLIKA  
SLOVENIJA



VARUH  
ČLOVEKOVIH  
PRAVIC

**Državni preventivni mehanizem**  
po Opcijskem protokolu h Konvenciji OZN proti mučenju in drugim krutim, nečloveškim  
ali poniževalnim kaznim ali ravnanju

## Poročilo 2009 Report

**National Preventive Mechanism**  
under the Optional Protocol to the UN Convention  
against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



REPUBLIC OF  
SLOVENIA



HUMAN  
RIGHTS  
OMBUDSMAN







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I. Uvod  
I. Introduction

## I. UVOD

Po Zakonu o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju (Uradni list RS, št. 114/06, Mednarodne pogodbe, št. 20/06; opcijski protokol) Varuh človekovih pravic RS (Varuh) izvršuje tudi naloge in pooblastila državnega preventivnega mehanizma (DPM), v dogovoru z njim pa tudi izbrane nevladne organizacije, registrirane v Republiki Sloveniji, ter organizacije, ki so pridobile status humanitarne organizacije v Republiki Sloveniji in se ukvarjajo z varstvom človekovih pravic ali temeljnih svoboščin.

Na podlagi javnega razpisa, objavljenega v Uradnem listu RS (št. 107/2008, 14. 11. 2008), so bile za sodelovanje v letu 2009 in 2010 (z možnostjo podaljšanja sodelovanja še za eno leto) izbrane te organizacije (v nadaljevanju: izbrane organizacije): Pravno-informacijski center nevladnih organizacij (PIC), Rdeči križ Slovenije (RKS) in Inštitut Primus.

Izbrane organizacije izvajajo naloge in pooblastila ob opravljanju obiska po svojih osebah, ki so usposobljene za posamezna področja nadzora in so člani skupine DPM, ki jo določi Varuh. DPM opravlja obiske na kraju odvzema prostosti in preverja ravnanje z osebami, ki jim je bila odvzeta prostost. Kraj, čas in število članov skupine za opravljanje posameznega obiska določi Varuh na podlagi programa, pripravljenega v sodelovanju z izbranimi organizacijami, po potrebi pa pri tem upošteva tudi druge okoliščine, ki bi terjale takojšen obisk. V letu 2009 smo tako glede na sprejeti program obiskov opravili 41 obiskov različnih ustanov, v katerih so za krajši ali daljši čas nastanjene osebe, ki jim je odvzeta prostost (devet ustanov, kjer so nameščene osebe, ki so na prestajanju kazni zapora, oziroma priporniki ali mladoletniki z izrečenim vzgojnim ukrepom, 19 policijskih postaj, azilni dom v Ljubljani, center za tujce v Postojni, psihiatrično kliniko, posebni socialni (varstveni) zavod in devet domov za starejše). Pri obiskih smo sodelovali s sedmimi predstavniki PIC, 17 predstavniki Rdečega križa Slovenije in eno predstavnico Inštituta Primus.

Po opcijskem protokolu imajo DPM pooblastila, da na krajih odvzema prostosti redno preverjajo ravnanje z osebami, ki jim je bila odvzeta prostost, da bi okrepili njihovo varstvo pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali ponižujočega ravnanja ali kaznovanja. Hkrati, ob upoštevanju ustreznih norm Organizacije združenih narodov (OZN), dajejo priporočila ustreznim organom, da bi izboljšali razmere in ravnanje z osebami, ki jim je bila odvzeta prostost, ter preprečili mučenje in druge oblike krutega, nečloveškega, ponižujočega ravnanja ali kaznovanja. Predložijo lahko tudi predloge in pripombe k veljavnim ali predlaganim zakonom.

DPM v Sloveniji ob vsakem obisku pripravi izčrpno poročilo o svojih ugotovitvah in obiskani ustanovi. To poročilo vsebuje tudi predloge in priporočila za odpravo ugotovljenih nepravilnosti in za izboljšanje stanja, vključno z ukrepi za zmanjšanje možnosti nepravilnega ravnanja v prihodnje.



## I. INTRODUCTION

Pursuant to the Act ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette of the Republic of Slovenia No. 114/06, International No 20/06; Optional Protocol) the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) also carries out tasks and authorities under the National Preventive Mechanism (NPM). In accordance with the Ombudsman, the NPM is also carried out by selected non-governmental organizations registered in the Republic of Slovenia, and organizations that have acquired the status of humanitarian organizations in the Republic of Slovenia and deal with the protection of human rights or fundamental freedoms.

On the basis of a public tender published in the Official Gazette of the Republic of Slovenia (No. 107/2008, 14 November 2008) the following organizations (hereinafter referred to as: selected organizations) were selected for co-operation in 2009 and 2010 (with the option of renewing the co-operation for another year): Legal Information Centre for NGOs (PIC), the Slovenian Red Cross (RKS) and the Primus Institute.

The selected organizations implement tasks and permitted activities during visits by their personnel trained in individual fields of control and are members of the NPM group, which is determined by the Ombudsman. NPM carries out visits to a place of deprivation of liberty and examines the treatment of persons deprived of their liberty. The place, time and number of group members for carrying out a certain visit are determined by the Ombudsman on the basis of the programme prepared in cooperation with the selected organizations. Where appropriate, other circumstances which would require an immediate visit are taken into account. In 2009, on the basis of the adopted programme, 41 visits were made to various institutions that for a shorter or a longer period of time house persons deprived of liberty (nine institutions that house persons that are serving a prison sentence, detainees or minors with imposed educational measures, 19 police stations, the Asylum Home in Ljubljana, the Centre for Aliens in Postojna, a psychiatric clinic, special social security institutions and nine homes for the elderly). During these visits we cooperated with seven representatives of the Legal Information Centre for NGOs (PIC), 17 representatives of the Slovenian Red Cross and one representative of the Primus Institute.

Under the Optional Protocol, the NPMs have the authority to regularly examine the treatment of persons deprived of their liberty in places of deprivation of liberty in order to strengthen their protection against torture and other cruel, inhuman or degrading treatment or punishment. At the same time, taking into account the relevant standards of the United Nations (UN), they make recommendations to the relevant authorities to improve conditions and the treatment of persons deprived of their liberty, and to prevent torture and other forms of cruel, inhuman and degrading treatment or punishment. They can also submit proposals and comments to applicable or proposed laws.

Upon each visit in Slovenia, the NPM produces a comprehensive report on its findings regarding the institution visited. This report also contains proposals and recommendations to remedy identified irregularities and to improve the situation, including the measures for reducing the possibility of future misconduct.

Pri pripravi poročila o opravljenem obisku sodelujejo predstavniki Varuha in izbranih nevladnih ali humanitarnih organizacij. Za izdelavo poročila je praviloma odgovoren predstavnik Varuha, čeprav je lahko za njegovo izdelavo določena tudi oseba iz izbrane nevladne organizacije. Vsak član skupine lahko že med obiskom ali po njem pripravi kratko opombo o lastnih ugotovitvah in predlogih, ki postanejo del skupnega poročila o opravljenem nadzoru. Če pri obisku sodeluje tudi izvedenec medicinske stroke (na podlagi posebne pogodbeo delu), poročilo vsebuje tudi njegove ugotovitve in morebitna priporočila, ki se nanašajo na zdravstveno oskrbo v obiskani ustanovi.

Poročilo o opravljenem nadzoru obsega vse okoliščine, ki se nanašajo na zagotavljanje in spoštovanje telesne in duševne integritete ter človeškega dostojanstva ves čas odvzema prostosti. Rdeča nit vsakega poročila o obisku je spoštovanje prepovedi mučenja in nečloveškega ali ponižujočega ravnanja z osebami, ki jim je odvzeta prostost. Naša priporočila se nanašajo predvsem na materialne pogoje ustanov, kjer so ali bi lahko bile osebe, ki jim je bila odvzeta prostost (to so prezasedenost, velikost celic oziroma sob, svetloba, prezračevanje, čistoča, hrana ipd.), v primeru pripornikov in zapornikov pa tudi na režim prestajanja pripora in izvrševanja kazni zapora (kot so možnosti za delo, izobraževanje, druge prostočasne aktivnosti, stiki z zunanjim svetom: obiski, telefonski klici, ugodnosti), učinkovitost pritožbenih postopkov, dostopnost sodnega varstva, dostopnost zdravstvene oskrbe, informacij o pravicah idr.

Poročilo o opravljenem nadzoru tako vsebuje ugotovitve in priporočila, ki se nanašajo na posamično ustanovo, kjer so ali bi lahko bile osebe, ki jim je odvzeta prostost. Seveda so naša mnenja, predlogi in priporočila, ki jih vsebuje posamezno poročilo, uporabna tudi v vseh drugih institucijah z enakimi ali podobnimi nalogami.

Poročilo o opravljenem nadzoru pošljemo ustanovi, kjer je bil nadzor opravljen, in njej nadrejenemu organu. Glede na okoliščine primera določimo rok, v katerem mora institucija oziroma njej nadrejeni organ poročilo o opravljenem nadzoru obravnavati in nanj odgovoriti. Praviloma je ta rok 30 dni. V odgovoru oziroma odzivnem poročilu pričakujemo tudi navedbo, katere ukrepe bodo pristojni organi sprejeli za odpravo ugotovljenih nepravilnosti in izboljšanje ugotovljenega stanja. Po potrebi se po prejemu odzivnega poročila dialog z obiskano ustanovo ali njej nadrejenim organom nadaljuje. Poročilo in odzivi nanj pa so nato uporabljeni kot podlaga za nadaljnje obiske te ustanove. Ob vsakem naslednjem obisku je predhodno poročilo namreč podlaga za preverjanje napredka glede danih priporočil in predlogov za izboljšanje stanja v času od zadnjega obiska.

Povzetek vsakega poročila o opravljenem nadzoru ter odzivnega poročila se objavi na Varuhovi spletni strani ([www.varuh-rs.si](http://www.varuh-rs.si)) in je tako na voljo tudi zainteresirani širši in strokovni javnosti.

Tudi v letu 2009 smo slovenski model implementacije opsijskega protokola na povabilo organizatorjev nekajkrat predstavili na raznih mednarodnih srečanjih, saj je zaradi načina sodelovanja z nevladnimi organizacijami zanimiv tudi za druge države (npr. v Srbiji, Črni gori, Bosni in Hercegovini, na Kosovu, v Kirgiziji, Tadžikistanu in Gruziji).

Representatives of the Ombudsman and selected NGOs or humanitarian organizations cooperate in the preparation of the report on the visit which was carried out. The representative of the Ombudsman is generally responsible for producing the report, although this can also be done by a person from a selected non-governmental organization. Each member of the group may prepare, during or after the visit, a short note on his/her own findings and proposals which become a part of a joint monitoring report regarding the visit carried out. If a medical expert is present during the visit (on the basis of a specific work contract), the report also includes his/her observations and any recommendations relating to the health care in the institution visited.

The monitoring report on conditions of detention covers all circumstances relating to the provision and respect for physical and mental integrity as well as human dignity throughout the period of the deprivation of liberty. A common thread of each report on the visit is the compliance with the prohibition of torture and inhuman or degrading treatment of persons deprived of their liberty. Recommendations refer primarily to the material conditions of the institutions which house or may house persons who have been deprived of liberty (these are overcrowding, size of cells or rooms, lighting, ventilation, cleanliness, food, etc.), and in the case of untried detainees and prisoners also the regime of serving their detention, or execution of prison sentence (such as job opportunities, education, other leisure-time activities, contacts with the outside world: visits, phone calls, benefits), the effectiveness of complaints procedures, access to judicial protection, access to health care, information about rights, etc.

The monitoring report thus contains findings and recommendations relating to individual institutions, where persons are or might be deprived of their liberty. The opinions, proposals and recommendations contained in an individual report can obviously also be used in all other institutions with the same or similar tasks.

The monitoring report is sent to the institution, where the monitoring was carried out, and to its superior body. Depending on the circumstances of the case the time period is set within which the institution or its superior body must address the monitoring report and provide a response. Usually this period is set at 30 days. In the response, or the response report, a statement is expected as to which measures the competent authorities will adopt to remedy irregularities identified and improve the situation observed. After receiving the report, if necessary, the dialogue with the visited institution or its superior body continues. The report and its responses are then used as a basis for further visits of this institution. The previous report is the basis at each subsequent visit for reviewing progress on the given recommendations and proposals for improving the situation since the last visit.

A summary of each monitoring report and the response report is published on the Ombudsman's website ([www.varuh-rs.si](http://www.varuh-rs.si)) and is thus also available to any interested general public and to experts.

Also in 2009, upon the invitation of the organizers, the Slovenian model of the Optional Protocol implementation was presented several times at various international meetings, as due to the feature of the cooperation with non-governmental organizations, it is of interest also for other countries (for example in Serbia, Montenegro, Bosnia and Herzegovina, Kosovo, Kyrgyzstan, Tajikistan and Georgia).



II. Poročilo Varuha človekovih pravic Republike Slovenije  
o izvajanju nalog državnega preventivnega mehanizma v letu 2009

II. Report of the Human Rights Ombudsman of the Republic of Slovenia  
on Performing the Tasks of National Preventive Mechanism in 2009

## II. POROČILO VARUHA ČLOVEKOVIH PRAVIC REPUBLIKE SLOVENIJE O IZVAJANJU NALOG DRŽAVNEGA PREVENTIVNEGA MEHANIZMA V LETU 2009

### 1. Obiski zavodov za prestajanje kazni zapora in prevzgojnega doma

V letu 2009 smo v okviru izvajanja nalog in pooblastil državnega preventivnega mehanizma (DPM) po Opcijskem protokolu h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju obiskali Zavod za prestajanje kazni zapora (ZPKZ) Ljubljana, ZPKZ Dob pri Mirni, ZPKZ Maribor, Oddelek Murska Sobota, ZPKZ Ljubljana, Oddelek Novo mesto, ZPKZ Maribor, Prevzgojni dom Radeče, ZPKZ Koper, ZPKZ Koper, Oddelek Nova Gorica, in ZPKZ Ig (zavodi). To pomeni devet od 13 lokacij, na katerih so v letu 2009 v Republiki Sloveniji delovali zavodi za prestajanje kazni zapora<sup>1</sup> in prevzgojni dom. Gre za notranje organizacijske enote Uprave za izvrševanje kazenskih sankcij (UIKS), organa v sestavi Ministrstva za pravosodje, v njih pa je bila osebam odvzeta prostost zaradi izvrševanja kazni zapora, uklonilnega zapora, pripora ali vzgojnega ukrepa oddaje v prevzgojni dom.

Pri vseh teh obiskih je bil navzoč vsaj en predstavnik izbranih nevladnih organizacij. Največkrat sta bila navzoča predstavnik Pravno-informacijskega centra nevladnih organizacij (PIC) in Rdečega križa Slovenije, le pri obiskih ZPKZ Koper in ZPKZ Ig je predstavnika zagotovila le prvo navedena nevladna organizacija. Pri obiskih štirih zavodov (ZPKZ Maribor, Prevzgojni dom Radeče, ZPKZ Koper in ZPKZ Ig) se nam je pridružila tudi psihiatrinja, ki na podlagi pogodbe sodeluje z Varuhom kot zunanja izvedenka in je podajala svoje ugotovitve zlasti glede varstva zaprtih oseb z zdravstvenega vidika. Kot posebnost kaže omeniti še, da je bil pri obisku ZPKZ Koper, Oddelek Nova Gorica, kot opazovalec navzoč eden izmed predstavnikov estonskega Office of Chancellor of Justice, ki so bili tiste dni v Republiki Sloveniji zaradi izmenjave izkušenj z Varuhom o izvajanju nalog državnega preventivnega mehanizma po opcijskem protokolu.

Večino teh zavodov smo obiskali tudi že leto poprej, le ZPKZ Ljubljana, ZPKZ Dob pri Mirni in ZPKZ Maribor, Oddelek Murska Sobota, smo nazadnje obiskali v drugi polovici leta 2007. Največ lokacij (tri) smo obiskali jeseni 2009 (ZPKZ Koper 20. in 21. oktobra, ZPKZ Koper, Oddelek Nova Gorica, 25. novembra in ZPKZ Ig 15. decembra), spomladi (ZPKZ Maribor, Oddelek Murska Sobota, 21. aprila in ZPKZ Ljubljana, Oddelek Novo mesto, 26. maja), poleti (ZPKZ Maribor 23. in 24. junija in Prevzgojni dom Radeče 22. septembra) in pozimi (ZPKZ Ljubljana 17. in 18. februarja in ZPKZ Dob pri Mirni 17. in 18. marca) pa smo obiskali po dve lokaciji. To je relevantno zaradi specifičnosti razmer, ki ob različnih letnih časih vladajo v tovrstnih zavodih, čeprav je treba pri tem še pripomniti, da so v času obiska ZPKZ Ig vladale že prave zimske razmere (sneg, nizke temperature ipd.), glede na (astronomsko) delitev letnih časov pa je bila še jesen.

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<sup>1</sup> Med te ne štejemo novega odprtega oddelka ZPKZ Dob Puščava v Mokronogu, kamor so bili prvi obsojenci nameščeni v drugi polovici decembra 2009.

## II. REPORT OF THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA ON PERFORMING THE TASKS OF NATIONAL PREVENTIVE MECHANISM IN 2009

### 1. Institutions for serving prison sentences and Radeče correctional homes

In 2009, within the framework of implementing tasks and authorities within the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, visits were made to the following institution for serving prison sentences (prisons): Ljubljana Prison, Dob pri Mirni Prison, Maribor Prison, Murska Sobota Department, Ljubljana Prison, Novo mesto Department, Maribor Prison, Radeče Correctional Home, Koper Prison, Koper Prison, Nova Gorica Department, and Ig Prison (institutions). This accounts for 9 out of 13 locations where in the Republic of Slovenia operated institutions for serving prison sentences<sup>1</sup> and correctional homes in 2009. These are internal organizational units of the Prisons Administration of the Republic of Slovenia, the body within the Ministry of Justice, and in which persons were deprived of their liberty due to the execution of a prison sentence, fine-default detention, detention or educational measure of committal to a correctional home.

During all these visits at least one representative of the selected non-governmental organizations was present. The representative of the Legal Information Centre for NGOs (PIC) and the Slovenian Red Cross were present in most cases. Only during the visits of the Koper Prison and Ig Prison, did the first mentioned non-governmental organization provide a representative. During the visit of four institutions (Maribor Prison, Radeče Correctional Home, Koper Prison and Ig Prison) a psychiatrist who co-operates with the Ombudsman on a contractual basis as an outside expert was present. She has delivered her findings particularly with regard to the protection of prisoners from a health perspective. It is particularly worth mentioning that during the visit of Koper Prison, Nova Gorica Department, one of the representatives of the Estonian Office of the Chancellor of Justice, who were at that time in the Republic of Slovenia due to the exchange of opinions with the Ombudsman regarding the implementation of tasks imposed by the National Preventive Mechanism under the Optional Protocol, was present as an observer.

Most of these institutions were also visited a year before. Only Ljubljana Prison, Dob pri Mirni Prison and Maribor Prison, Murska Sobota Department, were last visited in the second half of 2007. Most locations were visited (three) in autumn 2009 (Koper Prison on 20th and 21st October, Koper Prison, Nova Gorica Department, on 25th November and Ig Prison on 15th December), in spring (Maribor prison, Murska Sobota Department, on 21st April and Ljubljana prison, Novo Mesto Department, on 26th May), summer (Maribor Prison on 23rd and 24th June and Radeče Correctional Home on 22nd September) and in winter two locations were visited (Ljubljana Prison on 17th and 18th February and Dob pri Mirni prison on 17th and 18th March). This is relevant due to the specific conditions prevailing in such institutions in different seasons, although it should be noted that during the visit of Ig Prison there were already real winter conditions (snow, low temperatures, etc.), even though according to the calendar it was technically still autumn.

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<sup>1</sup> The new open department of the Dob Puščava Prison in Mokronog, where the first prisoners were placed in the second part of November 2009, is not included among these institutions.

Štiri od devetih lokacij smo obiskali po predhodni napovedi (ZPKZ Ljubljana, Dob pri Mirni, Maribor in Koper). To so glede na svoje zmogljivosti štiri največji ZPKZ v državi in tam so obiski potekali po dva dneva oziroma so bili že načrtovani za več kot en dan. Sicer pa smo obiske opravljali nenapovedano in v enem dnevu. Skupno smo tako za izvedbo obiskov vseh za leto 2009 izbranih krajev odvzema prostosti te kategorije porabili 13 dni.

Osrednji del vsakega našega obiska ZPKZ je bil ogled bivalnih prostorov zaprtih oseb in pogovor z vsemi zaprtimi osebami, ki so to želele. Ta del obiska smo praviloma opravljali v parih, in sicer tako, da je bil v vsakem paru (tudi) po en predstavnik izbranih nevladnih organizacij. Zaprte osebe, s katerimi smo bili med obiski v neposrednem stiku, so bili obsojenci in obsojenke, priporniki in pripornice, osebe v uklonilnem zaporu ter mladoletniki (mladoletnice) z vzgojnim ukrepom oddaje v prevzgojni dom. Skupno je bila v teh zavodih na dneve naših obiskov prostost odvzeta 1.178 osebam. Večina zaprtih oseb se je z nami želela tudi pogovoriti in le nekatere zaprte osebe so pogovor zavračale ali ta ni bil mogoč (npr. zaradi navzočnosti na glavni obravnavi pred kazenskim sodiščem).

Vsak obisk DPM vključuje tudi pogovor z vodstvom zavoda, po možnosti skupaj s predstavniki pravosodnih policistov in strokovnih delavcev. Tega opravimo pred ogledom bivalnih prostorov zaprtih oseb, da pridobimo podatke o stanju v zavodu, nato pa še po pregledu bivalnih prostorov, ko predvsem poskušamo dodatno razčistiti pritožbe, ki smo jih med pogovori prejeli od zaprtih oseb. Po potrebi vpogledamo v dokumentacijo, ki jo vodi obiskana ustanova, in na koncu obiska še ustno podamo ključne ugotovitve o obisku ter morebitne (nujne) predloge in priporočila za izboljšanje stanja.

Po vsakem obisku smo izdelali poročilo o ugotovitvah in kjer je bilo to po našem mnenju potrebno, tudi podali predloge, mnenja, kritike in priporočila za izboljšanje stanja oziroma odpravo nepravilnosti. Ta poročila, skupaj z zahtevo, da se v določenem roku do navedenega opredeli, pošiljamo Generalnemu uradu UIKS (Urad), v vednost pa tudi obiskanemu zavodu.

Ključne ugotovitve z naših obiskov zavodov in prevzgojnega doma so podane tematsko v nadaljevanju, povzetki poročil posamičnih obiskov pa so na voljo na spletni strani <http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/varuh-kot-drzavni-preventivni-mehanizem/>.

### **(Pre)zasedenost**

Uradne zmogljivosti vseh tokrat obiskanih zavodov so od naših prejšnjih obiskov ostale nespremenjene. Tako niti ne preseneča, da so se vsi zavodi, ki so se s prezasedenostjo ukvarjali že, ko smo jih nazadnje obiskali, z njo spopadali tudi tokrat – in nasprotno (do določene mere je pri tem izjema le ZPKZ Koper). Prezasedenost je tako ob naših letošnjih obiskih pestila štiri od obiskanih ZPKZ (Ljubljana, Dob pri Mirni, Ljubljana, Oddelek Novo mesto, in Maribor). Drugi (Maribor, Oddelek Murska Sobota, Prevzgojni dom Radeče in Koper, Oddelek Nova Gorica) te težave niso imeli, ZPKZ Koper pa je imel na dan našega obiska svojo uradno zmogljivost zasedeno »le« 100-odstotno, vendar število zaprtih oseb v tem zavodu narašča, v glavnem zaradi premeščanja obsojencev iz ZPKZ Ljubljana in ZPKZ Dob pri Mirni. Ob dnevih, ko smo ju obiskali, sta bila oba blizu enkrat preseženi uradni zmogljivosti (v prvem je bila ta presežena 98-, v drugem pa 86-odstotno).



Visits to four out of nine locations were previously announced ( Ljubljana Prison, Dob pri Mirni, Maribor and Koper). These are, according to their facilities' capacity, the four largest institutions for serving prison sentences in the country. Visits there lasted for two days or had already been planned to take place for more than one day. Otherwise visits were unannounced and lasted one day. Altogether in 2009, 13 days were spent visiting the selected places of deprivation of liberty of this category.

A central part of each visit of the institutions for serving prison sentences was the inspection of prisoners' accommodation and interviews held with all prisoners who wished to talk. This part of the visit was generally carried out in pairs in such a manner that one representative of the selected non-governmental organizations was also a member of each pair. Prisoners, with whom we were in direct contact during the visits, were convicted persons, detainees, persons in fine-default detention and minors imposed with educational measure of committal into a correctional home. A total of 1,178 persons were deprived of their liberty in these institutions on the days of our visits, The majority of prisoners also wanted to have a conversation with us and only a few of them refused to or could not do so (for example due to their presence at a hearing before the Criminal Court).

Each NPM's visit includes an interview with the management of the institution, preferably together with the representatives of prison officers and professionals. This is done before the inspection of prisoners' accommodation in order to obtain information about the conditions in the institution, and also after the inspection, when a special attempt is made to look into complaints received during interviews with prisoners. If necessary, an examination is made into documentation which is kept by the institution and at the end of the visit key findings are verbally given about the visit and possible proposals and recommendations for any urgent improvements.

After each visit a report is produced on findings and where this was thought necessary also proposals, opinions, criticisms and recommendations for improvements or to remedy deficiencies. These reports, together with the requirement to make a decision with regard to the subject mentioned within a determined period, are sent to the Head Office of the Prison Administration of the Republic of Slovenia (Office), and, for information, to the institution visited.

Key findings from the visits of institutions and correctional homes are given thematically below and summaries of reports of individual visits are available on the website <http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/varuh-kot-drzavni-preventivni-mehanizem/>.

### **Overcrowding**

The stated official capacities of all institutions visited this time have remained unchanged from previous visits. Thus it is not surprising that all institutions which suffered from overcrowding when they were last visited are still faced with it now – and vice versa (to some extent the exception is only ZPKZ Koper). Four of the visited Prisons (Ljubljana, Dob pri Mirni, Novo Mesto Department, and Maribor) were thus undergoing overcrowding at the time of being visited this year. Others (Maribor, Murska Sobota Department, Radeče Correctional Home and Koper, Nova Gorica Department) did not have this problem, Koper Prison had, on the day of its visit, an official occupied capacity of "only" 100 percent but the number of prisoners in this institution is increasing, mostly due to the transfer of convicted persons from Ljubljana Prison and Dob pri Mirni Prison. At the time of visiting, both were close to the facility's stated official capacity which had once previously been exceeded (in the first it was exceeded by 98 percent, and in the second 86 percent).

Problem prezasedenosti ZPKZ je eden najbolj kritičnih in tudi kompleksnih na področju izvrševanja kazenskih sankcij, predvsem ko gre za ukrep pripora. Zdi se, da se je za rešitev te problematike izkoristilo tako rekoč vse, kar je bilo mogoče, s smiselnim premeščanjem zaprtih oseb po ZPKZ oziroma njihovih oddelkih. Ob obisku ZPKZ Maribor nam je bilo pojasnjeno, da se premeščanja na zunanja oddelka v Murski Soboti in Rogozi načeloma niti ne morejo več izvajati, saj se prekoračitvi zmogljivosti čedalje bolj približujejo tudi tam. Poleg tega, da premeščanje neizogibno vodi v povečanje števila zaprtih oseb tam, kamor se premeščajo, ima lahko tudi druge negativne učinke. To lahko prikažemo s primerom ZPKZ Ljubljana, kjer obsojence, ki izpolnjujejo pogoje za bivanje v svobodnejšem režimu prestajanja kazni zapora, premeščajo v ZPKZ Ljubljana, Odprti oddelek Ig, s čimer se slabša struktura zaprtih oseb, ker tako ostajajo v zaprtem delu zavoda predvsem bolj »problematični« obsojenci.

Varuh že dalj časa poudarja, da bi bilo treba rešitev za prezasedenost zavodov za prestajanje kazni zapora (po)iskati predvsem v drugih smereh, tudi na normativni ravni, s povečano možnostjo alternativnega prestajanja (krajših) kazni zapora. Pomemben del rešitve je seveda tudi zgraditev novih zmogljivosti, čeprav opozarjamo pred novogradnjami, ki bi privedle do čezmerne koncentracije zaprtih oseb na enem kraju. V tem pogledu najbolj obetajoče kaže glede ZPKZ Dob pri Mirni, kjer smo ob obisku lahko opazili, da so se končno začela izvajati pripravljalna gradbena dela zaradi prenove in povečanja bivalnih prostorov. Poleg povečanja zmogljivosti naj bi se s tem omogočilo tudi prestajanje kazni zapora predvsem v eno- oziroma triposteljnih sobah, ne več v skupinskih. Po drugi strani načrtovana gradnja novega ZPKZ Ljubljana najverjetneje še vsaj nekaj časa ne bo izvedena. Tudi Urad je v zvezi s tem v odzivnem poročilu navedel, da ni realno pričakovati, da bo v kratkem ta objekt tudi zgrajen, saj bo gradnja trajala dalj časa, še posebej če ne bo na razpolago zadostnih finančnih sredstev. Tudi Urad že dalj časa opozarja na nemogoče razmere tudi resorno Ministrstvo za pravosodje, s problematiko naj bi bila seznanjena tudi Vlada Republike Slovenije. DPM ne dvomi o tem, da so vsi pristojni državni organi že dalj časa ustrezno seznanjeni z izpostavljenimi problematiko. V zdajšnjih gospodarskih razmerah je do določene mere razumljivo, da reševanje prezasedenosti ZPKZ ni prednostna naloga, vendar ne gre pozabiti, da te nepravilnosti trajajo že več let. Očitno je dosežena kritična točka, ko bo treba razmisliti o bolj sistemskih rešitvah, če naj bi država sploh izpolnjevala obveznosti, ki jih je sama sprejela bodisi s (pod)zakonskimi predpisi bodisi z ratifikacijo določenih mednarodnih pravnih aktov.

Pri vseh zavodih, ki jih je pestila prezasedenost, je bila ta najbolj pereča v priporu, glede na predvidena mesta v njih. Kot najočitnejši primer moramo izpostaviti zopet ZPKZ Ljubljana, kjer je bilo ob predvidenih 55 mestih za pripornike na dan našega obiska v njem nameščenih 126 pripornikov in je bila zmogljivost presežena za kar 129 odstotkov. Posebej kaže omeniti še ZPKZ Ljubljana, Oddelek Novo mesto, kjer so bile na dan našega obiska v delu pripora uradne zmogljivosti tokrat presežene za 75 odstotkov, pri čemer smo tudi prvič ugotovili, da je moral zaradi prostorske stiske eden izmed pripornikov v celici bivati le na žimnici, ki je bila položena na gola tla. To smo označili za povsem nedopustno in je tudi v nasprotju (vsaj) s Standardnimi minimalnimi pravili o ravnanju z zaporniki Organizacije združenih narodov, kjer je v 19. točki med drugim navedeno, da »mora vsak zapornik imeti, v skladu s krajevnimi ali nacionalnimi navadami, svojo posteljo in posteljnino. Tudi priporočilo št. R (2006) 2 Odbora ministrov Sveta Evrope državam članicam o evropskih zaporskih pravilih v 21. točki med drugim določa, naj se vsakemu zaporniku zagotovita ločena postelja in ločena posteljnina. V tem primeru smo predlagali, naj zavod in Urad zagotovita, da takšnih primerov v prihodnje ne bo več, Urad pa je pojasnil, da v prezasedeni bivalni prostor ni bilo mogoče namestiti postelje, zato se je zavod odločil za edino možno rešitev. O odreditvi pripora za določeno osebo zavod v nobenem primeru ni vnaprej obveščen, tako osebo v pripor pripelje policija ob vsakem času, zato tudi takojšna premestitev pripornika v drug za-

The problem of overcrowding with regard to the institutions for serving prison sentences is one of the most critical and complex problems in the area of enforcing criminal sanctions especially when it comes to detention. It seems that virtually everything that was possible was done to resolve this problem, by means of the reasonable transfer of prisoners among prisons or its departments. During the visit of Maribor Prison it was explained that transfers to outside departments in Murska Sobota and Rogoza cannot be carried out anymore as the facility's capacity there is almost exceeded as well. In addition to the fact that the transfer inevitably leads to an increase in the number of prisoners in the place where they are transferred, it may also have other negative effects. This can be shown in the case of Ljubljana Prison where convicted persons who fulfil the conditions for living in a more liberal regime for serving their prison sentence, are being transferred to Ljubljana Prison, Ig Open Department, thereby deteriorating the make-up of the prisoner population because mostly the more "problematic" prisoners remain in the Institution's closed department.

The Ombudsman has been pointing out for some time that the solution for solving the overcrowding of institutions for serving prison sentences should be mainly found in other directions, including on a normative level, with an increased possibility of the alternative serving of (shorter) prison sentences. An important part of the solution is of course the construction of new facilities, although our warning has been given against new buildings which would lead to an excessive number of prisoners in one place. In this view, the situation is the most promising with regard to institution Dob pri Mirni Prison, where when visited it was noticed that preparatory construction works for renovations and an increase of living quarters have finally started. In addition to an increase in the facility's capacity it will also allow prison sentences to be served mainly in single or triple rooms, and no longer in group rooms. On the other hand the planned construction of a new Ljubljana Prison will probably not take place for at least some time. In its response report the Office stated that it is not realistic to expect that this facility will be built soon, as this construction will take some time, especially if there are not enough financial resources available. The Office has been notifying the Ministry of Justice regarding the impossible conditions. The Government of the Republic of Slovenia is supposed to have taken note of these issues. NPM does not doubt the fact that all responsible national authorities have been appropriately familiarized with the highlighted issues for a long time. In the light of the current economic situation it is to a certain extent understandable that solving the issue of overcrowding is not a priority but it should not be forgotten that these irregularities have been going on for several years. A critical point has obviously been reached when it will be necessary to consider more organic solutions if the country is to meet its obligations at all, comprising those which were passed either by means of statutory and implementing regulations or by ratification of certain international legal acts.

Concerning all institutions facing overcrowding this problem was the most pressing with regard to detention, considering the anticipated places in them. As a most obvious case Ljubljana Prison must again be highlighted where in an anticipated 55 places for detainees, 126 detainees were accommodated, and capacity was exceeded by as much as 129 percent. It is particularly worth mentioning Ljubljana Prison, Novo mesto Department, where in the detention section on the day of visit, the facility's official capacity was exceeded by 75 percent this time. It was also discovered for the first time that due to lack of space, one of the detainees had to be accommodated only on a mattress which was laid on the bare floor. This was recorded as completely unacceptable and it is also contrary to (at least) UN Standard Minimum Rules for the Treatment of Prisoners, where item 19 states, inter alia, that »Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding.« Also, Recommendation No. R (2006) 2 of the Committee of Ministers of the Council of Europe to the Member States on European Prison Rules in the item 21 provides that, inter alia, every prisoner shall be provided with a separate bed and separate and appropriate bedding. In this case it is proposed that the

vod niti ni mogoča, ker mora o premestitvi na predlog s sklepom odločiti pristojno sodišče. Urad in zavod naj tako ne bi imela na razpolago realne možnosti za ustrezno reševanje tega problema, razen da čim prej poskrbita za premestitev v zavode ali oddelke, ki imajo na razpolago proste postelje.

Za pripornike velja domneva nedolžnosti in zato ni prav, da ukrep, ki jim je bil odrejen, prestajajo v še slabših razmerah kot obsojenci prestajajo kazen zapora. Poleg slabih materialnih razmer ima prezasedenost vpliv še na več drugih vidikov prestajanja in izvrševanja pripora (težave glede organiziranja aktivnosti, omogočanja tuširanja, zagotavljanja spremestev zunaj zavoda, ko bi bilo to potrebno, ipd.). Smiselno enako seveda velja tudi glede obsojencev oziroma prestajanja kazni zapora. Za ponazoritev naj že na tem mestu navedemo primer ZPKZ Ljubljana, Oddelek Novo mesto, ki je izpraznil eno izmed sob na obsojniškem delu in vanjo namestil pripornike, to pa je spremenilo režim aktivnosti za vse v tem delu zavoda, tako da so pri bivanju zunaj celic omejeni tudi obsojenci, ki prestajajo kazen zapora na polodprtem oddelku. Ne gre tudi pozabiti, da so že po svoji naravi, v kombinaciji z nekaterimi drugimi dejavniki, kot je na primer odvisnost od prepovedanih drog, pa še toliko bolj v razmerah prezasedenosti poudarjene tudi možnosti konfliktov, ki prinašajo le še nove težave.

Varuh že dalj časa poudarja, da prezasedenost slabo vpliva na življenjske razmere zaprtih oseb ter otežuje zagotavljanje varnosti in reda. Prepričani smo, da bi bilo veliko pomanjkljivosti, na katere opozarjamo, (vsaj) z omilitvijo teh razmer v precejšnji meri rešenih.

### **Bivalne razmere**

Večjih izboljšav bivalnih razmer za zaprte osebe glede na prejšnje obiske zavodov nismo ugotovili. V Prevezgojnem domu Radeče in ZPKZ Ig je bila v določenem delu izvedena načrtovana pregraditev v več manjših bivalnih prostorov, veliko gradbenih posegov v zavodih pa ostaja le načrtovanih. Po pojasnilih Urada izvedbo ovira pomanjkanje finančnih sredstev, v določenih primerih pa tudi lastništvo objektov (npr. ZPKZ Koper, Oddelek Nova Gorica).

Pogosto smo opažali, da je inventar v bivalnih prostorih zaprtih oseb dotrajan oziroma poškodovan. V eni izmed sob v ZPKZ Koper so bila poškodovana vhodna vrata in vrata sanitarnega prostora, v tem ni bilo mogoče prižgati luči, odlomljen je bil plastičen pokrov na WC-kotličku in razmajan je bil nastavek tuša. Obsojenec, ki je bil tam nastanjen, je bil z njegovim soglasjem zato že med našim obiskom premeščen v drug bivalni prostor. Tudi sicer je bilo v času naših obiskov udejanjenih precej naših predlogov glede manjših popravil v zavodih (menjava nedelujočih žarnic, namestitev kljuka na vrata ipd.), drugače pa smo predlagali, da jih opravijo čim prej. Načeloma bi zavodi lahko temu že sami namenili več pozornosti in poskrbeli za sprotno odpravljanje okvar in pomanjkljivosti.

institution and the Office ensure that such cases will not occur in the future. The Office explained that it was not possible to fit a bed in the overcrowded living area and that is why the institution decided on the only possible solution. In no case is an institution ever informed in advance about the detention order for a certain person. Such a person is thus brought into detention by the police at any time so the immediate transfer of a detainee to another institution is not possible since the competent Court has to decide on the request for transfer. Therefore the institution and the Office would not have any real possibilities available for solving this issue adequately, other than that they make arrangements as soon as possible for transfer to institutions or departments that have free beds available.

With regard to detainees a presumption of innocence applies and therefore it is wrong that they serve the measure imposed in an even worse situation than convicted persons who are serving a prison sentence. In addition to poor material conditions, the overcrowding has impact on several other aspects of serving and executing detention (problems with organizing activities, facilitating showering, providing escort outside the institution when it would be necessary, etc.). The same obviously also applies, *mutatis mutandis*, with regard to convicted persons or the serving of a prison sentence. The case of Ljubljana Prison, Novo mesto Department is referred to for illustration purposes: the authority emptied one of the rooms in the prisoner section and accommodated some detainees there. This, however, changed the activities regime for everybody in this section of the institution so that the before mentioned prisoners, who were serving a prison sentence in the semi-open department, were limited as regarded staying outside the cells. It should be kept in mind that by its very nature, in combination with some other factors such as drug addiction, and further, under such conditions of overcrowding, the possibility of conflicts, which only brings new problems, is highlighted.

The Ombudsman has been pointing out for a long time that overcrowding has adverse effects on the living conditions of prisoners and makes it difficult to ensure safety and order. It is believed that a lot of identified deficiencies noted by the Ombudsman would be solved with (at least) the easing of these conditions.

### **Living conditions**

In relation to previous visits of institutions no major improvements have been found with regard to living conditions for prisoners. In Radeče Correctional Home and Ig Prison the planned subdivision into a number of smaller living areas has been carried out in certain parts of the institution, while many construction works in institutions remain only planned. According to explanations given by the Office the implementation is hindered by the lack of financial resources and in some cases also by the ownership of objects (e.g. Koper Prison, Nova Gorica Department).

It has often been observed that the infrastructure in prisoners' accommodation is worn out or damaged. In one of the rooms of Koper Prison, the entrance door and the door of the sanitary facility were damaged. The light in the latter could not be turned on, the plastic lid on the toilet tank was broken and the shower spray hose was faulty. The prisoner who was accommodated there was in fact transferred into another living area during the visit, with his consent. A lot of proposals concerning minor repairs in institutions were fulfilled during the time of the visit (change of broken light bulbs, installation of door handle, etc). Otherwise it was proposed that they be made as soon as possible. In principle, the institutions could pay more attention to these and try to fix these damages and deficiencies each time they occur.



Ponekod (npr. ZPKZ Dob pri Mirni) je bilo glede na število obsojencev premalo opreme (tudi omar) in so zato obsojenci svoje stvari spravljali v razne vrečke in škatle, kar je še bolj poudarilo natrpanost bivalnih prostorov. To tudi ni varen način shranjevanja osebnih stvari. V ZPKZ Maribor, Oddelek Murska Sobota, smo v eni izmed priporniških sob opazili nameščene štiri postelje in (le) tri omare za shranjevanje osebnih predmetov, v neki drugi priporniški sobi pa je bila nameščena miza, ki je bila premajhna, da bi za njo lahko obedovali vsi štirje priporniki. Po drugi strani smo ponekod opažali v sobah več inventarja, kot bi ga moralo biti glede na število v njej nastanjenih oseb (npr. ZPKZ Koper, Oddelek Nova Gorica), in je bila zato v njih utesnjenost večja, kot bi bilo potrebno.

Menimo tudi, da je treba zaprte osebe spodbujati k primernemu odnosu do zavodske opreme. Neredko smo ugotavljali, da je bila tudi nedavno zamenjana oprema že poškodovana. Varuh že dalj časa opozarja, da bi bilo prav, da bi zavodi dosledno odkrivali povzročitelje škode in od njih izterjali tudi škodo, če je ti ne bi povrnili prostovoljno. Z nami se v tem pogledu strinja tudi Urad.

Pogoste so bile pritožbe zaprtih oseb zaradi ležišč (predvsem v ZPKZ Ljubljana, Dob pri Mirni in Maribor) in v večini primerov smo trditvam o njihovi dotrajanosti lahko pritrdili. Čeprav smo bili vselej deležni pojasnil, da lahko zaprte osebe ležišča kadar koli zamenjajo, to očitno ni bilo tako ali pa s to možnostjo niso bile seznanjene.

### **Vzdrževanje higiene**

Ob prevladujočem skupinskem prestajanju kazni, pogosto v prezasedenih prostorih, je vzdrževanje osebne in tudi siceršnje higiene ključnega pomena. Ob tem so higienske navade zaprtih oseb, ki so (v večini primerov) primorane bivati skupaj z drugimi, lahko zelo različne. V takih razmerah se mora spodbujanju k vzdrževanju higiene posvečati posebno pozornost, ob tem pa je treba tudi zagotoviti ustrezne možnosti, da je zanjo sploh mogoče v zadostni meri skrbeti.

Načeloma lahko rečemo, da so zaprte osebe v danih razmerah (lahko) primerno skrbele za čistočo svojih bivalnih prostorov, čeprav so bile tudi določene izjeme.

Nad pomanjkanjem higiene so se zaprte osebe množično pritoževale (le) na vseh oddelkih ZPKZ Maribor. Skrb vzbujajoče je bilo predvsem zatiranje, da odej ni mogoče oddajati v pranje in te so, resnici na ljubo, (pre)pogosto tudi dajale takšen vtis. Kljub zagotovitvi ob našem prejšnjem obisku, da bo zavod obsojencem in pripornikom ponovno pojasnil možnosti zamenjave dotrajanih in čiščenja umazanih odej, so bile v zvezi s tem še vedno težave. Zato smo predlagali, naj zavod tudi sam poziva zaprte osebe, da oddajo umazane odeje v pranje, dotrajane pa zamenjajo. Ob obisku smo ugotovili še, da so približno mesec dni pred našim obiskom štiri zaprte osebe zbolele za garjami. Po pojasnilih Urada je bila okužba opazna pri treh na novo sprejetih obsojencih v sprejemnem oddelku, ki so se najverjetneje okužili v stiku z obsojencem, ki je s to boleznijo prišel na prestajanje kazni zapora. Zavod oziroma zdravstvena služba sta ukrepala in odrejeni zdravstveni, higienski in drugi ukrepi so bili učinkoviti, saj se okužba ni razširila. Tudi zdravstveni inšpektor, ki je po tem dogodku opravil sanitarni nadzor, ni ugotovil nepravilnosti.

Ugotovili smo, da vsem zaprtim osebam še vedno ni omogočeno vsakodnevno prhanje. V določenih zavodih se priporniki namreč še vedno lahko oprhajo praviloma le dvakrat na teden (npr. ZPKZ Maribor, ZPKZ Maribor, Oddelek Murska Sobota). V primeru ZPKZ Ljubljana, Oddelek Novo mesto, smo pri tem opazili vsaj malenkosten premik na bolje (z dvakratne tedenske možnosti prhanja na trikrat tedensko). V ZPKZ Ljubljana pa je prhanje načeloma omogočeno vsak dan, vendar so težave pri zagotavljanju zadostne količine tople vode. Po pojasnilih Urada je vzrok v prešibki toplovodni napeljavi, ljubljanska toplarna pa naj je ne bi dovolila nadomestiti z močnejšo.

In some places (e.g. Dob pri Mirni Prison) there were not enough fittings (also cupboards), given the number of prisoners, and therefore the prisoners put their personal belongings in various bags and boxes which only emphasized the overcrowding of living spaces. This is also not a safe way of storing personal belongings. In Maribor Prison, Murska Sobota Department, in one of the detainees rooms, four beds and (only) three cupboards for storing personal belongings were found, and in the other there was a table which was too small for all four detainees. On the other hand in some rooms there were found to be more articles than necessary, considering the number of people accommodated there (e.g. ZPKZ Koper, Nova Gorica Department), therefore the tightness of space in these places was greater than necessary.

It is also thought that prisoners should be encouraged to give proper treatment to the prison equipment. Recently replaced fittings were seen to be already damaged. The Ombudsman has been given notifications for some time that it would be right for the institutions to consistently pursue persons who have caused the damage and make them pay compensation for it, even if not willingly. The Office agrees with this.

Prisoners frequently complained about the beds (especially Ljubljana, Dob pri Mirni and Maribor Prisons) and in most cases we could confirm the claims about their being worn-out. Although the explanation was always given that the prisoners could change beds anytime, this was obviously not the case, or the prisoners were not familiar with this possibility.

## **Hygiene**

With the prevailing group form of serving prison sentences, often in overcrowded places, the care for personal hygiene and hygiene in general is of key importance. The hygiene habits of prisoners, who are (in most cases) forced to live together with other prisoners, may be very different. In such conditions special attention has to be given to the encouragement of the care for personal hygiene and also to provide appropriate facilities to give sufficient care for it.

In principle, it is possible to report that prisoners, in given conditions, were able to take appropriate care for cleanliness of their living areas, although there were some exceptions.

Only in all departments of Maribor Prison did many prisoners complained about the lack of hygiene. Of main concern was mostly their claim that the blankets could not be washed and, in reality this seemed to be the case. Despite assurances during the previous visit that the institution would again explain to convicted persons and detainees the possibilities of changing worn out blankets and cleaning them, there were still some issues in this respect. Therefore it was proposed that the institute instructs the prisoners to give the dirty blankets up for washing and replace those that were worn out. During a visit it was also found out that about a month before four prisoners suffered from scabies. According to the explanation by the Office the infection was discovered with three newly adopted prisoners in the reception department, who probably became infected when in contact with a prisoner who came to prison with this disease. The institute or the healthcare service took appropriate action and the implemented health, hygiene and other measures were effective, because the infection did not spread. Also the health inspector, who performed a sanitary inspection after this event, did not find any irregularities.

It was discovered that all prisoners are still not able to shower on a daily basis. Namely, in certain institutions prisoners can usually have a shower only twice a week (e.g. Maribor Prison, Maribor Prison, Murska Sobota Department). In the case of Ljubljana Prison, Novo mesto Department, at least a small change for the better (from two times a week to three) was noticed. In Ljubljana Prison, however, showering is in principle possible every day but there are some difficulties in ensuring sufficient quantities of hot water. According to the explanations by the Office the cause lies in a weak hot-water installation system and the heating plant in Ljubljana would not allow it to be replaced with a stronger one.

## **Zdravstveno varstvo**

Na področju zdravstva so bile opazne večje spremembe. S 1. 1. 2009 je namreč nastopil prehod v javno zdravstveno mrežo in tako se zdravstvena oskrba zdaj tudi v zavodih zagotavlja v tem okviru. S tem so za zaprte osebe uveljavljeni standardi, enaki tistim zunaj zavodov. Ena izmed ključnih razlik glede na prejšnjo ureditev je, da imajo zavodi za opravljanje zdravstvene dejavnosti v njih zdaj sklenjene pogodbe z zdravstvenimi domovi, in ne več s samimi zdravniki. Če so bili prej torej pogodbeni partnerji zdravniki in je usklajevanje lahko potekalo neposredno z njimi, mora zdaj potekati prek zdravstvenih domov.

Prehod je predvsem v začetku prinesel nekaj organizacijskih, administrativnih in računalniško-informacijskih (ne)pričakovanih težav. Kljub temu je Urad menil, da je bila odločitev za vključitev zaprtih oseb v javno zdravstveno mrežo dolgoročno dobra rešitev, kar je ugotavljal tudi Varuh ob izvrševanju nalog državnega preventivnega mehanizma. Sicer pa tudi do konca leta vse pomanjkljivosti prehoda še niso bile odpravljene. Urad naj bi jih reševal takoj v začetku leta 2010 skupaj z Ministrstvom za zdravje, pri čemer si obeta, da jim bo uspelo doreči jasen pregled storitev, do katerih so zavodi v okviru pogodbe z zdravstvenimi domovi upravičeni.

Ugotavljamo, da je velik problem zdravstveno zavarovanje posameznikov. Za ponazoritev naj navedemo, da ga ob našem obisku ZPKZ Ljubljana kar 50 odstotkov zaprtih oseb že pred nastopom prestajanja kazni zapora ni imelo urejenega. V ZPKZ Ig pa zdravstvenega zavarovanja ni imelo urejenega kar 63 odstotkov obsojenk. Med drugim smo še ugotovili, da je poseben vidik tega problema ureditev zdravstvenega zavarovanja za tujce, saj je treba najprej pridobiti enotno matično številko za te osebe. Težave so bile tudi pri Romih, ki imajo v večini primerov velike družine, družinski člani pa so največkrat zavarovani po obsojencu. Ob spremembi statusa zavarovanja se tako prekine predhodno zavarovanje tudi za osebe, ki so bile zavarovane po njem.

Nad zdravstveno oskrbo smo največ pritožb prejeli ob obiskih ZPKZ Ljubljana, Dob pri Mirni in Ig. Bolj ali manj pa smo v vseh zavodih ob pogovorih z zaprtimi osebami opažali, da niti niso seznanjene s tem, na koga lahko tovrstne pritožbe sploh naslavlajo.

Izvedenka je ob naših obiskih preverjala tudi, ali imajo zavodi predvidene ukrepe za primer pojava nove gripe (npr. ZPKZ Koper in Ig), in ugotovila, da so ti bili pripravljene v sodelovanju z zdravstvenimi domovi. Pojav te ali katere koli druge nalezljive bolezni v zavodih nedvomno pomeni veliko grožnjo, v razmerah prenatrpanosti pa še toliko bolj.

V ZPKZ Maribor smo ugotovili, da posebnih bolniških postelj oziroma sob sploh ni in da tako bolne zaprte osebe ležijo kar v svojih sobah. To smo označili za skrb vzbujajoče, Urad pa se je v odzivnem poročilu zavezal, da bo skupaj z zavodom v najkrajšem možnem času proučil možnosti glede ureditve posebne bolniške sobe.

## **Stiki z zunanjim svetom**

V primerjavi s prejšnjimi obiski zavodov na tem področju nismo ugotovili večjih sprememb. Med bolj pohvalnimi ureditvami telefoniranja so bili npr. ZPKZ Koper, Koper, Oddelek Nova Gorica, in Maribor, Oddelek Murska Sobota.



## **Health care**

Major improvements were noticeable in the area of health care. Upon 1st January 2009 a transition into the public health network occurred and thus the health care in institutions is now provided within this context. With this the standards, which are the same as those outside the institutions, are established for prisoners. One of the key differences with regard to the previous arrangement is that now the health care institutions have concluded contracts with community health care centres and not directly with doctors any more. If the contracting parties were previously doctors and coordination may only have taken place directly with them, it must now take place through medical centres.

In the beginning, this transition brought some (un)expected organizational, administrative and IKT related problems. Regardless of this, the Office considered the decision to include prisoners in a public health care network to be a good one in the long-term, which was also noted by the Ombudsman during the implementation of the National Preventive Mechanism's tasks. Nevertheless, not all of the deficiencies of the transition were resolved by the end of the year. The Office is supposed to address them immediately at the beginning of 2010, together with the Ministry of Health, and it is expected that they will be able to define a clear overview of services eligible for the institutions within the framework of the contract with community health care centres.

It has been found that health insurance is a major problem for individuals. To illustrate, it should be stated that during the visit to Ljubljana Prison as many as 50 percent of prisoners did not have health insurance even prior to serving their prison sentence. In Ig Prison 63 percent of prisoners did not have health insurance. Among other things, it was noted that a particular aspect of this problem is with health insurance for aliens, because one has to first obtain a personal identity number. There were problems noted also with regard to the Roma people who in most cases have large families and the family members are usually insured under the name of the convicted person. Upon the change of insurance status, prior health insurance for these persons, who were insured under the said person, is thus suspended.

Most complaints about medical care were received during the visits to Ljubljana Prison, Dob pri Mirni Prison and Ig Prison. During the interviews with prisoners it was noticed that they were not familiar with the fact of to whom they may address these complaints. During these visits the expert also checked if the institutions have measures envisaged for the occurrence of H1N1 influenza (new flu) (e.g. Koper Prison and Ig Prison), and found that these were prepared in cooperation with community health care centres. The emergence of this or any other infectious disease in institutions undoubtedly represents a serious threat, even more so in conditions of overcrowding.

In Maribor Prison it was found that there are no special hospital beds or even special rooms and thus sick persons lie in their own rooms. This is especially worrying. In its response report the Office undertook, together with the institution, to consider in the shortest time possible the options regarding the arrangement of a special hospital room.

## **Contacts with the outside world**

In comparison with previous visits, no major changes were found in this area. Among the more commendable changes in the area of telephoning were for e.g. Koper Prison, Koper, Nova Gorica Department, and Maribor Prison, Murska Sobota Department.

ZPKZ Ljubljana, Oddelek Novo mesto, ima v zvezi z obiski precej težav z domačini, ki se pritožujejo predvsem zaradi parkiranja obiskovalcev pred njihovimi domovi. Obiskovalci naj bi tudi malo potrebo pogosto opravljali kar zunaj na prostem. Predlagali smo, naj se preveri, ali bi bilo mogoče najti rešitev, ki bi bila sprejemljiva tako za obiskovalce kot okoliške prebivalce. Urad je v tej zvezi pojasnil, da je bila ureditev parkirišča pred zgradbo zavoda in delom zemljišča, ki meji na reko Krko, načrtovana že pred leti. Z njo bi pridobili zunanje površine za rekreacijo, športne dejavnosti, sprehode in ne nazadnje tudi za izvajanje obiskov. Ta projekt pa ni bil izveden, ker v proračunu še niso bila zagotovljena potrebna finančna sredstva. Zavod naj bi tako začasno nameraval rešiti problem s postavitvijo ograje okoli zelenice, vendar tudi za to še ni bilo na voljo potrebnih finančnih sredstev.

Izpostaviti kaže še, da smo za ZPKZ Dob pri Mirni predlagali, naj se prouči namestitve dodatnih telefonskih govornic, saj je bila na vsakem oddelku le ena, kar je ob številu zaprtih oseb v njih premalo. Obsojenci so se tudi pritoževali, da jim ni omogočeno klicanje ožjih svojcev na številke mobilnih telefonov, Urad pa je pojasnil, da jim je to s hišnim redom že omogočeno, da pa bo zavod ob spremembah in dopolnitvah hišnega reda proučil tudi možnost omogočanja telefonskih pogovorov po mobilnem telefonu s svojci.

V ZPKZ Maribor se je precej zaprtih oseb pritoževalo, da se čas, v katerem lahko opravljajo telefonske pogovore, prekriva s časom za bivanje na prostem, in to smo označili za nedopustno. Urad se je z nami strinjal, da mora zavod vse aktivnosti zaprtih oseb razporediti tako, da zaradi telefoniranja ne bodo prikrajšane za druge aktivnosti, še posebej pa ne za zakonsko predpisano gibanje na prostem.

### **Uporaba ukrepov in sredstev, ki dodatno posegajo v pravice zaprtih oseb**

Primerov čezmerne uporabe prisilnih sredstev tudi letos nismo ugotovili v nobenem od obiskanih zavodov. Poleg tega, da je niso izkazovali tovrstni zapisi, praviloma takšnih pritožb ob obiskih DPM nismo prejeli niti v pogovorih z zaprtimi osebami. Po drugi strani opazimo, da se zaprte osebe iz najrazličnejših razlogov pogosto čutijo ogrožene od drugih zaprtih oseb. Varuh vselej poudarja, da je odgovornost zavodov, da z vsemi razumnimi ukrepi preprečijo vsakršno nasilje med zaprtimi osebami. Poleg prijave pristojnemu delavcu zavoda lahko zaprta oseba poda tudi ovadbo zaradi nasilja na pristojno državno tožilstvo oziroma policijo.

Nekatere pomanjkljivosti smo ugotovili v zvezi z disciplinskimi postopki zoper obsojence. Tako smo ugotovili, da so v ZPKZ Ljubljana opuščali izrekanje disciplinskih kazni, v ZPKZ Maribor pa uvedeni disciplinski postopki niso bili končani. V obeh primerih se je Urad strinjal z nami, da bi bilo treba v prihodnje dosledno uvajati disciplinske postopke in jih nato tudi končati.

Posebej je treba omeniti, da precej pogosto v bivalnih prostorih zaprtih oseb nismo našli hišnega oziroma dnevnega reda (npr. v ZPKZ Ljubljana). V ZPKZ Maribor smo tako predvsem pri pripornikih, ki so bili pred kratkim nameščeni v zavodu, ugotavljali, da so glede pravil bivanja povsem nevedni, nekaj od njih pa nam je na naše vprašanje pojasnilo, da so se jih pač priučili od tistih, ki so v zavodu dlje od njih. Opozorili smo, da bi morale biti vse zaprte osebe ob sprejemu v zavod seznanjene s pravili bivanja, imeti pa bi morale tudi možnost, da se z njimi kadar koli (dodatno) seznanijo in dobijo ustrezna pojasnila oziroma konkretna navodila od odgovornih, če bi bilo to potrebno. Le tako se lahko po njih tudi ravna in se hkrati seznanijo s pravicami, ki jim grede kot zaprtim osebam.

Ljubljana Prison, Novo mesto Department, has in relation to visits, significant problems with the locals who mostly complain about the visitors' parking in front of their homes. Visitors have reportedly been quite openly going to the toilet in the open air in this area. It is proposed that it be examined whether it would be possible to arrive at a solution that would be acceptable for both visitors and nearby residents. The Office explained that the parking arrangement in front of the institution and part of the land bordering the Krka River was planned years ago. With this they would acquire outside areas for recreation, sports activities, walks and also for the implementation of visits. This project was not carried out due to the lack of the necessary budgetary financial resources. The institute should have temporarily solved the problem by setting up fences around the green land but this has also not been carried out due to the lack of the necessary financial resources.

It is also worth mentioning that in Dob pri Mirni Prison it was suggested that they should examine the installation of additional telephone booths because there was only one for each department which is too few given the number of prisoners. The prisoners also complained that they were not allowed to call their close relatives on their mobile phones. The Office explained, however, that the House Rules already enables it to happen, but that the institution will, with amendments and modifications to the House Rules, examine the possibility of enabling phone conversations with relatives on mobile phones.

In Maribor Prison a lot of prisoners complained that the time in which they were allowed to make telephone calls coincides with the time when they can stay outdoors. This was thought to be unacceptable. The Office agreed that the institution has to arrange all activities of prisoners in such a manner so that because of telephone conversations they will not be deprived of their other activities, especially not of outdoor exercise determined by the law.

#### **Use of measures and means that additionally interfere with the rights of prisoners**

Also this year, no cases of excessive use of coercive means were found in any visited institutions. In addition to the fact that this was not shown in any records, on NPM visits no such complaints were made during conversations with prisoners. On the other hand it was observed that the prisoners, for a variety of reasons, often feel threatened by other prisoners. The Ombudsman of the Republic of Slovenia always stresses that the responsibility of institutions is to prevent, with all reasonable measures, any violence among prisoners. In addition to submitting a report to the competent institution worker, the prisoner can also submit a report due to violence to the competent State Prosecutor's Office or to the police.

Some deficiencies were found in relation to disciplinary proceedings against prisoners. Thus it was found that in Ljubljana Prison the imposition of disciplinary sanctions were omitted, and in Maribor Prison the introduced disciplinary proceedings have not been completed. In both cases the Office agreed that in future it will be necessary to consistently impose disciplinary proceedings and then also complete them.

It has to be mentioned that frequently the House Rules or a daily agenda in the prisoners' living areas could not be found (e.g. Ljubljana Prison). In Maribor Prison it was discovered, mostly from the detainees who have been recently accommodated in the institution, that they are completely ignorant as regards house rules. Some of them explained that they simply learned them from those who were there longer. It was pointed out that all prisoners should be made familiar with the rules of house order upon admission to the institution. They should also be able to familiarize themselves with them (additionally) at any time and obtain adequate explanations or specific instructions from the responsible people, if necessary. Only in this way can they follow them and at the same time familiarize themselves with the rights that pertain to them as prisoners.

Prostori za izločitev (osamitev) niso bili povsod primerno urejeni. V ZPKZ Ig takšen prostor ni bil oblažinjen, postelja z žimnico, stol in miza so bili priviti v tla, umivalnik je bil iz keramike, pri vhodu je bil nameščen poškodovan telefonski aparat. Ker so osebe, ki jih nameščajo v prostor za izločitev, pogosto v najrazličnejših intenzivnih čustvenih stanjih, tak prostor nedvomno prinaša obilo nevarnosti v smislu samopoškodovanja ali napada na zaposlene. V ZPKZ Dob pri Mirni pa smo ugotovili, da v nekaj primerih čas končanja namestitve v sobo za izolacijo ni bil naveden in tako sploh ni bilo razvidno, koliko časa je bila oseba tam nameščena. Tudi Urad se je strinjal, da morajo odgovorni vselej skrbeti, da pravosodni policisti dosledno izpolnjujejo vse rubrike v tovrstnih evidencah.

Obsojenec je po določbi 236. člena ZIKS-1 lahko odstranjen iz skupnih bivalnih in drugih prostorov in nameščen v poseben prostor. V ZPKZ Dob pri Mirni smo ugotovili, da je bil pri tem v enem izmed primerov kršen zakon, ker je taka namestitev trajala več kot 12 ur brez prekinitve. Posledica tega bi lahko bila najmanj odškodninska odgovornost države. Še pomembneje je, da je treba v takih primerih osebi, ki je razburjena, razdražena ali če obstaja bojazen, da se bo poškodovala sama, najpozneje v navedenem času zagotoviti zdravniško pomoč, ne pa le podaljševati njene namestitve v takem prostoru. Na potrebo po preureditvi prostorov zaradi zagotovitve ustrezne varnosti v njih nameščenih oseb smo opozorili v več primerih (npr. v ZPKZ Koper, Oddelek Nova Gorica, nima oblažinjenih sten in vrat), v ZPKZ Maribor, Oddelek Murska Sobota, in Ljubljana, Oddelek Novo mesto, pa že ponovno.

Glede na veljavno ureditev se odločitev o namestitvi obsojenca v strožji režim po 6. členu Pravilnika o izvrševanju kazni zapora (le) zapisuje v obsojenčev osebni načrt. Zavod mora nato enkrat na mesec preveriti, ali so še podani razlogi za bivanje obsojenca v strožjem režimu. Te ugotovitve je po zahtevi pravilnika prav tako treba (le) zapisati v osebni načrt. Tudi ob letošnjih obiskih se je veliko obsojencev, nameščenih v takem režimu, med pogovori s predstavniki DPM spraševalo o razlogih, zaradi katerih so bili vanj nameščeni, predvsem pa smo ugotavljali, da jim možnost pritožbe zoper tako odločitev ni znana.

Pregledovali smo tudi osebne spise tovrstnih obsojencev in pri tem pogosto ugotavljali, da so zapisi z razlogi za namestitev v strožji režim prestajanja kazni zapora skopi, brez potrebne konkretizacije razlogov, da ne vsebujejo pouka o pravici do pritožbe, nemalokrat pa tudi ne zapisa o (mesečnem) preverjanju razlogov za takšno namestitev. Najbolj sta v tem pogledu izstopala ZPKZ Dob pri Mirni in Maribor. Varuh meni, da taki zapisi v osebni načrtu ne izpolnjujejo svojega namena, saj gre le za formalizem, brez vsebine. Že leta izpostavljamu Varuhovo mnenje, da bi moral biti obsojenec pod strožjim režimom seznanjen z razlogi za takšno odločitev s pisno odločbo, saj mu to omogoča razmislek o morebitni spremembi v obnašanju, hkrati pa omogoča uporabo pritožbenih poti. V nasprotnem primeru je lahko prikrajšan za (učinkovito) pravico do pritožbe, oteženo pa je tudi poznejše preverjanje pogojev za ta ukrep na obsojenčevo zahtevo. Na to smo tudi letos Urad opozorili večkrat in v odzivnem poročilu našega obiska ZPKZ Koper je zagotovil, da bo pri pripravi novele Zakona o izvrševanju kazenskih sankcij predlagal ustrezno spremembo in dopolnitev zakonske določbe, ki ureja namestitev obsojenca v strožji režim prestajanja kazni zapora. Zavezal se je tudi, da bo v okviru svojih pristojnosti do uveljavitve novele citiranega zakona izvedel potrebne ukrepe, da bo zapis v osebni načrt o namestitvi obsojenca v strožji režim prestajanja kazni zapora vseboval tudi pravni pouk o možnosti pritožbe in tudi razloge za morebitno podaljšanje bivanja v strožjem režimu.

Places of isolation were not arranged properly everywhere. In Ig Prison an isolation place was not padded, the bed with the mattress, chair and desk were screwed into the ground, the sink was ceramic, and a damaged telephone was installed at the entrance. Because the persons placed in such an isolation area are often in various intense emotional states, such a place certainly poses plenty of risks in the sense of self-harm, or attack upon the staff. In Dob pri Mirni Prison it was found that in some cases the termination time of placement in the isolation room was not mentioned and thus it was not clear how much time the person had been there. The Office also agreed that all responsible persons should always take care that prison officers consistently fill in all sections in such records.

Pursuant to Article 236 of the Enforcement of Penal Sentences Act (ZIKS-1), a prisoner may be removed from a common living and other rooms and placed in a separate room. In Dob pri Mirni Prison it was found that in one of the cases there was a violation of the law because such placement lasted without interruption more than 12 hours. This could, at the very least, result in the State's liability for damages. More importantly, in such cases, when a person is upset, irritated or if there is a fear for self-harm, it is necessary to provide medical assistance within the stated time and not to extend his/her placement in such a room. In several cases the need for rearranging the rooms to ensure adequate safety of persons placed there has been pointed out (e.g. in Koper Prison, Nova Gorica Department, it does not have padded walls and doors), and again in Maribor Prison, Murska Sobota Department, and Ljubljana Prison, Novo mesto Department.

According to the current arrangement, the decision about the placement of a prisoner into a stricter regime under Article 6 of the Rules on implementation of the sentence of imprisonment is recorded only in a prisoner's personal plan. The institute must then verify each month if there are still reasons for a prisoner's accommodation in a stricter regime. According to the regulations these observations have to be recorded only in the personal plan. Also on the occasion of this year's visits, during conversations with NPM representatives a lot of prisoners placed in such regimes questioned the reasons for which they have been placed there, and in particular, many prisoners were found not to be aware of the possibility of appeal against such decision.

The personal files of such prisoners were examined and it was often found that the records showing reasons for placement in a stricter regime of serving prison sentence are brief, without specific details with regard to reasons, that they do not include details of the caution of the right to appeal, and often not even the record about (monthly) verification of reasons for such placement. The most obvious ones in this instance were Dob pri Mirni and Maribor Prisons. The Ombudsman considers that such records of personal details do not fulfil its purpose since it is only a formality without content. For years the Ombudsman's opinion has been highlighted that the prisoner under a stricter regime should be made familiar with reasons for such a decision by written decision as this would enable him/her to consider the possible change in his/her behaviour while also allowing the use of the appellate path. Otherwise he/she may be deprived of the (effective) right of appeal, and it is also difficult to verify later conditions for such a measure at the prisoner's request. Also this year the Office has repeatedly been warned about this and in its response report relating to the visit to Koper Prison assurances have been made that in preparing The Act Amending the Enforcement of Penal Sentences Act adequate modification and amendment of legal provision governing the prisoner's placement into a stricter regime of serving the prison sentence will be proposed. It also stated that in the framework of its competence until the enforcement of the Act amending the cited law, it shall take all necessary measures to ensure that the record in the personal plan regarding the placement of the prisoner in a stricter regime serving a prison sentence will also comprise a legal notice with regard to the possibility of appeal and also the reasons for any further extension of living in a stricter regime.

Obsojenci se pogosto tudi pritožujejo, da se od njih zahteva priznanje kaznivega dejanja, če želijo pridobiti ugodnosti. Takšne pritiske zavračajo, ker se ne štejejo za krive kaznivih dejanj, za katera so bili pravnomočno obsojeni. Tako je bilo v primeru ZPKZ Maribor. Varuh o tem načeloma meni, da mora obravnava obsojencev vselej potekati tako, da jih čim bolj motivira za sodelovanje. Občutek, da se poskuša od njih izsiliti priznanje, deluje odbijajoče, poleg tega za tako prakso tudi ni opore v trenutno veljavni zakonodaji. Urad je v zvezi s tem menil, da nekateri obsojenci le poenostavljeno enačijo izsiljevanje priznanja storitve kaznivega dejanja z merili o podeljevanju zunajzavodskih ugodnosti (odnos do žrtev in do kaznivega dejanja, pripravljenost vračanja s kaznivim dejanjem povzročene škode idr.), ki jih v 79. členu opredeljuje Pravilnik o izvrševanju kazni zapora.

### **Pravica do dela**

Večjih sprememb glede večjega zagotavljanja možnosti zaprtim osebam za delo tudi v letu 2009 ni bilo. Zagotovitev dela (vsaj) večini zaprtih oseb, ki želijo delati in so za delo tudi sposobne, je še vedno izjema, in ne pravilo. V vseh obiskanih ZPKZ smo priporočili, naj se delo zagotovi (še) več zaprtim osebam oziroma se k njemu spodbuja.

Že tako ne najboljše razmere na tem področju je še dodatno poslabšala gospodarska recesija, saj zagotavljanje dela zaprtim osebam večinoma sloni na javnih gospodarskih zavodih, upad naročil pa je bil in je še vedno občuten in so zato tudi možnosti za delo manjše. Še najbolj spodbudno je v tem pogledu kazalo v ZPKZ Koper, Oddelek Nova Gorica, ki bolj kot ne tudi uspeva zagotavljati delo vsem obsojencem, ki želijo delati in so za delo sposobni, deloma pa tudi pripornikom, ki nimajo zdravstvenih omejitev. Žal gre to verjetno v veliki meri pripisati temu, da je v tem oddelku populacija zaprtih oseb v primerjavi z drugimi obiskanimi ZPKZ majhna. Več možnosti za delo zaprtih oseb pa bi bilo mogoče poiskati z njihovim zaposlovanjem pri vzdrževanju prostorov zavodov (redno pleskanje, vzdrževanje opreme), izdelovanjem pohištva in druge opreme za zavode in morda tudi druge državne organe in podobno.

Preverjali smo tudi razmere, v katerih zaprte osebe delajo. Načeloma so bile sprejemljive, le ponekod smo predlagali določene izboljšave (npr. v JGZ Pohorje in Kozjak sanacijo garderobnih in sanitarnih prostorov, v JGZ Emboplast pa, da se uredi ustrezna temperatura delovnega prostora).

Urad naj bi z namenom ureditve področja dela zaprtih oseb kot ene od nalog v programu dela za leto 2010 tudi vključil pripravo projekta reorganizacije javnih gospodarskih zavodov in oblikovanja novih oblik in vsebin, s katerimi bi bilo mogoče zagotavljati več dela zaprtim osebam. Seveda bo tudi za uresničitev teh ciljev potreben posluh Vlade Republike Slovenije, predvsem zaradi zagotovitve potrebnih finančnih sredstev.



Prisoners also complain that they are required to confess to criminal offences if they want to obtain benefits. They refuse such requests because they do not consider themselves to be guilty of a criminal offence for which they were found convicted on the basis of a final judgement. This was the case in Maribor Prison. The Ombudsman believes in principle that the treatment of prisoners must always be such that they are motivated to cooperate as much as possible. The feeling that they are forced to confess seems repugnant and there is also no support for such a practice in the current legislation. In relation to this the Office believed that some prisoners only equate in a simple way the coercion of confessing to criminal offences with criteria for granting benefits outside the institution (relation to the victims and to the criminal offence, preparedness to return the caused damage which was done with the criminal offence etc.), which are defined in the Article 79 of the Rules on implementation of the sentence of imprisonment.

### **Right to work**

In 2009 there were no major changes concerning the provision of work opportunities for prisoners. Provision of work (at least) to the majority of prisoners, who wish to and are able to work, is still an exception rather than a rule. In all visited Prisons it was recommended that work be provided for (even) more prisoners or to encourage them to work.

Conditions, which are not the best in this area, are even further deteriorated by the economic recession as the provision of work to prisoners is mostly dependant on the public utility institutions and there were, and are still, fewer orders and therefore fewer possibilities for work. The most encouraging situation in this regard was noticed in Koper Prison, Nova Gorica Department, which mostly succeeds in providing work to all prisoners who wish to and are able to work, and in part also to detainees without limiting health problems. Unfortunately this is mostly due to the fact that in this department there are fewer prisoners in comparison to other visited prisons. More work opportunities for prisoners could be found with their employment in the maintenance of the institution's premises (regular painting, maintenance of fittings), making of furniture and other fittings for institutions and maybe other state authorities and similar.

The conditions under which the prisoners work were also examined. In principle, they were acceptable. Only in some places were certain improvements suggested (e.g. in Public Utility Institution (JGZ) Pohorje and Kozjak, the refurbishment of wardrobes and sanitary facilities, and in JGZ Emboplast, the regulation of temperature in the working space).

The Office should, for the purpose of the arrangement of the area of work with regard to prisoners as one of the tasks in the work programme for 2010, also include the preparation of a project regarding the reorganisation of public utility institutions and formation of new forms and contents with which it would be possible to provide more work for prisoners. For the achievement of these objectives the help of the Government of the Republic of Slovenia will obviously be needed, mainly for the provision of sufficient financial resources.

## Aktivnosti

V okolju, kot je v ZPKZ, je ključno omogočati (tudi) raznovrstne dejavnosti, saj v nasprotnem primeru ne more biti motivacije za bolj smiselno prestajanje kazni zapora oziroma pripora. Zaprte osebe naj bi torej imele omogočene različne oblike druženja, rekreacije in izobraževanja.

Tudi v tem pogledu so priporniki pogosto veliko na slabšem od obsojencev, saj je treba ob vsaki njihovi morebitni aktivnosti upoštevati več dejavnikov, povezanih z izvedbo kazenskega postopka. Ti v kombinaciji s prostorskimi in kadrovske omejitvami, s katerimi se spodajo zavodi v razmerah prezasedenosti, pogosto ustvarijo težko rešljive probleme. Tako so v ZPKZ Ljubljana, Maribor, Oddelek Murska Sobota, Maribor in Koper, Oddelek Nova Gorica, priporniki v svojih sobah zaklenjeni dobrih 21 ur na dan. Žal so pogosto tudi ob izvajanju zakonsko predpisanega najmanj dvehurnega gibanja na prostem njihove možnosti bolj omejene od tistih, ki jih imajo obsojenci. V ZPKZ Ljubljana in Koper, Oddelek Nova Gorica, imajo priporniki v ta namen na voljo le manjše sprehajališče, kjer so možnosti za aktivnejšo telesno dejavnost znatno omejene.

ZPKZ Maribor, Oddelek Murska Sobota, in Koper, Oddelek Nova Gorica, nista imela niti notranjega prostora za rekreacijo, kar pomeni velik problem predvsem v zimskem času oziroma ob slabem vremenu. Poseben primer pa je ZPKZ Maribor, ki ima sobo za fitnes, vendar je bila njena uporaba pripornikom (še vedno) omogočena le kot alternativa gibanju na prostem. To smo označili za nedopustno, saj je to pravica, ki jo je pripornikom treba zagotoviti na podlagi 213.a člena Zakona o kazenskem postopku, vsak dan. Ker tudi nadstreška na dvorišču zavoda ob našem obisku še ni bilo, smo (ponovno) lahko ugotovili, da za zaprte osebe bivanje na prostem v slabem vremenu ostaja praktično nemogoče. Naši predlogi za izboljšave na tem področju (npr. namestitev nadstreška, ureditev notranjega prostora za rekreacijo idr.) so bili zavrženi zaradi pomanjkanja finančnih sredstev.

Tudi pri zagotavljanju možnosti izobraževanja za zaprte osebe so še možnosti za napredek. Vse obiskane zavode smo spodbudili, naj za motiviranje zaprtih oseb za različne oblike izobraževanja vselej namenjajo več naporov. A je to brez smisla, če niso tudi dejansko zagotovljene tovrstne možnosti. Rešitev se največkrat (po)išče v sodelovanju z zunanjimi izobraževalnimi institucijami, kar ocenjujemo kot primere dobre prakse.

Predvsem v ZPKZ Ljubljana, Maribor in Maribor, Oddelek Murska Sobota, bi bile izboljšave na področju izobraževanja zaprtih oseb več kot dobrodošle, saj tam internih oblik izobraževanja sploh ni bilo organiziranih ali pa je bilo vanje vključenih le malo zaprtih oseb. Prav bi bilo, da bi vsi zavodi zaprtim osebam že ob sprejemnih pogovorih predstavljali tudi tovrstne možnosti. Sistem izobraževanja je vsaj solidno organiziran v ZPKZ Dob pri Mirni in Koper. Najbolj spodbudne spremembe smo glede na lansko leto opazili v ZPKZ Koper, Oddelek Nova Gorica, ki zdaj poskuša za vsako zaprto osebo poiskati možnosti formalnega in neformalnega izobraževanja, prilagojenega potrebam posameznika. Iz že večkrat pojasnenih razlogov pa je vključevanje pripornikov tudi v te procese praviloma bolj oteženo kot za obsojence, nemalokrat tudi zaradi pomanjkanja motivacije na njihovi strani.



## Activities

In an environment such as the institution for serving prison sentences it is essential to ensure (also) diverse activities otherwise there could be no motivation for a more meaningful serving of a prison sentence or detention. The prisoners should therefore be able to socialize in various ways, enjoy recreation and educate themselves.

Also in this respect the detainees are in a much worse situation than prisoners as several factors related to the implementation of criminal proceedings have to be taken into account in each possible activity. These, in combination with spatial and staffing constraints which institutions face in conditions of overcrowding, often create problems that are difficult to solve. Thus, the detainees in Ljubljana Prison, Maribor Prison, Murska Sobota Department, Maribor Prison and Koper Prison, Nova Gorica Department are locked in their rooms for 21 hours a day. Unfortunately, even with the implementation of the minimum two-hour outdoor exercise prescribed by the law their possibilities are more limited than the possibilities given to the convicted persons. In Ljubljana Prison and Koper Prison, Nova Gorica Department, the detainees have only a small walking space available where possibilities for active physical activity are significantly limited.

Maribor Prison, Murska Sobota Department, and Koper Prison, Nova Gorica Department did not have an indoor place for recreation which represents a major problem especially in winter time or during bad weather. A special case is Maribor Prison which has a fitness room but its use for detainees is still enabled only as an alternative to outdoor exercise. This was indicated as unacceptable as this is a right which has to be provided to the detainees each day under Article 213.a of the Criminal Procedure Act. At the time of visit there was still no canopy in the institution's courtyard, and therefore one could conclude that during bad weather prisoners practically cannot spend time outdoors. Suggestions for improvements in this area (e.g. installation of a canopy, arrangement of interior space for recreation, etc.) were refused due to a lack of financial resources.

Also regarding the provision of education opportunities for prisoners there is still room for improvement. We encouraged all visited institutions to spend more efforts motivating prisoners to take up various forms of education, but this is pointless if such opportunities are not actually provided. The solution is mostly found in cooperation with outside educational institutions which is considered to be an example of good practice.

Especially in Ljubljana Prison, Maribor Prison and Maribor Prison, Murska Sobota Department, improvements in the area of education of prisoners would be more than welcome as there were no organized internal forms of education, or they involved only a small number of prisoners. It would be appropriate that during interviews upon reception in the institution also such kinds of opportunities would be presented. The education system is at least solidly organized in Dob pri Mirni and in Koper Prisons. The most encouraging changes in comparison to last year were observed in Koper Prison, Nova Gorica Department, where they try to find for each prisoner the possibility of formal and non-formal education, adapted to the individual's needs. For reasons already explained several times the involvement of detainees in these processes is as a rule more difficult than that of prisoners, often also due to lack of motivation on their side.

## **Kadrovska zasedba v razmerju do zaprtih oseb**

Poleg tega, da je pravosodnih policistov premalo, da bi lahko vselej nemoteno opravljali svoje naloge in je treba določene obveznosti odpovedovati (npr. ZPKZ Maribor, Ljubljana in Ig), ti opravljajo tudi naloge, ki niso del njihovih del in nalog. Najočitnejši primer še naprej ostaja delitev medikamentozne terapije (zdravil). Urad je v zvezi s tem problemom, na katerega je Varuh že mnogokrat opozoril, v enem od odzivnih poročil navedel, da bo rešitev poskušal poiskati v okviru javne zdravstvene mreže, predvsem pa pričakuje, da bodo problematiko delitve zdravil reševali z usposobljeno strokovno delavko, ki bo od decembra po pogodbi usklajevala zdravstveno oskrbo po zavodih.

Obremenjenost pravosodnih policistov je že zelo velika. Nadure so tako rekoč pravilo, neredko so pravosodni policisti že samo do dne našega obiska že dosegli oziroma presegli zakonsko dovoljeno število nadur (npr. v ZPKZ Ljubljana, Oddelek Novo mesto, Maribor in Koper). Veliko kadra terjajo tudi (dlje časa trajajoča) individualna varovanja v bolnišnicah, v ZPKZ Ig pa je med pravosodnimi policistkami tudi veliko porodniške odsotnosti. Poleg vsega tega premajhno število pravosodnih policistov pomeni tudi nevarnost, da ne bo mogoče hitro in učinkovito reagiranje, kot smo opozorili v primeru ZPKZ Koper, Oddelek Nova Gorica, k(j)er sta v nočni izmeni razporejena le dva.

Treba je posebej poudariti, da pritožb zoper ravnanje paznikov ni bilo veliko, na njihov račun je bilo izrečenih več pohval, kar je ob upoštevanju navedenih razmer še posebej pohvalno. Po drugi strani smo precej pritožb prejeli zaradi vzgojnih služb (npr. v ZPKZ Ljubljana, Dob pri Mirni in Maribor), kjer je tudi kadrovski primanjkljaj. Precejšnje nezadovoljstvo z vzgojnimi službami je mogoče razumeti ob upoštevanju tega, da povečanju števila zaprtih oseb ni sledilo tudi potrebno povečanje ustreznih strokovnih kadrov in tako na posameznega delavca pride (pre)veliko zaprtih oseb. Ob tem ne gre prezreti, da smo v določenih primerih (npr. v ZPKZ Dob pri Mirni in Koper) ugotovili, da nekatera delovna mesta ostajajo nezasedena.

Ne glede na vse menimo, da bi bilo treba v zavodih bolj izkoristiti samoiniciativne obiske zaprtih oseb, predvsem od vzgojne službe. Kot posebno pohvalno lahko izpostavimo prakso vodstva ZPKZ Koper, ki vsak teden opravi obhod. Tovrsten neposreden stik z zaprtimi osebami lahko nanje vpliva le pozitivno. Gre za zgled, ki bi mu kazalo slediti tudi v drugih zavodih. Pohvale glede dostopnosti vodstva smo slišali tudi ob obisku ZPKZ Koper, Oddelek Nova Gorica. Ta zavod je primeren tudi za prikaz tega, kako lahko sproščeni in korektni odnosi med zaposlenimi in zaprtimi osebami močno nadoknadijo za večino slabe razmere, v katerih se prestaja kazen zapora oziroma ukrep pripora.

Nedvomno je, da je (tudi) spoštovanje predpisov s področja delovnega prava pogoj za primerno in nemoteno delo ter dobre odnose med zaposlenimi in zaprtimi osebami. Urad in zavodi so se strinjali z nami, da bi bilo treba v najkrajšem času zagotoviti ustrezno število kadrov. Urad je večkrat še dodal, da tudi na te težave že več let opozarja matično ministrstvo in vlado. V drugi polovici leta je nato s kadrovskim načrtom tudi pridobil 41 delovnih mest, kar je vsekakor dobrodošlo. Žal se pogosto izkaže, da za tovrstne razpise niti ni vedno veliko interesa, predvsem zaradi težkih pogojev dela.

## **Staffing levels in relation to prisoners**

In addition to the lack of prison officers available to perform their duties in an undisturbed manner at all times, sometimes certain obligations have to be cancelled (e.g. Maribor, Ljubljana and Ig Prisons), officers also perform duties that are not part of their tasks. The most obvious case still remains the administering of medications. With regard to this problem, which was often highlighted by the Ombudsman, the Office stated in one of its response reports that it will try to find a solution within the public healthcare network. Chiefly the Ombudsman expects that the issue regarding the administering of medications will be solved with a qualified practitioner who will, from December, under contract, coordinate health care in institutions.

The workload of prison officers is already very high. Overtime is almost the norm and quite often prison officers have, up until the day of the inspection, often reached or exceeded the number of overtime hours permitted by law (e.g. in Ljubljana Prison, Novo mesto Department, Maribor and Koper Prisons). A lot of staff are needed at long term individual protection assignments in hospitals, and in Ig Prison there is also a lot of maternity leave among women prison officers. Above all this, the too small number of prison officers, also poses a risk that quick and effective reaction will not be possible, as was pointed out in the case of Koper Prison, Nova Gorica Department where there were only two officers allocated to the night shift.

It should be stressed that there were not a lot of complaints against the ill treatment by prison guards and there was much praise which, considering the above stated conditions, was particularly commendable. On the other hand a lot of complaints were received against education services (e.g. in Ljubljana, Dob pri Mirni and Maribor Prisons) where there is a shortage of staff. Considerable dissatisfaction with the education services can be understood in the light of the fact that with the increasing number of prisoners there was no increase needed with regard to the increase in relevant professional workers and thus there are too many prisoners per individual worker. It should not go unnoticed that in certain cases (e.g. in Dob pri Mirni and Koper Prisons) it was found that some job posts remain vacant.

Regardless all of this it is thought that the institutions should make a greater use of visits to prisoners made on one's own initiative, particularly by the education service. The practice of the Koper Prison management which makes weekly inspections is especially commendable. Such direct contact with prisoners may only be of a positive influence. This is an example that should be followed in other institutions. Compliments were also made about the accessibility of management personnel during our visit of Koper Prison, Nova Gorica Department. This institution is an example of how relaxed and correct relationships between the employees and the prisoners can significantly compensate for the majority of bad conditions for serving a prison sentence or detention.

It is without doubt that (also) compliance with regulations in the area of labour law is a prerequisite for adequate and uninterrupted work as well as for good relations between the staff and prisoners. The Office and the institutions agree that it is necessary to ensure, in the shortest time possible an adequate number of staff. The Office added several times that this problem had been brought to the attention of the parent Ministry and Government over many years. In the second half of the year, with the staffing plan, it gained 41 posts, which is without doubt welcome. Unfortunately, it often turns out that such calls do not draw a lot of interest, mainly due to difficult working conditions.

## Kajenje in (druge) odvisnosti

Nekadilcem je nedvomno treba omogočiti bivanje v nekadilskih bivalnih prostorih, saj tako velewa zakon. Da je to ob prezasedenosti lahko velika težava, niti ne preseneča. Poleg (ne) kadilstva določene osebe je namreč treba upoštevati še druge okoliščine (npr. konflikti z drugimi osebami) in tako v ZPKZ Ljubljana stalne nekadilske sobe niti ne morejo zagotoviti.

Vodstva večjih zavodov so ob naših obiskih menila, da ima približno polovica populacije težave z odvisnostjo (v ZPKZ Ljubljana, Dob pri Mirni in Maribor, v ZPKZ Koper nekoliko manj). Podobno velja tudi za ZPKZ Ig, centralni zavod za ženske.

Obiskani zavodi večinoma (še) nimajo oddelka brez drog, kot ga določa 53. člen Pravilnika o izvrševanju kazni zapora. Osrednja težava so tudi v tem primeru prevladujoči pogoji prezasedenosti, ki otežujejo smiselno organiziranje takega oddelka. Poleg prostorskih zmožnosti njegovo organiziranje pogosto ovira tudi pomanjkanje ustreznega kadra. V ZPKZ Maribor gre npr. tako pri oddelku brez drog bolj za trakt, kjer so nameščeni »neproblematični« obsojenci in je poleg tega namenjen le tistim obsojencem, ki prestajajo kazen zapora na polodprtem oddelku, tako da v najboljšem primeru le deloma deluje tako, kot je bilo zastavljeno. Ob tem je Urad še pojasnil, da tudi sam nima ustrezno usposobljenega delavca, ki bi to področje pokrival.

Urinski testi za oceno vsebnosti prepovedanih drog ostajajo ena izmed bolj problematičnih praks, kar je razumljivo že glede na samo stanje. Največ tovrstnih pritožb smo prejeli v ZPKZ Maribor in Ig. Ni dvoma o tem, da je potrebno dosledno spoštovanje Navodila za obravnavo zaprtih oseb odvisnih od prepovedanih drog, še zlasti določila, da zaprta oseba urinira obrnjena stran od paznika. Vendar ni mogoče spregledati tudi nevarnosti izigravanja (npr. tuj urin v kondomu v vagini). Nedvomno je dajanje urina za namene testiranja (vsaj) mučno tako za zaprte osebe kot za osebje, zato bi bilo smiselno poiskati alternative. Izvedenka je izpostavila, da so se pred časom obetali testi s slino, žal pa je Urad pojasnil, da v tej zvezi sledi praksi in strokovnim doktrini specializiranih zdravstvenih institucij in da trenutno na področju obravnave odvisnosti ni ustreznega testa, ki bi bil alternativa urinskemu.

Obravnava odvisnosti v zavodih je po mnenju izvedenke večinoma vprašljiva; začne se že pri diagnostiki, ki večinoma poteka brez sodelovanja ustreznega strokovnjaka. Glede na velik delež oseb z odvisnostjo v zavodih za prestajanje kazni zapora bi od Urada pričakovali projekt dolgoročnega (posebni oddelki) in kratkoročnega (boljšo usposobljenost osebja vsaj za edukacijo in motivacijske postopke) obravnavanja te problematike.

## **Smoking and (other) addictions**

Non-smokers inevitably have to be accommodated in non-smoking living spaces as this is specified by law. It is not surprising that besides overcrowding this may be a major problem. In addition to the smoking or non-smoking habits of a certain person, certain other circumstances (e.g. conflicts with other persons) have to be also considered. Thus in Ljubljana Prison a permanent non-smoking room cannot even be assured.

At the time of the visit, management personnel of bigger institutions were of the opinion that approximately half of the population has problems with addiction (in Ljubljana, Dob pri Mirni and Maribor Prison, in Koper Prison a little less). The similar holds true also for Ig Prison, the central institution for women.

Most visited institutions do not yet have a department for drug-free dependency, as is set out in Article 53 of the Rules on implementation of the sentence of imprisonment. Also in this case, the main problem is overcrowding which makes it difficult to sensibly organize such a department. In addition to a facility's spatial capacities, its organization is often hindered by the lack of adequate staff.

In Maribor Prison, for example, the drug-free department is more of a wing where "unproblematic" prisoners are accommodated. In addition this space is meant only for those prisoners who serve their prison sentence in a semi-open department, so that it, at best, only partially works in the way that it was designed. Furthermore the Office explained that it does not have an adequately trained worker who would cover this area.

Urine tests for assessing the level of prohibited drugs remain one of the more problematic practices which is understandable given the situation. Most of such complaints were received in Maribor and Ig Prisons. There is no doubt regarding the need to consistently respect Instructions for treatment of prisoners addicted to illicit drugs, especially provisions that the prisoner urinates facing away from the guard. However it is not possible to overlook the risk of circumvention (for example, foreign urine in a condom in a vagina). Providing urine for testing purposes is undoubtedly considered troublesome both for prisoners and the staff that is why it would be sensible to find alternatives. An expert pointed out that some time ago tests with saliva were promised, but the Office explained that in relation to this issue it follows the practice and expert doctrine of specialized medical institutions and that currently there is no appropriate test in the area of addiction treatment that would be an alternative to the urine test.

According to the expert, addiction treatment in institutions is mostly questionable; it starts with diagnostics which mostly take place without the cooperation of a relevant expert. Given the large number of addicted persons in institutions serving a prison sentence, the Office would be expected to make a long-term project (special departments) and short-term one (better staff training, at least for the education and motivational procedures) for dealing with this issue.

## **(Pre)hrana**

Pritožb v zvezi s prehrano ni bilo veliko, v vsakem zavodu pa se jih je našlo nekaj. Največkrat je šlo za negotovanje nad enoličnostjo in premajhnimi obroki. Urad je te očitke vedno utemeljeno zavrnil s prikazom predpisanih standardov kaloričnih vrednosti obrokov in jedilnikov.

V Zavodu za prestajanje kazni zapora (ZPKZ) Ljubljana in Maribor smo ugotovili, da se pripornikom ob obrokih še vedno ne daje ustreznega jedilnega pribora – noža. Nekateri jih tako pri obedovanju sploh niso uporabljali, drugi so si jih kupovali sami v zavodski kantini, eden izmed pripornikov v ZPKZ Maribor pa nam je celo pokazal nož in žlico, ki si ju je iz pločevine izdelal sam. Nedvomno je, da mora vsak zavod tudi pripornikom zagotoviti ustrezen jedilni pribor, torej tudi nož, če je vsaj del obroka hrana, ki jo je treba pred zaužitjem običajno razrezati. Ne nazadnje gre za jasno zahtevo iz 35. člena Pravilnika o izvrševanju pripora. V obeh primerih nam je Urad pritrdil in opozoril vodstvi zavodov, naj tovrstnih nepravilnosti ne bo več.

Med obiski smo si ogledovali tudi kuhinje in shrambe. Večinoma nismo ugotavljali pomanjkljivosti, ni pa bilo povsod tako. V ZPKZ Maribor smo (enako kot že ob lanskem obisku) ugotovili, da je določenim izdelkom v shrambi že potekel rok trajanja, nekatere hladilne naprave so bile v slabšem stanju in sveža zelenjava je bila zložena kar na tleh. Povrhu vsega je bil v zavodu tudi že pred tem opravljen inšpekcijski nadzor in je bila izdana odločba, v njej ugotovljene nepravilnosti pa bi že morale biti odpravljene, a niso bile. Urad se je strinjal, da bi zaradi teh ugotovitev inšpekcije in DPM lahko bila izrečena tudi visoka denarna kazen. Je pa jasno vsaj to, kdo bi bil odgovoren za morebitne zastrupitve s hrano.

Ob naših obiskih se zaprte osebe pogosto pritožujejo tudi nad previsokimi cenami v zavodskih kantinah oziroma trgovinah, kjer lahko opravljajo nakupe. Ko smo te njihove navedbe preverjali, cene posameznih artiklov niso pomembneje odstopale od tistih zunaj zavodov.

## **Tujci kot zaprte osebe**

V večini zavodov je bilo ob naših obiskih vsaj nekaj tujih državljanov. Zavodi prevajalcev praviloma ne uporabljajo, ker naj težav pri komunikaciji ne bi bilo. Pogosto v ta namen uporabijo katero od zaprtih oseb, ki govori jezik, v katerem je sporazumevanje s tujcem mogoče. Nekateri zavodi se za pomoč obračajo tudi na diplomatsko konzularna predstavništva. Kljub vsemu smo vselej predlagali, naj se v prihodnje vedno, ko bo z zaprto osebo komunikacija otežena, zagotovi pomoč uradnega prevajalca. Urad vztraja, da zavodi v mejah realnih možnosti spoštujejo tudi določbo 209. člena Zakona o izvrševanju kazenskih sankcij, po kateri mora zavod obsojenca, ki ne obvlada uradnega jezika, seznaniti z gradivom in svojim delom v njegovem jeziku in mu omogočiti, da spremlja postopek s tolmačem.



## **Diet**

There were not a lot of complaints relating to diet. In each institution there were only a few. It was usually dissatisfaction with monotony or the small meals. The Office always reasonably refused these complaints by showing prescribed standards of caloric values of meals and menus.

In the Institutions for serving a prison sentence, Ljubljana and Maribor Prisons, it was found that detainees are still not given proper cutlery – a knife, during meals. Some of them did not even use it while eating, others bought it from the institute's canteen, one of the detainees in Maribor Prison even showed a knife and a fork which he himself had made from sheet metal. It is clear that each institution has to provide their detainees with adequate cutlery, including a knife, if at least part of a meal is food that usually must be cut before eating. This is after all a clear request from Article 35 of the Rules of execution of detention. In both cases the Office agreed and warned the management of institutions that there should no longer be any such irregularities.

During the visits kitchens and pantries were inspected. In most of them deficiencies were noted, but not in all of them. In Maribor Prison, as last year, it was discovered that the shelf life of certain products in the pantry had expired, some cooling devices were in worse condition and fresh vegetables were stowed on the floor. Moreover, the institute had already been previously inspected and a decision had been issued, and the irregularities should have already been resolved, but were not. The Office agreed that due to the findings of inspection and the NPM, a high fine might have been imposed. However, it is at least clear who would be responsible for any food poisoning.

During our visits prisoners often complain about the excessive prices in institution canteens or shops, where they may make purchases. When their claims were checked it was found that the prices of individual items were not significantly different from those outside the institutions.

## **Aliens as prisoners**

In most institutions there were at least a few foreign nationals. Institutes generally do not use translators as there are supposedly no communication problems. For this purpose they often use one of the prisoners who speaks the language in which communication with an alien is possible. Some institutions also turn for help to a diplomatic mission and consular posts. Nevertheless, it was suggested that in the future they should provide the assistance of an official translator when communication with a prisoner will be made difficult. The Office insists that the institutions, within their realistic possibilities, comply with the Article 209 of the Enforcement of Penal Sentences Act under which the institution has to acquaint a prisoner, who does not speak the official language, with material and his/her work in his/her own language and make it possible that he/she monitors the process with the help of an interpreter.

## 2. Obiski policijskih postaj

V okviru izvajanja nalog in pooblastil državnega preventivnega mehanizma (DPM), ki ga določa Opcijski protokol h konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju, smo v letu 2009 obiskali 19 policijskih postajah po Sloveniji<sup>2</sup> z namenom, da se preveri ravnanje z osebami, ki jim je odvzeta prostost, ter da se opravi pregled prostorov, kjer so nastanjene osebe, ki jim je bila odvzeta prostost. Ob obiskih smo tudi tokrat opazili, da so bili policisti dobro seznanjeni z našim nalogami in pooblastili, tako da je delo lahko potekalo nemoteno. To vsekakor pozdravljamo.

Vsi obiski so bili nenapovedani, opravljeni v dopoldanskem ali popoldanskem času, dva pa tudi v nočnem času. Po vsakem obisku je skupina pripravila poročilo o ugotovitvah s priporočili, ki je bilo poslano na Ministrstvo za notranje zadeve (MNZ) in na policijsko postajo (PP), kjer je bil opravljen nadzor.

Poročila so nastala na podlagi pregleda prostorov za pridržanje, pogovora z vodstvom PP in pogovorov s pridržanimi osebami. MNZ se je tudi tokrat redno odzivalo na naša poročila. V večini primerov je soglašalo z našimi ugotovitvami in nam zagotovilo, da so nekatere pomanjkljivosti že odpravili oziroma da načrtujejo izboljšave.

Obiski policijskih postaj potekajo po ustaljenem zaporedju: najprej skupina, ki jo sestavljajo predstavniki Varuha in predstavniki ene ali obeh pogodbenih nevladnih organizacij, opravi ogled vseh prostorov za pridržanje, vključno s pomožnimi prostori (prostori za sprejem, za tujce in za odvetnika, skladišče, prostor za sprehod). Nato sledi ogled intervencijskih vozil, če so bila na PP v času našega obiska, končno je na vrsti pogovor z vodstvom PP (največkrat s komandirjem, pomočnikom komandirja ali z dežurnim policistom). Ob ogledu prostorov za pridržanje smo se osredotočili predvsem na naslednje zahteve:

- ali je zagotovljena ustrezna svetloba (dnevna in umetna);
- ali sta zagotovljena primerna temperatura in prezračevanje prostorov;
- ali so prostori primerno označeni;
- čistoča;
- opremljenost in velikost prostorov;
- sanitarije;
- dostop do pitne vode;
- oskrba s hrano;
- videonadzor prostorov in klicni zvonec;
- opremljenost prostorov z informacijami in brošurami o pravicah pridržanih oseb;
- možnost za gibanje na prostem in
- urejenost pritožbenih poti.

Ogledu prostorov za pridržanje je sledil pogovor z vodstvom PP oziroma dežurnim policistom, v katerem smo podali prvo oceno o primernosti prostorov za pridržanje in opozorili na morebitne opažene pomanjkljivosti ter pohvalili dobre rešitve. Ob vsakem obisku smo tudi pregledali dokumentacijo (spise) pridržanj nekaj naključno izbranih primerov, in sicer za pridržanje na podlagi zakonov o prekrških, o kazenskem postopku, o varnosti cestnega prometa ter o policiji. Pridobili smo tudi statistične podatke o številu pridržanih in zadržanih oseb na obiskanih PP v letu 2009 (od 1. 1. 2009 do dneva obiska).

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2 PP Kranjska Gora, PP Radovljica, PP Krško, PP Brežice, PP Ljubljana Bežigrad, PP Ljubljana Center, PP Ljubljana Vič, PP Slovenj Gradec, PP Ravne na Koroškem, PP Laško, PP Celje, PP Maribor I, PP Podlehnik, PP Slovenska Bistrica, PP Škofja Loka, PP Tržič, PP Ljubljana Šiška, PP Ribnica in PP Kočevje.



## 2. Visits to police stations

Within the framework of the implementation of tasks and authorities by the National Preventive Mechanism (NPM) which is provided by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2009, 19 police stations across Slovenia<sup>2</sup> were visited with the purpose of examining the treatment of persons deprived of liberty and carrying out an inspection of premises, where persons deprived of liberty were accommodated. During the visits it was also noted this time that the police were well acquainted with the inspection tasks and authorities so that work was undisturbed, and this was certainly welcome.

All visits were unannounced, carried out in the morning or afternoon, two even at night. After each visit the group prepared a report on the findings with recommendations which was sent to the Ministry of the Interior (MI) and the police station (PS) in which monitoring had been performed.

Reports were made on the basis of an inspection of places for detention, interviews with PS management and persons in police custody. MI regularly responded to such reports also this time. In most cases it agreed with the findings and assured that some deficiencies had already been rectified or that improvements are being planned.

Visits to the police stations are carried out in a regular order: first the group, which consists of representatives of the Ombudsman and one or both contracted non-governmental organizations, inspects all the premises for detention, including auxiliary premises (premises for reception, premises for aliens and a lawyer, storehouse, exercise area). This is followed by an inspection of intervention vehicles, if they were at the PS during a visit. Finally, a discussion with PS management (usually with the commander, commander's assistant or duty officer) is held. During an inspection of premises for detention the main focus was on:

- whether suitable lighting is provided (daylight and artificial);
- whether proper temperature and ventilation are provided;
- marking of premises;
- cleanliness;
- fittings and size of premises;
- sanitary facilities;
- access to drinking water;
- food supply;
- video surveillance of premises and possibility of emergency call;
- supplying premises with information and brochures on the rights of persons in police custody;
- possibility of outdoor exercise, and
- regulation of the appeal paths.

Inspection of premises for detention was followed by an interview with the PS management or duty officer, in which an initial assessment was given about the suitability of premises for detention and any warning given with regard to possible observed deficiencies and compliments made with regard to good solutions. During each visit examination was made of the documentation (files) regarding detentions and of some randomly chosen cases, namely for detention on the basis of the Minor Offences Act, Criminal Procedure Act, Road Traffic Safety Act and Police Act. Statistical data was obtained on the number of persons in police custody and persons remanded in custody at the visited PS in 2009 (from 1 January 2009 to the day of the visit).

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<sup>2</sup> Kranjska Gora PS, Radovljica PS, Krško PS, Brežice PS, Ljubljana Bežigrad PS, Ljubljana Center PS, Ljubljana Viè PS, Slovenj Gradec PS, Ravne na Koroškem PS, Laško PS, Celje PS, Maribor I PS, Podlehnik PS, Slovenska Bistrica PS, Škofja Loka PS, Tržič PS, Ljubljana Šiška PS, Ribnica PS and Kočevje PS.

## Osnovni podatki o prostorih za pridržanje

Število prostorov za pridržanje se razlikuje po postajah. Policijske postaje (PP) imajo od enega do sedem prostorov za pridržanje. Večje število prostorov za pridržanje omogoča, da se nekateri prostori uporabljajo za krajša pridržanja (do 12 ur), drugi pa za daljša (do 48 ur).

Na nekaterih PP imajo prostore za pridržanje, vendar jih zaradi različnih razlogov ne uporabljajo (neizpolnjevanje normativov). V takih primerih uporabljajo prostore za pridržanje na drugih PP. Posledica tega je lahko tudi večurna vožnja pridržanih oseb (ki je lahko zlasti za osebe, ki so pod vplivom alkohola, neprijetna) in neustreznost s stroškovnega vidika, zato smo predlagali, naj se razlogi, ki preprečujejo uporabo prostorov za pridržanje, čim prej odpravijo. Naši predlogi so bili uspešni, vsaj po odzivnem poročilu ene PP, kjer je bila sprejeta odločitev, da se bodo prostori za pridržanje obnovili v letu 2009.

Na nekaterih PP prostori za pridržanje, ki so videonadzorovani, niso bili ustrezno označeni (z nalepko z opozorilom o videonadzoru). Predlagali smo, naj namestijo nalepke z opozorilom o videonadzoru. MNZ nas je z odzivnim poročilom seznanil, da so bile nalepke o videonadzoru že nameščene.

Dostop do prostorov za pridržanje je v večini primerov mogoč neposredno čez dvorišče (z interventnim vozilom) ali mimo dežurnega policista. Le na nekaterih PP (PP Slovenj Gradec in Slovenska Bistrica) so prostori za pridržanje v kletnih prostorih in je zato dostop do njih mogoč (le) mimo dežurnega policista, in ne neposredno čez dvorišče, kar ni najboljša rešitev.

Prostori po velikosti ustrezajo standardom. Veliko prostorov (in PP) je novih, kar je posledica uvedbe schengenskega sistema. V nekaj primerih smo zaradi lažje in preglednejše organizacije dela in evidentiranja pridržanja opozorili, naj PP prostore za pridržanje številčno označijo oziroma popravijo oznake tako, da se bodo ujemale z oznakami v uradnih zaznamkih.

## Svetlost prostorov za pridržanje

Pri pregledu vseh 19 PP smo na sedmih PP ugotovili, da prostori za pridržanje nimajo ustrezne dnevne in/ali umetne svetlobe, na treh PP pa sploh ni dnevne svetlobe. Naši predlogi so se pri umetni svetlobi zato nanašali na zagotovitev močnejših svetlobnih teles. MNZ je v odzivnih poročilih sporočilo, da bodo naše predloge upoštevali oziroma da so jih že.

Na dveh PP smo opazili, da je luč v prostoru za pridržanje prižgana tudi ponoči, ker v nasprotnem primeru videonadzor ni mogoč. Opozorili smo, da je lahko umetna razsvetljava v času pridržanja za pridržano osebo moteča, in predlagali, naj preverijo, kako bi bilo to mogoče spremeniti oziroma zmanjšati moč umetne svetlobe v času nočnega počitka. MNZ je v odzivnem poročilu sporočilo, da bodo naše predloge o namestitvi svetlobnega telesa z manjšo močjo osvetlitve, ki je primerna za nočni počitek, upoštevale, v enem odzivnem poročilu pa sporočilo, da se ponoči prostori za pridržanje ne uporabljajo, ker se vsa pridržanja izvajajo na drugi PP, kjer pa so zagotovljeni vsi bivalni pogoji.

## **Basic data on detention rooms**

The number of detention rooms varies among police stations. Police stations (PS) have from one to seven detention rooms. A larger number of detention rooms enables that some rooms can be used for shorter detentions (up to 12 hours), and others for longer (up to 48 hours).

Some PSs have detention rooms but for various reasons do not use them (non-compliance with standards). In such cases they use detention rooms at other PSs. This can result in several hours' driving of persons in police custody (which is especially unpleasant for persons under the influence of alcohol) which is also uneconomic so it was suggested that the reasons which prevent the use of detention rooms be rectified as soon as possible. Such suggestions were successful, at least according to the response report of one of the PSs, where the decision was made to renovate detention rooms in 2009.

At some of the PSs, detention rooms, which are under video surveillance, were not properly marked (with a warning label about video surveillance). It was suggested that such labels should be installed. In its response report, the MI reported to the Ombudsman that these had already been installed.

Access to detention rooms is mostly possible directly across the courtyard (with an intervention vehicle) or past the duty officer. Only in some PSs (PS Slovenj Gradec and Slovenska Bistrica) the detention rooms are located in the basement and the access is therefore only possible past the duty officer and not directly across the courtyard, which is not the best solution.

Premises meet size standards. Many premises (and PSs) are new, which is a result of the introduction of the Schengen system. In some cases, for easier and more transparent work organization and for the record of detention, we advised PS that detention rooms should be numerically marked or their labels corrected in such a way that they would correspond to the markings in official notices.

## **Lighting of detention rooms**

During the inspection of all 19 PSs it was found that in case of seven PSs the detention rooms do not have adequate daylight and/or artificial light, and at three PSs these rooms did not even have daylight. Relevant suggestions regarding artificial light therefore related to the provision of stronger lighting devices. In their response reports, the MI reported that these suggestions will be, or they already have been, taken into account.

At two PSs it was noticed, that the light in the detention room was turned on even at night since video surveillance is otherwise not possible. It was pointed out that the artificial light in times of detention can be unpleasant for the person in police custody, and suggested that possibilities with regard to changing or reducing the power of the artificial light during night rest should be verified. In its response report the MI reported that the suggestions regarding the installation of a lighting device with a lower power adequate for night rest would be taken into account. In one response report it was reported that detention rooms are not used during the night because all detentions are carried out in another PS, where all living conditions are provided.

## **Čistoča**

Policijske postaje imajo zaposleno čistilko ali sklenjeno pogodbo z zunanjo čistilko oziroma čistilnim servisom. Na vseh PP so bili prostori za pridržanje čisti. V enem primeru smo ugotovili, da so stene v prostoru za pridržanje precej umazane in potrebne pleskanja, podobno smo ugotovili v drugem primeru v prostoru za pogovore s strankami, s čimer se je strinjalo tudi MNZ. Na eni PP smo zaznali smrad po kanalizaciji, na kar smo tudi opozorili. Kot pozitivno prakso ocenjujemo vodenje evidence čiščenja prostorov, ki jo opravljajo na nekaterih PP (na PP Podlehnik in Laško).

## **Oprema**

Prostori za pridržanje so bili večinoma ustrezno opremljeni (WC, ležalne blazine, posteljnina). Ležišča so običajno lesena in opremljena s PVC-žimnicami. Praviloma dobi oseba ob prihodu posteljnino (odeje ali posteljnino za enkratno uporabo in pokrivalo), ki so shranjena v posebnem skladišču oziroma prostoru. Na nekaterih PP smo pogrešali vzglavnike (če se izvaja pridržanje čez noč) ter stole in mize.

Na nekaterih PP smo opazili tudi pomanjkljivosti, kot so:

- uporaba pograda, ki nima lestve za pomoč pri vzpenjanju nanj. Predlagali smo, naj se ta namesti. MNZ je v odzivnem poročilu zagotovil, da bo ta nameščena;
- neprimernost tankih ležalnih blazin (armafleksi) za pridržanje oseb čez noč. V odzivnem poročilu se je MNZ strinjalo z opozorilom in zagotovilo, da bodo prednostno nameščene ustrezne ležalne blazine v vseh prostorih za pridržanje;
- zgornja plast ležišča je bila počena in zato je bil les izbočen.

## **Sanitarije**

Sanitarije so bile z izjemo dveh PP (PP Slovenska Bistrica in Kranjska Gora) ustrezno urejene: toaletna školjka v prostorih za daljše pridržanje in počepnik z izplakovanjem v prostorih, ki so namenjeni krajšemu pridržanju. Na omenjenih PP pridržane osebe ne morejo splakovanja opraviti same, saj je to mogoče storiti le v predprostoru in mora zato poklicati dežurnega policista, kar z vidika dostojanstva in pravice do zasebnosti ni primerno, na kar smo tudi opozorili.

## **Cleanliness**

Police stations normally have a cleaner employed or a contract concluded with an outside cleaner or cleaning service. The detention rooms were clean in all PSs. In one case it was found that the walls of the detention room were quite dirty and needed painting. A similar situation was found in another case in the room for interviews with clients, with which MI agreed. In one of the PSs the unpleasant smell of sewage system was noticed and reported. Records regarding the cleaning of premises, which is carried out in some PSs (PS Podlehnik and Laško) is assessed as a positive practice.

## **Fittings**

Detention rooms were mainly adequately fitted (toilet, mattress covers, bedding). Beds are usually wooden and fitted with PVC mattresses. A person normally receives bedding upon the arrival (blanket or bedding for single use and cover), which is stored in a special storage or premises. Some PSs did not have pillows (if detention is carried out overnight) or chairs and tables.

Some deficiencies in some PSs were noted:

- use of a bunk bed without a ladder to climb on top, which was suggested be installed. In its response report, MI assured that this would be done;
- inadequacy of thin mattresses (armafleks foam) for detaining persons overnight. In its response report, the MI agreed with this warning and assured that adequate mattresses will be installed, as a priority, in all detention rooms;
- the upper layer of the bed was broken and thus the wood protruded.

## **Sanitary facilities**

Sanitary facilities, with the exception of two PSs (PS Slovenska Bistrica and Kranjska Gora) were adequately arranged: with a toilet bowl in the premises for longer detention and a squatting toilet with flushing mechanism in the premises intended for shorter detention. In the above mentioned PSs persons in police custody cannot flush the toilet themselves as this can be done only in the WC antechamber and they have to call the police officer on duty, which is not appropriate from the point of view of dignity and right to privacy, which was also pointed out.

## Zvočni in videonadzor

Nedvomno mora policija poskrbeti za varnost osebe, ki jo pridrži v svojih prostorih, saj je oseba v tem času pod njeno oblastjo. Določba 54. člena Pravilnika o policijskih pooblastilih je v tem pogledu jasna. Policist, ki izvaja pridržanje, mora poskrbeti za varnost pridržane osebe od njene namestitve v prostor za pridržanje do izpustitve. Za nadzorovanje pridržanih oseb lahko policist po tej določbi uporablja naprave za prenos zvočnih in slikovnih znakov. Uporaba teh naprav mora biti v prostoru vidno označena. Pravilnik pri tem tudi jasno določa, da nadzor s tehničnimi sredstvi ne izključuje neposrednega fizičnega nadzora. Videonadzor je tako le pripomoček policistu pri neposrednem nadzoru pridržane osebe. Tega je treba v vsakem primeru prilagajati okoliščinam posameznega primera. Posebej skrben mora biti torej nadzor pridržane osebe v primerih, da oseba kaže nagnjenje k samopoškodovanju ali z njim grozi.

To poudarjajo tudi Usmeritve za izvajanje policijskih pooblastil, ki še določajo, da se v takih primerih policist takoj posvetuje z dežurnim zdravnikom ali izvede druge ukrepe za pomiritev oziroma preprečitev takih ravnanj. Vse to so očitno upoštevali tudi Normativi za gradnjo, adaptacijo in opremo prostorov za pridržanje št. 2152-1-31/500359-2 z dne 30. 9. 2002, saj določajo, da se videokamera namesti na strop ali nedosegljivo mesto tako, da nadzoruje celoten prostor, razen sanitarnega dela. Vprašljivo je tudi, ali bi drugačna namestitev kamere sploh prestala test sorazmernosti, to je tehtanje posega in varovane dobrine. Pri tem testu je treba med drugim namreč odgovoriti na vprašanje, ali je poseg v pravico posameznika (sploh) nujen in primeren za doseg zasledovanega ustavno legitimnega cilja (varstva pravic drugih oziroma javne koristi) ter v sorazmerju s pomembnostjo varovanega cilja. Za nujnost posega bi tako šlo v primeru, da cilja ni bilo mogoče doseči drugače, sorazmernost v ožjem smislu pa zahteva, da je poseg določen v najmanjši možni meri, s katero je še mogoče doseči cilj: da je zasledovana korist sorazmerna s težo posega samega.

Na treh PP (PP Ravne na Koroškem, Laško in Celje) je bilo ugotovljeno, da zorni kot videonadzornega sistema v prostorih za pridržanje obsega tudi toaletni del prostora za pridržanje, kar je v nasprotju z Navodilom o gradnji, adaptaciji in opremi prostorov za pridržanje, na kar smo opozorili in predlagali, naj se zaradi pravice do zasebnosti napake odpravijo. V odzivnih poročilih je MNZ zagotovil, da so že poskrbeli za ustrezno namestitev videonadzornega sistema.

Večina PP je pod videonadzorom in imajo klicni zvonec. V zvezi z načinom opozarjanja pridržanih oseb o nadzoru smo opazili te pomanjkljivosti: opozorilo o videonadzoru večkrat ni bilo nameščeno v prostorih za pridržanje ali pa je bilo to nameščeno zunaj prostorov, na primer na zunanji strani vrat, na hodniku. Naš predlog, naj PP zagotovijo opozorilo (nalepko) vedno tudi v prostorih za pridržanje, je MNZ sprejelo in zagotovilo, da bo to uredilo ali je že uredilo.

## Sound and video surveillance

Undoubtedly, the police have to ensure the security of a person detained in their premises, as during this time the person is under their power. The provision of Article 54 of the Rules on Police Powers is clear in this respect. The police officer implementing the detention has to ensure the safety of a person in police custody from the moment of his/her placement in the detention room until his/her release. For monitoring persons in police custody, the police officer may under this provision use devices to transfer sound and video images. The use of these devices must be visibly marked in the room. The Rules also make it clear that monitoring by technical devices does not exclude direct physical control. Video surveillance is thus only a tool to help the officer in direct monitoring of a person in police custody. In any case, this must be adapted to the circumstances of each case. Special care must be taken in monitoring a person in police custody where a person shows a tendency to self-harm or threatens to harm himself/herself.

This is also stressed in the Guidelines for Implementing Police Powers which even determine that in such cases the police officer must immediately consult the doctor on duty or implement other measures for easing or preventing such acts. All this was obviously taken into account in the Standards for Construction, Adaptation and Fittings of Detention Rooms No. 2152-1-31/500359-2 of 30 September 2002, as they set out that the video camera is installed on the ceiling or out of reach so that it monitors the whole room except the sanitary part. It is also questionable whether a different installation of a camera would even pass the proportionality test (reasonableness) that is a balancing of interference and protected items. Among other things this test needs to answer the question whether an interference with the individual's right is urgent (at all) and appropriate with regard to the achievement of a constitutionally legitimate goal (protection of rights of others or for public benefit) and proportional to the importance of the protected goal. An urgent interference would be thus considered in a case when it would not be possible to achieve a goal in another manner, while the principle of proportionality in a narrow sense requires that an interference is determined with the least possible means with which it is still possible to achieve the goal: that the benefit pursued is in proportion to the weight of an interference itself.

In three PSs (Ravne na Koroškem, Laško and Celje PSs) it was found that the viewing angle of the video surveillance system in detention rooms covers also the sanitary part, which is contrary to the Guidelines for Construction, Adaptation and Fittings of Detention Rooms, which was also pointed out and the suggestion was made that this be rectified due to the right to privacy. In response reports the MI ensured that they had already taken care to carry out a proper installation of the video surveillance system.

The majority of PSs are under video surveillance and equipped with a call bell. In relation to the warning provided to the detainees regarding the monitoring the following deficiencies were noticed: the warning regarding video surveillance was often not installed in detention rooms or it was placed outside the room, for example on the exterior side of the door, in the corridor. The MI accepted the suggestion that the PS provide a warning (sticker) also in detention rooms and assured that this would be done, or that it had already been done.



## Prehrana in voda

Večina PP zagotavlja pridržanimi osebam hrano v obliki t. i. lunch paketov, ki jih je več tipov, med njimi tudi posebni za vegetarijance, katerih rok uporabnosti je bil ustrezen. Večina PP (ki izvaja daljša pridržanja) ima sklenjene pogodbe o dostavi tople hrane iz bližnjih gostiln (zlasti v primeru pridržanj do 48 ur). Pohvalna je tudi praksa nekaterih PP (na primer PP Brežice in Krško), ki ponudijo topli obrok tudi osebi, ki je pridržana do 12 ur, če ta izrazi željo po toplem obroku.

Na nekaterih PP prostori za pridržanje nimajo dostopa do tekoče vode, zato jo pridržanim dostavljajo policisti v plastenkah, na PP Ribnica pa delijo vodo celo v kozarcih. Predlagali smo, naj se tudi to v doglednem času spremeni in pridržanim osebam omogoči stalen dostop do pitne vode v prostoru za pridržanje.

## Dokumentacija

Pregled dokumentacije je pokazal, da je ta načeloma skrbno urejena, smo pa kljub temu opazili nekatere nepravilnosti in nedoslednosti:

- neujemanje podatka o koncu pridržanja na uradnem zaznamku s podatkom iz računalniške evidence,
- nepodpisani sklepi o pridržanju od pridržane osebe in neizpolnjena rubrika razlogi za odklonitev podpisa,
- ni zapisan podatek o datumu in uri vročitve sklepa o pridržanju,
- nepravilno zapisan podatek, kdaj je bila oseba seznanjena z možnostjo obvestitve svojcev,
- neujemanje podatka v elektronski evidenci FIO glede dejanskega kraja pridržanja,
- ni označeno, ali je bila osebi ponujena voda in ali jo je pridržana oseba sprejela ali odklonila,
- nepravilno popravljavanje podatkov (prečrtanje s kemikom) na uradnih zaznamkih,
- napaka pri vnosu podatka o seznanitvi s posameznimi pravicami (zapisan čas, ko postopek sploh še ni bil uveden),
- neustrezna uporaba starih odločb (obrazcev) o pridržanju (JRM-3 MNZ RS (PC2)), nista zapisana datum in ura konca pridržanja in
- ni označen podatek v rubriki druge ugotovitve ali pripombe, ali je bil sklep o pridržanju pridržani osebi vročen in ali ga je pridržana oseba sprejela ali ne.

O vseh teh pomanjkljivosti smo obvestili Ministrstvo za notranje zadeve (MNZ), ki nam je odzivnem poročilu podalo obrazložitev, da je Generalna policijska uprava glede pomanjkljivosti in nepravilnosti pri evidentiranju pridržanja in opozorila vodstva nadziranih enot in jim naročila, naj izvedejo ustrezne ukrepe za odpravo pomanjkljivosti.

Nekatere PP pa so izstopale po skrbno urejeni dokumentaciji in zapisu vseh relevantnih okoliščin v zvezi s pridržanjem. To je pohvalno in hkrati izziv za tiste PP, pri katerih smo ugotovili pomanjkljivosti.

Na nekaterih PP smo zasledili primere dobre prakse, in sicer:

- da je opravljen pogovor z vsako pridržano osebo po koncu pridržanja in da se o tem sestavi zapis, ki ga pridržana oseba podpiše. Če je kakšen pogovor (in seveda tudi podpis zapisa) prostovoljen, je lahko učinkovit način, da pridržana oseba že ob koncu pridržanja pojasni oziroma prijavi morebitne nepravilnosti, ki bi se nanašale na odrejeno pridržanje;
- izročanje sklepov o pridržanju ob podpisu tega, tako ima pridržana oseba sklep o pridržanju pri sebi v prostoru za pridržanje;
- skrben zapis v uradni zaznamek, da sta bili osebi ponujeni voda in hrana in ali ju je oseba sprejela ali odklonila.

## Food and water

The majority of PSs provide persons in police custody with food in the form of lunch packages of several types, with adequate shelf life, among them also special packages for vegetarians. The majority of PSs (which perform longer detentions) have concluded contracts for hot food delivery from nearby restaurants (especially in cases of detention for up to 48 hours). The positive practice of some PSs (for example Brežice and Krško PSs) which also offer hot meals to a person detained up to 12 hours, if he/she wishes, is commendable. In some PSs detention rooms do not have access to running water which is why the police officers deliver bottled water, and in Ribnica PS they even deliver it in glasses. It is proposed that this be changed in the future and that persons in police custody be given permanent access to drinking water in detention rooms.

## Documentation

Inspection of documentation has shown that it is mainly carefully arranged; nevertheless, still some irregularities and inconsistencies were noticed:

- discordant data at the end of detention between the official notice and the computer record,
- unsigned decisions on detention of a person in police custody and unfilled sections with the reasons for refusing to sign it,
- the date and time of serving the police detention warrant are not recorded,
- improperly recorded data regarding when a person was made familiar with the possibility of notifying relatives,
- discordant data in the FIO electronic record regarding the actual place of detention,
- no records about whether a person was offered water and if this person accepted it or refused,
- improper correction of data (crossed off with a pen) on official notices,
- error when entering data regarding a person becoming acquainted with individual rights (recorded time when the procedure had not yet been instituted),
- inadequate use of old decisions (forms) on detention (JRM-3 MNZ RS (PC2)), date and time of release from detention are not recorded, and
- there is no indicated data in the section "other findings or comments", if the police detention warrant was personally served on the person in police custody and if the said person accepted it or not.

The Ministry of the Interior (MI) was informed about all of these deficiencies. In its response report it explained that the General Police Directorate, with regard to the deficiencies and irregularities in recording police custody, warned the managers of inspected units and ordered them to take appropriate measures to eliminate these deficiencies.

However, some PSs excelled in keeping carefully arranged documentation and records of all relevant circumstances regarding the detention. This is commendable and at the same time challenging for those PSs where deficiencies were found.

At some PSs, examples of good practice were noted:

- that there is an interview with each person in police custody held after the end of detention and that a record, signed by the detained person, is written. If any conversation (and also signing of the record) is voluntary, it may be effective in such a way that a person in police custody can at the end of the detention explain or report any irregularities that may have related to the detention imposed;
- handing of a police detention warrant at the time of its signing so that the person in police custody has it with him/her in the detention room;
- careful record in the official note that the person was offered food and water and whether he/she accepted it or declined it.

## **Zdravstvena oskrba pridržanih oseb**

PP zdravniško pomoč zagotavljajo tako, da pridržano osebo odpeljejo v bližnji zdravstveni dom, ki ima zagotovljeno 24-urno dežurstvo oziroma pride dežurni zdravnik na PP.

## **Intervencijska vozila**

Pri pregledu vozil smo le v enem primeru ugotovili, da je prostor za prevoz pridržanih oseb umazan. Drugače so bili prostori čisti. Vsa vozila so imela za sedalnim delom režo, ki omogoča, da se pridržana oseba med transportom oprime, tako da je ne premetava po notranjosti vozila.

## **Prostor za odvetnike**

Policijske postaje imajo ali poseben prostor za odvetnike ali pa v ta namen uporabljajo druge prostore (prostor za sprejem pridržane osebe in za zaslišanje). Na nekaterih PP je oprema v teh prostorih pomanjkljiva (ni mize ali stola), zato smo predlagali namestitve nujne opreme, potrebne pri pogovoru med odvetnikom in stranko. Seznam odvetnikov se vodi na spletni strani policije, le nekaj PP ima seznam odvetnikov v tiskani obliki (na nekaterih obiskanih PP je bil ta tudi v predprostorih oziroma v sobah za sprejem in pogovore s pridržanimi osebami).

Prostori za pogovore z odvetniki so sicer različno opremljeni, kar zadeva zvočni in videonadzor.

Če prostor ni opremljen s telefonom, je odvetnika mogoče poklicati po telefonu, ki je namenjen dežurnemu policistu.

## **Sprehajališča**

Ta so namenjena sprehajanju pridržanih oseb in kajenju. Vse policijske postaje nimajo posebnega sprehajališča, zato v ta namen uporabljajo dvorišča PP, temu primerno zagotovijo tudi osebni nadzor.

Posebna sprehajališča, kjer že so, so v večini primerov primerno velika, razlikujejo pa se v pokritosti (nepokrita, delno pokrita, v celoti pokrita) in ograjenosti (ograjena z ograjo ali neograjena).

Opremljena so z zvočnim in videonadzorom (ponekod je manjkalo opozorilo), zagotovljeni so pepelniki, v večini primerov so bila čista.

## **Prostor za tujce**

Večinoma so bili prostori primerno čisti in opremljeni, vključno s plakatom o pravicah pridržanih oseb v več jezikih, brošuro o pravicah oseb, ki jim je bila odvzeta prostost v več jezikih, in raznimi zloženkami (UNHCR, PIC). Postajam, na katerih tega nismo zasledili, smo predlagali, naj zagotovijo plakate in brošure.

### **Health care of persons in police custody**

PSs provide health assistance by taking the person in police custody to the nearest community health care centre which provides 24-hour duty service or otherwise a doctor on call comes to the PS.

### **Intervention vehicles**

During the inspection of vehicles it was found only in one case that the area for the transport of persons in police custody was dirty. Otherwise the areas were clean. All vehicles were equipped with handgrips which a detained person can hold during transportation so that he/she does not get thrown around inside the vehicle.

### **Room for legal counsel**

Police stations have a special room for legal counsel or use other rooms for this purpose (room for receiving persons in police custody and for interviewing them). At some PSs the equipment in these rooms is inadequate (no table or chair) therefore it is suggested that the necessary equipment needed for a conversation between a lawyer and a client be installed. A list of lawyers is kept on the police website, only a few PSs have this list in a printed form (in some PSs this list was displayed in the vestibule (or in rooms for reception and interviews with persons in police custody).

Rooms for interviews with lawyers are differently equipped in terms of audio and video surveillance.

If a room is not fitted with a telephone, a lawyer can be called from the telephone intended for the duty officer.

### **Exercise areas**

These are intended for exercise and smoking for persons in police custody. Not all police stations have a special area for exercise that is why they use courtyards with adequately provided escort and monitoring.

Special exercise areas are in most cases of a proper size, they differ only in terms of cover (covered, partially covered, fully covered) and fencing (enclosed or not enclosed by a fence).

They are equipped with audio and video surveillance (only in some places did they lack a warning), ashtrays are provided, and in most cases they are clean.

### **Premises for aliens**

In general, premises were properly cleaned and equipped, including a poster on the detained persons' rights explained in several languages, a brochure on the rights with regard to persons deprived of their liberty published in several languages, and various leaflets (UNHCR, PIC). At those police stations where these were not displayed the provision of posters and brochures was suggested.

### **Seznanjenost pridržanih oseb z njihovimi pravicami**

Policija je pred leti izdajala brošuro z obvestilom o pravicah osebe, ki ji je bila odvzeta prostost v več jezikih in jih imajo v vseh obiskanih PP. Žal prevečkrat ne na mestu, kjer je najbolj potrebna (prostori in predprostori za pridržanje), in tako je bilo včasih potrebno nekaj časa, da so policisti brošuro sploh našli.

Seznanjenost s pravicami se zagotavlja tudi s plakati z obvestilom o prijemu zaradi odvzema prostosti, kar je pohvalno, vendar bi jih bilo treba v večini primerov zamenjati z novejšo različico, ker zdajšnji ne vsebuje pravice do zdravnika po lastni izbiri. Eno izmed priporočil Odbora proti mučenju je namreč, da se v zakonodaji in praksi vsem osebam, ki jim je bila odvzeta prostost, omogoči pravica do neodvisnega zdravnika.

Prav bi tudi bilo, da bi bili plakati nameščeni v prostorih, kjer se pridržane osebe zadržujejo največ časa. Če so nameščeni samo na hodnikih, dvomimo, da se osebam omogoča, da se seznanijo z vsebino.

### **Pritožbene poti**

Policijske postaje imajo različno urejene pritožbene poti (poleg tiste, ki jo ureja Zakon o policiji). Večinoma imajo vse PP knjigo pohval in pritožb (razen PP Slovenska Bistrica), ki je pri dežurnem policistu. Nekatere PP imajo tudi nabiralnike, kar daje pridržanim osebam možnost anonimne pritožbe ali pohvale, to pa lahko uporabijo tudi tujci, ki niso seznanjeni s slovenskimi predpisi o možnosti pritožb zoper delo uradnih oseb (ob predpostavki, da je nabiralnik tudi ustrezno označen v tujem jeziku).

### **Informativeness of persons in police custody regarding their rights**

A few years ago the police issued a brochure with a notice in several languages regarding the rights enjoyed by persons deprived of their liberty. The brochure is kept at every PS. Unfortunately too often this is not placed where it is most needed (rooms and vestibules for detention) and thus it sometimes took a lot of time for the police officers to even find it.

Information on rights is also ensured with posters with a notice regarding the arrest due to deprivation of liberty, which is commendable, but in most cases they should be replaced with a newer version because the current one does not contain the right to a doctor of one's own choice. One of the recommendations of the Committee against Torture is that, in legislation and practice, all persons deprived of their liberty are given the right to an independent doctor.

It would also be correct to place the posters in rooms where the detainees spend most of their time. If they are only placed in corridors it is doubtful if persons are being informed of their content.

### **Appeal paths**

Police stations have appeal paths arranged in various manners (besides the one that is regulated by the Police Act). Mostly all of them have a complaints book (except Slovenska Bistrica PS), which can be found with the police officer on duty. Some PSs also have post boxes, which give the detainees an opportunity of making an anonymous complaint or to give praise. These can also be used by aliens who are not familiar with Slovene regulations on the possibility of complaints against the work of official persons (assuming that the post box is properly labelled in a foreign language).

### 3. Obisk Azilnega doma

Obisk azilnega doma (AD) smo opravili brez predhodne napovedi. Glavni namen obiska je bil preveriti ravnanje s tujci, ki so izrazili namen vložiti prošnjo za mednarodno zaščito in so nameščeni na sprejemni oddelek, ter ravnanje s prosilci za mednarodno zaščito, ki jim je gibanje omejeno na oddelek za omejevanje gibanja skladno z Zakonom o mednarodni zaščiti. Ob tokratnem obisku v zvezi s precejšnjim delom ugotovitev, ki smo jih zapisali ob obisku AD lani, nismo opazili večjih sprememb in ker tudi tujci oziroma prosilci za mednarodno zaščito, s katerimi smo se pogovorili, niso imeli pritožb v zvezi z bivanjem ali glede odnosa zaposlenih, v nadaljevanju izpostavljamo predvsem tiste okoliščine, ki jih je smiselno (tudi tokrat) izpostaviti.

Do našega obiska (27. 10. 2009) je bilo v letu 2009 vloženi 154 prošnji za mednarodno zaščito, na dan obiska pa je bilo v Republiki Sloveniji 81 prosilcev. V AD jih je bilo nastanjenih 54, tako da je bila njegova uradna zmogljivost, ki je še vedno 203 osebe, zasedena le približno 27-odstotno. Trije od prosilcev v AD so bili mladoletniki brez spremstva, vsi stari 17 let. Skrbništvo nad njimi izvajajo prostovoljci Slovenske filantropije. Tudi tokrat so bili vsi trije vključeni v program neformalnega izobraževanja Projektno učenje za mlajše odrasle (PUM). Sicer pa je bilo od mladoletnih prosilcev 13 šoloobveznih, ena mladoletna prosilka je bila vpisana v srednjo šolo, preostali so bili predšolski otroci.

Začasno omejenega gibanja ni imel nihče v AD, en tak prosilec pa je bil v centru za tujce – po pojasnilih, ki smo jih prejeli ob obisku, tega enkrat na teden za pogovor obišče socialni delavec AD, v zvezi s postopkom za pridobitev mednarodne zaščite pa ga obiskuje tudi operativna služba. V letu 2009 je bilo do našega obiska izdanih 19 sklepov o omejitvi gibanja, devetkrat je bila ta nato še podaljšana. Družine se, navkljub morebitnim omejitvam gibanja, praviloma nameščajo v azilni dom, in ne v center za tujce.

Za samovoljno zapustitev AD so se posamezniki v letu 2009 do našega obiska odločili 107-krat, dan pred našim obiskom pa je bila evidentirana ena samovoljna zapustitev, in sicer iz sprejemnih prostorov.

Ob našem obisku v letu 2008 nam je bilo pojasnjeno, da je v pripravi nova brošura, ki bo prevedena v več jezikov in bo prosilcem izročena ob sprejemu v AD. Tokrat nam je bila res predložena lična brošura Kako do mednarodne zaščite. Brošura, ki je na voljo v devetih jezikih (tudi romskem), se ob namestitvi posreduje prosilcem v slovenskem ali najustreznejšem izmed osmih tujih jezikov. Poleg te brošure, ki ji je priložen tudi seznam kontaktnih podatkov svetovalcev za begunce, se prosilcem posreduje še predstavitev hišnega reda AD z brošuro Živim v Azilnem domu. Obe brošuri prosilce na prijazen in slikovit način seznanjata z njihovimi pravicami in dolžnostmi. Državni preventivni mehanizem (DPM) tak pristop pozdravlja, saj je v nasprotju s suhoparnimi formaliziranimi informacijami, ki so bile prosilcem doslej na voljo, do prosilcev mnogo prijaznejši. Izdelava obeh brošur je bila sofinancirana iz sredstev Evropskega sklada za begunce (iz katerih so bili sofinancirani tudi nekateri drugi projekti, npr. preureditev in oprema večnamenskega prostora, dokončanje postavitve zaščitne ograje okoli objektov sektorja za azil, dokončanje nadgradnje objekta kotlovnice idr.).



### 3. Visit to the asylum hostel

A visit to the Asylum Hostel (AH) was unannounced. The main purpose of the visit was to check the treatment of aliens who had expressed an intention to file a request for international protection and have been placed in reception facilities, and treatment of applicants for international protection whose movement is restricted to a special department where restrictions of movement apply in accordance with the International Protection Act. During this visit, in relation to findings recorded during last year's visit of AH, no major changes were observed and as the aliens or applicants for international protection who were interviewed did not have any complaints in relation to living conditions or attitude of the employees, such circumstances worth mentioning again are highlighted below.

In 2009, up to the day of the visit (27 October 2009), 154 applications for international protection were filed and on the day of the visit there were 81 applicants in the Republic of Slovenia. 54 of them were accommodated in AH so that their official capacity, which is still 203 persons, was only 27 percent occupied. Three of the applicants in the AH were unaccompanied minors, all 17 years old. Their custody is carried out by volunteers from Slovene Philanthropy. All three were involved in the informal education programme Project learning for young adults (PLYA). Among minor applicants 13 were school-aged, one minor applicant was enrolled in high school, others were pre-school children.

None of the residents in the AH suffered any form of restriction of movement, however there was one such applicant at the Centre for Aliens – according to the explanations received during the visit, an AH social worker visits him once a week, and with regard to the procedure for obtaining international protection he receives visits by officers from the operational service. In 2009 up to the visit, 19 decisions on restriction of movement were issued; nine times it was then even extended. Families are, despite possible restrictions of movement, usually placed in the Asylum Home and not in the Centre for Aliens.

In 2009 up to the visit, in 107 cases the individuals themselves decided to leave the Asylum Home, and on the day prior to the visit one such case was recorded, namely from the reception rooms.

During the visit in 2008 it was explained that a brochure, which will be translated into several languages and handed out to the applicants upon the reception into the Asylum Home, was being prepared. This time a nice brochure was actually produced entitled "How to obtain international protection". The brochure, which is available in nine languages (also in the Roma language), is given to the applicants in the Slovenian language or in one of the most appropriate of the eight other foreign languages upon accommodation. In addition to this brochure to which an enclosed contact list of consultants for refugees is attached, the applicants are also given a presentation of the Asylum Home's House Rules including the brochure entitled "I live in the Asylum Home". Both brochures provide information to the applicants regarding their rights and duties in a user-friendly and illustrated way. The National Preventive Mechanism (NPM) welcomes such an approach since it is, contrary to the somewhat tedious and formalized information available to applicants up to now, much more user-friendly for the applicants. The brochure production was co-funded by the European Refugee Fund (from which also some other projects were co-funded, for example; rearrangement and equipment of a multipurpose room, completion of security fence installation around the buildings' sector for asylum, completion of the boiler room upgrade, etc.).

V prostoru ob vhodu v AD smo našli nameščene izvode zloženek Schengensko območje in jaz (obvestilo o schengenskem območju za begunce, prosilce za azil, upravičence do statusa subsidiarne zaščite in osebe brez državljanstva) Visokega komisariata Združenih narodov za begunce (UNHCR) in »Basic information on the course of procedure before and on applying for asylum« Pravno-informacijskega centra nevladnih organizacij (PIC), izdajo katere je prav tako financiral UNHCR. Na vratih pisarne nevladnih organizacij je bilo v več jezikih nameščeno tudi obvestilo o nujenju pravne pomoči. DPM meni, da je ta način seznanitve oseb, ki se jih namesti v AD, z zanje relevantnimi informacijami načeloma zadovoljiv, seveda ob predpostavki, da so jim za vsakršna morebitna nadaljnja pojasnila oziroma pomoč v zadostni meri dostopni vsi, ki morajo skrbeti za njihovo nastanitev in oskrbo.

Prostori, oprema in okolica AD (sprejemni oddelek, oddelki za samske ženske, za samske moške, za družine, za mladoletnike brez spremstva, za osebe s posebnimi potrebami in za omejitve gibanja, sanitarije, učilnice, soba za verske aktivnosti, soba z igračami, otroško igrišče idr.) so bili ustrezno urejeni in vzdrževani. Zato smo le priporočili, naj se (vsaj) takšno stanje vzdržuje tudi v prihodnje. Kot izjemi smo izpostavili le zunanje ograjeno peščeno igrišče, ki je (tudi tokrat) delovalo precej zanemarjeno, in večnamenski prostor, ki je bil skoraj povsem založen predvsem z rabljenimi oblačili in obutvijo. Ob obisku nam je bilo pojasnjeno, da zaradi urejanja skladišča, oblačila in obutve tam razvrščajo. Ker je bilo glede na potrebe prosilcev oblačil in obutve precej preveč, so razmišljali, da bi jih podarili Rdečemu križu. To smo podprli, seveda ob pogoju, da je prosilcem zagotovljeno dovolj oblačil in obutve.

Spremembe so bile uvedene v zvezi s psihosocialno oskrbo. V času lanskega obiska so jo nudili socialni delavci, psiholog in sociolog, po 15. uri do 23. ure pa podjetje Arx. Takrat smo predlagali, naj se zagotovi navzočnost zaposlenih na področju socialnega dela tudi v popoldanskem času in Ministrstvo za notranje zadeve (MNZ) je v odzivnem poročilu o našem obisku zagotovilo, da se bo v okviru kadrovske možnosti proučilo možnost navzočnosti socialnega delavca. Ob tokratnem obisku nam je bilo pojasnjeno, da je bil socialni delavec do prvega septembra 2009 dejansko navzoč tudi po 15. uri, vendar so to prakso opustili in so od tedaj v tem času navzoči štirje predstavniki nevladnih organizacij in operativni delavec.

Družba Arx pogodbeno izvaja dva programa. Pri prvem gre za pomoč pri nastanitvi in oskrbi prosilcev, pri drugem pa za psihoterapijo (ki jo ob petkih izvaja psihoterapevtka) in pogovore s psihiatrom (ob petkih, lahko pa se ga pokliče tudi sicer, če je za to potreba). V obeh primerih gre za individualne obravnave. V poštev bi lahko prišla tudi ustanovitev terapevtske skupine, vendar nam je bilo pojasnjeno, da pri tem pričakujejo težave, ker se populacija razmeroma hitro spreminja, to pa je za delo v skupini lahko precejšnja nevšečnost. Kljub temu DPM podpira ta prizadevanja, še posebno ker je bilo v pogovoru pojasnjeno, da imajo številni prosilci psihične težave. Prav je, da se prosilcem poskuša zagotavljati podporo na čim več načinov, saj jo glede na svoj položaj in ker imajo številni med njimi psihične težave, nedvomno potrebujejo.

V zdravstveni službi AD je zaposlena medicinska sestra. Ob obisku nam je bil posredovan podatek, da je navzoča do 15. ure, vendar smo ugotovili, da je v brošuri Živim v Azilnem domu navedeno, da je navzoča le od 10. do 13. ure, zato smo prosili za dodatno pojasnilo. MNZ je pojasnilo, da je medicinska sestra v AD zaposlena za polni delovni čas in da je v brošuri navedeni čas njene navzočnosti le orientacijski, saj je medicinska sestra v tem času dejansko vedno navzoča za pomoč prosilcem pri uveljavljanju pravic, ki izhajajo iz zdravstvenega varstva. V preostalem času pa izvaja druge naloge, določene z aktom, ki ureja notranjo organizacijo in sistemizacijo delovnih mest. Te naloge so predvsem izvajanje

In the room near the entrance to the Asylum Home some copies of brochures "Schengen area and I" were found (information on the Schengen area for refugees, asylum applicants, beneficiaries of subsidiary protection status and persons without citizenship) from the United Nations High Commissioner for Refugees (UNHCR) and "Basic information on the course of procedure before and on applying for asylum" from the Legal Information Centre for Non-Governmental Organizations (PIC) which issue was also funded by the UNHCR. On the office door of non-governmental organizations a notification on the provision of legal aid was placed in several languages. NPM believes that this method of informing people accommodated in the Asylum Home with information that is relevant for them is satisfactory in principle, obviously under the assumption that everybody who is tasked with taking care of their accommodation and care is accessible for any further explanation or assistance.

Premises, equipment and the surroundings of the Asylum Home (reception department, department for single women, for single men, for families, for unaccompanied minors, for persons with special needs and for restriction of movement, sanitary areas, classrooms, room for religious activities, room with toys, children playground, etc.) were adequately arranged and maintained. Thus it was suggested that these be maintained at least in such state in the future. The only exceptions were the enclosed outdoor sand playground which (also this time) seemed rather neglected, and the multipurpose room which was almost completely stocked primarily with used clothing and footwear. During the visit it was explained that clothes and footwear had been put there due to the rearrangement of the storehouse. Since there were too many clothes and too much footwear considering the needs of the applicants they proposed to donate them to the Red Cross. This decision was supported, of course on condition that there are enough clothes and footwear ensured for the applicants.

Changes have been made in relation to psychosocial care. During last year's visit it was offered by social workers, a psychologist and a sociologist, and from 3 p.m. to 11 p.m. by Arx company. At that time it was proposed that the presence of persons employed in the area of social work be ensured also in the afternoon. In its response report, the Ministry of the Interior (MI) assured that it would examine the possibility of ensuring the presence of a social worker within the framework of personnel possibilities. During this visit it was explained that until 1 September 2009, a social worker was actually present even after 3 p.m. but this practice was abandoned and since then there are now four representatives of non-governmental organizations and an operational officer present during this time.

Arx company implements two programmes on a contract basis. The first programme refers to the assistance with accommodation and care of applicants and the second one to psychotherapy (performed by a psychotherapist on Fridays) and interviews with psychiatrist (on Fridays, or when the need arises, a psychiatrist may be called). In both cases it is about the individual treatment of applicants. The establishment of a therapeutic group may also be taken into account but it was explained that some problems may arise as the population quickly changes and this might be rather inconvenient for working in a group. Despite that, the NPM supports these efforts, especially since it was explained that a lot of applicants have psychic problems. It is right to provide support for the applicants in as many ways as possible since, regarding their situation and because many of them have psychic problems, they certainly need it.

A nurse is employed in the Asylum Home's healthcare service. During the visit it was stated that she is present until 3 p.m. but the "I live in the Asylum Home" brochure states that she is only present from between 10 a.m. to 1 p.m., so additional clarification was requested. The MI explained that the nurse in the Asylum Home is employed full time and that the time regarding her presence as stated in the brochure is only for guidance since during this time,

sanitaro-dezinfekcijskih pregledov tujcev, naročanje prosilcev na zdravniške preglede, nadzor nad sanitarno ustreznostjo nastanitvenih oddelkov in v nujnih primerih izvajanje spremstva k zdravniku. AD zagotavlja navzočnost medicinske sestre v nujnih primerih tudi zunaj rednega delovnega časa. Zdravnik prihaja v AD pogodbeno, za opravljanje preventivnih zdravstvenih pregledov, po potrebi pa prosilce napotuje na preglede v zdravstveni dom Vič ali Metelkova, v specialistične ambulante ali se jih odpelje na urgenco UKC. Brez predhodnega naročanja si prosilci lahko poiščejo medicinsko pomoč v zdravstvenem domu Vič (odrasli) oziroma zdravstvenem domu Center ((pred)šolski otroci).

Za opravljanje vzdrževalnih del (pleskanje, čiščenje, pomoč pri tehnično-vzdrževalnih delih ipd.), ki jih razpisuje vodja AD, naj med prosilci ne bi bilo veliko interesa, in to kljub dvigu urnih postavk. Zato smo predlagali, da se spodbujanju prosilcev k opravljanju vzdrževalnih del nameni posebna pozornost, saj poleg tega, da ohranja delovne navade, omogoča tudi bolj konstruktivno preživljanje časa v AD. MNZ je v zvezi s tem pojasnilo, da je temu že zdaj tako in da prosilce spodbujajo tako socialni delavci AD kot tudi predstavniki podjetja Arx, ki so navzoči ob odsotnosti socialnih delavcev.

Podobno velja tudi glede organiziranih aktivnosti. V zvezi z njimi nam je bilo ob obisku predložene tudi nekaj literature, kot sta brošura o organiziranih izletih, taborih in počitnicah na morju Pozdrav s poletnih počitnic otrok Azilnega doma in interno otroško glasilo Azilček. Na stenah hodnikov pa je bilo mogoče opaziti več plakatov o raznih dogodkih oziroma dejavnostih, pri katerih so sodelovali prosilci. Takšna prizadevanja, ki pogosto potekajo v sodelovanju z Jezuitsko službo, podjetjem Arx, Slovensko filantropijo ipd., spodbujamo tudi za v prihodnje.

V poročilu o lanskem obisku smo predlagali, naj se proučijo možnosti za zagotovitev dostopa prosilcev do svetovnega spleta, in MNZ je zagotovilo, da bo projekt dodatnega ožičenja AD, kot pogoja za zagotovitev spletne povezave, izveden predvidoma v treh mesecih. Ob tokratnem obisku nam je bilo pojasnjeno, da je bilo ožičenje izvedeno, vendar dostop do spleta prosilcem še ni bil omogočen. Precej časa naj bi se namreč porabilo za postopek izbire ponudnika spletnega dostopa, ki pa je bil že končan, v vseh sobah za obiske naj bi bila pripravljena že vsa potrebna oprema in čakali naj bi le še operaterja, da naredi priklop. Na podlagi tega smo MNZ zaprosili za pojasnilo, ali je zdaj prosilcem dostop do spleta že omogočen. MNZ nas je obvestilo, da so prosilcem dostop do spleta v AD omogočili novembra 2009.

Vtis o razmerah v AD in ravnanju z nastanjenimi prosilci smo dobili na podlagi pogovorov z zaposlenimi in prosilci ter ob ogledu prostorov in je bil dober. To pa ne pomeni, da na določenih področjih stanja ne bi bilo mogoče še izboljšati. Zato bomo ta prizadevanja AD podpirali tudi v prihodnje.

the nurse is actually always present to provide assistance to applicants regarding the exercise of their rights arising from health care. During the remainder of the time she performs other tasks stipulated by the Act regulating internal organization and systematisation of job posts. These tasks mainly include implementation of sanitation and disinfection, examinations of aliens, making appointments with regard to medical examinations for applicants, monitoring the adequacy of compliance of accommodation departments with sanitary conditions, and in urgent cases providing escorts to the doctor. The Asylum Home ensures the presence of a nurse in urgent cases also outside normal working hours. A doctor comes to the Asylum Home on a contract basis in order to perform preventive medical examinations and, if necessary, he/she refers applicants to examinations at the Vič or Metelkova community health care centres, to specialist outpatient clinics, or they are taken to the emergency room at the University Medical Centre Ljubljana. Without prior appointment, the applicants may seek medical assistance in the Vič Community Health Care Centre (adults) or in the Center Community Health Care Centre ((pre)school children).

For invitations to participate in carrying out maintenance works (painting, cleaning, assistance with technical and maintenance works, etc.) which are issued by the Asylum Home's Director, there was not much interest shown among applicants despite the rise in pay. It was therefore proposed that applicants be encouraged to perform maintenance works since; in addition to the fact that in this manner an applicant maintains work habits, it also provides for a more constructive way of spending time in the Asylum Home. In relation to this issue, the MI explained that this is already the case and that applicants are being encouraged both by the Asylum Home's social workers and by representatives of Arx company who are present in the absence of social workers.

A similar case is true with regard to organized activities. In relation to this topic, during the visit some literature was produced such as a brochure about organized tours, camps and holidays at sea entitled "Asylum Home children's greetings from summer vacation" and an internal children's newsletter entitled in the Slovenian language "Azilček" (A Child Asylum Seeker). On the walls of corridors several posters on various events or activities in which applicants participated could be seen. Such efforts, often conducted in collaboration with the Jesuit Service, Arx company, Slovene Philanthropy, etc., are also to be encouraged in the future.

In the last year's report it was suggested that the possibilities for ensuring applicants access to the Internet be examined and the MI ensured that the project with regard to the additional wiring of the Asylum Home, as a condition for ensuring web connection, was expected to be implemented in three months. During this visit it was explained that the wiring was already in place but access to the Internet for applicants was still not possible. Specifically, a lot of time was spent choosing the internet provider; access to the internet was already installed, all the needed equipment was supposed to be ready in all rooms for visitors, and the operator to make the connection was the last item on the to-do list. On the basis of this information the MI was asked for an explanation on whether the Internet access for applicants had been enabled. The MI informed us that access to the Internet in the Asylum Home was enabled in November 2009.

The impression regarding the situation in the Asylum Home and treatment of accommodated applicants was obtained on the basis of interviews with the employees, the applicants and during the inspection of the premises and it was a good impression. This, however, does not mean that the situation in certain areas could not be improved. That is why the efforts by the Asylum Home will also be supported in the future.



#### 4. Obisk centra za tujce

Tudi obisk centra za tujce smo skupaj s predstavnikoma pogodbenih nevladnih organizacij (Rdeči križ Slovenije in Pravno-informacijski center nevladnih organizacij (PIC)) obiskali brez predhodne napovedi.

Ob obisku smo se pogovorili z vodstvom centra in pregledali prostore ter se pogovorili z vsemi tistimi tujci, ki so to želeli. Ministrstvo za notranje zadeve (MNZ) je po pregledu našega poročila o obisku zagotovilo, da bo center naše predloge za dodatno izboljšanje kakovosti bivanja tujcev upošteval pri načrtovanju in nadaljnjem izvajanju svojih dejavnosti.

V centru so nastanjeni tujci, ki ne zapustijo države v določenem roku in ki jih iz kakršnih koli razlogov ni mogoče takoj odstraniti iz države. Nastanitev v njem odredi policija, ki je skladno z Zakonom o tujcih tudi pristojna za odstranitev tujca iz države. V letu 2008 je policija v Sloveniji prijela 40 mladoletnikov brez spremstva, od tega jih je bilo 15 nastanjenih v azilnem domu v Ljubljani, 22 je bilo takoj predanih organom sosednjih držav, trije med tistimi, ki so bili v centru, pa so ga zapustili. Po pojasnilih centra mladoletnike nemudoma predajo organom sosednjih držav, če so prijeti v bližini državne meje. V drugih primerih se o njihovem prijemu obvesti pristojni center za socialno delo, ki poskuša čim prej postaviti skrbnika za poseben primer. Glede na to, da gre za izredno ranljivo skupino tujcev, smo poudarili, da je zelo pomembno, da se v teh primerih ravna hitro in da se skrbi za pravice ter interese mladoletnikov ves čas njihove obravnave.

Zmogljivost centra je 220 tujcev. V letu 2008 je bilo v center sprejetih 512 tujcev, v prvih štirih mesecih leta 2009 pa 112. Na dan našega obiska (9. 6. 2009) jih je bilo v njem nastanjenih 33, od tega 15 na moškem oddelku, 17 na oddelku za ranljive skupine (od tega tri družine) in ena tujka na oddelku za mladoletnike brez spremstva (sicer polnoletna, a tam nastanjena zaradi invalidnosti).

Ob sprejemu v center se evidentirajo oblačila in osebni predmeti, ki so jih tujci prinesli s seboj, vrnejo pa se jim, ko center zapustijo. Izjema so tujci na oddelku za ranljive skupine, kjer imajo lahko svoja oblačila. Ker so tujci v preteklosti očitali, da niso dobili vrnjenih vseh stvari, ki so jim bile ob sprejemu odvzete, je center uvedel prevzem predmetov proti podpisu tujca in uredil dodaten videonadzor pri predaji stvari. Takšno odločitev smo pozdravili, saj je (tudi) tako mogoče preveriti tovrstne očitke tujcev.

Zaradi manjšega števila nastanjenih tujcev jim center lažje omogoča prostočasne aktivnosti. Ob pomoči socialne službe si tudi sami organizirajo določene dejavnosti, kot so tematski večeri ali delavnice, ki prispevajo h kakovostnejšemu preživljanju časa in pozitivno vplivajo na vzdušje v centru. Pohvalili smo tudi na novo urejeni igralnico za otroke in t. i. sobo za tišino, namenjeno verskim obredom tujcev različnih veroizpovedi. Po drugi strani smo ob obisku opazili, da stavba, ki stoji tik ob nastanitvenem delu centra, še vedno ni bila prenovljena v telovadnico. Pojasnjeno nam je bilo, da tudi v letošnjem letu ni predvidena za prenavo, da pa obnovo načrtujejo skupaj s prenavo moškega oddelka, če bodo seveda zagotovljena tudi ustrezna sredstva iz sklada EU za notranjo mejo. Po tem načrtu je izdelava potrebne dokumentacije načrtovana za leto 2010, dela pa bi lahko začeli v letu 2011. To smo pozdravili, saj bi bila vsaka možnost dodatne rekreacije dobrodošla.

#### 4. Visit to the centre for aliens

Also the visit to the Centre for Aliens, carried out together with the representatives of contracted non-governmental organizations (Slovenian Red Cross and Legal Information Centre of Non-Governmental Organizations (PIC)), was unannounced.

During the visits a conversation with the management took place, an inspection of the premises was made and interviews were carried out with all aliens who wished to do so. After reviewing the report on the visit, the Ministry of the Interior (MI) made an assurance that the centre will take into account all proposals to additionally improve the quality of life of aliens in the planning and further carrying out of its activities.

The centre accommodates aliens who do not leave the country within a specified period of time and cannot be immediately removed from the country for various reasons. Accommodation is ordered by the police who according to the Aliens Act are responsible for removing an alien from the country. In 2008, in Slovenia, the police arrested 40 unaccompanied minors, 15 of these were accommodated in the Asylum Hostel in Ljubljana, 22 of them were immediately handed over to the authorities of neighbouring countries, and three of them, who were in the centre, left the hostel. According to the Centre's explanation minors are immediately handed over to the authorities of neighbouring countries if they are apprehended near the border. In other cases, a responsible Social Work Centre is notified about their apprehension and tries as soon as possible to appoint a guardian for a particular case. Considering the fact that this is an extremely vulnerable group of aliens it was emphasized that it is very important to act quickly in such cases and take care of the rights and interests of minors throughout their treatment.

The Centre's capacity is 220 aliens. In 2008, 512 aliens were accepted at the Centre, and in the first four months of 2009, 112. On the day of the visit (9 June 2009), 33 aliens were accommodated in the Centre. Of this number there were 15 aliens in the male department, 17 in the department for vulnerable groups (of these three of them were families) and one alien in the department for unaccompanied minors (who is in fact an adult but is accommodated there due to her disability).

Upon reception into the Centre, clothes and personal belongings brought by aliens are recorded and returned when they leave the centre. Exceptions are aliens in the department for vulnerable groups who may have their own clothing. Since in the past, aliens have complained of not receiving back all their belongings taken upon reception, the Centre introduced a system of item collection whereby the alien's signature is obligatory and arranged additional video surveillance upon delivery of items. Such a decision was welcomed as it (also) makes it possible to verify complaints of this kind which are made by aliens.

Due to a smaller number of accommodated aliens, the Centre can facilitate leisure activities more easily. With the help of social services aliens themselves can organize certain activities such as thematic evenings or workshops contributing to a higher quality of leisure time and positively influencing the atmosphere in the Centre. Praise was also given for the newly arranged playroom for children and the so-called room for silence intended for religious rituals of performed by aliens of various religions. On the other hand it was observed that the building located next to the accommodation part of the Centre had still not been rebuilt and turned into a gym. It was explained that it is not expected to be renovated either in this year but its renovation is planned to take place together with renovation of the male department if, obviously, adequate funding is received from the EU. According to this plan, the production of necessary documentation is planned for 2010 and the works could begin in 2011. This information was welcomed, as every possibility for additional exercise is welcome.



Uporaba mobilnih telefonov je tujcem v centru prepovedana. Po pojasnilih centra je v preteklosti njihova uporaba povzročala preveč konfliktov. Neposreden dostop do spleta tujcem iz tehnično-varnostnih razlogov še vedno ni zagotovljen, jim pa socialne delavke lahko natisnejo novice z izbranih spletnih strani.

Na vsakem oddelku centra imajo po en TV-sprejemnik. Podobno kot ob zadnjem obisku so tujci tudi letos (na moškem oddelku) izpostavili, da pri izbiranju programa zaradi različnih interesov pogosto nastajajo konflikti. Ob upoštevanju nadvse pestrega kulturnega ozadja tujcev v centru se te navedbe zdijo povsem verjetne oziroma razumljive. Glede na to, da je TV za nastanjene tujce eden od redkih virov informacij o domovini ali zunanjem svetu, smo ponovili že lanskoletni predlog, da se vsaj na moškem oddelku zagotovi še kakšen dodaten TV-sprejemnik. To ne bi smelo predstavljati večjih težav, če bi v ta namen preuredili eno izmed sob, ki zaradi (zdaj že daljše) neizkoriščenosti zmožljivosti niso zasedene.

Obiski potekajo v popoldanskem času, v prostoru, ki je namenjen tudi oddaji vlog za mednarodno zaščito in pogovorom, ki jih vodijo inšpektorji. Po zagotovilih centra pa tudi pri tujcih ni prekrivanja ali krajšanja obiskov, zato je takšna rešitev ustrezna.

Na vsakem oddelku je tujcem na voljo tudi prostor za kajenje. V času našega obiska so bili ti prostori ustrezno prezračeni.

Tujcem zagotavljajo tri obroke na dan, z možnostjo vegetarijanske ali dietne prehrane. Center je upošteval naše priporočilo iz leta 2008 in zadnji obrok prestavil na poznejšo uro (ob 19h), tako da lažje počakajo na zajtrk. Pohvalno je tudi, da je zdaj do štirikrat na teden zagotovljena topla večerja, jedilnik pa se prilagaja strukturi nastanjenih tujcev, ki jo center sporoča dobavitelju hrane. Jedilnica je bila ob obisku urejena in čista, ni pa bilo na vidnem mestu obešenega jedilnika, zato smo predlagali, da ga tja namestijo.

Ob ogledu oddelka za ranljive skupine in oddelka za strožji nadzor smo ugotovili, da je hišni red, ki velja za vse nastanjene tujce, na vidnem mestu izobešen v štirih jezikih (nemškem, italijanskem, hrvaškem in angleškem). Po pojasnilih centra je bil hišni red preveden tudi v druge jezike in ga tujcem izročajo ob prihodu v center. Kljub temu smo predlagali, naj izvode teh prevodov namestijo ob tiste, ki so na vidnih mestih že izobešeni.

Tujci se nad zdravstveno oskrbo niso pritoževali. V centru deluje zdravstvena služba, ki ima tudi lastno lekarno. Večjih težav pri komunikaciji s tujci ni, ker zdravstveno osebje obvlada več jezikov, po potrebi pa se angažira tudi tolmač. Ti zaradi hitrejšje komunikacije pogosto pomagajo kar po telefonu. Takšna praksa je dobrodošla, saj je prav, da se zdravstveno osebje s tujcem sporazume v čim krajšem času. Tujci imajo dostop tudi do psihiatra. Za obisk pri njem zaprosijo pri splošnem zdravniku, ta pa nato presodi, ali je napotitev k psihiatru potrebna ali ne.

Aliens are not allowed to use mobile phones in the Centre. According to the Centre's explanation their use has caused too many conflicts in the past. For aliens, direct access to the internet is still not provided due to technical and security reasons but the social workers can print out for them news from selected websites.

Each department has one TV set. Similarly as on the occasion of last year's visit, the aliens (in the male department) pointed out that still a lot of conflicts are provoked due to various interests in selecting a TV programme. Given the extremely varied cultural background of aliens, these arguments seem completely plausible and understandable. Considering the fact that for aliens the TV is one of the rare sources of information regarding their country or the outside world, last year's suggestion to provide an additional TV set, at least in the male department, was repeated. This should not present major problems if one of the rooms which have not been used for some length of time could be refurbished for this purpose.

Visits take place in the afternoon in a room which is also intended for submitting applications for international protection and interviews conducted by inspectors. An assurance was given that alien's visits are not shorter or do not overlap which is why such a solution is appropriate.

Each department has a room available for smoking. During the visit these rooms were properly ventilated.

Aliens are provided with three meals a day with a possibility of vegetarian or diet food. The Centre has taken into account the recommendation from 2008 and moved the last meal to a later hour (at 7 p.m.) so that they can easily wait for breakfast. It is also commendable that now four times a week a hot dinner is assured and the menu gets adapted to the make-up of accommodated aliens, upon whom the food supplier is notified. The dining room was tidy and clean during the visit. The menu, however, was not displayed in a clearly visible location, that is why the only suggestion was therefore to display it in a visible manner.

During the inspection of the department for vulnerable groups and the department for stricter surveillance it was observed that the House Rules, which apply to all accommodated aliens, are displayed in a visible place in four languages (German, Italian, Croatian and English). According to the Centre's explanation the House Rules were also translated into other languages and are given to aliens upon their arrival. Despite this fact, it was suggested that copies of these translations be placed along with those which are already displayed in visible places.

Aliens did not complain about their health care. A healthcare service with its own pharmacy is located inside the centre. There are no major problems with regard to the communication with aliens as the medical staff speak several languages and if needed an interpreter is also engaged. Due to faster communication, interpreters often help via a phone. This practice is welcomed, as it is right that the medical staff should communicate with an alien in the shortest time possible. Aliens have access to a psychiatrist. They have to make a request to a general practitioner who then decides whether a referral to a psychiatrist is needed or not.

Določena sistemizirana delovna mesta v socialni službi so bila nezasedena, vendar to za center ni več težava, ker je število tujcev (čedalje) manjše. Prosilce za mednarodno zaščito, ki so nastanjeni v centru, obiskujejo tako socialni delavci azilnega doma kot zaposleni v referatu za operativne zadeve MNZ. Ti nudijo prosilcem informacije v zvezi s postopkom pridobitve mednarodne zaščite.

Posebne fluktuacije med zaposlenimi ni, tako da se raven znanja zaposlenih primerno vzdržuje, kljub temu pa še vedno priporočamo dodatno izobraževanje zaposlenih o kulturah tujih držav, o načinih komunikacije s tujci in podobnem.

V letu 2008 so bili tujci v centru osemkrat obravnavani zaradi suma storitve prekrška po Zakonu o javnem redu in miru in dvakrat zaradi suma storitve kaznivega dejanja po Kazenskem zakoniku. V istem letu so se prisilna sredstva uporabila v 14 dogodkih zoper 17 tujcev. Čezmerne uporabe nismo ugotovili, smo pa kljub temu poudarili, naj tovrstna sredstva uporabljajo le, če je to neizogibno potrebno in so za njihovo uporabo podani zakoniti razlogi.

Na oddelkih so bili nameščeni nabiralniki za pritožbe in le pri enem smo opazili, da bi ga bilo treba zamenjati zaradi povsem uničenih vratc. Pritožbe rešujejo na jutranjih sestankih, kjer določijo osebo, ki naj se pogovori s tujcem v zvezi s pritožbo in jo skuša rešiti. Kljub našim priporočilom iz prejšnjega leta se pritožbe še vedno rešujejo praviloma ustno. Center meni, da se tako prispeva k celovitejši obravnavi pritožbe, saj se lahko v pogovoru s tujcem nemudoma rešijo tudi morebitna druga vprašanja, ki se odprejo v povezavi s pritožbo. Kljub temu smo predlagali, naj se v vsakem primeru zagotovi (tudi) pisni odgovor oziroma skupni dogovor o rešitvi problema.

Tujci so v pogovorih z nami potrjevali korekten odnos osebja do njih in tudi sicer smo se ob obisku lahko prepričali o sproščenem vzdušju, ki je vladalo v centru, kar smo še posebej pohvalili, seveda ob pričakovanju, da bo tako ostalo.

Certain systemized work posts in social services have not been occupied but this is no longer a problem for the Centre as the number of aliens is increasingly fewer. Applicants for international protection accommodated in the Centre are visited by social workers from the Asylum Hostel as well as employees in the MI's division for operational matters. They provide applicants with information regarding the procedure for obtaining international protection.

There is no significant staff turnover among employees, thus the appropriate level of employees' knowledge is adequately maintained. But it is still recommended that there be additional training for employees regarding cultures of foreign countries, manners of communication with aliens and similar.

In 2008, aliens in the Centre were treated eight times due to a suspicion of an offence under the Protection of Public Order Act and two times due to a suspicion of a criminal offence under the Criminal Code. In the same year coercive measures were used in 14 events against 17 aliens. No excessive use was noticed but despite this fact it was stressed that such measures should be used only if their use is necessary, unavoidable, and legitimate grounds have been provided.

Each department had a post box for complaints installed and only one needs to be replaced because the post box entrance was completely destroyed. Complaints are addressed at morning meetings and a person is appointed to discuss the complaint with the alien and try to resolve it. Despite the recommendation from last year, complaints are, as a rule, resolved orally. The Centre believes that this method contributes to a more comprehensive treatment of the complaint since by means of discussion other potential issues related to the complaint may be resolved immediately. Despite this fact the provision of a written response or common agreement regarding the solution of the problem is recommended in any case.

During the discussions, aliens confirmed that the attitude of the staff towards them is correct and the relaxed atmosphere that prevailed in the Centre, which was apparent, was particularly praiseworthy, and of course, it is expected that it will remain so.

## 5. Obiski domov za starejše in posebnih socialnovarstvenih zavodov

V letu 2009 smo obiskali Dom starejših občanov Ljubljana Vič - Rudnik (enota Bokalce), Dom upokojencev Podbrdo (enote Petrovo Brdo, Podbrdo in Tolmin), Obalni dom upokojencev Koper, Dom starejših občanov Novo mesto, Dom starejših občanov Ilirska Bistrica, Dom počitka Metlika, Dom upokojencev Kranj in Socialnovarstveni zavod Dutovlje. Obiskali smo tudi Dom upokojencev Izola in Penzion Sreča v Šmarjeških toplicah, vendar smo ob obisku ugotovili, da nimata varovanih oddelkov, zato podrobnejšega obiska in pregleda nismo opravili.

Vsi obiski domov za starejše so bili nenapovedani (predhodno je bil napovedan le obisk Socialnovarstvenega zavoda Dutovlje). Ob prihodu v dom se je skupina najprej pogovorila z njegovim vodstvom in temu je sledil ogled varovanih oddelkov in drugih prostorov doma. Po ogledu je sledil ponovni pogovor z vodstvom doma, v katerem smo ga seznanili s prvimi vtisi, preverili pa smo tudi pisno evidenco nekaterih naključno izbranih namestitev na varovanem oddelku in druge (statistične) podatke.

Tudi v tem letu je po vsakem obisku skupina, ki so jo sestavljali predstavniki Varuha človekovih pravic RS in praviloma tudi posameznikov iz izbranih nevladnih organizacij, pripravila poročilo o svojih ugotovitvah in priporočilih. Poročilo je bilo posredovano obiskani ustanovi ter Ministrstvu za delo, družino in socialne zadeve.

V nadaljevanju se tudi tokrat glede ugotovitev iz obiskov na tem področju osredotočamo na varovane oddelke.

### Ogled varovanih oddelkov

Že v preteklosti smo se srečevali z različnimi oblikami omejevanja svobode gibanja stanovalcem na varovanih oddelkih socialnovarstvenih zavodov (domov za starejše ali drugih posebnih socialnovarstvenih zavodih). Ti namreč iščejo rešitve, ki bi na eni strani kazale na bolj odprt režim oddelka, na drugi strani pa vseeno uspešno preprečila odhod stanovalca takšnega oddelka zunaj nadzora doma in njegovega osebja.

Zakon o duševnem zdravju (ZDZdr), ki se uporablja od 12. 8. 2009, je natančneje opredelil varovani oddelek. To je oddelek v socialnovarstvenem zavodu, kjer so osebe zaradi svojih potreb nepretrgoma deležne posebne zaščite in varstva ter zavoda ne morejo zapustiti po lastni volji (2. člen ZDZdr). Varuhovo mnenje v tej zvezi je jasno. Preprečevanje odhoda iz doma je lahko urejeno s tehničnimi sredstvi (klasična ali elektronska ključavnica, razna odpirala, ki dementnim onemogočajo ali močno otežijo izhod z oddelka) ali arhitekturnimi ovirami do glavnega vhoda (dolga pot, stopnišča, hodniki) oziroma z doslednim vračanjem oseb, za kar poskrbijo zaposleni (v skrajnem primeru receptor). V vseh teh primerih lahko govorimo o varovanem oddelku, saj gre v teh primerih očitno za de facto odvzem prostosti. Nedvomno je svoboda gibanja posameznika omejena tudi takrat, ko mu namestijo poseben ročni oddajnik (zapestnico), ki deluje tako, da se pri osebju oglasi pozivnik, ko stanovalec prekorači indukcijsko zanko. Tak način varovanja smo na primer srečali v dveh od obiskanih domov za starejše. V enem je zapestnica stanovalcu preprečevala, da bi se odprla vrata z oddelka, vendar se ta metoda varovanja ni izkazala za učinkovito (stanovalec zapestnico lahko sname; če stoji ob vratih, se vrata nikomur ne odprejo ipd.). V drugem od obiskanih domov pa so pojasnili, da so varovanje z ročnim oddajnikom uporabili le enkrat pri enem izmed stanovalcev. Pa še ta je oddajnik odstranil in odvrigel.

## 5. Visit to homes for the elderly and special social security institutions

In 2009 a visit was made to Ljubljana Vič – Rudnik Home for Elderly (Bokalce unit), Podbrdo Retirement Home (Petrovo Brdo, Podbrdo and Tolmin unit), the Littoral Retirement Home Koper, Novo Mesto Home for the Elderly, Ilirska Bistrica Home for the Elderly, Metlika Rest Home Metlika, Kranj Retirement Home and Dutovlje Social Security Institution. Visits were also made to the Izola Retirement Home and Sreča Boarding House in Šmarješke toplice but it was found that they do not have secure departments that is why a more thorough inspection was not conducted.

All visits were unannounced (only the visit of the Dutovlje Social Security Institution was announced). Upon arrival at the institution, the group first interviewed the management which was followed by an inspection of secure departments and other premises. After the inspection another interview was held with the management during which first impressions were pointed out. Also checks were made of written records of with regard to some randomly selected accommodations in the secure department and other (statistical) data.

Also this year, after each visit, the group consisting of the Ombudsman of the Republic of Slovenia and, as a rule, also individuals coming from the selected non-governmental organizations produced a report on their findings and recommendations. The report was forwarded to the institution visited and the Ministry of Labour, Family and Social Affairs.

In the continuation of this text, with regard to the findings obtained from these visits, a focus is made on secure departments.

### **Inspection of secure departments**

In the past, various forms of deprivation of liberty with regard to the residents in secure departments within social security institutions (homes for the elderly or other special social security institutions) had been noticed. These institution in particular try to find solutions which would reflect a more open departmental regime while on the other hand still successfully preventing a resident of such a department from leaving the premises without being noticed.

The Mental Health Act (ZDZdr), which applies from 12 August 2009, defines a secure department more accurately. This is a department in the social security institution where persons are given, due to their needs, special protection and safety and cannot leave the institution out of their own free will (Article 2 of the ZDZdr). The Ombudsman's opinion in relation to this issue is clear. Prevention with regard to leaving the institution may be regulated by technical means (conventional or electronic locks, various openers to prevent or make it difficult for the persons with dementia to leave the department) or architectural barriers on the way to the main entrance (long route, staircases, corridors) or with the consistent returning of persons, which is done by the employees (in the last extreme by the receptionist). In all these cases the term to use is "a secure department" since these cases are clearly about a de facto deprivation of liberty. A person's freedom to movement is undoubtedly limited also when a person wears a specially fitted transmitter (a bracelet), operating in such a manner that the staff receive an alert from a pager when a resident crosses an induction loop. This security method was observed in two visited homes for the elderly. In one institution the bracelet prevented the resident from opening the door of the department but such a security method has proved ineffective (a resident can take off the bracelet; if the said person stands near the door, the door does not open to anyone, etc.). In the other institution visited it was explained that such a method was used only once, and in that case a resident removed the transmitter and threw it away.

Več težav imajo z vzpostavitvijo varovanih oddelkov v starejših domovih, ki niso bili že grajeni v ta namen in so nastali zaradi potreb mobilnih dementnih stanovalcev. Vodstva teh domov jih rešujejo glede na prostorske in finančne zmožnosti. To so na primer varovani oddelki v nadstropjih, brez možnosti neposredne povezave z varovanimi zelenimi površinami, s premajhnimi večnamenskimi prostori ali s premalo možnosti za gibanje v okviru oddelka.

Domovi si prizadevajo, da bi tudi varovani oddelki delovali čim bolj toplo in domače. Stene prostorov so tako v nekaterih od obiskanih domov prepleskali v tople tone in jih opremili z izdelki stanovalcev. Taki oddelki dejansko delujejo prijetneje, zato smo te rešitve predlagali tudi v domovih, ki delujejo bolj hladno in brezosebno. Varuh v vlogi izvrševanja nalog in pooblastil državnega preventivnega mehanizma poudarja, da so domovi za starejše za stanovalce drugi dom. Še bolj pa se je treba zavedati, da so stanovalci na varovanih oddelkih večji del dneva omejeni na manjši gibalni prostor, zato si je treba prizadevati, da se bodo na oddelku kar najbolje počutili.

Zelo pomemben element pri kakovosti bivanja oseb na varovanem oddelku je možnost izhoda na sveži zrak. Večina domov, ki smo jih obiskali, ima del okolice doma ograjene (z žičnato ali leseno ograjo, arhitektonskimi ovirami, s koriti, klopmi ipd.) in tako lahko osebe z varovanega oddelka (če je to v pritličju) samostojno odidejo z oddelka. Če je varovani oddelk v nadstropju, so možnosti za gibanje na svežem zraku omejene le na določene ure, zagotoviti pa je treba tudi navzočnost osebja, ki takrat ne more biti na razpolago stanovalcem, ki ostanejo na oddelku.

V enem primeru smo posebej opozorili tudi na smiselnost namestitve ustreznega nadstreška, ki bi stanovalcem omogočal izhod tudi ob slabem vremenu. Izjemoma, ko gre za domove v starejših zgradbah, v mestnem jedru, pa ureditev varovanega, ograjenega parka (prostora) ni mogoča. V takšnem primeru smo poudarili potrebo, da se zagotovijo redni izhodi stanovalcev varovanega oddelka v spremstvu osebja.

Še vedno se dogaja, da v toaletnih prostorih ni toaletnega papirja, brisač in mila. Odgovori domov, kjer pomanjkljivost ugotovimo, je praviloma, da lahko te pripomočke dobijo pri osebju, da so stanovalci inkontinentni in zato toaletnega papirja ne potrebujejo ali da je bila odstranitev potrebna zaradi varnosti stanovalcev (predvsem mila). Varuh meni, da gre za osnovne higienske potrebščine, ki bi morale biti stanovalcu – razen izjemoma (npr. zaradi nevarnosti zaužitja) – vedno na voljo, če je potrebno, v prilagojenih oblikah oziroma količinah.



More problems occur with establishing secure departments in elderly homes which were not built for this purpose but were established because of the needs typical for mobile residents with dementia. The management of these institutions solves these issues in accordance with spatial and financial capabilities. These issues are, for example, secure departments located on upper floors without the possibility of direct connection to secured green areas, departments with multipurpose rooms which are too small or with too little possibility for movement within the department.

The institutions strive to make the secure department as warm and homely as possible. Thus, the walls of the rooms in some of the institutions visited have been repainted with warmer colours and fitted with artwork made by residents. Such departments seem more pleasant that is why it is suggested that such solutions also be adopted in institutions that seem colder and impersonal. The Ombudsman in her role of implementation of tasks and authorities imposed under the National Preventive Mechanism points out that homes for the elderly are second homes for residents. Also it is necessary for us to be aware of the fact that the residents in secure departments are confined to a small area of movement for most of the day, and that is why efforts should be made to make them feel as comfortable as possible.

A very important element regarding the quality of life for persons living in a secure department is the possibility of going out into the fresh air. The majority of the institutions visited have a part of their surroundings enclosed (with wire or wooden fence, architectural barriers, with plant containers, benches, etc.) and thus the persons living in a secure department (if this is located on the ground floor) may independently leave the department. If the secure department is located on the upper floor, the possibilities for exercise in the fresh air are limited only to certain hours, and it is also necessary to ensure the presence of the staff who during that time cannot be available to the residents remaining in the department.

In one case it was particularly pointed out that an appropriate canopy be installed which would allow the residents to go out also during bad weather. Exceptionally, when dealing with institutions located in older buildings, in the city centre, it is not possible to arrange a secured and enclosed park (area). In such a case the need to ensure regular exits of secure department residents with a staff escort is emphasised.

There are still cases where there is no toilet paper, towels or soap provided in sanitary facilities. The replies coming from institutions where these deficiencies were noted usually state that these utilities may be found with the staff, that the residents are incontinent and thus do not need toilet paper or that the removal was necessary for safety reasons (especially soap). The Ombudsman believes that these are basic hygienic supplies which should always be available to the resident – with exceptions (for example due to the risk of ingestion) – and always available, if needed, in adapted forms or quantities.

## Pritožbeni postopki

V večini obiskanih domov smo ugotovili, da na varovanih oddelkih ni nameščenih nabiralnikov za pritožbe. Ugovorne in pritožbene poti, ki so stanovalcu na voljo, so bile zapisane (npr. v zloženki, na oglasni deski na oddelku), vendar to ne pomaga, če stanovalec pritožbe nima kam oddati. Ko smo v domovih opozarjali na to pomanjkljivost, so nam navadno pojasnili, da lahko stanovalec ustno ali pisno pritožbo odda zaposlenemu. Tudi svojec lahko njegovo pritožbo vrže v nabiralnik, ki je zunaj varovanega oddelka, praviloma blizu recepcije. Toda državni preventivni mehanizem ne vidi razloga, zakaj se takšna možnost ne bi ponudila tudi stanovalcu na varovanem oddelku neposredno, še posebej ker je tako omogočeno tudi anonimno oddajanje pritožb, poleg tega pa nabiralnik simbolično opozarja na možnost pritožb. Odgovor obiskanih domov na Varuhov predlog po namestitvi nabiralnika za pritožbe tudi na varovanem oddelku je praviloma bil, da osebe na tem oddelku pritožbe niso sposobne zapisati. Stanovalci na varovanem oddelku največkrat res ne bodo sposobni zapisati in v nabiralnik oddati svoje pritožbe. Vendar so navedbe, da stanovalci sami niso sposobni napisati pritožbe, vseeno preveč pavšalne. Varuh je v preteklosti že prejel pisne pobude, ki so jih napisale osebe na varovanem oddelku socialnovarstvenega zavoda. Tudi ob obiskih, ki jih Varuh skupaj z nevladnimi organizacijami opravlja v izvajanju funkcij državnega preventivnega mehanizma, smo se na varovanih oddelkih socialnovarstvenih zavodov že srečali z osebami, ki so svoje misli, občutja in spomine smiselno in povezano zapisale. In čeprav morebiti v tem trenutku na oddelku ni stanovalca, ki bi bil sposoben pritožbo (ali seveda pohvalo) zapisati, bo mogoče v prihodnosti tak stanovalec sprejet na oddelek. Zato je prav, da se takšna možnost posamezniku ponudi. Pritožbo pa lahko v imenu stanovalca napiše kdo od obiskovalcev.

Varuh oziroma državni preventivni mehanizem je bil ob svojih obiskih po uveljavitvi ZDZdr posebej pozoren na objavo pravic stanovalcev in hišnega reda. Vsi obiskani domovi niso imeli objavljenega seznama pravic stanovalcev na varovanem oddelku niti hišnega reda. S tem so kršili določilo 16. člena ZDZdr. Eden izmed domov je v odzivnem poročilu navedel, da seznama pravic niso objavili, ker ta ne bi imel svoje funkcije, hkrati pa so menili, da bi bila bolj smiselna objava pravic stanovalcev na skupni oglasni deski v avli doma, tam je dostopnejša in primernejša. Pravice stanovalcev varovanega oddelka so po njihovem mnenju enake kot pravice drugih stanovalcev, z izjemo omejitev, s katerimi soglaša sodišče in so vezane na varnost stanovalca. Z mnenjem doma, da se pravice stanovalcev na varovanem oddelku ne razlikujejo zelo od pravic drugih stanovalcev v domu, se strinjamo. Nedvomno je tudi prav, da dom seznam pravic stanovalcev objavi tudi zunaj varovanega oddelka. Vendar je ZDZdr jassen. V drugem odstavku 16. člena tako določa, da socialnovarstveni zavod na vidnem mestu objavi seznam pravic, ki jih ima stanovalec po ZDZdr in hišni red. Seznam mora vsebovati tudi službene naslove in telefonske številke zastopnikov, odgovornih za območje, na katerem deluje socialnovarstveni zavod. Gre za zapis pravic, ki jih ima oseba z duševno motnjo, to pa so (predvsem) tudi stanovalci na varovanem oddelku. Ker se stanovalec takšnega oddelka z zapisom pravic, objavljenem zunaj oddelka, ne more seznaniti oziroma se vsaj težje seznaniti, mora biti tak seznam nujno objavljen na varovanem oddelku. Zato smo domovom, ki te zakonske zahteve (še) niso izpolnili, predlagali, naj to čim prej storijo in nas o tem pisno seznanijo.

## Complaint procedures

In most institutions visited it was found that in secure departments there are no post boxes to collect complaints. Complaint and appeal paths available to a resident were recorded (for example, in a brochure, on a notice board in the department) but this does not help if the resident cannot submit the complaint. When this deficiency was pointed out to the institutions' management, it was usually explained that the resident could submit an oral or written complaint to an employee. Also a relative may submit the said person's complaint by dropping it into the post box located outside the secure department, usually near the reception. But the National Preventive Mechanism does not see any reason why such an opportunity should not be offered directly to the resident of a secure department, especially as in this manner an anonymous submission of complaints would be ensured, and, in addition, the post box indicates, in a symbolic way, that there is the possibility to complain. The response by the institutions visited to the Ombudsman's proposal to install a post box for complaints also in the secure department usually was the following: people residing in this department are not capable of writing a complaint. It is true that most of the times residents in the secure department will not be able to write and drop their complaint into the post box. However, statements saying that residents are not capable of writing a complaint on their own are nevertheless too specious. The Ombudsman has already received complaints written by persons in the secure department of a social security institution. Even during visits, which the Ombudsman, together with non-governmental organizations, performs within the framework of the implementation of the National Preventive Mechanism functions, persons have already been met in secure departments of social security institutions who wrote down their thoughts, feelings and memories in a meaningful and coherent manner. Even though there may not be such a resident capable of writing a complaint (or some praise), residing in the department at the moment, such a person might be admitted to the department in the future. That is why it is right to offer such a possibility to an individual. And, one of the visitors may write the complaint on behalf of the resident.

During visits and after the enforcement of the Mental Health Act, the Ombudsman, or the National Preventive Mechanism, paid special attention to the publication of residents' rights and House Rules. Not all institutions visited had residents' rights and House Rules published in the secure department. Thus, they violated the provision of the Article 16 of the Mental Health Act. In its response report one of the institutions stated that the list of rights was not published because it would not serve its purpose while at the same time they considered such a publication of residents' rights to be more meaningful on the joint notice board in the institution's main hall making it thus more accessible and appropriate. According to their opinion, rights of the residents in the secure department are the same as rights of other residents, with the exception of limitations agreed with by the Court and which are also connected to the safety of a resident. We share this institution's view that the rights of residents in a secure department do not differ from the rights of other residents. Undoubtedly it is right that the institution publishes a list of residents' rights also outside the secure department. But the Mental Health Act is clear. In the second paragraph of Article 16 it is stated that the social security institution should publish a list of rights which a resident has according to the Mental Health Act and House Rules in a clearly visible location. The list should also include work addresses and telephone numbers of representatives responsible for the area in which a social security institution operates. It is a record of rights that a person with a mental disorder has and these are (mostly) also residents in the secure department. Because a resident of such a department cannot, or it is more difficult for the said person to acquaint himself with regard to the list of rights posted outside the department, such a list must be by way of necessity published in the secure department. That is why it is proposed to those, which have not (yet) complied with this legal requirement, to do so in the shortest time possible and to give a notification in written form.

## Pridržalni postopki

Že v preteklem poročilu o izvajanju nalog državnega preventivnega mehanizma smo opozorili na neurejeno vprašanje namestitve na varovani oddelek domov za starejše. Praviloma so sodišča obvestila domov zavračala oziroma postopka niso uvedla. Še posebej sporna se nam je zdela različna sodna praksa prvostopenjskih sodišč. Pričakovali smo, da bo novi ZDZdr, ki se je začel uporabljati avgusta 2009, dvome odpravil in bo o namestitvi stanovalcev na varovanih oddelkih (tako tam že nameščenih kot novih) odločalo sodišče. Ugotavljamo, da se tako praviloma tudi izvaja. Vendar nas je presenetilo, da je večina domov, ki je v preteklosti redno obveščala sodišče, s temi obvestili močno zamujala, tako o že nameščenih (zatečenem stanju) kot o novo nameščenih stanovalcih. To kaže, da je novi zakon prinesel tudi nejasnosti, ki jih domovi sami niso znali rešiti in so ob naših obiskih postavljali vprašanja glede pristojnosti sodišča, stroškov postopka, prilog k obvestilom in podobno.

Ugotovili smo lahko, da so izpostavljene »težave« s proučitvijo zakonskih določb in ustrezno razlago zakonskih določil praviloma zlahka rešljive. Tako lahko ugotovimo, da so zamude predvsem posledica kratkega stika med domovi na eni in pristojnim ministrstvom ter sodišči na drugi strani. Morebiti bi večji poudarek na izobraževanju in »preigravanju« različnih zahtev novega zakona nejasnosti lahko (še pravočasno) odpravil. Še toliko bolj, ker se je ZDZdr začel uporabljati šele eno leto po njegovi uveljavitvi in bi torej morale biti dovolj časa za pripravo na postopke in razjasnitev vseh nejasnosti.

Zanimivo je bilo mnenje enega od obiskanih domov, kjer je sodišče postopke na podlagi določil ZDZdr že izpeljalo. Dom namreč meni, da so postopki zahtevni, zato bi bilo po njihovem mnenju smiselno, da bi tudi Varuh opozoril na spremembo zakonodaje, da bi bil sklep sodišča trajen, in ne le za eno leto.

Opozorilo doma je (delno) smiselno in tehtno. Med pripravo ZDZdr je bil čas, za katerega sodišče lahko odloči o pridržanju osebe v socialnovarstvenem zavodu, daljši, in sicer dve leti. Zakaj je bil rok pozneje skrajšan in ga je sprejeti zakon omejil na eno leto, ne vemo. Menimo, da sklep o trajni namestitvi v posamezni zavod morebiti ne bi bil najbolj primeren. Vsekakor pa bi bil čas pridržanja v nekaterih primerih lahko daljši, kot je v primeru namestitve v bolnišnično oskrbo. Pri osebah, sprejetih na varovane oddelke socialnovarstvenih zavodov, je namreč napoved ozdravitve velikokrat slaba ali je celo ni mogoče pričakovati. Ob tem je treba tudi upoštevati, da zakon določa najdaljši možni čas, za katerega sodišče lahko izreče, da se nekoga pridrži. Ob ugodnejšem predvidevanju ozdravitve pa lahko sodišče (upoštevaje nedvomno predvsem tudi mnenje izvedenca) čas, za katerega odredi pridržanje, primerno skrajša ali ob nepričakovanem izboljšanju zdravstvenega stanja premesti na enega od odprtih oddelkov.

## Detention procedures

Even in the previous report on implementation of the tasks by the National Preventive Mechanism attention was drawn to the unsolved issue regarding the accommodation in the secure department of Homes for the Elderly. Notifications written by these institutions were as a rule refused by Courts, or Courts did not institute proceedings. The different judicial practice of Courts of first instance seemed especially controversial. It was expected that the new Mental Health Act, which became effective in August 2009, would resolve doubts and that the Court would decide with regard to the accommodation of residents in the secure department (those who are already accommodated there and those to be accommodated). This has usually been the practice. However, it was surprising that most of the institutions, which had regularly notified the Court in the past, submitted these notifications with regard to already accommodated residents (position in situ) as well as new residents with serious delays. This shows that the new law has also brought some ambiguities, which institutions did not know how to solve and during the visits questions were asked regarding the jurisdiction of the Court, legal costs, annexes to the notifications and similar.

Usually the highlighted "problems" on the examination of legal provisions and proper interpretation of statutory provisions are easily solved. Thus it can be concluded that the delays are mostly due to the limited contacts between institutions on the one hand, and competent ministries and Courts on the other. Perhaps a greater emphasis on education and sensible solutions with regard to various requirements imposed by the new law could eliminate the ambiguities in time. Even more so because the Mental Health Act became effective only a year after its enactment and there should thus be enough time to get prepared for the proceedings and clarification of all ambiguities.

The opinion given at one of the institutions visited in the case of which the Court had already completed proceedings on the basis of the provisions of the Mental Health Act is interesting. Its opinion is that the proceedings are complex and that is why it would be reasonable that the Ombudsman should draw attention to the modification in law and that the court decision would be permanent and not just for one year.

This warning is (partially) reasonable and substantial. During the preparation of the Mental Health Act, the time period regarding the detention of a person in a social security institution which may be ruled by the Court was longer, namely two years. Why this period was shortened later on and the law passed limited it to one year is not known. It is believed that the decision on permanent accommodation in an individual institution might not be the most appropriate one. However, the time of detention in some cases could be longer as is the case of accommodation in hospital care. With regard to persons, who are admitted to the secure departments of social security institutions, the recovery prognosis is not good in most times or it can not even be expected. It should also be taken into account that the law prescribes the longest time possible about which the Court may decide to detain somebody. And with a more favourable prognosis regarding the recovery, the Court may (taking into account especially the expert's opinion) adequately shorten the time period for which detention is ordered, or, in case of a sudden improvement of health condition, transfer a person to one of the open departments.

## **Posebni varovalni ukrepi**

ZDZdr je v 29. členu natančno opredelil, da sta posebna varovalna ukrepa (PVU) dva, in sicer telesno oviranje s pasovi in omejitev gibanja v enem prostoru. Zakon je tudi natančno opredelil, kdo in v kakšnem primeru lahko PVU odredi, koga je treba o odrejenem ukrepu obvestiti, koliko časa lahko tak ukrep traja, kako je z nadzorom takšne osebe med trajanjem ukrepa in drugo. Ob obiskih domov lahko tudi po uveljavitvi ZDZdr ugotovimo, da se praksa izvajanja ukrepov (kjer se jih izvaja) ni spremenila. Zato menimo, da bi morale pristojno ministrstvo vložiti večje napore v zagotovitev skladnosti dela domov z določili ZDZdr (priprava ustreznih navodil, obrazcev, izobraževanje zaposlenih).

V enem izmed domov pa smo se srečali s težavami, ki jih imajo zaradi odzivnosti zdravnika v primeru potrebe po odreditvi PVU. Zdravnika pokličejo, vendar včasih, posebno v nočnem času, terapijo oziroma izvedbo PVU določi kar po telefonu. Ob naslednjem obisku doma svojo odobritev vpiše še v kartoteko stanovalca. Navede uro, kdaj in do kdaj je fiksacijo odobril. Dom meni, da takšno ravnanje ni pravilno, saj meni, da bi se zdravnik moral vedno zglasiti v domu in osebo pregledati. Ob tem bi lahko navodila oziroma odobritev PVU takoj vpisal v karton stanovalca, in ne šele naknadno. Strinjamo se s temi pripombami doma. Odobritev za izvedbo PVU bi bila po telefonu dopustna le takrat, ko bi bil dežurni zdravnik zaradi nujnega primera zadržan, z izvedbo ukrepa pa ne bi bilo mogoče počakati (sedmi odstavek 29. člena ZDZdr). Vendar menimo, da bi se moral tudi v tem primeru zdravnik v domu zglasiti takoj, ko bi bilo to mogoče, preveriti stanje osebe in izvajanje ukrepa. To, da zdravnik iz komaj 500 metrov oddaljene dežurne ambulante v dom ne bi prišel brez utemeljenega razloga, je po prepričanju državnega preventivnega mehanizma nesprejemljivo. Po drugi strani bi bilo treba že z zakonom predvideti, kako naj ravnajo v domovih, ki nimajo svojega zdravnika oziroma je dežurni zdravnik zaradi večje oddaljenosti doma težko dosegljiv.

## **Osebj**

Obiskani domovi so zagotovili, da imajo osebj zaposleno skladno s kadrovskimi normativi s področja socialnega varstva in zdravstvenega zavarovanja. Ob obiskih v domovih ugotavljamo, da so normativi nezadostni, saj osebj nima toliko časa, da bi se lahko dovolj posvetilo vsakemu stanovalcu. Opažamo, da je osebj v popoldanskih urah manj, kar se kaže tudi v manjšem številu pristočasnih in drugih organiziranih aktivnostih v popoldanskih urah in enako med vikendi. Sicer pa je v domovih organiziranih več terapevtskih in pristočasnih aktivnosti, v katere se lahko stanovalci varovanega oddelka vključijo po potrebi in skladno z lastnimi interesi.

Po našem mnenju je premalo navzočega osebj tudi v nočnem času, saj bi moral biti na varovanem oddelku vedno navzoč kdo od osebj. V večini obiskanih domov smo tako ugotovili, da v nočnem času na varovanem oddelku ni stalno navzočega delavca, saj kadrovski normativi tega ne omogočajo. Domovi to pomanjkljivost rešujejo večinoma s klicnimi zvonci, s katerimi bi stanovalec v stiski lahko poklical pomoč in/ali videonadzorom hodnikov varovanega oddelka. Od prikazu delovanja klicnih zvoncev, smo ugotovili, da klicni sistemi v nekaterih domovih ne delujejo (ponekod so bili klicni zvonci pokvarjeni, drugod izključeni), v enem izmed domov je bil odzivni čas osebj pretirano dolg. Domovom, kjer klicni sistem ne zagotavlja stanovalcem, da bodo v nujnih primerih deležni hitrega in učinkovitega odziva in pomoči osebj, smo predlagali, naj pomanjkljivosti in okvare takoj odpravijo, proučijo pa tudi možnosti izboljšanja klicnega sistema.



## **Special security measures**

Article 29 of the Mental Health Act clearly defines that there are two special security measures (SSM), in particular, physical restraint with belts and movement restricted to one room. The law also clearly defined the following: who the SSM may order and in which cases; who needs to be informed about the ordered measure; how much time may this measure last; how the is person monitored during the imposition of a measure, and any other matters. During visits it has been seen that even after the enforcement of the Mental Health Act the practice of implementing measures (where they are implemented) did not change. It is therefore believed that the responsible ministry should make greater efforts to ensure compliance of the work performed by institutions with provisions of the Mental Health Act (preparation of appropriate instructions, forms, employee training).

In one of the institutions problems were noted with the doctor's response if the SSM needs to be ordered. The doctor is called but sometimes, especially during the night, the therapy or the implementation of the SSM is ordered just by phone. At the next visit to the institution, his approval is entered into a resident's file. The hour regarding when and up to when this imposition of treatment was ordered is written down. The institution believes that such treatment is not adequate as the doctor should always come to the institution and examine the person in question. His instructions or approval of a SSM might thus be written in the resident's file immediately and not only subsequently. These comments provided by the institution are approved. Approval to implement the SSM on the phone would be allowed only when the doctor on call would be unavailable due to an emergency case and the implementation of such a measure could not be postponed (seventh paragraph, Article 29 of the Mental Health Act). However, it is believed that even in such a case the doctor must come to the institution as soon as possible and check the condition of the person and implementation of the measure. The fact that a doctor would not come from an outpatient duty unit only 500 metres away without a reasonable cause is unacceptable according to the National Preventive Mechanism. On the other hand, the law would have to envisage how institutions without their own doctor, or when a doctor on call is difficult to reach due to distance, should act.

## **Personnel**

Institutions visited provided assurances that the staff are employed in accordance with the staffing standards applicable in the area of social care and health insurance. While visiting the homes it was found that the standards are insufficient as the personnel does not have time to devote their care to each resident. It is noted that there are fewer personnel in the afternoon which results in a smaller number of leisure and other activities organized in the afternoon; the same applies for the weekends. Otherwise, several therapeutic and leisure activities are organised for residents of the secure department to participate in if the need arises or according to their own interests.

It is thought there is also a lack of personnel during night time since some personnel should always be present in the secure department. In most institutions visited it was found that during the night no employee is constantly present in the secure department since the staffing standards do not make allowance for this possibility. This deficiency is mostly solved by means of call bells enabling a resident in need to call for help and/or by means of video surveillance of secure department corridors. Upon demonstration of the operation of call bells it was found that the paging systems in some institutions do not work (in some places call bells were broken, in other they were turned off), and in one of the institutions the personnel response time was too long. It was suggested to Institutions where the paging system does not ensure their residents a quick and effective response as well as assistance of the personnel in case of an emergency were suggested to immediately eliminate irregularities and also to consider the possibilities of improving the paging system.



V dveh od obiskanih domov smo ugotovili, da so stanovalcem, ki zvoncev ne znajo uporabljati in zato nanje neprestano pritiskajo, te izključili. S klicnimi zvonci stanovalci izražajo potrebo po pomoči, zato bi morali biti nameščeni in delovati pri vsaki postelji in v vseh prostorih, kjer bi stanovalec morebiti lahko potreboval pomoč zaposlenih. Če ga stanovalec ne bo želel uporabljati, ga pač ne bo uporabljal. Menimo, da je odstranitev klicnega zvonca pri postelji dopustna le, če stanovalec zvonca ne zna uporabljati kot klic na pomoč oziroma ne ve, čemu je zvonec namenjen. Za te primere bi moral dom določiti in zapisati protokol glede odstranitve klicnega zvonca s posebnih poudarkom na vprašanju, v katerih primerih in s čigavo odobritvijo se lahko klicni zvonec odstrani. Ob tem smo tudi predlagali, naj se v primeru odstranitve klicnega zvonca po potrebi opravlja povečan nadzor nad stanovalcem, pri katerem je bila klicna tipka odstranjena. Sicer pa menimo, da bi moral imeti klicni zvonec ob postelji vsak stanovalec, tudi tisti, ki večkrat kliče pomoč, čeprav pogosto tudi neupravičeno, vendar se ob tem zaveda, čemu je zvonec namenjen.

### **Duhovna oskrba**

Ugotavljamo, da je v obiskanih domovih praviloma dobro poskrbljeno za duhovno oskrbo vernikov rimskokatoliške vere. Duhovniki stanovalce, ki to želijo, obiskujejo individualno, organizirane so molitvene skupine, vsaj nekajkrat na leto so v prostorih doma (v domski kapeli ali večnamenskem prostoru) tudi maše. Po zagotovilih vodstev obiskanih domov je število vernikov drugih veroizpovedi majhno, zato posebnih aktivnosti za zagotavljanje duhovne oskrbe teh stanovalcev praviloma ne izvajajo. Prepričani so, da bodo stanovalci (tako na varovanem kot na drugih oddelkih) željo po verskem obredu izrazili sami. V določenih primerih pa stanovalec morda ne bo želel biti »v nadlego« ali pa želje ne bo znal nasloviti na pravo osebo, zato smo predlagali, naj osebje stanovalce drugih veroizpovedi samoiniciativno seznanji z možnostjo za pomoč pri stikih z duhovnikom svoje vere in ob tem preveri, ali bi ti stanovalci potrebovali pomoč pri odhodu k verskim obredom ali posredovanje, da duhovnik obred opravi v prostorih doma.

Eden od domov je pojasnil, da stanovalcev ne sprašujejo o njihovi veroizpovedi, saj menijo, da je to njihova osebna odločitev. Če stanovalci izrazijo željo za pomoč pri odhodu k verskim obredom, pa jim v okviru svojih zmožnosti to ponudijo. Opozorili smo, da lahko dom stanovalcu, če že ima podatke o njegovi veroizpovedi, ponudi pomoč ob navezavi stikov z duhovnikom njegove vere, po potrebi pa tudi prostor za molitveno skupino, verske obrede in podobno. Hkrati smo menili, da bi dom lahko že v zloženki, ki jo stanovalec dobi ob sprejemu v dom, ali na oglasni deski stanovalce obvestili o verskih aktivnostih v domu (obiski rimskokatoliškega duhovnika, molitvene skupine, maše) in jih pozvali, naj se ob težavah pri uveljavljanju njihove verske oskrbe obrnejo na enega od zaposlenih.

In two of the institutions it was found that the bells of those residents who did not know how to use them and who constantly used them were turned off. Call bells are used by residents with the aim of expressing the need for and calling for help and that is why bells should be fully operational and installed at each bed and in all rooms where the resident might need assistance from the employees. If the resident did not wish to use it then the said person would simply not use it. It is considered that the removal of the call bell otherwise installed next to the bed should only be allowed if the resident does not know how to use the call bell as a call for help or does not know what purpose it has. For these cases the institution should determine and write down a protocol regarding the removal of the call bell with special emphasis on the issue of which cases and with whose approval the call bell can be removed. A more rigorous monitoring of the resident whose call bell has been removed is proposed. Moreover, it is believed that each resident should have a call bell installed next to the bed, including that resident who repeatedly calls for assistance, even though many times the call is unjustified, and the said person is aware of the bell's purpose.

### **Spiritual care**

It is noted that the institutions visited make good provision for the spiritual care of Roman Catholic believers. Priests visit residents who wish it, individually, and prayer groups are organized and at least a few times a year also a mass in the institution's premises is held (in the institution's chapel or in the multipurpose room). According to the assurances given by the management there is a small number of believers of other religions so the special activities for ensuring spiritual care of these residents are normally not carried out. It is believed that residents (in the secure department and other departments) will express their wish for religious ceremony themselves. In certain cases, however, a resident may not wish to be "a burden" or the said person will not know how to express this wish to the right person that is why it is suggested that residents having other religions be informed about the possibility that personnel may assist in establishing contact with a priest of a relevant religion and at the same time it should be verified whether these residents should be assisted with regard to their departure to religious ceremonies, or whether a priest should carry out the ceremony in the institute's premises.

One of the institutions explained that residents are not asked about their religion since this is believed to be their personal decision. When residents express a wish to be assisted when departing to religious ceremonies, this assistance is offered within the capabilities of the institution. It was pointed out that an institution may offer assistance in establishing contacts with a priest of a relevant religion considering the fact that the institution possesses information regarding the said person's religion, and, where appropriate also a room for a prayer group, to perform any religious ceremony and similar. At the same time it is thought that an institution could notify the residents about religious activities (visits of the Roman Catholic priest, prayer groups, masses) in a brochure, received by a resident upon accommodation, or on a notice board. Residents were called upon to contact one of the employees when they experience difficulties in exercising their spiritual needs.

## Vročanje pisemskih pošilk

Način vročanja pošte osebam na varovanem oddelku je bil v obiskanih domovih različen. V enem izmed domov pošto dobijo v skupni nabiralnik na recepciji, osebje doma pa jo razdeli po oddelkih. Če poštni delavec prinese uradno pisanje, socialna delavka usmeri poštnega delavca, ki pusti obvestilo. Svojce oziroma pooblaščenca o takšni pošiljki nemudoma obvestijo oziroma jim pošiljko prepošljejo. Uradnih pisanj ne vročajo osebno stanovalcem, saj se je že zgodilo, da se je takšno pisanje izgubilo. Vendar smo na varovanem oddelku opazili na oglasni deski pritrjenih več pisem. Ko smo na to opozorili, so predstavniki doma ugotovili, da se en sklop pisem nanaša na stanovalca, ki je že umrl, drugih pa ni nihče prevzel. Tak način vročanja pisanj seveda ni primeren in ne omogoča zadostne varnosti pisemskih pošilk. Drugi stanovalci ter zaposleni in obiskovalci stanovalcev se namreč lahko seznanijo z vrsto pisemske pošiljke, včasih pa hote ali nehote tudi z njeno vsebino. Zato smo predlagali, naj dom skuša najti primernejši način za vročanje pisanj. Morebiti bi bilo najbolje, da se pisanja stanovalcem vročijo takoj, ko jih poštni delavec prinese. Če to ni mogoče (zaradi začasne odsotnosti stanovalca ali nezmožnosti, da bi razumel pomen pošiljke), pa se pošta shrani v varovani predalčnik stanovalca ali pri receptorju (in se na oglasno desko pripne le obvestilo o čakajoči pošti). Hkrati smo predlagali, naj dom zagotovi, da se po smrti stanovalca prejete poštna pošiljke nemudoma prepošljejo oziroma na drug primeren način izročijo svojcem.

V drugem domu poštni delavec pusti obvestilo o priporočeni pošiljki na oglasni deski doma. Tudi takšno ravnanje se nam ne zdi primerno, saj v primeru vročanja po Zakonu o pravnem postopku lahko pride tudi do domneve vročitve. Če namreč stanovalec v 15 dneh, od kar je bilo obvestilo pritrjeno na oglasni deski, pisanja na pošti ne dvigne, se skladno s 141. členom Zakona o pravnem postopku šteje pisanje za vročeno z dnem, ko je bilo obvestilo pritrjeno na oglasno desko. Za oskrbovanca lahko to pomeni, da zamudi rok za na primer pritožbo. Predlagali smo, naj dom poskuša v sodelovanju s Pošto Slovenije najti ustreznejšo rešitev za vročanje priporočenih pisanj stanovalcem. Tako bi lahko poštar o priporočeni pošiljki za stanovalca v vsakem primeru obvestil socialno delavko ali drugega pooblaščenega delavca doma in obvestilo pustil pri njem. Socialna delavka pa bi nato o pošiljki takoj obvestila skrbnika ali svojca. S takšnim načinom vročanja bi se zagotovila večja varnost osebnih podatkov ter preprečila možnost, da se obvestilo nenamerno izgubi oziroma ga pomotoma sname drug stanovalec. Vročitev obvestila socialni delavki doma bi tudi zagotavljala, da bo Pošta Slovenije, posredno pa tudi sodišče, pravočasno obveščena o morebitni odsotnosti stanovalca (zaradi odhoda v bolnišnico, premestitve v drug dom). Tak način vročanja je praksa v enem izmed obiskanih domov. Socialna delavka v tem primeru o prispeli priporočeni pošti obvesti skrbnika, ki na matični pošti na podlagi odločbe prevzame pošto. Če ne gre za priporočeno pošto, jo pustijo na recepciji, kjer jo dvignejo svojci. Praksa, v kateri socialna delavka o prispeli priporočeni pošiljki obvesti skrbnika ali svojca dementne osebe, se nam zdi primerna, zato jo pozdravljamo. Opozarjamo le, da mora biti obvestilo predvsem v primeru sodnih pisanj zadosti hitro, da se ne bi zgodilo, da bi zaradi zamude pri obveščanju potekli roki, kot jih za primer nadomestne vročitve določajo nekateri procesni zakoni.

## Mail delivery

Mail delivery to persons in a secure department varied in each institution visited. In one of the institutions the mail is delivered into a joint post box at the reception and the personnel then distributes it among departments. When a postman brings an official document, a social worker provides directions for the said person, and he leaves a notification. Relatives or authorized persons are immediately notified about such mail, or this letter is forwarded to them by mail. Official documents are not served on residents in person since it has already happened that such documents have got lost. However several letters have been seen attached to the notice board in the secure department. When this was pointed out the institute's representatives found that one set of the letters was addressed to a resident who had already died and the other was never taken by anybody. Such method of mail delivery is obviously not appropriate and does not ensure adequate mail security. Other residents, employees and residents' visitors may become familiar with the type of mail and sometimes, intentionally or unintentionally, with its content. That is why a more suitable manner with regard to the mail delivery should be considered by the Institution. Maybe it would be best to deliver the mail to residents immediately after mail is brought by a postman. But if this is not possible (due to temporary absence of a resident or the said person's inability to understand the meaning of the mail), the mail is stored in a resident's secure drawer or with the receptionist (and a notification regarding the received mail is attached to the notice board). It was also suggested that after a resident passes away, all mail is immediately forwarded, or in another appropriate manner handed to the said person's relatives.

In another institution a postman leaves a notification regarding the registered mail on the institution's notice board. Neither was this solution thought appropriate since in the event of serving mail under the Civil Procedure Act the presumption of service may arise. Namely, if in 15 days from when the notification was attached on the notice board, a resident does not collect the mail at the post office, then in compliance with Article 141 of the Civil Procedure Act the mail is deemed delivered on the day when its notification was attached to the notice board. For a resident this could signify that the said person might miss a deadline, for example to lodge an appeal. It is suggested that the institution, in cooperation with the Post of Slovenia, should find a more appropriate solution for serving registered mail to residents. With regard to the registered mail, a postman may thus notify a social worker or other person authorised by the institution and leave a notification with this person. The social worker would then inform a resident or a relative. With this manner of serving a greater security of personal data would be ensured and the possibility that a notification be unintentionally lost or taken by accident by another resident would be prevented. Serving the notification on the social worker would also ensure that the Post of Slovenia, and indirectly also the Court, will be informed in time about a potential absence of a resident (due to a departure to hospital, or transfer to another home). Such method of serving is a practice in one of the institutions visited. In this case a social worker notifies a guardian about the received registered mail who then collects it at the post office on the basis of a relevant decision. If the mail is not a registered letter, it is left at the reception where the relatives can collect it. The practice by means of which a social worker notifies a guardian or relative of a person with dementia about the received registered mail seems appropriate and it is therefore welcomed. It only needs to be pointed out that particularly in the event of letters sent from judicial bodies this notification should be fast enough not to arrive at the situation where due to a delay in notification, deadlines stipulated by some procedural acts with regard to the substitute delivery would expire.

## 6. Obisk Psihiatrične klinike Ljubljana

**Ob obisku** Psihiatrične klinike Ljubljana (PKL) (obisk opravljen pred uvedbo ZDZdr, saj zakon sedaj te oddelke označuje kot »oddelke pod posebnim nadzorom« in ne varovane oddelke), smo si ogledali varovane oddelke v sklopu bolnišnice. Varuh je obiskal PKL pred dvema letoma, tako da je bil tokratni obisk v vlogi izvrševanja nalog in pooblastil DPM usmerjen predvsem v madzor, kako je PKL odpravila pomanjkljivosti, ki smo jih ugotovili ob obisku v letu 2007, in kako je upoštevala naša takratna priporočila.

Varovani oddelki in zmogljivost posameznih oddelkov so ostali nespremenjeni (118 postelj). Pacienti so na varovani oddelku (sprejemni oddelku) sprejeti s soglasjem ali brez njega. V primeru sprejema s soglasjem pacient podpiše izjavo, da se strinja s pridržanjem in zdravljenjem na varovanem oddelku. Ker smo ob svojem predhodnem obisku ugotovili, da vsi pacienti niso seznanjeni, da lahko dano soglasje kadar koli prekličijo, smo takrat predlagali, naj se to zapiše v izjavo o soglasju. Tako se ne more zgoditi, da bi bile na varovanem oddelku osebe, ki s pridržanjem in zdravljenjem (več) ne soglašajo, o njihovem pridržanju pa ne bi odločalo sodišče. Ob tokratnem obisku smo ugotovili, da je bolnišnica priporočilo upoštevala. Možnost preklica soglasja je navedena v izjavi o soglasju, tako da tovrstnih pritožb pacientov ob našem tokratnem obisku ni bilo.

Od pacientov pa smo dobili veliko pritožb, ker naj bi več dni čakali na zaslišanje sodišča. Kljub tem očitkom nismo mogli ugotoviti, da bi bili kršeni roki, ki jih je določal Zakon o nepravdnem postopku, ki se je ob obisku še uporabljal. Treba je namreč upoštevati, da je bil zakonski rok za obvestilo sodišča o pridržanju 48 ur, sodišče pa je moralo pridržanega obiskati v treh dneh. Vendar smo hkrati poudarili, da to ne odvezuje na eni strani bolnišnice in na drugi strani sodišča, da obveznost obveščanja in odločanja izpolnita čim hitreje in ne čakata, da roki (skoraj) potečejo. Predlagali smo še, naj bolnišnica na vsako obvestilo o pridržanju, ki ga pošlje sodišču po faksu, zapiše dan in uro, kdaj je bilo obvestilo poslano.

Vpogledali smo tudi v nekaj naključno izbranih primerov obveščanja sodišč. V dveh primerih smo ugotovili, da je PKL sodišče o podaljšanju pridržanja prepozno obvestila. Na ugotovljene zamude pri tovrstnem obveščanju smo opozorili že v letu 2007. Ponovno smo predlagali, naj bolnišnica pravočasno pošlje predlog za podaljšanje in s tem zagotovi spoštovanje zakonskih rokov, saj tudi, če se pozneje pokaže, da je pacienta mogoče odpustiti ali premestiti na odprti oddelku, postopek ali celo že izdana nova odločba bolnišnice ne ovirata, da ne bi tako postopala.

Seznanjeni smo bili, da pacienti včasih ne želijo biti premeščeni z varovanega na druge oddelke, čeprav ni več potrebe po njihovi namestitvi na varovanem oddelku. To so pristojni pripisali temu, da se pacienti na sprejemnem oddelku počutijo varneje, ker je več osebja, ki je stalno navzoče. Če je premestitev na odprti oddelku mogoča, ni pa proste postelje, se lahko pacient sam odloči, da bo ležal na dodatnem ležišču in ob tem podpiše izjavo, da se s tako namestitvijo strinja. Ker je na dodatnem ležišču, ki je lahko postavljeno tudi v dnevni prostor oddelka, manj možnosti za zasebnost, se nekateri pacienti v takih primerih odločijo, da ostanejo na varovanem oddelku do sprostitev postelje na odprtem oddelku. Bolnišnici smo zato predlagali, naj v primeru, da pacientu, ki na lastno željo ostane na varovanem oddelku, omogočajo proste izhode z oddelka, ob premestitvah oziroma nameščanju pacientov na oddelke pa vedno posveti pozornosti zagotavljanju zasebnosti pacientom.

## 6. Visit to Ljubljana Psychiatric Clinic

During the visit of the Ljubljana Psychiatric Clinic (PKL) (visit was performed before the introduction of the Mental Health Act, and now the law describes these departments as "departments under special supervision" and not as secure departments) an inspection of secure departments within the hospital was made. The Ombudsman visited the PKL two years ago so that this visit, carrying out the role of the implementation of tasks and authorities under the NPM, was especially focused on monitoring with regard to how the PKL eliminated the irregularities pointed out during the visit in 2007, and how it took into account the then recommendations.

The secure departments and capacities of individual departments have remained unchanged (118 beds). Patients are admitted to the secure department (receiving department) with or without a consent. In case of an admittance by way of a consent, the patient signs a statement expressing the said person's consent to the detention and treatment in a secure department. Since during the previous visit it was noticed that not all of the patients are informed of the fact that they may revoke a given consent at any time, it was then suggested to write this provision down in the Statement of Consent. In this manner it cannot happen that a secure department would accommodate persons who do not consent (anymore) with the detention and treatment, and their detention would not be ruled by the Court. During this visit it was found that the hospital had taken into account this recommendation. The possibility of revoking the consent is mentioned in the Statement of Consent so that this time no such complaints were received from patients.

A lot of complaints were received from patients stating that they were supposedly waiting for a court hearing for several days. Despite these complaints it was not possible to find out whether any deadlines stipulated by the Non-litigious Civil Procedure Act which still applied during the visit had been violated. It should be considered, though, that the statutory deadline for a Court's notification regarding the detention was 48 hours and the Court had to visit the detainee in three days. But at the same time it was pointed out that this does not relieve the hospital, on the one hand, and the Court, on the other, from the obligation of informing and making a decision as fast as possible and not waiting for deadlines to (almost) expire. It was also suggested that the date and time when the notification was sent be written on each notification regarding the detention sent by the hospital to the Court by fax.

Some randomly selected examples with regard to court notifications were also inspected. In two cases it was found that the PKL's notification regarding the extension of the detention was submitted to the Court too late. The delay in such notification had already been pointed out in 2007. It was again suggested that the proposal for extension be submitted by the hospital in due time, and in this manner ensure the compliance of the statutory deadlines, as even if it is shown later that the patient may be released or transferred into an open department, the procedure or even a newly issued decision does not prevent the hospital from proceeding in the manner described.

We were informed that sometimes patients do not wish to be transferred from a secure department to another department even though there is no need for their accommodation in the secure department. Persons responsible attributed this to the fact that patients feel safer in the reception department because there are more personnel present. If a transfer to the open department is possible but there is no free bed a patient may decide for himself to use the extra bed and sign a statement that he/she agrees with such accommodation. Because the extra bed, which can also be placed in the living room of the department, offers less privacy some patients decide to stay in the secure department until there is a free bed in the open department. It is thus proposed to the hospital that in such case a patient who desires to stay in the secure department be allowed to leave the department freely, and that upon a transfer or allocation of patients to departments special attention is always paid to ensuring patients' privacy.



Ob zadnjem obisku PKL smo predlagali bolj skrbno in načrtno izpolnjevanje kontrolnih listov oziroma dokumentiranja izvajanj posebnih varovalnih ukrepov (PVU). Ob tokratnem obisku smo ob pregledu naključno izbranih primerov dokumentiranja PVU ugotovili, da so kontrolni listi skrbno izpolnjeni, in nismo zasledili večjih kršitev pri njihovem izpolnjevanju.

Pacienti na sprejemnem oddelku ne smejo biti v lastnih oblačilih, po pojasnilih pristojnih iz varnostnih razlogov (da se pacienti ločijo od obiskovalcev in se preprečijo odhodi pacientov) in higienskih razlogov (večkrat je potreba po pogostejšem preoblačenju). Tako so večino časa v spalnih oblačilih (pižami in halji). Sicer jim ponudijo tudi trenirke, vendar so te v poletnih mesecih prevroče. Doslej smo ob obiskih psihiatričnih bolnišnic zasledili različno prakso bolnišnic glede zahteve po nošenju bolnišničnih oblačil. Menimo, da je oblačilo, ki ga nosijo osebe, hospitalizirane na varovanih oddelkih, izredno pomembno tudi za krepitev samopodobe in osebno dostojanstvo. Z našim mnenjem soglaša tudi razširjeni strokovni kolegij za psihiatrijo, ki meni, da je zaradi strokovnih in humanističnih dejavnikov treba spodbujati nošenje osebnih oblačil, razen seveda v zelo izjemnih primerih, ko to otežkočajo ali celo onemogočajo posebnosti telesnega zdravstvenega stanja bolnika oziroma potrebe po medicinskih intervencijah. PKL se je strinjala, da je treba spodbujati nošenje osebnih oblačil pri pacientih, razen v zelo izjemnih primerih, zato bodo v lažje reševanje te problematike v prihodnosti usmerili več naporov, z edukacijo zdravstvenega osebja bodo skušali tudi zmanjšati neutemeljene potrebe po stigmatizaciji pacientov.

Na podlagi naših opažanj, kako so pacienti seznanjeni s pravicami (in dolžnostmi), ki jih imajo, in kakšne pritožbene poti so jim na voljo, kadar menijo, da so jim pravice kršene, smo bolnišnici predlagali, naj poskrbi, da bosta pravilnik, ki določa obravnavo kršitve pacientovih pravic, in brošura, ki pojasnjuje določbe Zakona po pacientovih pravicah, vedno dostopna pacientom na vseh varovanih oddelkih. Predlagali smo še namestitev nabiralnikov za pritožbe na varovanih oddelkih, kjer teh nabiralnikov ob našem obisku ni bilo.

Ob obisku smo PKL opozorili še na nekaj zaznanih pomanjkljivosti prostorov:

- v kadih enega izmed varovanih oddelkov še vedno ni urejeno učinkovito prezračevanje, zato je zrak v prostoru izrazito slab. Bolnišnici smo predlagali, naj vzpostavi boljše prezračevanje;
- prehod z oddelka na ograjeni vrt je zaščiten le z metrsko ograjo, kar pomeni za paciente nevarnost (trimetrskega) padca v globino. Tudi osebje na oddelku se zaveda te nevarnosti, zato sta ob vsakem izhodu na teraso navzoča dva zaposlena, kar zagotavlja večjo varnost, vendar se zato opravi manj izhodov na teraso. Predlagali smo, naj ograjo na terasi in ob stopnišču ustrezno povišajo oziroma uredijo, da ne bi bili mogoč naključni ali namerni padec s terase. S tem se bo razbremenilo tudi osebje oziroma se bo pacientom lahko zagotovilo več izhodov na zrak. PKL nam je pojasnila, da v prihodnjem letu načrtuje dvig ograje in ureditev vrta.



During the last visit of the PKL a more careful and systematic filling in of checklists or documentation regarding the implementation of special security measures (SSM) was suggested. This time, during the review of randomly chosen cases of the SSM documentation, it was found that the checklists are carefully filled in and no major violations were found.

Patients in the reception department cannot wear their own clothes, according to responsible persons' explanations due to safety (so that the patients are separated from the visitors and are prevented from leaving) and hygienic reasons (more frequent need to change clothes). Thus most of the time they are dressed in sleeping clothes (pyjamas and a robe). They are offered training suits but during the summer it is too hot to wear them. So far a different hospital practice regarding the requirement to wear hospital clothes has been observed. It is believed that the clothing worn by a person hospitalised in secure departments is of an extreme importance for strengthening self-esteem and personal dignity. The expanded professional board for psychiatry agrees with this opinion and believes that, due to technical and humanistic factors, wearing of personal clothes should be encouraged except obviously in very extreme cases when this is difficult or even impossible because of the physical health status of a patient or a need for medical intervention. The PKL agreed that wearing personal clothes should be encouraged, except in the most extreme cases, that is why more efforts for solving this problem will be made in the future, and by means of the training of medical personnel they will try to reduce groundless needs for the stigmatisation of patients.

Based on these observations with regard to how patients are informed of their rights (and duties), and what appeal paths are available for them in the event that they believe that their rights have been violated, it has been suggested to the hospital that it ensures that the Rules regulating the treatment of a violation of patient's rights and that the brochure explaining the provision of the Patients Rights Act are always available to patients in all secure departments. It was proposed that post boxes for complaints be placed in the secure departments which were not there during the visit.

During the visit of the PKL some other irregularities with reference to premises were noticed:

- in the smoking room in one of the secure departments there is still insufficient ventilation which is why the air in this room is particularly stale. It is proposed to establish better ventilation;
- transition from the department to the enclosed garden is only protected with a meter high fence which presents a danger of a (three meter high) fall. The personnel in the department are aware of this danger that is why there are always two employees present during each exit to the terrace thus ensuring greater safety but less exits. Raising the fence in the terrace and in the staircase was suggested so that there is no possibility of an accidental or intentional fall from the terrace. This will ease the burden for the personnel and also allow the patients to go out into the fresh air more often. The PKL explained that in the next year it plans to build a higher fence and arrange the garden.

## SKLEPNE UGOTOVITVE

DPM s svojim delovanjem, ki temelji na rednih in nenapovedanih obiskih v ustavah odvzema prostosti, zagotavlja zunajsodno preventivno sredstvo na področju varstva oseb, ki jim je bila odvzeta prostost, pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja. Priporočila DPM, ki temeljijo na ugotovitvah obiska posamezne ustanove, pomenijo ključni del obiska. Nekatera priporočila in predlogi v poročilu o opravljenem obisku so takšni, da so lahko izvedeni takoj. Nekateri pa so dolgoročnejši in terjajo ustrezen rešitev na splošni, sistemski ravni, morda celo spremembo zakonodaje. Tudi tovrstni predlogi so zato del naših poročil.

Z dosedanjimi odzivi pristojnih organov na dana priporočila DPM smo zadovoljni. Njihove odgovore smo prejeli redno in tudi pri obiskih nismo zaznali nobenih težav.

Za uresničitev priporočil za izboljšanje razmer in ravnanje z osebami, ki jim je bila odvzeta prostost, oziroma za preprečitev mučenja in drugih oblik okrutnega, nečloveškega, poniževalnega ravnanja ali kaznovanja DPM nima posebnih (izvršilnih) sredstev. Njegova največja moč je le v moči argumenta, torej v dobri argumentaciji, utemeljitvi podanih priporočil. Opozarjamo pa, da je uresničevanje priporočil DPM zaveza države pogodbenice opcijskega protokola. Po določbi 22. člena opcijskega protokola morajo namreč pristojni organi države pogodbenice obravnavati priporočila DPM in z njim vzpostaviti dialog o mogočih ukrepih za izvršitev priporočil. Neizpolnitev katerega od danih priporočil zato ne more veljati za neuspeh DPM. Seveda pa je prav, da DPM v dialogu s pristojnimi državnimi organi (ta mora biti stalen) vztraja pri izvršitvi danih priporočil in na njih stalno opozarja, dokler se ne izvršijo in tako tudi ravnamo.

## CONCLUSIONS

The NPM and its operation which is based on regular and unannounced visits to institutions accommodating persons deprived of liberty ensures extrajudicial preventive means in the area of protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. The NPM recommendations which are based on findings obtained by visits regarding each institution represent a key part of the visit. Some recommendations and proposals in the report on the visit performed are such as can be implemented immediately. Some, however, are more of a long-term nature and require an appropriate solution at a general and systems level, maybe even modifications to legislation. Such proposals are therefore also a part of our reports.

So far, we are pleased with the responses made by responsible authorities with regard to the NPM recommendations given. Their responses were received regularly and also during the visits no problems were noticed.

For the implementation of recommendations to improve the situations and treatment of persons deprived of their liberty or for prevention of torture and other cruel, inhuman or degrading treatment or punishment the NPM does not envisage any special measures. Its greatest strength lies only in the power of an argument that is in good argumentation against a given recommendation. But it is pointed out that implementing NPM recommendations is an obligation imposed on the Contracting Party by the Optional Protocol. Pursuant to Article 22 of the Optional Protocol the competent authorities of the State Party concerned shall examine the recommendations made by the National Preventive Mechanism and enter into a dialogue with it on possible implementation measures. Failure to comply with any of the given recommendations thus cannot be considered as a failure of the NPM. But it is right that the NPM, in a dialogue held with the responsible state authorities (which must be constant), insists on the implementation of given recommendations and constantly points them out until they are achieved, and this also continues to be the case.



III. Pravni dokumenti  
III. Legal Documents

### III. PRAVNI DOKUMENTI

#### 1. Konvencija OZN proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju

Sprejeta ter na voljo za podpis, ratifikacijo in pristop, dne 10. decembra 1984, z resolucijo Generalne skupščine Združenih narodov 39/46.

Datum začetka veljavnosti konvencije: 26 juni 1984 - v skladu s 27(1) členom konvencije. Objavljena v Uradnem listu Republike Slovenije - Mednarodne pogodbe št. 7/93.

#### **Besedilo konvencije v slovenskem prevodu se glasi:**

Države članice te konvencije,  
menijo, da je v skladu z načeli ustanovne listine Združenih narodov priznavanje enakih in neodtujljivih pravic vseh članov človeške družine temelj svobode, pravice in miru v svetu,  
menijo, da te pravice izhajajo iz dostojanstva, neločljivega od človekove osebnosti,  
menijo, da morajo države na podlagi ustanovne listine, predvsem pa njenega 55. člena, spodbujati splošno in dejansko spoštovanje človekovih pravic in temeljnih svoboščin,  
upoštevajo 5. člen splošne deklaracije o človekovih pravicah in 7. člen mednarodnega pakta o državljanskih in političnih pravicah, po katerih nihče ne sme biti izpostavljen mučenju in ne krutim, nečloveškim ali poniževalnim kaznim ali ravnanju,  
upoštevajo tudi deklaracijo o varstvu vseh oseb pred mučenjem in drugimi krutimi, nečloveškimi ali poniževalnimi kaznimi ali ravnanju, ki jo je Generalna skupščina sprejela 9. decembra 1975,  
želijo povečati učinkovitost boja proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju v vsem svetu, in  
so se zedinile o naslednjem:

#### **I. DEL**

##### **1. člen**

1. V tej konvenciji pomeni izraz »mučenje« vsako dejanje, ki osebi namenoma prizadene hudo bolečino ali trpljenje, bodisi telesno ali duševno, da bi se od nje ali koga drugega dobila obvestila ali priznanja ali da bi se kaznovala za dejanje, ki ga je storila sama ali kdo drug ali je zanj osumljena sama ali kdo drug, da bi se ustražovala ali nanjo izvajal pritisk ali da bi se ustražoval kdo drug ali nanj izvajal pritisk, ali iz kateregakoli drugega razloga, ki temelji na katerikoli obliki diskriminacije, če to bolečino ali trpljenje prizadeva uradna oseba ali kdo drug, ki nastopa kot oseba z uradnim statusom ali na njeno pobudo ali z njeno izrecno privolitvijo ali privolitvijo molče.

Ta izraz se ne nanaša na bolečino ali trpljenje, ki je posledica izključno zakonitih sankcij, ki ni ločljivo od teh sankcij ali ga te sankcije povzročajo.

2. Ta člen ne vpliva na noben mednarodni instrument ali nacionalni zakon, ki vsebuje ali utegne vsebovati določbe širšega pomena.

### III. LEGAL DOCUMENTS

#### 1. UN 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).

Published in Uradni list RS - Mednarodne pogodbe, No. 7/93 (Official Gazette of the Republic of Slovenia - International Treaties).

##### **Original text of the convention:**

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.



## **2. člen**

1. Vsaka država članica izvaja zakonske, upravne, sodne ali druge učinkovite ukrepe, da bi na ozemlju pod svojo jurisdikcijo preprečila mučenje.
2. Kot opravičilo za mučenje se ne more navesti nikakršna izredna okoliščina - bodisi da gre za vojno stanje ali vojno nevarnost, notranjo politično nestabilnost ali kako drugo izredno stanje.
3. Kot opravičilo za mučenje se ne more navesti odredba kake nadrejene osebe ali organa oblasti.

## **3. člen**

1. Nobena država članica ne bo pregnala, izgnala in ne izročila osebe drugi državi, če so resni razlogi za sum, da utegne biti mučena.
2. Da bi ugotovili, ali so taki razlogi, bodo pristojni organi upoštevali vse relevantne okoliščine, med drugim tudi to, ali obstaja v zadevni državi vrsta sistematičnih resnih, očitnih ali množičnih kršitev človekovih pravic.

## **4. člen**

1. Vsaka država članica si prizadeva, da se po njenem kazenskem pravu vsa dejanja mučenja štejejo za kazniva dejanja. To velja tudi za poskuse mučenja ali kakega drugega dejanja, ki ga kdo stori, pomeni pa soudeležbo ali udeležbo pri dejanju mučenja.
2. Vsaka država članica določi za ta kazniva dejanja ustrezne kazni, ki upoštevajo njihovo težo.

## **5. člen**

1. Vsaka država članica sprejme potrebne ukrepe, da bi določila svojo pristojnost za kazniva dejanja iz 4. člena v naslednjih primerih:
  - a) kadar je kaznivo dejanje storjeno na ozemlju pod njeno jurisdikcijo ali na letalih ali ladjah, vpisanih v njeni državi;
  - b) kadar je domnevni storilec kaznivega dejanja njen državljan;
  - c) kadar je žrtev njen državljan, če meni, da je to potrebno.
2. Vsaka država članica prav tako sprejme potrebne ukrepe, da bi določila svojo pristojnost za omenjena kazniva dejanja, če je domnevni storilec teh dejanj na ozemlju pod njeno jurisdikcijo in če ga v skladu z 8. členom ne izroči kaki državi iz prvega odstavka tega člena.
3. Ta konvencija ne izključuje nobene kazenske pristojnosti, ki temelji na nacionalni zakonodaji.

### **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 1 of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

## **6. člen**

1. Če meni, da okoliščine to opravičujejo, in po poprejšnji obravnavi obvestil, s katerimi razpolaga, poskrbi vsaka država članica, na ozemlju katere je oseba, za katero se sumi, da je storila kaznivo dejanje iz 4. člena, da se zadevna oseba aretirata, ali pa izvede vse potrebne zakonske ukrepe, da bi zagotovila njeno navzočnost. Ta aretacija in ti ukrepi morajo biti v skladu z zakonodajo omenjene države, toda izvajajo se lahko samo toliko časa, kolikor je potrebno za začetek kazenskega pregona ali postopka za izročitev.

2. Omenjena država takoj opravi predhodno preiskavo, da bi ugotovila dejstva.

3. Vsaka oseba, aretirana v skladu s prvim odstavkom tega člena, lahko takoj stopi v stik z najbližjim pooblaščenim predstavnikom države, katere državljanstvo ima, ali, če gre za apatrida, s predstavnikom države, v kateri ima običajno prebivališče.

4. Če je kaka država aretirala osebo v skladu s tem členom, mora o tej aretaciji in okoliščinah, ki jo opravičujejo, takoj obvestiti države iz prvega odstavka 5. člena. Država, ki izvaja predhodno preiskavo iz drugega odstavka tega člena, mora svoje ugotovitve takoj sporočiti omenjenim državam in jih obvestiti, ali namerava izvršiti jurisdikcijo.

## **7. člen**

1. Država članica, na katere ozemlju pod njeno jurisdikcijo je odkrit domnevni storilec kaznivega dejanja iz 4. člena, če ga ne izroči, predloži v primerih iz 5. člena zadevo pristojnim organom, da bi izvedli kazenski postopek.

2. Ti organi odločajo pod enakimi pogoji kot za vsako hudo kaznivo dejanje splošnega prava v skladu s pravnimi predpisi zadevne države. V primerih iz drugega odstavka 5. člena dokazna pravila, ki se uporabljajo za pregon in obsodbo, nikakor ne smejo biti manj stroga od pravil, ki se uporabljajo v primerih iz prvega odstavka 5. člena.

3. Vsaki osebi, ki se preganja za katerokoli kaznivo dejanje iz 4. člena, je zajamčeno pravično ravnanje v vseh fazah postopka.

## **8. člen**

1. Kazniva dejanja iz 4. člena so avtomatično vključena v vsako pogodbo o izročitvi, že sklenjeno med državami članicami. Države članice prevzemajo obveznost, da bodo omenjena kazniva dejanja vključile v vsako pogodbo o izročitvi, ki jo bodo sklenile med seboj.

2. Če dobi država članica, ki za izročitev postavlja kot pogoj pogodbo, od druge države članice, s katero ni vezana s pogodbo o izročitvi, zahtevo za izročitev, lahko šteje to konvencijo kot pravno podlago za izročitev glede omenjenih kaznivih dejanj. Izročitev je odvisna od drugih pogojev, določenih s pravom zaprosene države.

3. Države članice, ki za izročitev ne postavljajo kot pogoj pogodbe, medsebojno priznavajo omenjena kazniva dejanja kot primere za izročitev pod pogoj, predvidenimi s pravom zaprosene države.

### **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 1 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. Med državami članicami se za omenjena kazniva dejanja za namene izročitve šteje, kot da so bila storjena ne le v kraju, kjer so se zgodila, temveč tudi na ozemljih držav, ki morajo določiti svojo pristojnost po prvem odstavku 5. člena.

#### **9. člen**

1. Države članice dajejo druga drugi kar največjo pravno pomoč v vsakem kazenskem postopku v zvezi s kaznivimi dejanji iz 4. člena, vštevši tudi pošiljanje vseh razpoložljivih dokaznih elementov, ki so potrebni za postopek.

2. Države članice izpolnjujejo svoje obveznosti v skladu s prvim odstavkom tega člena smiselno vsaki morebitni medsebojni pogodbi o pravni pomoči.

#### **10. člen**

1. Vsaka država članica bo zagotovila, da bosta seznanjanje s prepovedjo mučenja in informiranje o njej sestavni del izobraževanja civilnega ali vojaškega osebja, zadolženega za uporabo zakonov, medicinskega osebja, vršilcev javnih funkcij in drugih oseb, ki utegnejo kakorkoli sodelovati pri straženju aretirane, priprte ali zaprte osebe, pri njenem zasliševanju ali ravnanju z njo.

2. Vsaka država članica vključi omenjeno prepoved v pravila ali navodila v zvezi z obveznostmi in dolžnostmi teh oseb.

#### **11. člen**

Vsaka država članica sistematično nadzoruje pravila, navodila, metode in prakso zasliševanja ter določbe v zvezi s straženjem kakorkoli aretiranih, priprtih ali zaprtih oseb na kakem ozemlju pod njeno jurisdikcijo ter ravnanjem z njimi, da bi preprečila kakršnokoli mučenje.

#### **12. člen**

Vsaka država članica skrbi za to, da pristojni organi takoj opravijo nepristransko preiskavo vsakič, ko so upravičeni razlogi za sum, da je bilo dejanje mučenja storjeno, na kakem ozemlju pod njeno jurisdikcijo.

#### **13. člen**

Vsaka država članica zagotovi vsaki osebi, ki trdi, da je bila mučena na kakem ozemlju pod njeno jurisdikcijo, pravico, da se pritoži pristojnim organom omenjene države, ki takoj in nepristransko preučijo primer. Sprejeti bodo ukrepi, da se oseba, ki se je pritožila, in priče zavarujejo pred kakršnimkoli grdum ravnanjem ali ustrahovanjem zaradi vložene pritožbe ali dane izjave.

#### **14. člen**

1. Vsaka država članica v svojem pravnem sistemu jamči žrtvi dejanja mučenja odstranitev krivice ter pravico do pravične in ustrezne odškodnine, vštevši sredstva, potrebna za njeno čim popolnejšo rehabilitacijo. V primeru smrti žrtve dejanja mučenja imajo imetniki pravic te žrtve pravico do odškodnine.

2. Ta člen ne izključuje nobene pravice do odškodnine, ki bi jo imela žrtev ali kdo drug v skladu z nacionalno zakonodajo.

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 1 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.

### **15. člen**

Vsaka država članica skrbi za to, da se izjava, za katero se dokaže, da je bila dobljena z mučenjem, ne more navesti kot dokazni element v kakem postopku, razen zoper osebo, obtoženo za mučenje, da bi se ugotovilo, da je bila izjava dana.

### **16. člen**

1. Vsaka država članica prevzema obveznost, da bo na ozemlju pod svojo jurisdikcijo preprečila druga dejanja krutih, nečloveških ali poniževalnih kazni ali ravnanja, ki niso dejanja mučenja, kot jih opredeljuje 1. člen, kadar takšna dejanja stori predstavnik javne funkcije ali kdo drug, ki nastopa kot oseba z uradnim statusom ali na njeno spodbudo ali z njeno izrecno privolitvijo ali privolitvijo molče. Zlasti obveznosti, navedene v 10., 11., 12. in 13. členu, se uporabljajo s tem, da se pojem mučenja nadomesti s pojmom drugih oblik krutih, nečloveških ali poniževalnih kazni ali ravnanja.

2. Določbe te konvencije ne vplivajo na določbe kateregakoli mednarodnega instrumenta ali nacionalnega zakona, ki prepoveduje krute, nečloveške ali poniževalne kazni ali ravnanja ali ki se nanaša na izročitev ali izgon.

## **II. DEL**

### **17. člen**

1. Ustanovi se komite proti mučenju (v nadaljnjem besedilu: komite), katerega funkcije so tu določene. Komite sestavlja deset izvedencev z visokimi moralnimi kvalitetai, katerih kompetentnost na področju človekovih pravic je priznana in ki zasedajo v osebnem statusu. Izvedence volijo države članice, pri tem pa upoštevajo pravično zemljepisno zastopanost in da je pomembno, da pri delu komiteja sodelujejo osebe s pravnimi izkušnjami.

2. Člani komiteja se volijo s tajnim glasovanjem z liste kandidatov, ki jih določijo države članice. Vsaka država članica določi enega kandidata izmed svojih državljanov. Države članice upoštevajo, kako pomembno je, da so določeni kandidati hkrati člani komiteja za človekove pravice, ustanovljenega v skladu z mednarodnim paktom o državljanskih in političnih pravicah, in da so pripravljeni biti člani komiteja proti mučenju.

3. Člani komiteja se volijo na sestanku držav članic, ki ga sklicuje generalni sekretar Organizacije združenih narodov in ki je vsako drugo leto. Na tem sestanku, ki je sklepčen, če so navzoči predstavniki dveh tretjin držav članic, so za člane komiteja izvoljeni kandidati, ki dobijo največ glasov in absolutno večino glasov predstavnikov držav članic, ki so navzoči in glasujejo.

4. Prve volitve se izvedejo najpozneje šest mesecev po uveljavitvi te konvencije. Najmanj štiri mesece pred vsakimi volitvami pošlje generalni sekretar Organizacije združenih narodov pismo državam članicam in jih pozove, naj predložijo svoje kandidature v treh mesecih. Generalni sekretar sestavi abecedni seznam vseh tako določenih kandidatov z navedbo držav članic, ki so jih določile, in ga pošlje državam članicam.

5. Člani komiteja se volijo za štiri leta. Lahko so ponovno izvoljeni, če so znova kandidirani. Vendar mandat petih članov, izvoljenih na prvih volitvah, preneha po dveh letih. Neposredno po prvih volitvah izžreba imena teh petih članov predsednik sestanka, navedenega v tretjem odstavku tega člena.



### **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. Če član komiteja umre, odstopi ali iz kakršnegakoli razloga ne more več opravljati svojih funkcij v komiteju, imenuje država članica, ki ga je določila, drugega izvedenca - svojega državljanca, ki ostane v komiteju preostali čas mandata, če to odobri večina držav članic. Šteje se, da je privolitev dana, razen če polovica ali več kot polovica držav članic ne izrazi nasprotnega mnenja v šestih tednih od trenutka, ko jih generalni sekretar Organizacije združenih narodov obvesti o predlaganem imenovanju.

7. Države članice plačajo stroške članov komiteja, dokler opravljajo funkcije v komiteju.

### **18. člen**

1. Komite voli svoj biro za dve leti. Člani biroja se lahko ponovno volijo.

2. Komite sam določi svoj poslovnik. Ta poslovnik mora imeti predvsem naslednji določbi:

- a) za sklepčnost je potrebna navzočnost šestih članov;
- b) sklepi komiteja se sprejemajo z večino glasov navzočih članov.

3. Generalni sekretar Organizacije združenih narodov da komiteju na razpolago osebje in prostore, ki jih ta potrebuje za učinkovito opravljanje del, ki so mu zaupana v skladu s to konvencijo.

4. Generalni sekretar Organizacije združenih narodov skliče prvi sestanek članov komiteja. Po svojem prvem sestanku se komite sestaja ob priložnostih, določenih z njegovim poslovníkom.

5. Države članice plačajo stroške sestankov držav članic in komiteja, vštévši plačilo vseh stroškov Organizaciji združenih narodov, kot so stroški za plačilo osebja in prostorov, ki jih organizacija angažira v skladu s tretjim odstavkom tega člena.

### **19. člen**

1. Države članice predložijo komiteju s posredovanjem generalnega sekretarja Organizacije združenih narodov poročilo o ukrepih, ki so jih izvedle, da bi izpolnile svoje obveznosti v skladu s to konvencijo, in sicer v enem letu po uveljavitvi konvencije za zadevno državo članico. Države članice nato vsako četrto leto predložijo dodatno poročilo o vseh novih ukrepih in druga poročila, ki jih komite zahteva.

2. Generalni sekretar Organizacije združenih narodov pošlje poročila vsem državam članicam.

3. Komite obravnava vsako poročilo in lahko da o njem splošne komentarje, ki so po njegovem mnenju potrebni, omenjene komentarje pa pošlje zainteresirani državi članici. Ta država članica lahko pošlje komiteju kot odgovor vse pripombe, ki so po njenem mnenju koristne.

4. Komite lahko sklène, da v letnem poročilu, ki ga sestavi po 24. členu, ponovi vse komentarje, ki jih je dal v skladu s tretjim odstavkom tega člena, skupaj s pripombami, ki jih je v zvezi s tem vprašanjem dobil od zainteresirane države članice. Če zainteresirana država članica to zahteva, lahko komite priloži tudi poročilo, predloženo na podlagi prvega odstavka tega člena.

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. (amendment (see General Assembly resolution 47/111 of 16 December 1992);

### **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. (amendment (see General Assembly resolution 47/111 of 16 December 1992);

### **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 1 of this article.

## **20. člen**

1. Če komite prejme verodostojna obvestila, za katera se mu zdi, da vsebujejo zanesljiva obvestila o tem, da se mučenje sistematično izvaja na ozemlju kake države članice, pozove zadevno državo, da sodeluje pri obravnavanju teh obvestil in da ga v ta namen obvesti o svojih ugotovitvah v zvezi s tem vprašanjem.
2. Upoštevajoč vse morebitne pripombe zainteresirane države članice in druga ustrezna obvestila, s katerimi razpolaga, lahko komite, če je to po njegovem mnenju upravičeno, naloži enemu ali več svojim članom, da začnejo zaupno preiskavo in da mu o tem takoj predložijo poročilo.
3. Če se izvaja preiskava v skladu z drugim odstavkom tega člena, zaprosi komite za sodelovanje zainteresirano državo članico. V dogovoru z omenjeno državo članico lahko taka preiskava zajema obisk na njeno ozemlje.
4. Po obravnavi ugotovitev, ki mu jih predloži član ali člani v skladu z drugim odstavkom tega člena, pošlje komite te ugotovitve zainteresirani državi članici in tudi vse komentarje in sugestije, za katere meni, da so primerne glede na dano stanje.
5. Celotna dejavnost komiteja, navedena v prvem do četrtem odstavku tega člena, je zaupna, v vseh etapah tega dela pa se teži vzpostaviti sodelovanje z državo članico. Komite lahko po končanem delu v zvezi s preiskavo, ki je bila vodena v skladu z drugim odstavkom, po posvetovanju z zainteresirano državo članico odloči, da se v letno poročilo, ki ga izdela v skladu s 24. členom, vključi kratko poročilo o rezultatih dela.

## **21. člen**

1. Država članica te konvencije lahko v skladu s tem členom kadarkoli izjavi, da prizna, da je komite pristojen prejemati in obravnavati poročila, v katerih ena država članica trdi, da kakšna druga država članica ne izpolnjuje svojih obveznosti na podlagi te konvencije. Ta sporočila se lahko prejemajo in obravnavajo v skladu s tem členom samo, če prihajajo iz države članice, ki je dala izjavo, da prizna pristojnost komiteja. Komite ne obravnava nobenega sporočila, ki se nanaša na državo članico, ki ni dala take izjave. Za sporočila, prejeta po tem členu, velja takle postopek:
  - a) če država članica te konvencije meni, da kakšna druga država, ki je tudi članica konvencije, ne uporablja določb konvencije, lahko pisno opozori zadevno državo na to vprašanje. Država, ki ji je poslano sporočilo, pošlje v treh mesecih po njegovem prejemu državi, ki ji je poslala sporočilo, pojasnilo ali kakršnokoli drugo pisno izjavo, ki pojasnjuje vprašanje in ki naj bi vsebovala čim več in čim koristnejša obvestila o pravilih postopka in o pravnih sredstvih, bodisi da so že uporabljena ali se uporabljajo ali se šele utegnejo uporabiti;
  - b) če v šestih mesecih od dneva, ko je prejemna država dobila začetno sporočilo, vprašanje ni zadovoljivo rešeno za obe zainteresirani državi članici, imata obe pravico predložiti to vprašanje komiteju, pri čemer se pošlje sporočilo komiteju in drugi zainteresirani državi;
  - c) komite je lahko pristojen za zadevo, ki jo dobi v skladu s tem členom, šele ko se prepriča, da so bila vsa razpoložljiva interna pravna sredstva izkoriščena in izčrpana v skladu s splošno priznanimi načeli mednarodnega prava. To pravilo se ne uporablja v primerih, ko pritožbeni postopki presegajo razumne roke ali ni pričakovati, da bodo dejansko učinkoviti za osebo, ki je žrtev kršenja te konvencije;

### **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) komite obravnava sporočila, predvidena s tem členom, na zaprtih sejah;
- e) s pridržkom določb pod c) ponudi komite svoje dobre usluge zainteresiranima državama članicama, da bi mimo rešili vprašanje ob spoštovanju obveznosti iz te konvencije. Če komite meni, da je potrebno, lahko v ta namen ustanovi ad hoc pravno komisijo;
- f) v vsaki zadevi, ki mu je predložena v skladu s tem členom, lahko komite zahteva od zainteresiranih držav članic iz pododstavka b), da mu pošljeta vsa ustrezna obvestila;
- g) zainteresirani državi članici, navedeni v pododstavku b), imata pravico biti zastopani, ko komite obravnava zadevo, in dajati ustne in/ali pisne pripombe;
- h) komite mora predložiti poročilo v dvanajstih mesecih od dneva, ko je prejel sporočilo, navedeno v pododstavku b);
- i) če je bilo mogoče najti rešitev v skladu z določbo pod e), se komite v svojem poročilu omeji na kratko navedbo dejstev in dosežene rešitve;
- (ii) če rešitve ni bilo mogoče najti v skladu z določbo pod e), se komite v svojem poročilu omeji na kratko navedbo dejstev, besedilo pisnih pripomb in zapisnik o ustnih pripombah, ki sta jih navedli zainteresirani državi članici, se dodata k poročilu. Za vsako zadevo se pošlje poročilo zainteresiranima državama članicama.

2. Določbe tega člena začnejo veljati, ko pet držav članic te konvencije da izjavo, predvideno v prvem odstavku tega člena. To izjavo deponira država članica pri generalnem sekretarju Organizacije združenih narodov, ki pošlje kopijo drugim državam članicam. Izjava se lahko umakne kadarkoli s sporočilom, poslanim generalnemu sekretarju. Ta umik ne vpliva na obravnavo kakršnegakoli vprašanja, ki je predmet že poslanega sporočila v skladu s tem členom: nobeno nadaljnje sporočilo katerekoli države članice ne bo sprejeto v skladu s tem členom, ko generalni sekretar prejme sporočilo o umiku izjave, razen če zainteresirana država članica ne da nove izjave.

## **22. člen**

1. Država članica te konvencije lahko v skladu s tem členom kadarkoli izjavi, da prizna, da je komite pristojen sprejemati in obravnavati sporočila, ki jih dobi od posameznikov ali v imenu posameznikov, ki so pod njeno jurisdikcijo in trdijo, da so žrtve kršenja določb konvencije s strani kakšne države članice. Komite ne sprejme nobenega sporočila, ki se nanaša na posamezno državo članico, ki ni dala take izjave.

2. Za komite bo nesprejemljivo vsako sporočilo, dano v skladu s tem členom, ki je anonimno ali za katerega meni, da pomeni zlorabo pravice do takih sporočil ali da je nezdržljivo z določbami te konvencije.

3. Ob pridržku drugega odstavka pošlje komite vsako sporočilo, dano v skladu s tem členom, državi članici te konvencije, ki je dala izjavo v skladu s prvim odstavkom in se zanjo trdi, da je kršila katerokoli določbo konvencije. Navedena država v naslednjih šestih mesecih pošlje komiteju pisna pojasnila ali izjave, ki pojasnjujejo vprašanje in morebitne ukrepe, ki jih je že sprejela za izboljšanje položaja.



(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 1 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. Komite obravnava sporočila, ki jih je prejel v skladu s tem členom, ob upoštevanju vseh informacij, ki jih je dobil od posameznikov ali v njihovem imenu in od zainteresirane države članice.

5. Komite ne obravnava nobenega sporočila posameznika v skladu s tem členom, ne da bi se poprej prepričal o naslednjem:

a) da navedeno vprašanje ni bilo obravnavano in ni v obravnavi pred kakšno drugo mednarodno instanco, pristojno za preiskavo ali reševanje spora;

b) da je posameznik izkoristili vsa interna razpoložljiva sredstva. To pravilo se ne uporablja, če pritožbeni postopki presegajo razumne roke ali ni pričakovati, da bodo dejansko učinkoviti za posameznika, ki je žrtev kršenja te konvencije.

6. Komite obravnava sporočila, predvidena v tem členu, na zaprtih sejah.

7. Komite sporoči svoje ugotovitve zainteresirani državi članici in posamezniku.

8. Določbe tega člena začnejo veljati, ko pet držav članic te konvencije da izjavo, predvideno v prvem odstavku tega člena. Država članica deponira to izjavo pri generalnem sekretarju Organizacije združenih narodov, ki pošlje kopijo drugim državam članicam. Izjava se lahko kadarkoli umakne s sporočilom, poslanim generalnemu sekretarju. Ta umik ne vpliva na obravnavo kakršnegakoli vprašanja, ki je predmet že poslanega sporočila v skladu s tem členom;

nobeno nadaljnje sporočilo, ki ga je poslal posameznik ali je bilo poslano zanj, ne bo sprejeto v skladu s tem členom, ko generalni sekretar prejme sporočilo o umiku izjave, razen če zainteresirana država članica ni dala nove izjave.

### **23. člen**

Člani komiteja in člani ad hoc upravne komisije, ki utegnejo biti imenovani v skladu s prvim odstavkom pod e) 21. člena, imajo pravico do olajšav, privilegijev in imunitet, ki so priznane izvedencem v službi Organizacije združenih narodov tako, kot so navedene v ustreznih delih konvencije o privilegijih in imunitetah Združenih narodov.

### **24. člen**

Komite predloži državam članicam in generalni skupščini Organizacije združenih narodov letno poročilo o svojih dejavnostih po tej konvenciji.

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 1 (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.

### **III. DEL**

#### **25. člen**

1. Ta konvencija je odprta za podpis vsem državam.
2. Ta konvencija se mora ratificirati. Ratifikacijske listine bodo deponirane pri generalnem sekretarju Organizacije združenih narodov.

#### **26. člen**

Vse države lahko pristopijo k tej konvenciji. Pristop se uveljavi tako, da se pristopna listina deponira pri generalnem sekretarju Organizacije združenih narodov.

#### **27. člen**

1. Ta konvencija začne veljati trideseti dan potem, ko je dvajseta listina o ratifikaciji ali pristopu deponirana pri generalnem sekretarju Organizacije združenih narodov.
2. Za vsako državo, ki bo to konvencijo ratificirala ali k njej pristopila po deponiranju dvajsete listine o ratifikaciji ali pristopu, začne konvencija veljati trideseti dan potem, ko je deponirala svojo listino o ratifikaciji ali pristopu.

#### **28. člen**

1. Vsaka država lahko ob podpisu ali ratifikaciji ali pristopu izjavi, da ne prizna pristojnosti, ki jo ima komite v skladu z 20. členom konvencije.
2. Vsaka država članica, ki bo imela pridržek v skladu s prvim odstavkom tega člena, lahko kadarkoli umakne ta pridržek tako, da pošlje sporočilo generalnemu sekretarju Organizacije združenih narodov.

#### **29. člen**

1. Vsaka država članica te konvencije lahko predlaga amandma in da svoj predlog generalnemu sekretarju Organizacije združenih narodov. Generalni sekretar sporoči predlog amandmaja državam članicam, pri čemer od njih zahteva, da mu sporočijo, ali so za to, da se organizira konferenca držav članic, da bi se predlog obravnaval in dal na glasovanje. Če se v štirih mesecih od dneva, ko je bilo dano tako sporočilo, vsaj tretjina držav članic izjavi za konferenco, jo generalni sekretar organizira pod pokroviteljstvom Organizacije združenih narodov. Vsak amandma, ki ga sprejme večina držav članic, ki so navzoče na konferenci in glasujejo, predloži generalni sekretar v sprejetje vsem državam članicam.
2. Amandma, sprejet po prvem odstavku tega člena, začne veljati, ko dve tretjini držav članic te konvencije obvestijo generalnega sekretarja Organizacije združenih narodov, da so ga sprejele v skladu s postopkom, predvidenim z njihovo ustavo.
3. Ko začnejo amandmaji veljati, so obvezni za vse države članice, ki so jih sprejele, za druge države članice pa veljajo določbe te konvencije in vsi prejšnji amandmaji, ki so jih sprejele.

### **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 1 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 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 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 1 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.

### **30. člen**

1. Vsak spor med dvema ali več državami članicami v zvezi z razlago ali uporabo te konvencije, ki ga ni mogoče rešiti s pogajanjem, se predloži v arbitražo na zahtevo ene izmed teh držav. Če v šestih mesecih po dani zahtevi za arbitražo strani ne dosežejo sporazuma o organiziranju arbitraže, lahko vsaka med njimi predloži spor Mednarodnemu sodišču z zahtevo v skladu s statutom sodišča.

2. Vsaka država lahko ob podpisu ali ratifikaciji ali pristopu h konvenciji izjavi, da zanjo ne velja prvi odstavek tega člena. Za druge države članice ne velja navedena določba glede na vsako državo članico, ki izrazi tak pridržek.

3. Vsaka država članica, ki izrazi pridržek v skladu z drugim odstavkom tega člena, ga lahko kadarkoli umakne tako, da pošlje sporočilo generalnemu sekretarju Organizacije združenih narodov.

### **31. člen**

1. Država članica lahko odpove to konvencijo s pisnim sporočilom, poslanim generalnemu sekretarju Organizacije združenih narodov. Odpoved začne veljati eno leto potem, ko je generalni sekretar prejel sporočilo.

2. Zaradi take odpovedi država članica ni oproščena obveznosti, ki jih ima v skladu s to konvencijo v zvezi z vsakim dejanjem ali vsako opustitvijo pred dnem, ko začne odpoved veljati. Odpoved tudi ni ovira za nadaljnjo obravnavo vsakega vprašanja, ki je bilo že predloženo komiteju na dan, ko je začela odpoved veljati.

3. Po dnevu, ko začne veljati odpoved posamezne države članice, komite ne obravnava več nobenega novega vprašanja v zvezi z zadevno državo.

### **32. člen**

Generalni sekretar Organizacije združenih narodov sporoči vsem državam članicam Organizacije združenih narodov in vsem državam, ki bodo podpisale to konvencijo ali pristopile k njej:

- a) podpise, ratifikacije in pristope, prejete na podlagi 25. in 26. člena;
- b) datum, ko začne konvencija veljati na podlagi 27. člena, in datum, ko začne veljati vsak amandma po 29. členu;
- c) odpovedi, prejete na podlagi 31. člena.

### **33. člen**

1. Ta konvencija, katere besedila v arabskem, angleškem, francoskem, kitajskem, ruskem in španskem jeziku so enako verodostojna, bo deponirana pri generalnem sekretarju Organizacije združenih narodov.

2. Generalni sekretar Organizacije združenih narodov pošlje vsem državam overjene kopije te konvencije.

### **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 1 of this article. The other States Parties shall not be bound by paragraph 1 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.

## 2. OPCIJSKI PROTOKOL h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju

(Uradni list RS, št. 114/2006 – Mednarodne pogodbe, št. 20 z dne 09. 11. 2006)

### ZAKON O RATIFIKACIJI OPCIJSKEGA PROTOKOLA H KONVENCIJI PROTI MUČENJU IN DRUGIM KRUTIM, NEČLOVEŠKIM ALI PONIŽEVALNIM KAZNIM ALI RAVNANJU (MOPPM) (Uradni list RSM, št. 20-117/2006 z dne 9. 11. 2006)

#### 1. člen

Ratificira se Opcijski protokol h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju, sprejet na 57. zasedanju Generalne skupščine Združenih narodov 18. decembra 2002.

#### 2. člen

Besedilo protokola se v izvirniku v angleškem jeziku ter v prevodu v slovenskem jeziku glasi:

### PREAMBULA

Države pogodbenice tega protokola

ponovno potrjujejo, da so mučenje in druge oblike okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja prepovedane in pomenijo resno kršenje človekovih pravic,

so prepričane, da so potrebni nadaljnji ukrepi, da bi lahko uresničili cilje Konvencije proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju (v nadaljevanju: konvencija) in okrepili varstvo oseb, ki jim je bila odvzeta prostost, pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja,

se sklicujejo na 2. in 16. člen konvencije, ki zavezujeta vse države pogodbenice, da učinkovito ukrepajo, da bi preprečile mučenje in druge oblike okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja na katerem koli ozemlju pod njihovo jurisdikcijo,

ugotavljajo, da so predvsem države odgovorne za izvajanje teh dveh členov, da je skupna odgovornost vseh držav okrepiti varstvo oseb, ki jim je bila odvzeta prostost, in v celoti spoštovati njihove človekove pravice, in da mednarodni organi izvajanja dopolnjujejo in krepijo državne ukrepe,

se sklicujejo na to, da sta za učinkovito preprečevanje mučenja in drugega okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja potrebni izobraževanje in povezovanje zakonodajnih, upravnih, sodnih in drugih ukrepov,

se sklicujejo na to, da so na Svetovni konferenci o človekovih pravicah odločno izjavile, da je treba prizadevanja za odpravo mučenja usmeriti predvsem na preprečevanje, in pozvale k sprejetju opcijskega protokola h konvenciji, ki naj bi vzpostavil preventivni sistem rednih obiskov na krajih odvzema prostosti,



## 2. OPTIONAL PROTOCOL to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(Official Gazette RS no. 114/06 – International Treaties no. 20/06)

### **ACT OF RATIFICATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

#### *Article 1*

The Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at the 57th session of the General Assembly of the United Nations 18 December 2002 is hereby ratified.

#### *Article 2*

The text of the Protocol in the original in the English language and in translation into the Slovene language reads as follows:

### **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,

so prepričane, da se lahko varstvo oseb, ki jim je bila odvzeta prostost, pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja okrepi z nesodnimi preventivnimi sredstvi, ki temeljijo na rednih obiskih na krajih odvzema prostosti,

in so se dogovorile:

## **I. DEL**

### **Splošna načela**

#### **1. člen**

Namen tega protokola je vzpostaviti sistem rednih obiskov neodvisnih mednarodnih in državnih organov na krajih, kjer je ljudem odvzeta prostost, da bi preprečili mučenje in druge oblike okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja.

#### **2. člen**

1. Ustanovi se Pododbor za preprečevanje mučenja in drugega okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja Odbora proti mučenju (v nadaljevanju: pododbor za preprečevanje), ki opravlja naloge, določene s tem protokolom.

2. Pododbor za preprečevanje opravlja svoje delo v okviru Ustanovne listine Združenih narodov in spoštuje njene cilje in načela ter norme Združenih narodov glede ravnanja z ljudmi, ki jim je bila odvzeta prostost.

3. Pododbor za preprečevanje spoštuje tudi načela zaupnosti, nepristranskosti, nerazlikovanja, univerzalnosti in objektivnosti.

4. Pododbor za preprečevanje in države pogodbenice sodelujejo pri izvajanju tega protokola.

#### **3. člen**

Vsaka država pogodbenica na državni ravni ustanovi, določi ali vzdržuje enega ali več organov za obiskovanje zaradi preprečevanja mučenja in drugega okrutnega, nečloveškega ali ponižujočega ravnanja ali kaznovanja (v nadaljevanju: državni preventivni mehanizem).

#### **4. člen**

1. Vsaka država pogodbenica v skladu s tem protokolom dovoli obiske organov iz 2. in 3. člena na katerem koli kraju, ki je v njeni pristojnosti in pod njenim nadzorom, kjer so ali bi lahko bile osebe, ki jim je bila odvzeta prostost na podlagi odredbe javne oblasti ali na njihovo pobudo ali z njihovo izrecno ali tiho privolitvijo (v nadaljevanju: kraji odvzema prostosti). Namen teh obiskov je, če je potrebno, okrepiti varstvo teh oseb pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja.

2. V tem protokolu pomeni odvzem prostosti vsako obliko pridržanja ali zapora ali namestitve osebe v javni ali zasebni zavod, ki ga ta oseba po odredbi sodne, upravne ali katere koli druge oblasti ne sme zapustiti po svoji volji.

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.

## II. DEL

### Pododbor za preprečevanje

#### 5. člen

1. Pododbor za preprečevanje sestavlja 10 članov. Po petdeseti ratifikaciji ali pristopu k temu protokolu se število članov v pododboru za preprečevanje poveča na 25.
2. Člani pododbora so izbrani med osebami, ki imajo visok moralni ugled, morajo imeti poklicne izkušnje na področju pravosodja, zlasti kazenskega prava, upravljanja zaporov ali policijske uprave ali na različnih področjih, povezanih z ravnanjem z osebami, ki jim je bila odvzeta prostost.
3. Pri sestavi pododbora za preprečevanje se upoštevata pravična geografska zastopanost in zastopanost različnih oblik civilizacij in pravnih sistemov držav pogodbenic.
4. V tej sestavi se upošteva tudi uravnotežena zastopanost spolov na podlagi načel enakosti in nediskriminacije.
5. Vsak član pododbora mora biti državljan druge države.
6. Člani pododbora za preprečevanje opravljajo svoje delo kot posamezniki, morajo biti neodvisni in nepristranski ter morajo biti pododboru na razpolago za učinkovito opravljanje dela.

#### 6. člen

1. Vsaka država pogodbenica lahko v skladu z drugim odstavkom tega člena predlaga največ dva kandidata, ki sta ustrezno usposobljena in izpolnjujeta zahteve iz 5. člena, pri čemer mora predložiti podrobne podatke o njuni usposobljenosti.
2. (a) Kandidati morajo biti državljani držav pogodbenic tega protokola.  
(b) Vsaj eden od obeh kandidatov mora biti državljan države pogodbenice, ki ga je predlagala.  
(c) Posamezna država pogodbenica lahko predlaga največ dva svoja državljana.  
(d) Preden država pogodbenica predlaga državljana druge države pogodbenice, zaprosi za njeno soglasje in ga pridobi.
3. Generalni sekretar Združenih narodov vsaj pet mesecev pred dnevom sestanka držav pogodbenic, na katerem bodo potekale volitve, pošlje pismo državam pogodbenicam, s katerim jih pozove, naj v treh mesecih predlagajo svoje kandidate. Generalni sekretar nato predloži abecedni seznam vseh predlaganih oseb z navedbo držav pogodbenic, ki so jih predlagale.

## **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.

### **7. člen**

1. Člani pododbora za preprečevanje se izvolijo po naslednjem postopku:

- a) najprej se upošteva izpolnjevanje zahtev in meril iz 5. člena tega protokola;
- b) prve volitve potekajo najpozneje šest mesecev po začetku veljavnosti tega protokola;
- c) države pogodbenice izvolijo člane pododbora s tajnim glasovanjem;
- d) volitve članov pododbora potekajo vsaki dve leti na sestankih držav pogodbenic, ki jih skliče generalni sekretar Združenih narodov. Na sestankih, na katerih je za sklepčnost potrebna navzočnost dveh tretjin držav pogodbenic, so v pododbor izvoljene tiste osebe, ki dobijo največ glasov in absolutno večino glasov predstavnikov držav pogodbenic, ki so navzoči in glasujejo.

2. Če na volitvah dva državljana države pogodbenice dobita dovolj glasov za članstvo v pododboru za preprečevanje, postane član pododbora tisti kandidat, ki dobi več glasov. Če sta državljana dobila enako število glasov, velja naslednji postopek:

- a) če je le enega od obeh kandidatov predlagala država pogodbenica, katere državljan je, postane ta kandidat član pododbora za preprečevanje;
- b) če je oba kandidata predlagala država pogodbenica, katere državljan sta, poteka ločeno tajno glasovanje, s katerim se odloči, kateri državljan bo član pododbora,
- c) če nobenega kandidata ne predlaga država pogodbenica, katere državljan sta, poteka ločeno tajno glasovanje, s katerim se odloči, kateri kandidat bo član pododbora.

### **8. člen**

Če član pododbora umre, odstopi ali zaradi kakršnega koli razloga ne more več opravljati svojih dolžnosti, država pogodbenica, ki je tega člana predlagala, predlaga drugo osebo, ki je ustrezno usposobljena in izpolnjuje zahteve iz 5. člena, ob upoštevanju potrebe po uravnoteženi zastopanosti različnih področij, in bo opravljala delo do naslednjega sestanka držav pogodbenic, če se s tem strinja večina držav pogodbenic. Šteje se, da se države pogodbenice strinjajo, razen če polovica ali več držav pogodbenic odgovori negativno v šestih tednih, potem ko jih je generalni sekretar Združenih narodov obvestil o predlaganem imenovanju.

### **9. člen**

Člani pododbora za preprečevanje so izvoljeni za štiri leta. Enkrat so lahko ponovno izvoljeni, če so ponovni predlagani. Polovici članov, izvoljeni na prvih volitvah, se mandat izteče po dveh letih; imena teh članov neposredno po prvih volitvah z žrebom določi predsedujoči sestanka iz točke d prvega odstavka 7. člena.

### **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).



### **10. člen**

1. Pododbor za preprečevanje izvoli svoje vodstvo za dve leti. Lahko je ponovno izvoljeno.
2. Pododbor za preprečevanje sprejme svoj poslovnik. Ta med drugim določa, da:
  - a) je za sklepčnost potrebna več kot polovica članov;
  - b) se odločitve pododbora za preprečevanje sprejmejo z večino navzočih članov;
  - c) se pododbor za preprečevanje sestaja brez navzočnosti javnosti.
3. Prvi sestanek pododbora za preprečevanje skliče generalni sekretar Združenih narodov. Po prvem sestanku se pododbor sestaja, kot to določa poslovnik. Pododbor za preprečevanje in odbor proti mučenju zasedata hkrati vsaj enkrat letno.

## **III. DEL**

### **Naloge in pooblastila pododbora za preprečevanje**

#### **11. člen**

##### **Pododbor za preprečevanje:**

- a) obiskuje kraje iz 4. člena in daje priporočila državam pogodbenicam glede varstva oseb, ki jim je bila odvzeta prostost, pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja;
- b) v zvezi z državnimi preventivnimi mehanizmi:
  - i) svetuje in pomaga državam pogodbenicam pri njihovi vzpostavitvi, če je potrebno;
  - ii) vzdržuje neposredne, in če je potrebno, zaupne stike z državnimi preventivnimi mehanizmi in jim omogoča usposabljanje in strokovno pomoč, da bi okrepili svoje zmogljivosti;
  - iii) jim svetuje in pomaga pri oceni potreb in sredstev, potrebnih za krepitev varstva oseb, ki jim je bila odvzeta prostost, pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja;
  - iv) daje priporočila in pripombe državam pogodbenicam, da bi okrepile zmogljivosti, naloge in pooblastila državnih preventivnih mehanizmov za preprečevanje mučenja in drugih oblik okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja;
- c) za preprečevanje mučenja na splošno sodeluje z ustreznimi organi in mehanizmi Združenih narodov in mednarodnimi, regionalnimi in državnimi institucijami ali organizacijami, ki si prizadevajo za okrepitev varstva oseb pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja.

### **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**

##### **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.

## **12. člen**

Da bi pododboru za preprečevanje omogočili uresničevanje njegovih nalog in pooblastil iz 11. člena, se države pogodbenice zavezujejo, da bodo:

- a) sprejele pododbor za preprečevanje na svojem ozemlju in mu dovolile dostop do krajev odvzema prostosti, kot je opredeljeno v 4. členu tega protokola;
- b) priskrbele pododboru za preprečevanje vse ustrezne informacije, ki bi jih od njih zahteval, da bi lahko ocenil potrebe in ukrepe, ki bi jih bilo treba sprejeti za okrepitev varstva oseb, ki jim je bila odvzeta prostost, pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja;
- c) spodbujale in omogočale stike med pododborom za preprečevanje in državnimi preventivnimi mehanizmi;
- d) obravnavale priporočila pododbora za preprečevanje in vzpostavile dialog z njim o mogočih ukrepih za izvajanje.

## **13. člen**

1. Pododbor za preprečevanje najprej z žrebom sestavi program rednih obiskov v državah pogodbenicah, da izpolni naloge in pooblastila iz 11. člena.

2. Po posvetovanjih pododbor za preprečevanje uradno obvesti države pogodbenice o svojem programu, tako da se lahko nemudoma dogovorijo o potrebnih praktičnih podrobnostih glede obiskov, ki naj se opravijo.

3. Obiske opravita vsaj dva člana pododbora za preprečevanje. Če je potrebno, člane spremljajo strokovnjaki z dokazanimi strokovnimi izkušnjami in znanjem na področjih, ki jih vključuje ta protokol, in so izbrani s seznama strokovnjakov, pripravljenega na podlagi predlogov držav pogodbenic, Urada visokega komisarja Združenih narodov za človekove pravice in Centra Združenih narodov za mednarodno preprečevanje kriminala. Pri pripravi seznama države pogodbenice predlagajo največ pet nacionalnih strokovnjakov. Država pogodbenica lahko nasprotuje, da je posamezen strokovnjak navzoč pri obisku, nato pododbor za preprečevanje predlaga drugega strokovnjaka.

4. Če se pododboru za preprečevanje zdi primerno, lahko po rednem obisku predlaga še kratek dopolnilni obisk.

## **14. člen**

1. Da bi pododboru za preprečevanje omogočili izpolnjevanje nalog in pooblastil, se države pogodbenice tega protokola zavezujejo, da mu bodo zagotovile:

- a) neomejen dostop do vseh informacij o številu oseb, ki jim je bila odvzeta prostost, na krajih odvzema prostosti, kot je opredeljeno v 4. členu, in o številu krajev in njihovih lokacijah;
- b) neomejen dostop do vseh informacij o ravnanju s temi osebami in njihovimi pogoji odvzema prostosti;
- c) neomejen dostop do vseh krajev odvzema prostosti ter njihovih objektov in opreme ob upoštevanju drugega odstavka;

### **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 follow-up 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) možnost zaupnih pogovorov z osebami, ki jim je bila odvzeta prostost, brez prič, osebno ali s prevajalcem, če je potrebno, in s katero koli osebo, za katero pododbor za preprečevanje meni, da lahko priskrbi ustrezne informacije;

e) svobodno izbiro krajev, ki jih želi obiskati, in oseb, s katerimi želi govoriti.

2. Obisku določenega kraja odvzema prostosti se lahko nasprotuje le iz nujnih in tehtnih razlogov zaradi državne obrambe, javne varnosti, naravne nesreče ali hudega nereda na kraju, ki naj bi ga obiskali, in ki trenutno preprečujejo izvedbo takega obiska. Država pogodbenica se ne sme sklicevati na obstoj razglašenega izrednega stanja kot na razlog za nasprotovanje obisku.

### **15. člen**

Nobena oblast ali uradna oseba ne sme odrediti, uporabiti, dovoliti ali dopustiti kakršne koli sankcije proti nobeni osebi ali organizaciji, ker je pododboru ali njegovim delegatom dala resnične ali neresnične informacije, in nobene osebe ali organizacije se zaradi tega ne sme kako drugače oškodovati.

### **16. člen**

1. Pododbor za preprečevanje svoja priporočila in pripombe zaupno sporoči državi pogodbenici, in če je potrebno, državnemu preventivnemu mehanizmu.

2. Pododbor za preprečevanje objavi svoje poročilo z morebitnimi pripombami prizadete države pogodbenice, kadar to zahteva. Če država pogodbenica objavi del poročila, lahko pododbor za preprečevanje objavi poročilo v celoti ali delno. Osebni podatki pa se ne smejo objaviti brez izrecne privolitve prizadete osebe.

3. Pododbor za preprečevanje mora Odboru za mučenje predložiti javno letno poročilo o svojih dejavnostih.

4. Če država pogodbenica v skladu z 12. in 14. členom zavrne svoje sodelovanje s pododborom za preprečevanje ali ukrepanje, ki bi glede na priporočila pododbora izboljšalo stanje, lahko Odbor proti mučenju na prošnjo pododbora za preprečevanje z večino svojih članov odloči, da bo dal javno izjavo o zadevi ali objavil poročilo pododbora, potem ko je imela država pogodbenica možnost predstaviti svoja stališča.

## **IV. DEL**

### **Državni preventivni mehanizmi**

### **17. člen**

Vsaka država pogodbenica najpozneje leto po začetku veljavnosti tega protokola, njegovi ratifikaciji ali pristopu k njemu vzpostavi, določi ali ustanovi enega ali več neodvisnih državnih preventivnih mehanizmov za preprečevanje mučenja. Mehanizmi, ki so jih vzpostavile decentralizirane enote, se lahko za namene tega protokola določijo za državne preventivne mehanizme, če so v skladu z njegovimi določbami.

(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.

### **18. člen**

1. Države pogodbenice zagotavljajo neodvisnost delovanja državnih preventivnih mehanizmov in neodvisnost njihovega osebja.
2. Države pogodbenice ukrenejo vse potrebno, da zagotovijo, da so strokovnjaki državnega preventivnega mehanizma ustrezno usposobljeni in imajo strokovno znanje. Prizadevajo si za uravnoteženo zastopanost spolov in ustrezno zastopanost etničnih skupin in manjšin v državi.
3. Države pogodbenice se zavezujejo, da bodo dale na voljo potrebna sredstva za delovanje državnih preventivnih mehanizmov.
4. Pri vzpostavitvi državnih preventivnih mehanizmov države pogodbenice ustrezno upoštevajo načela glede statusa in delovanja nacionalnih institucij za spodbujanje in varstvo človekovih pravic.

### **19. člen**

Državni preventivni mehanizmi imajo vsaj naslednja pooblastila, da:

- a) na krajih odvzema prostosti, kot so opredeljeni v 4. členu, redno preverjajo ravnanje z osebami, ki jim je bila odvzeta prostost, da bi okrepili njihovo varstvo pred mučenjem, in drugimi oblikami okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja, če je potrebno;
- b) ob upoštevanju ustreznih norm Združenih narodov dajejo priporočila ustreznim organom, da bi izboljšali razmere in ravnanje z osebami, ki jim je bila odvzeta prostost, in preprečili mučenje in druge oblike okrutnega, nečloveškega, poniževalnega ravnanja ali kaznovanja;
- c) predložijo predloge in pripombe k veljavnim ali predlaganim zakonom.

### **20. člen**

Da bi državni preventivni mehanizmi lahko izpolnili svoje naloge in pooblastila, se države pogodbenice tega protokola zavezujejo, da jim bodo zagotovile:

- a) dostop do vseh informacij o številu oseb, ki jim je bila odvzeta prostost, na krajih odvzema prostosti, kot so opredeljeni v 4. členu, in o številu krajev in njihovi lokaciji;
- b) dostop do vseh informacij o ravnanju s temi osebami in njihovih pogojih odvzema prostosti;
- c) dostop do vseh krajev odvzema prostosti ter njihovih objektov in opreme;
- d) možnost zaupnih pogovorov z osebami, ki jim je bila odvzeta prostost, brez prič, osebno ali s prevajalcem, če se zdi potrebno, in s katero koli osebo, za katero državni preventivni mehanizem meni, da lahko priskrbi ustrezne informacije;
- e) svobodno izbiro krajev, ki jih želijo obiskati, in oseb, s katerimi želijo govoriti;
- f) pravico do stikov s pododborom za preprečevanje, pošiljanja informacij pododboru in do srečanj z njim.



### **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.

### **21. člen**

1. Nobena oblast ali uradna oseba ne sme odrediti, uporabiti, dovoliti ali dopustiti kakršne koli sankcije proti nobeni osebi ali organizaciji, ker je državnemu preventivnemu mehanizmu dala resnične ali neresnične informacije, in nobene osebe ali organizacije se zaradi tega ne sme kako drugače oškodovati.

2. Zaupne informacije, ki jih zbere državni preventivni mehanizem, so zavarovane kot take. Osebni podatki pa se ne smejo objaviti brez izrecne privolitve prizadete osebe.

### **22. člen**

Pristojni organi prizadete države pogodbenice obravnavajo priporočila državnega preventivnega mehanizma in z njim vzpostavijo dialog o mogočih ukrepih za izvajanje.

### **23. člen**

Države pogodbenice tega protokola se zavezujejo, da bodo objavile in razširjale letna poročila državnih preventivnih organov.

## **V. DEL**

### **Izjava**

### **24. člen**

1. Ob ratifikaciji lahko države pogodbenice izjavijo, da bodo odložile izpolnjevanje svojih obveznosti iz III. ali IV. dela tega protokola.

2. Odložitev obveznosti velja največ tri leta. Odbor proti mučenju lahko podaljša to obdobje za dodatni dve leti ob utemeljenih navedbah države pogodbenice in po posvetovanjih s pododborom za preprečevanje.

## **VI. DEL**

### **Finančne določbe**

### **25. člen**

1. Stroške pododborja za preprečevanje, ki nastanejo pri izvajanju tega protokola, krijejo Združeni narodi.

2. Generalni sekretar Združenih narodov zagotovi ustrezno osebje in prostore za učinkovito opravljanje nalog pododborja za preprečevanje po tem protokolu.

**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.

### **26. člen**

1. V skladu z ustreznimi postopki Generalne skupščine se ustanovi poseben sklad, za pomoč pri financiranju izvajanja priporočil, ki jih je pododbor za preprečevanje dal po obisku v državi pogodbenici, in za izobraževalne programe državnih preventivnih mehanizmov, ki ga je treba upravljati v skladu s finančnimi predpisi in pravili Združenih narodov.

2. Poseben sklad se lahko financira s prostovoljnimi prispevki vlad, medvladnih in nevladnih organizacij in drugih zasebnih ali javnih subjektov.

## **VII. DEL** **Končne določbe**

### **27. člen**

1. Protokol je na voljo za podpis vsem državam, ki so podpisale konvencijo.

2. Protokol lahko ratificira vsaka država, ki je ratificirala konvencijo ali k njej pristopila. Listine o ratifikaciji se deponirajo pri generalnem sekretarju Združenih narodov.

3. Protokol je na voljo za pristop vsem državam, ki so ratificirale konvencijo ali k njej pristopile.

4. Pristop se opravi z deponiranjem listine o pristopu pri generalnem sekretarju Združenih narodov.

5. Generalni sekretar Združenih narodov o deponiranju vsake listine o ratifikaciji ali pristopu obvesti vse države, ki so podpisale ta protokol ali k njemu pristopile.

### **28. člen**

1. Protokol začne veljati trideseti dan po dnevu, ko se pri generalnem sekretarju Združenih narodov deponira dvajseta listina o ratifikaciji ali pristopu.

2. Za vsako državo, ki ratificira protokol ali k njemu pristopi po deponiranju dvajsete listine o ratifikaciji ali pristopu pri generalnem sekretarju Združenih narodov, začne protokol veljati trideseti dan po dnevu deponiranja njene listine o ratifikaciji ali pristopu.

### **29. člen**

Določbe tega protokola veljajo za vse dele zveznih držav brez omejitev ali izjem.

### **30. člen**

K temu protokolu niso dopustni pridržki.

**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.

### **31. člen**

Določbe tega protokola ne vplivajo na obveznosti držav pogodbenic po regionalnih konvencijah, ki uvajajo sistem obiskov na krajih odvzema prostosti. Pododbor za preprečevanje in organi, ustanovljeni na podlagi takih regionalnih konvencij, pa se spodbujajo k posvetovanju in sodelovanju, da bi se izognili podvajanju in učinkovito podpirali cilje tega protokola.

### **32. člen**

Določbe tega protokola ne vplivajo na obveznosti držav pogodbenic štirih Ženevskih konvencij z dne 12. avgusta 1949 in dopolnilnih protokolov k Ženevskim konvencijam z dne 8. junija 1977, niti na možnost katere koli države pogodbenice, da pooblasti Mednarodni odbor Rdečega križa, da obišče kraje odvzema prostosti v razmerah, ki jih ne zajema mednarodno humanitarno pravo.

### **33. člen**

1. Vsaka država pogodbenica lahko kadar koli odpove ta protokol s pisnim uradnim obvestilom, naslovljenim na generalnega sekretarja Združenih narodov, ki obvesti druge države pogodbenice tega protokola in konvencije. Odpoved začne veljati eno leto po dnevu, ko generalni sekretar prejme uradno obvestilo.

2. Odpoved države pogodbenice ne odvezuje obveznosti po tem protokolu glede katerega koli dejanja ali razmer, ki lahko nastanejo pred dnevom, ko začne odpoved veljati, ali ukrepov, za katere se je pododbor za preprečevanje odločil ali se lahko odloči, da jih sprejme glede te države pogodbenice; odpoved prav tako na noben način ne vpliva na nadaljnje obravnavanje katere koli zadeve, ki je pri pododboru za preprečevanje že v obravnavi pred dnevom, ko začne veljati odpoved.

3. Po datumu, ko začne veljati odpoved države pogodbenice, pododbor za preprečevanje ne začne obravnavati nobene nove zadeve, povezane s to državo.

### **34. člen**

1. Vsaka država pogodbenica tega protokola lahko predlaga spremembo in jo predloži generalnemu sekretarju Združenih narodov. Generalni sekretar sporoči predlagano spremembo državam pogodbenicam tega protokola in jih zaprosi, da ga obvestijo, ali se strinjajo s konferenco držav pogodbenic zaradi obravnavanja in glasovanja o predlogu. Če se v štirih mesecih od dneva tega sporočila vsaj tretjina držav pogodbenic strinja s to konferenco, generalni sekretar skliče konferenco pod pokroviteljstvom Združenih narodov. Generalni sekretar Združenih narodov pošlje vsem državam pogodbenicam v sprejetje vsako spremembo, ki jo z dvotretjinsko večino sprejmejo države pogodbenice, ki so navzoče in glasujejo na konferenci.

2. Sprememba, sprejeta v skladu s prvim odstavkom tega člena, začne veljati, ko jo sprejmejo države pogodbenice tega protokola z dvotretjinsko večino v skladu z njihovimi ustavnimi postopki.

3. Ko začnejo spremembe veljati, so zavezujoče za vse tiste države pogodbenice, ki so jih sprejele, za druge države pogodbenice pa še naprej veljajo določbe tega protokola in katera koli prejšnja sprememba, ki so jo sprejele.

### **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.



### **35. člen**

Člani pododbora za preprečevanje in državnih preventivnih mehanizmov uživajo take privilegije in imunitete, ki so potrebni za neodvisno izvajanje njihovih nalog. Člani pododbora za preprečevanje uživajo privilegije in imunitete iz 22. člena Konvencije Združenih narodov o privilegijih in imunitetah z dne 13. februarja 1946 ob upoštevanju določb 23. člena te konvencije.

### **36. člen**

Člani pododbora za preprečevanje ob obisku v državi pogodbenici uživajo privilegije in imunitete, ne da bi posegali v določbe in namene tega protokola, in sicer:

- (a) spoštujejo zakone in predpise države, ki jo obiščejo;
- (b) se vzdržijo katerega koli ukrepa ali dejavnosti, ki ni v skladu z nepristransko in mednarodno naravo njihovih nalog.

### **37. člen**

1. Ta protokol, katerega besedilo v angleškem, arabskem, francoskem, kitajskem, ruskem in španskem besedilu je enako verodostojno, se deponira pri generalnem sekretarju Združenih narodov.

2. Generalni sekretar Združenih narodov pošlje overjene kopije tega protokola vsem državam.

### **3. člen**

Za izvajanje protokola skrbi Ministrstvo za pravosodje.

### **4. člen**

Republika Slovenija daje v zvezi s 17. členom Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju naslednjo izjavo: »Pristojnosti in naloge državnega preventivnega mehanizma po opcijskem protokolu, skladno s 17. členom, izvršuje Varuh človekovih pravic, v dogovoru z njim pa tudi nevladne organizacije, registrirane v Republiki Sloveniji ter organizacije, ki so pridobile status humanitarne organizacije v Republiki Sloveniji.«

### **5. člen**

(1) Naloge in pooblastila državnega preventivnega mehanizma po tem protokolu izvršuje Varuh človekovih pravic. Pri opravljanju nadzora na krajih odvzema prostosti ter preverjanja ravnanja z osebami, ki jim je bila odvzeta prostost, lahko z Varuhom pri izvrševanju nalog in pooblastil Varuha po tem protokolu sodelujejo nevladne organizacije, registrirane v Republiki Sloveniji ter organizacije, ki so pridobile status humanitarne organizacije v Republiki Sloveniji, ki se ukvarjajo z varstvom človekovih pravic ali temeljnih svoboščin, zlasti s področja preprečevanja mučenja in drugih krutih, nečloveških ali poniževalnih kazni ali ravnanj.

### **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.

### **Article 3**

The Ministry of Justice shall be responsible for the implementation of the Protocol.

### **Article 4**

In connection with Article 17 of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment the Republic of Slovenia hereby makes the following statement: "The competences and tasks of national preventive mechanism under the Optional Protocol, in compliance with Article 17 shall be carried out by the Human Rights Ombudsman, and with his agreement also non-governmental organisations registered in the Republic of Slovenia and organisations that have obtained the status of humanitarian organisations in the Republic of Slovenia."

### **Article 5**

(1) The tasks and authorities of national preventive mechanism under this protocol shall be performed by the Human Rights Ombudsman. In carrying out monitoring at places of detention and checking the treatment of persons who have been deprived of their liberty, non-governmental organisations registered in the Republic of Slovenia and organisations that have obtained the status of humanitarian organisations in the Republic of Slovenia, which deal with the protection of human rights or fundamental freedoms, especially in the field of preventing torture and other cruel, inhuman or degrading treatment or punishment, may cooperate with the Ombudsman in carrying out the tasks and authorities of the Ombudsman under this protocol.

2) Organizacije, ki bodo sodelovale pri izvajanju nalog in pooblastil po določbah prejšnjega odstavka, se izberejo na podlagi javnega razpisa, katerega izvede Varuh, ki tudi odloči o izbiri organizacije. Vsebina javnega razpisa mora biti v skladu s 4. členom tega zakona ter podzakonskih aktov, izdanih na podlagi četrtega odstavka.

(3) Osebe iz izbranih organizacij, ki bodo sodelovale pri izvajanju nalog in pooblastil državnega preventivnega mehanizma po tem protokolu, podajo predhodno pisno izjavo, da bodo pri opravljanju teh nalog in pooblastil delovale po navodilih Varuha človekovih pravic in delovale po predpisih o varovanju tajnosti osebnih in tajnih podatkov, tako kot to velja za Varuha, njegove namestnike in uslužbence.

(4) Potrebne stroške in nagrade osebam iz organizacij, ki opravljajo naloge oziroma izvršujejo pooblastila po prvem odstavku, izplača Varuh človekovih pravic iz proračunskih postavk Varuha, po pravilniku, ki ga izda Varuh po predhodnem soglasju ministra, pristojnega za finance. Pravilnik se objavi v Uradnem listu Republike Slovenije.

### **6. člen**

Ta zakon začne veljati 1. januarja 2007.

Št. 713-03/91-4/4

Ljubljana, dne 29. septembra 2006

EPA 1008-IV

Predsednik  
Državnega zbora  
Republike Slovenije  
France Cukjati, dr. med., l.r.

(2) Organisations that will cooperate in the implementation of tasks and authorities under the provisions of the previous paragraph shall be chosen on the basis of public tender, which will be held by the Ombudsman, who will also decide on the choice of organisations. The content of the public tender must be in compliance with Article 4 of this Act and statutory regulations issued on the basis of the fourth paragraph.

(3) Persons from the selected organisations who will cooperate in implementing the tasks and authorities of national preventive mechanism under this Protocol shall provide a prior written declaration that in performing these tasks and authorities they will work according to the instructions of the Human Rights Ombudsman and work according to regulations on the protection of the confidentiality of personal and confidential information, as these apply for the Ombudsman and his deputies and staff.

(4) Necessary costs and rewards of persons from organisations that perform tasks or implement authorities under the first paragraph shall be paid by the Human Rights Ombudsman from budget headings of the Ombudsman, according to rules which the Ombudsman shall issue after the prior approval of the minister responsible for finance. The rules shall be published in the Official Gazette of the Republic of Slovenia.

#### ***Article 6***

This Act shall take effect on 1 January 2007.

No. 713-03/91-4/4

Ljubljana, 29 September 2006

EPA 1008-IV

President  
National Assembly  
of the Republic of Slovenia  
France Cukjati, M.D., I.r.

Na podlagi četrtega, v zvezi z drugim odstavkom 5. člena Zakona o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju (Uradni list RS, št. 114/06 – Mednarodne pogodbe, št. 20/06) ter po predhodnem soglasju ministra, pristojnega za finance, varuhinja človekovih pravic izdaja

### **3. PRAVILNIK O POVRAČILU STROŠKOV IN O NAGRADAH osebam iz organizacij, ki opravljajo naloge oziroma izvršujejo pooblastila po določbah Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju**

**( Uradni list RS, št. 17/2008 z dne 19.02.2008)**

## **I. SPLOŠNA DOLOČBA**

### **1. člen**

(1) Ta pravilnik ureja povračilo stroškov in nagradi osebam iz izbranih nevladnih in humanitarnih organizacij, za sodelovanje pri izvajanju nadzora po določilih Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju, katerega le te izvajajo po navodilih Varuha človekovih pravic (v nadaljnjem besedilu: Varuh).

(2) Povračilo stroškov po tem pravilniku obsega povračilo potnih stroškov in stroškov za prehrano in prenočišče ter pravico do nadomestila plače ali nadomestila za izgubljeni zaslužek v času nadzora. Nagradi po tem pravilniku sta plačilo za izdelavo poročila o opravljenem nadzoru in simbolični prejemek.

## **II. POVRAČILO STROŠKOV**

### **2. člen**

(1) Potni stroški obsegajo stroške prihoda in vrnitve osebe iz izbranih nevladnih in humanitarnih organizacij (v nadaljevanju: izvajalec nadzora) od kraja njenega prebivališča do kraja, kjer opravlja nadzor. Potni stroški se priznajo v višini dejanskih izdatkov za prevoz z javnim prevoznim sredstvom.

(2) Če ni možnosti prevoza z javnim prevoznim sredstvom, se izvajalcu nadzora priznajo stroški kilometrine.

### **3. člen**

(1) Stroški za prehrano se izvajalcem nadzora priznajo v obliki dnevnice.

(2) Pravico do dnevnice ima udeleženec, ki ima stalno ali začasno prebivališče zunaj kraja, kjer se opravlja nadzor.

(3) Stroški za prenočišče se priznajo izvajalcem nadzora s povračilom dejansko plačanih stroškov prenočevanja.

On the basis of the fourth in connection with the second paragraph of Article 5 of the Act of Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette RS no. 114/06 – International Treaties no. 20/06) and with the prior approval of the minister responsible for finance, the Human Rights Ombudsman hereby issues

### **3. RULES ON THE REIMBURSEMENT OF COSTS AND OTHER REWARDS to persons from organisations that perform tasks or exercise authorities under the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**(Official Gazette RS, no. 17/2008 of 19.02.2008)**

#### **I. GENERAL PROVISIONS**

##### ***Article 1***

(1) These rules regulate the reimbursement of costs and rewards to persons from selected non-governmental and humanitarian organisations for cooperation in implementing monitoring under the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which these (organisations) implement under the instructions of the Human Rights Ombudsman (hereinafter: Ombudsman).

(2) Reimbursement of costs under these rules covers reimbursement of travelling expenses and costs of food and accommodation and the right to compensation of pay or compensation of lost earnings during the time of monitoring. Rewards under these rules shall be payment for producing a report on monitoring and a symbolic payment.

#### **II. REIMBURSEMENT OF COSTS**

##### ***Article 2***

(1) Travelling expenses shall include the costs of return travel of persons from chosen non-governmental and humanitarian organisations (hereinafter: monitors) from their place of residence to the place where monitoring is performed. Travelling expenses shall be recognised at the level of actual expenditures for transport by public means of transport.

(2) If travel by public transport is not possible, costs in the form of a kilometer rate will be awarded to monitors.

##### ***Article 3***

(1) Costs for food shall be recognised for monitors in the form of a daily rate.

(2) A participant who has permanent or temporary residence outside the place where monitoring is performed shall have the right to the daily rate.

(3) Overnight costs shall be awarded to monitors by the reimbursement of actually paid costs of overnight accommodation.

(4) Pravico do povračila stroškov prenočišča ima izvajalec nadzora, ki ima stalno ali začasno prebivališče zunaj kraja, kjer se opravlja nadzor in je zaradi sodelovanja pri opravljanju nadzora moral prenočevati v tem kraju.

#### **4. člen**

Dnevnic, stroški prenočišča in kilometrina se odmerijo na način in v višini, kot je določena za javne uslužbenke.

### **III. NADOMESTILO PLAČE OZIROMA IZGUBLJENI ZASLUŽEK**

#### **5. člen**

(1) Izvajalec nadzora, ki je zaposlen in je zaradi opravljanja nadzora odsoten z dela, ima na podlagi potrdila Varuha pravico do nadomestila plače. Izvajalcu nadzora, ki ima pravico do nadomestila plače, Varuh izda potrdilo o sodelovanju pri opravljanju nadzora naslednji dan po opravljenem nadzoru.

(2) Delodajalec izvajalcu nadzora izplača nadomestilo plače, Varuh pa nato delodajalcu povrne znesek, ki ustreza višini nadomestila plače na podlagi pisnega obračuna s priloženimi dokazili o višini plače izvajalca nadzora in o izplačanem nadomestilu.

#### **6. člen**

Izvajalcu nadzora, ki je samostojni podjetnik posameznik oziroma oseba, ki samostojno opravlja dejavnost kot redni poklic, pripada nadomestilo za izgubljeni zaslužek v višini, ki se določa po sodni odmeri glede na povprečni dnevni zaslužek v ustreznem poklicu v odvisnosti od časa opravljanja nadzora.

#### **7. člen**

(1) Izvajalci nadzora, ki niso zajeti v določbah 5. in 6. člena tega pravilnika in tisti, ki so zaposleni, vendar v času opravljanja nadzora niso bili odsotni z dela, imajo pravico do nadomestila v pavšalnem znesku.

(2) Višina nadomestila se v primeru iz prejšnjega odstavka odmeri v odvisnosti od časa opravljanja nadzora, pri čemer višina nadomestila na dan ne sme presegati 75 odstotkov zneska dnevnic za službeno potovanje, ki traja od šest do osem ur, kot je določen za javne uslužbenke.

### **IV. NAGRADA ZA IZDELAVO POROČILA O OPRAVLJENEM NADZORU**

#### **8. člen**

Izvajalec nadzora dobi za izdelavo poročila o opravljenem nadzoru nagrado v višini 100 EUR.

### **V. SIMBOLIČNI PREJEMEK**

#### **9. člen**

Izvajalcem nadzora pripada simbolični prejemek v višini 5 eurov (EUR) za vsako začeto uro sodelovanja pri nadzoru.



(4) The right to the reimbursement of accommodation costs accrues to a monitor who has permanent or temporary residence outside the place where monitoring is taking place and because of cooperating in the performance of monitoring he or she must spend the night in that place.

#### ***Article 4***

Daily rates, accommodation costs and the kilometer rate shall be calculated in the way and at the level that is specified for public servants.

### **III. COMPENSATION OF PAY OR OF LOST EARNINGS**

#### ***Article 5***

(1) A monitor who is employed and because of performing monitoring is absent from work has the right to compensation of pay on the basis of confirmation of the Ombudsman. The Ombudsman shall issue to the monitor confirmation of cooperation in the performance of monitoring the day after monitoring has been performed.

(2) The employer of the monitor shall pay compensation of pay and the Ombudsman shall then refund to the employer the amount corresponding to the level of compensation of pay on the basis of a written invoice with evidence enclosed of the amount of pay of the monitor and on the payment of compensation.

#### ***Article 6***

A monitor who is a self-employed business person or person who independently performs an activity as a regular profession is entitled to compensation for lost earnings to a level which is determined by the court calculation in relation to average daily earnings in the relevant profession depending on the time of performing monitoring.

#### ***Article 7***

(1) Monitors who are not covered by the provisions of Articles 5 and 6 of these Rules and those who are employed but at the time of performing the monitoring were not absent from work have the right to compensation in a lump sum.

(2) The level of compensation referred to in the previous paragraph shall be calculated on the basis of the time of performing monitoring, whereby the level of compensation per day may not exceed 75 percent of the amount of the daily rate for a business trip that lasts from six to eight hours, as determined for public servants.

### **IV. REMUNERATION FOR PRODUCING A REPORT ON MONITORING PERFORMED**

#### ***Article 8***

A monitor shall receive remuneration of 100 EUR for producing a report on monitoring performed.

### **V. SYMBOLIC PAYMENT**

#### ***Article 9***

A symbolic payment will be made to monitors of 5 euros (EUR) for each hour or part of an hour of cooperation in monitoring.

## **VI. SKUPNE DOLOČBE**

### **10. člen**

Izvajalec nadzora predloži zahtevek za povračilo stroškov in nagradi na obrazcu št. 1, ki je sestavni del tega pravilnika, ob predaji poročila o opravljenem nadzoru, ki mora biti izdelano in posredovano Varuhu najpozneje v osmih dneh po opravljenem nadzoru.

### **11. člen**

- (1) Predstavniki Varuha, odgovorni za opravo posameznega nadzora, izda v roku treh dni po prejemu zahtevka za povračilo stroškov in nagradi, izvajalcu nadzora sklep o povračilu stroškov na obrazcu št. 2, ki je sestavni del tega pravilnika.
- (2) Izplačilo stroškov in nagrad se izvrši na podlagi sklepa iz prejšnjega odstavka.

### **12. člen**

- (1) Nagrade in povračilo stroškov se izplačujejo iz proračunskih sredstev Varuha človekovih pravic – podprogram Opcijski protokol, sredstva namenjena za delo nevladnih in humanitarnih organizacij, na transakcijski račun izvajalca nadzora, obračunani davki in druge dajatve pa na ustrezne račune javnih sredstev.
- (2) Nadomestila plače oziroma izgubljenega zaslužka se izplačujejo iz proračunskih sredstev Varuha človekovih pravic – podprogram Opcijski protokol, sredstva namenjena za delo nevladnih in humanitarnih organizacij, na transakcijski račun prejemnika.

## **VII. KONČNI DOLOČB**

### **13. člen**

V tem pravilniku uporabljeni izrazi, zapisani v moški spolni slovnični obliki, se uporabljajo kot nevtralni za moški in ženski spol.

### **14. člen**

Ta pravilnik začne veljati petnajsti dan po objavi v Uradnem listu Republike Slovenije.

Št. 2.0-4/2007-3-SE

Ljubljana, dne 27. decembra 2007

dr. Zdenka Čebašek - Travnik l.r.  
Varuhinja človekovih pravic

Št. 007-771/2007/5

Ljubljana, dne 5. februarja 2008

Soglašam!  
dr. Andrej Bajuk l.r.  
Minister za finance

## VI. COMMON PROVISIONS

### **Article 10**

A monitor shall submit a claim for reimbursement of costs and remuneration on Form no. 1, which is an integral part of these rules, at the time of submitting the report on performed monitoring, which must be produced and sent to the Ombudsman not later than eight days after the monitoring was performed.

### **Article 11**

(1) The Ombudsman's representative responsible for performing an individual monitoring, within three day of receipt of the claim for reimbursement of costs and remunerations, shall issue to the monitor a decision on the reimbursement of costs on Form no. 2, which is an integral part of these rules.

(2) Payment of costs and rewards shall be done on the basis of the decision referred to in the previous paragraph.

### **Article 12**

(1) Rewards and reimbursement of costs shall be paid from budget funds of the Human Rights Ombudsman – sub-program Optional Protocol, funds earmarked for the work of non-governmental and humanitarian organisations, to the monitor's transaction action, and calculated tax and other levies to the relevant account of public funds.

(2) Compensation of pay or lost earnings shall be paid from budget funds of the Human Rights Ombudsman – sub-program Optional Protocol, funds earmarked for the work of non-governmental and humanitarian organisations, to the transaction account of the recipient.

## VII. FINAL PROVISIONS

### **Article 13**

Expressions used in these rules written in the masculine grammatical form shall be considered neutral for both masculine and feminine gender.

### **Article 14**

These rules shall enter into force on the day following publication in the Official Gazette of the Republic of Slovenia

No. 2.0-4/2007-3-SE

Ljubljana, 27 December 2007

Dr. Zdenka Čebašek - Travnik I.r.  
Human Rights  
Ombudsman

No. 007-771/2007/5

Ljubljana, 5 February 2008

Approved!  
Dr. Andrej Bajuk I.r.  
Minister of Finance

**Obrazec 1****Zahtevek za povračilo stroškov in nagrad**

(ime in priimek) \_\_\_\_\_ po poklicu \_\_\_\_\_

stanujoč / a \_\_\_\_\_

davčna številka \_\_\_\_\_

številka transakcijskega računa \_\_\_\_\_ - \_\_\_\_\_

odprtega pri \_\_\_\_\_

sem sodeloval/a pri opravljanju nadzora

\_\_\_\_\_  
\_\_\_\_\_

dne \_\_\_\_\_ od \_\_\_\_\_ do \_\_\_\_\_ ure.

Prosim, da se mi prizna in izplača:

**1. SIMBOLIČNI PREJEMEK**

število ur	višina nagrade za vsako začeto uro	skupaj EUR

**2. PLAČILO ZA IZDELAVO POROČILA O OPRAVLJENEM NADZORU****3. POVRAČILO STROŠKOV**

potni stroški javni prevoz

za relacijo od / do	skupaj EUR

Kilometrina

za relacijo od / do	Skupaj km	Cena za 1 km	skupaj EUR

stroški za prehrano in prenočišče (dnevnice)

višina dnevnice	višina stroškov prenočišča	skupaj EUR

d.) nadomestilo plače, izgubljenega zaslužka

skupaj EUR

V \_\_\_\_\_, dne \_\_\_\_\_

podpis

Priloge:

- izjava o opravljenem nadzoru in izdelavi poročila
- računi

**Form 1****Claim for the reimbursement of costs and rewards**

I, \_\_\_\_\_ by profession \_\_\_\_\_  
 residing at \_\_\_\_\_  
 tax number \_\_\_\_\_  
 transaction account number \_\_\_\_\_ - at \_\_\_\_\_  
 (bank) \_\_\_\_\_  
 cooperated in monitoring

on \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_ hours.

Please acknowledge and pay:

**1. SYMBOLIC PAYMENT**

number of hours	level of reward for each hour or part	total EUR

**2. PAYMENT FOR PRODUCING REPORT ON MONITORING PERFORMED****3. REIMBURSEMENT OF COSTS**

travelling expenses by public transport

for journey from / to	total EUR

Kilometer rate

for the journey from/ to	total km price	per 1 km	total EUR

costs for food and accommodation (daily rate)

level of daily rate	level of costs of accommodation	total EUR

compensation of pay, lost earnings

total EUR

In \_\_\_\_\_, date \_\_\_\_\_

signature

Enclosures:

- confirmation of monitoring carried out and report produced
- invoices

**Obrazec 2****Sklep o povračilu stroškov in nagrad**

Za sodelovanje \_\_\_\_\_ pri  
opravljanju nadzora, v \_\_\_\_\_, dne \_\_\_\_\_ po

določilu 11. člena Pravilnika o povračilu stroškov in o nagradah osebam iz organizacij, ki opravljajo naloge oziroma izvršujejo pooblastila po določbah Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju (MOPPM)

**odmerim**

simbolični prejemek	EUR
potni stroški	EUR
kilometrina	EUR
stroški za prehrano in prenočišče	EUR
nadomestilo plače	EUR
nadomestilo izgubljenega zaslužka	EUR
plačilo za izdelavo poročila o opravljenem nadzoru	EUR
skupaj	EUR

in odredim plačilo davkov in drugih javnih dajatev.

Hkrati odredim izplačilo na ustrezne transakcijske račune in transakcijski račun prejemnika, vse v breme proračunskega uporabnika 1214 Varuh človekovih pravic RS - podprogram Opcijski protokol, podkonto sredstva namenjena za delo nevladnih in humanitarnih organizacij \_\_\_\_\_,

V \_\_\_\_\_, dne \_\_\_\_\_

podpis \_\_\_\_\_

Zneski od katerih se plačujejo davki in druge javne dajatve, se odmerjajo "brutto"

**Form 2****Decision on reimbursement of costs and rewards**

For the cooperation of \_\_\_\_\_ in  
 carrying out monitoring at \_\_\_\_\_, on \_\_\_\_\_

under the provisions of Article 11 of the Rules on the reimbursement of costs and rewards to persons from organisations that perform tasks or exercise authorities under the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (MOPPM)

**I hereby calculate:**

symbolic payment	EUR
travelling expenses	EUR
kilometer rate	EUR
costs for food and accommodation	EUR
compensation of pay	EUR
compensation for lost earnings	EUR
payment for producing report on monitoring performed	EUR
total	EUR

and order payment of taxes and other public levies.

At the same time, I order payment to the relevant transaction account and the transaction account of the recipient, all to be paid from the budget of user 1214 Human Rights Ombudsman RS – sub-program Optional Protocol, sub-account of funds earmarked for the work of non-governmental and humanitarian organisations \_\_\_\_\_

\_\_\_\_\_ ,

in \_\_\_\_\_, date \_\_\_\_\_

Signature \_\_\_\_\_

Amounts on which taxes and other public levies are paid shall be calculated »gross«



## 4. JAVNI RAZPIS ZA SODELOVANJE NEVLADNIH ORGANIZACIJ

Objavljen v Uradnem listu RS, št. 107, 14. 11. 2008.

Na podlagi drugega odstavka 5. člena Zakona o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju (Uradni list RS, št. 114/06 – Mednarodne pogodbe, št. 20/06) objavlja Varuh človekovih pravic Republike Slovenije

### JAVNI RAZPIS ZA SODELOVANJE NEVLADNIH ORGANIZACIJ

registriranih v Republiki Sloveniji in organizacij, ki so pridobile status humanitarnih organizacij v Republiki Sloveniji z Varuhom pri izvajanju pristojnosti in nalog državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju

#### 1. Naziv in sedež naročnika:

Varuh človekovih pravic Republike Slovenije,  
Dunajska cesta 56, 1000 Ljubljana, tel. 01/475-00-50, faks 01/475-00-40,  
elektronski naslov: info@varuh-rs.si.

#### 2. Predmet javnega razpisa:

sodelovanje nevladnih organizacij, registriranih v Republiki Sloveniji in organizacij, ki so pridobile status humanitarnih organizacij v Republiki Sloveniji (v nadaljevanju: organizacije) z Varuhom pri izvajanju pristojnosti in nalog državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju. Naloge in pooblastila državnega preventivnega mehanizma po opsijskem protokolu, skladno s 17. členom protokola v zvezi s 4. členom Zakona o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju izvršuje Varuh, v dogovoru z njim pa tudi nevladne organizacije, registrirane v Republiki Sloveniji ter organizacije, ki so pridobile status humanitarne organizacije v Republiki Sloveniji, ki se ukvarjajo z varstvom človekovih pravic ali temeljnih svoboščin, zlasti s področja preprečevanja mučenja ali drugih krutih, nečloveških ali poniževalnih kazni ali ravnanj.

#### 3. Namen razpisa:

izbor organizacij, ki bodo sodelovale z Varuhom pri izvajanju pristojnosti in nalog državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju. Organizacije bodo izbrane na javnem razpisu, katerega izvede Varuh, ki bo tudi odločil o izbiri organizacije. Izbrane organizacije bodo naloge in pooblastila pri opravljanju nadzora opravljale s svojimi pripadniki ali pripadnicami, usposobljenimi za posamezna področja nadzora, kot člani skupine, ki jo bo določil Varuh za opravljanje nadzora na krajih odvzema prostosti ter preverjanja ravnanja z osebami, ki jim je bila odvzeta prostost. Po izvedenem nadzoru po določbah Opcijskega protokola, katerega bodo po navodilih Varuha izvajali pripadniki in pripadnice izbranih nevladnih ali humanitarnih organizacij, bodo predstavniki oziroma predstavnice izdelali tudi poročilo o opravljenem nadzoru.

#### 4. PUBLIC TENDER FOR THE COOPERATION OF NON-GOVERNMENTAL ORGANISATIONS

Published in the Official Gazette of the Republic of Slovenia no. 107, 14. 11. 2008.

On the basis of the second paragraph of Article 5 of the Act of Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette RS, no. 114/06 – International Treaties, no. 20/06) the Human Rights Ombudsman of the Republic of Slovenia hereby publishes a

#### **PUBLIC TENDER FOR THE COOPERATION OF NON-GOVERNMENTAL ORGANISATIONS**

registered in the Republic of Slovenia and organisations that have obtained the status of humanitarian organisations in the Republic of Slovenia with the Ombudsman, in implementing the competences and tasks of national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

##### **1. Title and address of the tenderer:**

Human Rights Ombudsman of the Republic of Slovenia, Dunajska cesta 56, 1000 Ljubljana, tel. 01/475-00-50, faks 01/475-00-40, elektronski naslov: info@varuh-rs.si.

##### **2. Subject of the public tender:**

cooperation of non-governmental organisation registered in the Republic of Slovenia and organisations that have obtained the status of humanitarian organisations in the Republic of Slovenia (hereinafter organisations) with the Ombudsman in implementing the competences and tasks of national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The tasks and authorities of national preventive mechanism under the Optional Protocol, in accordance with Article 17 in connection with Article 4 of the Act of Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, are performed by the Ombudsman, and with his agreement also non-governmental organisations in the Republic of Slovenia and organisations that have obtained the status of humanitarian organisations in the Republic of Slovenia which deal with the protection of human rights or fundamental freedoms, especially in the field of the prevention of torture or other cruel, inhuman or degrading punishment or treatment.

##### **3. Purpose of the tender:**

selection of organisations that will cooperate with the Ombudsman in implementing the competences and tasks of national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The organisations will be selected at public tender held by the Ombudsman, who will also decide on the choice of organisations. The selected organisations will perform the tasks and exercise the authorities in performing monitoring with members of their organisations qualified in individual fields of monitoring and checking the treatment of persons who have been deprived of liberty. After monitoring under the provisions of the Optional Protocol, which will be performed by members of the chosen non-governmental or humanitarian organisations, representatives will also produce a report on the monitoring carried out.

#### **4. Orientacijska vrednost razpisa:**

osebe iz organizacij, ki bodo izbrane in bodo opravljale nadzor po določbah Opcijskega protokola, bodo dobile povrnjene potne stroške, stroške za prehrano in prenočišče, nagrado za izdelavo poročila o opravljenem nadzoru, nadomestila plače ali nadomestilo za izgubljeni zaslužek in simbolično nagrado po Pravilniku o povračilu stroškov in o nagradah osebam iz organizacij, ki opravljajo naloge oziroma izvršujejo pooblastila po določbah Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim in poniževalnim kaznim ali ravnanju (Uradni list RS, št. 17/08).

#### **5. Pogoji, ki jih morajo izpolnjevati prijavitelji:**

na javni razpis se lahko prijavijo nevladne organizacije, registrirane v Republiki Sloveniji in organizacije, ki so pridobile status humanitarne organizacije v Republiki Sloveniji po Zakonu o humanitarnih organizacijah (Uradni list RS, št. 98/03), ki se ukvarjajo z varstvom človekovih pravic ali temeljnih svoboščin, zlasti s področja preprečevanja mučenja ali drugih krutih, nečloveških ali poniževalnih kazni ali ravnanj. K svoji prijavi priložijo kratko predstavitev dela na področju varstva človekovih pravic ali temeljnih svoboščin, zlasti s področja preprečevanja mučenja ali drugih krutih, nečloveških ali poniževalnih kazni ali ravnanj, nevladne organizacije izjavo o registraciji, humanitarne organizacije pa izjavo o podelitvi statusa humanitarne organizacije in o vpisu v razvid humanitarnih organizacij. Organizacija, ki želi sodelovati pri opravljanju nadzora mora predložiti izjavo, da pri opravljanju nadzora ne bodo sodelovale pripadnice ali pripadniki, ki so bili pravnomočno obsojeni za kaznivo dejanje, ki se preganja po uradni dolžnosti oziroma pravnomočno obsojeni na nepogojno kazen zapora v trajanju več kot 3 mesece oziroma oseba, zoper katero je vložena pravnomočna obtožba zaradi kaznivega dejanja, ki se preganja po uradni dolžnosti (dokazilo – potrdilo).

#### **6. Merila za izbor:**

prednost pri izbiri za sodelovanje bodo imele organizacije z več izkušnjami na področju varstva človekovih pravic ali temeljnih svoboščin, zlasti s področja preprečevanja mučenja ali drugih krutih, nečloveških ali poniževalnih kazni ali ravnanj (dokazilo: opis najpomembnejšega delovanja, zlasti na področju preprečevanja mučenja ali drugih krutih, nečloveških ali poniževalnih kazni ali ravnanj).

#### **7. Ostali pogoji:**

pripadniki oziroma pripadnice izbrane organizacije, ki bodo sodelovale pri izvajanju nalog in pooblastil po določbah prvega odstavka 5. člena Zakona o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju bodo morale v skladu s tretjim odstavkom 5. člena tega zakona podati predhodno pisno izjavo, da bodo pri opravljanju nalog in pooblastil sodelovale po navodilih Varuha in delovale po predpisih o varovanju tajnosti osebnih in tajnih podatkov, tako kot to velja za varuha, njegove namestnike in uslužbenice. Pripadnik izbrane organizacije, ki ne bo podal predhodne pisne izjave ne more sodelovati pri opravljanju nadzora.

#### **8. Z izbranimi organizacijami bo Varuh**

sklenil pogodbo o sodelovanju za obdobje do 31. 12. 2010, z možnostjo podaljšanja sodelovanja še za eno leto.

#### **9. Rok**

za oddajo pisne prijave je 15 dni od dneva objave razpisa v Uradnem listu RS.

**4. Orientation value of the tender:**

persons from organisations chosen and who will perform monitoring under the provisions of the Optional Protocol, will receive reimbursement of expenses, costs of food and accommodation, remuneration for producing a report on monitoring performed, compensation of pay or compensation for lost earnings and a symbolic payment under Rules on the reimbursement of expenses and on rewards to persons from organisations who perform tasks or exercise authorities under the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette RS, no. 17/08).

**5. Conditions that applicants must fulfil:**

non-governmental organisations in the Republic of Slovenia and organisations that have obtained the status of humanitarian organisations in the Republic of Slovenia under the Humanitarian Organisations Act (Official Gazette RS, no. 98/03) which deal with the protection of human rights or fundamental freedoms, especially in the field of the prevention of torture or other cruel, inhuman or degrading punishment or treatment may apply at the public tender. They shall attach to their application a brief presentation of their work in the field of human rights and fundamental freedoms, especially in the field of preventing torture or other cruel, inhuman or degrading treatment of punishment. Non-governmental organisations shall attach a declaration on registration and humanitarian organisations a declaration on the granting of the status of humanitarian organisation and on entry in the record of humanitarian organisations. An organisation that wishes to cooperate in carrying out monitoring must submit a declaration that members will not cooperate in performing monitoring who have been finally convicted to an unconditional prison sentence lasting more than 3 months or persons against whom a final charge has been filed because of a criminal offence that is prosecuted ex officio (proof: certificate).

**6. Criteria for selection:**

criteria in the choice for cooperation will be given to organisations with more experience in the field of protection of human rights and fundamental freedoms, especially in the field of prevention of torture or other cruel, inhuman or degrading punishment or treatment (proof: description of the most important activities, especially in the field of prevention of torture or other cruel, inhuman or degrading punishment or treatment).

**7. Other conditions:**

members of selected organisations who will cooperate in implementing the tasks and exercising the authorities under the provisions of the first paragraph of Article 5 of the Act of Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in accordance with the third paragraph of Article 5 of this Act, will have to provide a prior written declaration that in performing the tasks and exercising the authorities they will cooperate according to the instructions the Ombudsman and work according to regulations on the protection of personal data and confidential data such as apply for the Ombudsman, his deputies and staff. A member of a selected organisation who does not give a prior written declaration may not cooperate in performing monitoring.

**8. The Ombudsman will conclude**

a contract of cooperation with selected organisations for the period until 31.12.2010, with the possibility of extending cooperation for a further year.

**9. The deadline**

for the delivery of written applications is 15 days from the day of publication of the tender in the Official Gazette RS.

**10. Prijave**

morajo biti oddane v zaprtih kuvertah z navedbo »Za javni razpis« na naslov: Varuh človekovih pravic, Dunajska cesta 56, 1000 Ljubljana.

**11. Ponudniki bodo o izbiri obveščeni**

v 15 dneh po opravljeni izbiri.

**12. Dodatne informacije** posreduje:

Ivan Šelih

tel. 01/475-00-19

e-mail: Ivan.Selih@varuh-rs.si.

**13. Razpis**

se objavi v Uradnem listu RS in na spletnih straneh Varuha. Vprašanja in odgovori se objavijo na spletnih straneh Varuha.

**Varuh človekovih pravic**

**10. Applications**

must be delivered in a closed envelope with the statement »Za javni razpis« (For public tender), to the address: Varuh človekovih pravic, Dunajska cesta 56, 1000 Ljubljana.

**11. Applicants will be informed of the selection**

within 15 days after the selection has been made.

**12. Additional information** is available from:

Ivan Šelih

tel. 01/475-00-19

e-mail: Ivan.Selih@varuh-rs.si.

**13. The public tender**

shall be published in the Official Gazette RS and on the website of the Ombudsman. Questions and answers shall be published on the website of the Ombudsman.

**Human Rights Ombudsman**

## 5. VZOREC POGODBE O SODELOVANJU

Pogodba o sodelovanju pri izvajanju nalog in pooblastil državnega preventivnega mehanizma po določbi 5. člena Zakona o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju (Uradni list RS, št. 114/06 - Mednarodne pogodbe, št. 20/06)

ki jo sklenejo

**Varuh človekovih pravic Republike Slovenije** (v nadaljevanju: Varuh)  
Dunajska cesta 56, 1000 Ljubljana,  
ki ga zastopa dr. Zdenka Čebašek – Travnik, varuhinja človekovih pravic  
in

**Rdeči Križ Slovenije** (v nadaljevanju: RKS)  
Mirje 5, 1000 Ljubljana,  
ki ga zastopa mag. Janez Pezelj, generalni sekretar

### **1. člen**

Pogodbene stranki ugotavljata:

- da naloge in pooblastila državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju (v nadaljevanju: opcijski protokol), skladno s 17. členom protokola v zvezi s 4. členom Zakona o ratifikaciji opcijskega protokola, izvršuje Varuh, v dogovoru z njim pa tudi nevladne organizacije, registrirane v Republiki Sloveniji ter organizacije, ki so pridobile status humanitarne organizacije v Republiki Sloveniji, ki se ukvarjajo z varstvom človekovih pravic ali temeljnih svoboščin, zlasti s področja preprečevanja mučenja ali drugih krutih, nečloveških ali poniževalnih kazni ali ravnanj (v nadaljevanju: izbrane organizacije);

- da so bile za sodelovanje nevladnih organizacij, registriranih v Republiki Sloveniji in organizacij, ki so pridobile status humanitarnih organizacij v Republiki Sloveniji, z Varuhom pri izvajanju pristojnosti in nalog državnega preventivnega mehanizma po opcijskem protokolu, na podlagi javnega razpisa, objavljenega v Uradnem listu RS, št. 107/2008 z dne 14. 11. 2008, izbrane organizacije: PIC, Rdeči Križ Slovenije in Inštitut Primus.

### **2. člen**

Izbrane organizacije bodo naloge in pooblastila pri opravljanju nadzora opravljale s svojimi osebami, ki so usposobljene za posamezna področja nadzora, kot člani skupine, ki jo za vsak primer obiska določi Varuh za opravljanje nadzora na kraju odvzema prostosti ter preverjanja ravnanja z osebami, ki jim je bila odvzeta prostost.

### **3. člen**

RKS bo naloge in pooblastila pri opravljanju nadzora opravljal z naslednjimi osebami:.....

## 5. SAMPLE CONTRACT OF COOPERATION

Contract of cooperation in implementing the tasks and exercising the authorities of the national preventive mechanism under the provisions of Article 5 of the Act of Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette RS, no. 114/06 – International Treaties, no. 20/06)

which is concluded between

**Human Rights Ombudsman of the Republic of Slovenia** (hereinafter: Ombudsman)  
Dunajska cesta 56, 1000 Ljubljana,  
represented by Dr. Zdenka Čebašek – Travnik, Human Rights Ombudsman  
and

**Slovenian Red Cross** (hereinafter: RKS)  
Mirje 5, 1000 Ljubljana,  
represented by Mag. Janez Pezelj, Secretary-general

### **Article 1**

The contract parties find:

- that the tasks and authorities of national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: Optional Protocol), in accordance with Article 17 of the Protocol in connection with Article 4 of the Act of Ratification of the Optional Protocol, are performed by the Ombudsman, and with his agreement also by non-governmental organisations registered in the Republic of Slovenia and organisations that have obtained the status of humanitarian organisation in the Republic of Slovenia which deal with the protection of human rights or fundamental freedoms, especially in the field of preventing torture or other cruel, inhuman or degrading treatment or punishment (hereinafter: selected organisations);
- that non-governmental organisations registered in the Republic of Slovenia and organisations that have obtained the status of humanitarian organisation in the Republic of Slovenia have been selected for cooperation with the Human Rights Ombudsman in implementing the competences and tasks of national preventive mechanism under the Optional Protocol on the basis of a public tender published in the Official Gazette RS, no. 107/2008 of 14. 11. 2008, the selected organisations: PIC, Slovenian Red Cross and Inštitut Primus.

### **Article 2**

The selected organisations will perform the tasks and exercise the authorities in performing monitoring with their own staff who are qualified for individual fields of monitoring, as members of groups which for each case of a visit the Ombudsman will designate for performing monitoring at a place of detention and checking the treatment of persons who have been deprived of liberty.

### **Article 3**

RKS will perform tasks and exercise authorities in performing monitoring with the following personnel:.....



#### **4. člen**

Pri opravljanju nadzora ne more sodelovati oseba iz izbranih organizacij, ki je pravnomočno obsojena za kaznivo dejanje, ki se preganja po uradni dolžnosti, oziroma pravnomočno obsojena na nepogojno kazen zapora v trajanju več kot 3 mesece oziroma oseba, zoper katero je vložena pravnomočna obtožba zaradi kaznivega dejanja, ki se preganja po uradni dolžnosti.

Pri opravljanju nadzora prav tako ne more sodelovati oseba iz izbranih organizacij, ki je kakorkoli povezana z ustanovo na posameznem kraju nadzora.

#### **5. člen**

Osebe iz izbranih organizacij, ki bodo sodelovale z Varuhom pri izvajanju nalog in pooblastil državnega preventivnega mehanizma, morajo podati predhodno pisno izjavo, da bodo pri opravljanju nalog in pooblastil sodelovale po navodilih Varuha človekovih pravic in delovale po predpisih o varovanju tajnosti osebnih in tajnih podatkov, tako kot to velja za varuha, njegove namestnike in uslužbence.

Osebe iz izbranih organizacij, ki ne bodo podale predhodne pisne izjave, ne morejo sodelovati pri opravljanju nadzora.

#### **6. člen**

Kraj nadzora, čas nadzora in število članov skupine za opravljanje nadzora na posameznem kraju nadzora določi Varuh za vsak primer posebej, upoštevajoč pri tem tudi program obiskov, ki ga v ta namen sprejeme Varuh s sodelovanjem z izbranimi organizacijami, po potrebi pa pri tem upošteva tudi druge okoliščine, ki bi terjale opravo takojšnjega nadzora. V primeru, da nobena od oseb iz izbrane organizacije zaradi odsotnosti ali drugih neodložljivih obveznosti na navedeni dan ni na voljo, se obisk izvede brez nje.

#### **7. člen**

Po izvedenem nadzoru po določbah Opcijskega protokola, katerega bodo po navodilih Varuha izvajale osebe iz izbranih organizacij, vsaka oseba, ki sodeluje pri nadzoru, izdelava kratko pisno poročilo o svojih ugotovitvah in morebitnih priporočilih v smeri krepite varstva oseb, ki jim je bila odvzeta prostost, pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali ponižujočega ravnanja ali kaznovanja in ga posreduje Varuhu v roku 8 dni po opravljenem nadzoru.

Če bo za posamezen primer nadzora Varuh tako določil, bo oseba iz izbranih organizacij pripravila po navodilih Varuha tudi celovito poročilo o opravljenem nadzoru.

#### **8. člen**

Osebe iz izbranih organizacij, ki bodo opravljale nadzor, so upravičene do povračila stroškov po Pravilniku o povračilu stroškov in o nagradah osebam iz organizacij, ki opravljajo naloge oziroma izvršujejo pooblastila po določbah Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju (Uradni list RS, št. 17/2008).

#### **Article 4**

Persons from the selected organisations may not cooperate in performing monitoring who have been finally convicted to an unconditional prison sentence lasting more than 3 months or persons against whom a final charge has been filed because of a criminal offence which is prosecuted ex officio.

Similarly, persons from the selected organisations who are in any way connected with an institution at an individual place of detention may not take part.

#### **Article 5**

Persons from the selected organisations who will cooperate with the Ombudsman in implementing the tasks and exercising the authorities of national preventive mechanism must provide a prior written declaration that in performing tasks and exercising authorities they will cooperate according to the instructions of the Human Rights Ombudsman and work according to regulations on the protection of the confidentiality of personal data and confidential data such as apply for the Ombudsman, his deputies and staff.

Persons who do not provide a prior written declaration may not cooperate in performing monitoring.

#### **Article 6**

The place of monitoring, time of monitoring and number of members of the group for performing monitoring at an individual place of monitoring shall be specified by the Ombudsman for each case individually, taking into account the program of visits which the Ombudsman adopts for this purpose in cooperation with the selected organisations and, as necessary, also taking into account other circumstances which could require that more immediate monitoring take place. In the event that none of the personnel of the selected organisations is available on the day stated, because of absence or other obligations that cannot be deferred, the visit shall be carried out without them.

#### **Article 7**

After carrying out monitoring under the provisions of the Optional Protocol, which will be carried out according to the instructions of the Ombudsman by personnel from the selected organisations, each person who cooperates in the monitoring will produce a short written report on their findings and possible recommendations for strengthening the protection of persons who have been deprived of liberty from torture and other forms of cruel, inhuman or degrading treatment or punishment and communicate it to the Ombudsman within 8 days after the monitoring has been performed.

If the Ombudsman so decides in an individual case, a person from the selected organisations will also prepare the entire report on the performed monitoring, on the instructions of the Ombudsman.

#### **Article 8**

Persons from the selected organisations who perform monitoring are entitled to reimbursement of expenses under the Rules on reimbursement of costs and other rewards to persons from organisations that perform tasks or exercise authorities under the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette, no. 17/2008).

Pravilnik obsega povračilo potnih stroškov in stroškov za prehrano in prenočišče ter pravico do nadomestila plače ali nadomestila za izgubljeni zaslužek v času nadzora. Nagradi po tem pravilniku pa sta plačilo za izdelavo celovitega poročila o opravljenem nadzoru in simbolični prejemek.

#### **9. člen**

Osebe iz izbranih organizacij, ki so sodelovale pri nadzoru, predložijo zahtevek za povračilo stroškov in nagradi na obrazcu št. 1, ki je sestavni del pravilnika iz 8. člena ob predaji kratkega poročila o opravljenem nadzoru oziroma ob predaji celovitega poročila o opravljenem nadzoru, ki mora biti izdelano in posredovano Varuhu najpozneje v osmih dneh po opravljenem nadzoru.

#### **10. člen**

Predstavniki Varuha, odgovorni za opravo posameznega nadzora, izda v roku treh dni po prejemu zahtevka za povračilo stroškov in nagradi, izvajalcu nadzora sklep o povračilu stroškov na obrazcu št. 2, ki je sestavni del pravilnika iz 8. člena.

#### **11. člen**

Pogodbene stranke se sporazumejo, da bodo morebitne spore v zvezi s to pogodbo reševale sporazumno, če pa to ne bi bilo mogoče, je za reševanje sporov pristojno sodišče v Ljubljani.

#### **12. člen**

Pogodba je sestavljena in podpisana v štirih enakih izvodih, od katerih prejme vsaka pogodbeni stranka po dva izvoda.

#### **13. člen**

Skrbnik te pogodbe s strani RKS je ....., strokovni sodelavec, s strani Varuha pa Ivan Šelih, svetnik Varuha.

#### **14. člen**

Pogodba prične veljati z dnem podpisa pogodbenih strank in velja za obdobje do 31. 12. 2010, z možnostjo podaljšanja sodelovanja še za eno leto.

Morebitne spremembe in dopolnitve pogodbe se sklepajo v obliki aneksa.

1.  
**Varuh človekovih pravic RS**  
Dunajska cesta 56  
1000 Ljubljana,  
dr. Zdenka Čebašek – Travnik  
varuhinja človekovih pravic

2.  
**Rdeči križ Slovenije**  
Mirje 5  
1000 Ljubljana,  
mag. Janez Pezelj  
generalni sekretar

The Rules cover the reimbursement of travelling expenses and costs of food and accommodation and the right to compensation of pay or compensation for lost earnings during the time of monitoring. Rewards under these are also paid for producing a complete report on monitoring carried out and a symbolic payment.

#### **Article 9**

Persons from selected organisations who cooperate in monitoring shall submit a claim for the reimbursement of expenses and rewards on Form no. 1, which is an integral part of the Rules referred to in Article 8, at the time of delivery of the short report on monitoring performed or on delivery of the complete report on monitoring performed, which must be produced and sent to the Ombudsman not later than 8 days after the monitoring has been performed.

#### **Article 10**

The representative of the Ombudsman responsible for performing an individual monitoring shall issue to the monitor, within three days after receiving the claim for reimbursement of costs and rewards, a decision on the reimbursement of expenses on Form no. 2, which is an integral part of the Rules referred to in Article 8.

#### **Article 11**

The contract parties agree that they will resolve possible disputes in connection with this contract by agreement, and if this is not possible the court in Ljubljana has jurisdiction for resolving disputes.

#### **Article 12**

The contract is composed and signed in four equal copies, of which each contract party shall receive two copies.

#### **Article 13**

The keeper of this contract on the part of RKS is ....., professional associate, and on the part of the Ombudsman, Ivan Šelih, adviser to the Ombudsman.

#### **Article 14**

The contract shall enter into force on the day it is signed by the contract parties and shall apply for the period to 31. 12. 2010, with the possibility of extension of cooperation for one year.

Possible amendments or supplements to the contract shall be concluded in the form of an annex.

1.  
**Human Rights Ombudsman RS**  
 Dunajska cesta 56  
 1000 Ljubljana,  
 Dr. Zdenka Čebašek – Travnik  
 Human Rights Ombudsman

2.  
**Slovenian Red Cross**  
 Mirje 5  
 1000 Ljubljana,  
 Mag. Janez Pezelj  
 Secretary-general

**Državni preventivni mehanizem v Republiki Sloveniji po Opcijskem protokolu h Konvenciji OZN  
proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju  
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