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Poročilo Varuha človekovih pravic RS o izvajanju nalog državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji OZN proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju za leto 2008

Report of the Human rights Ombudsman of the Republic of Slovenia on the implementation of the tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2008





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## I. Uvod

### I. introduction

## I. UVOD

Opcijski protokol h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju je mednarodna pogodba, ki je bila sprejeta na 57. zasedanju Generalne skupščine Združenih narodov 18. decembra 2002.

Državne pogodbenice Opcijskega protokola v njegovi preambuli med drugim ponovno potrjujejo, da so mučenje in druge oblike okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja prepovedane in pomenijo resno kršitev človekovih pravic. Prepričane so, da so potrebni nadaljnji ukrepi, da bi lahko uresničili cilje Konvencije proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju in okrepili varstvo oseb, ki jim je bila odvzeta prostost, pred mučenjem in drugimi oblikami okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja. Menijo tudi, 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. **Glavni namen Opcijskega protokola je zato vzpostaviti sistem rednih obiskov neodvisnih mednarodnih in tudi državnih organov na krajih, kjer je ljudem odvzeta prostost, da bi preprečili mučenje in druge oblike okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja.** Po Opcijskem protokolu odvzem prostosti pomeni vsako obliko pridržanja ali zapore 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.

Opcijski protokol je v ta namen ustanovil Pododbor za preprečevanje mučenja in drugega okrutnega, nečloveškega ali poniževalnega ravnanja ali kaznovanja Odbora proti mučenju. Pri tem je vsaka država pogodbenica zavezana, da na državni ravni ustanovi, določi ali vzdržuje enega ali več organov za obiskovanje zaradi preprečevanja mučenja ali drugega okrutnega, nečloveškega ali ponižujočega ravnanja ali kaznovanja (državni preventivni mehanizem).

Državni preventivni mehanizmi imajo po Opcijskem protokolu pooblastila, da na krajih odvzema prostosti redno preverjajo ravnanje z osebami, ki jim je odvzeta prostost, da bi okrepili njihovo varstvo pred mučenjem in drugimi oblikami krutega, nečloveškega ali ponižujočega ravnanja ali kaznovanja. Ob upoštevanju ustreznih norm OZN dajejo priporočila odgovornim organom, da bi izboljšali razmere in ravnanja z osebami, ki jim je bila odvzeta prostost. Državni preventivni mehanizem ima po protokolu tudi pooblastilo predložiti predloge in pripombe k veljavnim ali predlaganim zakonom.

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

- dostop do vseh informacij o številu oseb, ki jim je bila odvzeta prostost, na krajih odvzema prostosti, in o številu krajev in njihovi lokaciji,
- dostop do vseh informacij o ravnanju s temi osebami in njihovih pogojih odvzema prostosti,
- dostop do vseh krajev odvzema prostosti ter njihovih objektov in opreme,
- možnost zaupnih pogovorov z osebami, ki jim je bila odvzeta prostost, brez prič, osebno ali s prevajalcem (po potrebi) in s katero koli osebo, za katero državni preventivni mehanizem meni, da lahko priskrbi ustrezne informacije,
- svobodno izbiro krajev, ki jih želijo obiskati, in oseb, s katerimi želijo govoriti, ter
- pravico do stikov s pododborom, pošiljanja informacij pododboru in do srečanj z njim.



## I. INTRODUCTION

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international treaty that was adopted at the 57th session of the General Assembly of the United Nations on 18 December 2002.

State Parties to the Optional Protocol among other things reconfirm that torture and other forms of cruel, inhuman or degrading treatment or punishment are banned and signify serious violations of human rights. They are convinced that further measures are required in order to achieve the aims of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and strengthen the protection of persons who have been deprived of liberty from torture and other forms of cruel, inhuman or degrading treatment or punishment. They also believe that the protection of persons who have been deprived of liberty from torture and other forms of cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial preventive means based on regular visits to places of detention. **The main purpose of the Optional Protocol is therefore to establish a system of regular visits of independent international and also national bodies to places of detention, in order to prevent torture and other forms of cruel, inhuman or degrading treatment or punishment.** According to the Optional Protocol, deprivation of liberty means any form of detention or imprisonment or placing of persons in public or private institutions which, under the orders of a court, the administration or any other authority, may not release such persons by their own choice.

The Optional Protocol for this purpose founded a Sub-committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of the Committee against Torture. Each State Party is obliged on a national level to establish, designate or maintain one or more bodies for visiting in order to prevent torture or other cruel, inhuman or degrading treatment or punishment (national preventive mechanism).

National preventive mechanisms have authority under the Optional Protocol regularly to check in places of detention the treatment of persons who have been deprived of liberty, in order to strengthen their protection from torture or other cruel, inhuman or degrading treatment or punishment. Bearing in mind the relevant standards of the UN, they make a report to the responsible authority in order to improve the conditions and treatment of persons who have been deprived of liberty. Under the Protocol, a national preventive mechanism also has authority under the Protocol to submit proposals and comments to applicable or proposed laws.

**In order for a national preventive mechanism to fulfil its tasks and authorities, State Parties to the Protocol have bound themselves to provide:**

- access to all information on the number of persons who have been deprived of liberty in places of detention, and the number of such places and their locations,
- access to all information on the treatment of such persons and the conditions of their deprivation of liberty,
- access to all places of detention and their installations and facilities,
- the possibility of confidential interviews with persons who have been deprived of liberty, without witnesses, personally or with a translator (if required) and with any person whom the national preventive mechanism believes can supply relevant information,
- a free choice of places that they wish to visit and persons with whom they wish to talk, and
- the right to contact with the subcommittee, to send information to the subcommittee and to meet with them.

Z Zakonom o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju (Uradni list, št. 20/2006, Mednarodne pogodbe, Uradni list, št. 114/2006) je bil v Republiki Sloveniji za državni preventivni mehanizem določen Varuh človekovih pravic RS (Varuh). Četrty člen Zakona o ratifikaciji namreč določa, da pristojnosti in naloge državnega preventivnega mehanizma po Opcijskem protokolu v skladu z njegovim 17. členom izvršuje Varuh, v dogovoru z njim pa tudi v Sloveniji registrirane nevladne organizacije ter organizacije, ki so pridobile status humanitarne organizacije v Sloveniji.

Glede na zaupane naloge in pooblastila državnega preventivnega mehanizma je Varuh v letu 2007 začel aktivnosti oziroma priprave za začetek izvajanja teh nalog. Tako je bilo za izvajanje nalog po Opcijskem protokolu pri Varuhu določenih pet sodelavcev in vodja, vsi poleg tega opravljajo še delo na drugih področjih delovanja Varuha.

Izbor nevladnih in humanitarnih organizacij za sodelovanje pri izvrševanju pristojnosti in nalog državnega preventivnega mehanizma je Varuh opravil na podlagi javnega razpisa (Uradni list RS, št. 90/2007). Za sodelovanje v letu 2008 sta bili izbrani obe na javni razpis prijavitelji nevladni organizaciji – Mirovni inštitut in Pravno-informacijski center nevladnih organizacij - PIC, saj sta izpolnjevali vsa z javnim razpisom določena merila. Z izbranimi nevladnima organizacijama je Varuh 11. marca 2008 podpisal pogodbo o sodelovanju, ki je podrobneje uredila medsebojne obveznosti pogodbenih strank za obdobje do 31. decembra 2008. Konec lanskega leta je Varuh na podlagi novega javnega razpisa za sodelovanje izbral vse tri prijavitelne organizacije, to je Pravno-informacijski center nevladnih organizacij-PIC, Rdeči križ Slovenije in Inštitut Primus.

Izbrane nevladne in humanitarne organizacije naloge in pooblastila pri opravljanju nadzora opravljajo s svojimi osebami, usposobljenimi za posamezna področja nadzora. Te osebe delujejo kot članice skupine za opravljanje nadzora in preverjanja ravnanja z osebami na krajih, kjer so nameščene osebe, ki jim je odvzeta prostost. Skupino imenuje Varuh. Vsaka skupina, ki opravlja nadzor, je tako sestavljena iz predstavnikov Varuha in izbranih organizacij.

Kraj in čas nadzora ter število članov skupine za opravljanje nadzora na posameznem kraju nadzora določi Varuh za vsak primer posebej, z upoštevanjem programa obiskov, ki ga v ta namen sprejme Varuh skupaj z izbranimi organizacijami, po potrebi pa pri tem upošteva še druge okoliščine, ki bi terjale takojšen obisk.

Varuh kot državni preventivni mehanizem je prvi obisk opravil v Prevgojnem domu Radeče 19. 3. 2008, zadnjega v letu 2008 pa v Pegazovem domu Rogaška Slatina 17. 12. 2008. Skupno je bilo v letu 2008 opravljenih 35 obiskov različnih krajev odvzema prostosti.

Osebe iz izbranih organizacij, ki opravljajo nadzor, so upravičene do povračila potrebnih stroškov in nagrade. V ta namen je Varuh izdal Pravilnik o povračilu stroškov in o nagradah osebami 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, ki je objavljen v Uradnem listu Republike Slovenije.

With the Act of Ratification of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette, no. 20/2006 International Treaties, Official Gazette no. 114/2006) the Human Rights Ombudsman RS was designated as the national preventive mechanism in the Republic of Slovenia. Article 4 of the Ratification Act, namely, specifies that the competences and tasks of national preventive mechanism under the Optional Protocol, in compliance with its Article 17, shall be performed by the Ombudsman, and in agreement with the Ombudsman also non-governmental organisations registered in Slovenia and organisations that have obtained the status of humanitarian organisations in Slovenia.

In view of the confidential tasks and authorities of the national preventive mechanism, in 2007 the Ombudsman commenced activities or preparations for the commencement of implementing these tasks. Five associates and a head were therefore appointed at the Ombudsman for carrying out tasks under the Optional Protocol, all of whom also perform work in other fields of activity of the Ombudsman.

The Ombudsman made the selection of non-governmental and humanitarian organisations for cooperation in executing the competences and tasks of national preventive mechanism on the basis of a public tender (Official Gazette RS, no. 90/2007). In 2008, both non-governmental organisations that applied at the public tender were selected for cooperation – the Peace Institute and the Legal and Information Centre of Non - Governmental Organizations, since they both met all the criteria specified in the public tender. On 11 March 2008, the Ombudsman signed a contract of cooperation with the selected non-governmental organisations, which regulated in more detail the mutual obligations of the contract parties for the period until 31 December 2008. At the end of last year, on the basis of a new public tender for cooperation, the Ombudsman selected all three organisations that applied, i.e., the Legal and Information Centre of Non -Governmental Organizations, the Slovenian Red Cross and Inštitut Primus.

The selected non-governmental and humanitarian organisations perform the tasks and exercise the authorities in performing monitoring using their own staff, trained for individual fields of monitoring. These persons operate as members of a group for performing monitoring and checking the treatment of persons in places in which persons are placed who have been deprived of their liberty. The Ombudsman appoints the groups. Each group that performs monitoring is thus composed of representatives of the Ombudsman and the selected organisations.

The place and time of monitoring and the number of members of a group for performing monitoring at an individual place of monitoring is decided by the Ombudsman for each case individually, taking into account the programme of visits which the Ombudsman, together with the selected organisations, adopts for this purpose, and as necessary taking into account other circumstances that may require an immediate visit.

The Ombudsman made a first visit as national preventive mechanism to Radeče Correctional Home on 19.3.2008 and the last in 2008 on 17.12.2008 to Pegazov dom Rogaška Slatina. A total of 35 visits to various places of detention were made in 2008.

Persons from the selected organisations that perform monitoring are entitled to the reimbursement of necessary costs and reward. For this purpose, the Ombudsman issued Rules on the reimbursement of costs and rewards to persons from organisations that perform tasks or exercise authority under the provisions of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, which were published in the Official Gazette of the Republic of Slovenia.

Pravilnik obsega povračilo potnih stroškov ter 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.

Ob vsakem obisku in pregledu nadzorovanih ustanov Varuh izdelava poročilo s predlogi za odpravo pomanjkljivosti in nepravilnosti oziroma s priporočili za izboljšanje stanja. Tudi osebe iz izbranih nevladnih ali humanitarnih organizacij so po izvedenem nadzoru izdelale kratko poročilo o lastnih ugotovitvah s predlogi za odpravo nepravilnosti, ki je del vsakega končnega poročila o opravljenem nadzoru. Varuh lahko za izdelavo končnega poročila o opravljenem nadzoru določi tudi osebo izbrane organizacije.

Ugotovitve, predlogi in priporočila za izboljšanje stanja, ki jih Varuh podaja v izvajanju nalog in pooblastil državnega preventivnega mehanizma, se pogosto pokažejo v izboljšanju pogojev in ravnanju z osebami, ki jim je odvzeta prostost. O nekaterih glavnih ugotovitvah iz opravljenih obiskov iz leta 2008 poročamo v nadaljevanju.

The Rules cover the 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 include payment for producing a complete report on the monitoring carried out and a symbolic payment.

At the time of each visit and inspection of monitored institutions, the Ombudsman produces a report with proposals for rectifying deficiencies and irregularities or with recommendations for improving conditions. Persons from the selected non-governmental or humanitarian organisations, after carrying out monitoring, also produced a short report on their own findings, with proposals for rectifying irregularities, which is part of the final report on monitoring carried out. The Ombudsman may also designate a person from a selected organisation for producing the final report on monitoring carried out.

Findings, proposals and recommendations for improving conditions which the Ombudsman makes in carrying out tasks and exercising authorities of national preventive mechanism frequently appear in improved conditions and treatment of persons who have been deprived of liberty. We report below on some of the main findings from visits performed in 2008.



Poročilo Varuha človekovih pravic Republike Slovenije o izvajanju nalog  
državnega preventivnega mehanizma za leto 2008

II. Report of the Human Rights Ombudsman of the Republic of Slovenia  
on performing the tasks of National Preventive Mechanism in 2008



## II. POROČILO VARUHA ČLOVEKOVIH PRAVIC REPUBLIKE SLOVENIJE O IZVAJANJU NALOG DRŽAVNEGA PREVENTIVNEGA MEHANIZMA V LETU 2008

### 1. Zavodi za prestajanje kazni zapora in Prevezgojni dom Radeče

V letu 2008 smo obiskali Prevezgojni dom (PD) Radeče (19. 3. 2008) in sedem zavodov za prestajanje kazni zapora (ZPKZ), in sicer ZPKZ Ljubljana, Oddelek Novo mesto (15. 4. 2008), ZPKZ Maribor (13. in 14. 5. 2008), ZPKZ Ljubljana, Odprti oddelek Ig (29. 5. 2008), ZPKZ Ig (23. 6. 2008), ZPKZ Koper, Oddelek Nova Gorica (16. 9. 2008), ZPKZ Koper (14. 10. 2008) ter Zavod za prestajanje kazni mladoletniškega zapora in kazni zapora (ZPMZ in KZ) Celje (3. 12. 2008).

Ob obiskih smo v vsakem zavodu opravili pregled vseh bivalnih prostorov zaprtih oseb in se z zaprtimi osebami pogovorili. O obisku smo izdelali poročilo in ga poslali Generalnemu uradu Uprave za izvrševanje kazenskih sankcij (UIKS), ki se je do naših ugotovitev, mnenj in predlogov opredelil v svojem odzivnem poročilu.

V nadaljevanju je predstavljena ključna problematika, ki smo ji ob svojih obiskih v zavodih za prestajanje kazni zapora namenili največ pozornosti. Podrobnostim so namenjena posamična poročila o obisku vsakega zavoda posebej, povzetki poročil so na voljo na spletni strani [www.varuh-rs.si](http://www.varuh-rs.si).

#### **(Pre)zasedenost**

S prezasedenostjo se je v času naših obiskov v letu 2008 ukvarjala polovica obiskanih ZPKZ, nismo je ugotovili le v PD Radeče (ta je bil ob obisku zaseden le 41-odstotno), ZPKZ Ljubljana, Odprti oddelek Ig (67-odstotna zasedenost), ZPKZ Ig (71-odstotna zasedenost) in ZPKZ Koper, Oddelek Nova Gorica (84-odstotna zasedenost).

ZPKZ Koper in ZPKZ Maribor sta se s prezasedenostjo srečevala zlasti na obsojniškem oddelku. Zmogljivosti na tem oddelku so bile v prvem primeru presežene za 38 odstotkov, v drugem pa za 29 odstotkov. V ZPMZ in KZ Celje je bilo število pripornikov preseženo kar za 124 odstotkov, ZPKZ Ljubljana, Oddelek Novo mesto pa se je s prezasedenostjo srečeval na priporniškem (za 19 odstotkov) in obsojniškem oddelku (za 26 odstotkov).

Problem (pre)zasedenosti zavodi rešujejo z nameščanjem več oseb, kot je predvideno z normativi, znotraj oddelkov (kar zmanjšuje ustreznost bivalne površine v sobah) in z nameščanjem oseb na druge oddelke (npr. ZPMZ in KZ Celje je pripornike nameščal v sobe, ki so namenjene obsojencem, to pa je vodilo v dodatne težave pri organiziranju njihovega življenja v zavodu) ter s premeščanjem zaprtih oseb v druge zavode (npr. premeščanje pripornikov iz ZPKZ Ljubljana, Oddelek Novo mesto, v ZPKZ Ljubljana ali obratno). Dodatne zaplete so povzročile tudi spremembe predpisov o pošiljanju zaprtih oseb na prestajanje kazni zapora in razporejanju v pripor. Čeprav se je tako poskušalo omiliti za približno 100 odstotkov presežene kapacitete v ZPKZ Ljubljana, se je obenem v ZPKZ Koper izrazito povečalo število obsojencev, predvsem iz sodnega okrožja Ljubljana, kar je povzročilo povečanje prezasedenosti v tem zavodu.

Prezasedenost nedvomno negativno vpliva na delo z zaprtimi osebami in medsebojne odnose. Pri večini težav v vsakodnevem življenju zaprtih oseb, ki smo jih ugotavljali ob obiskih, gre pravzaprav za posledico prezasedenosti. Zato tudi ne preseneča, da je bila rdeča nit pritožb zaprtih oseb pogosto prav prezasedenost in z njo povezane težave.



## II. REPORT OF THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA ON PERFORMING THE TASKS OF NATIONAL PREVENTIVE MECHANISM IN 2008

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

In 2008, we visited Radeče correctional home (PD) (19.3.2008) and seven institutions for serving prison sentences (ZPKZ), to wit ZPKZ Ljubljana, Novo mesto Department (15. 4. 2008), ZPKZ Maribor (13 and 14. 5. 2008), ZPKZ Ljubljana, Ig Open Department (29. 5. 2008), ZPKZ Ig (23. 6. 2008), ZPKZ Koper, Nova Gorica Department (16. 9. 2008), ZPKZ Koper (14. 10. 2008) and the Young Offenders Institute (ZPMZ and KZ) Celje (3. 12. 2008).

During the visits to each institution, we carried out an inspection of all the living quarters of detained persons and spoke with the detained persons. We produced a report on the visits and sent it to the General Office of the Prison Administration RS (Office) which gave its opinion on our findings, opinions and proposals, in its response to the report,

Below are presented the key problems to which we devoted most attention during our visits to the institutions. Individual reports of visits to each institute individually are devoted to details, and summaries of reports are available on the website [www.varuh-rs.si](http://www.varuh-rs.si).

#### **(Over)occupancy**

Half of the ZPKZ visited were coping with overcrowding at the time of our visits in 2008, except for PD Radeče (which was only 41% occupied at the time of the visit), ZPKZ Ljubljana, Open Department Ig (67 percent occupancy), ZPKZ Ig (71 percent occupancy) and ZPKZ Koper, Nova Gorica Department (84 percent occupancy).

ZPKZ Koper and ZPKZ Maribor are confronted with overcrowding in particular in the departments for convicted persons. Capacities in these departments were exceeded in the former by 38 percent and in the latter by 29 percent. In ZPMZ and KZ Celje the number of detainees was exceeded by 124 percent, ZPKZ Ljubljana, Novo mesto Department was confronted by overcrowding in the departments for arrested persons (by 19 percent) and convicted persons (by 26 percent).

The institutions solve the overcrowding problem by allocating more people than envisaged by standards within departments (which reduces the adequacy of living areas in rooms) and by allocating persons to other departments (e.g., ZPMZ and KZ Celje allocated arrested persons to rooms intended for convicted persons and this led to additional difficulties in organising their lives in the institution) and by transferring prisoners to other institutions (e.g., transfer of prisoners from ZPKZ Ljubljana, Novo mesto Department to ZPKZ Ljubljana or vice versa). Additional complexities were caused by changes to regulations on consigning detained persons to serve prison sentences and allocating to prisons. Although this was an attempt to alleviate exceeded capacities in ZPKZ Ljubljana by approximately 100 percent, in ZPKZ Koper it explicitly increased the number of convicts, mainly from the Ljubljana court circuit, which caused an increase of overcrowding in this institution.

Overcrowding undoubtedly has a negative impact on work with prisoners and on inter-relations. We found during visits that the majority of difficulties in the everyday life of prisoners were actually a result of overcrowding. It is therefore not surprising that the common thread of prisoners' complaints was frequently precisely overcrowding and associated difficulties.

## **Bivalne razmere**

Večjih izboljšanj življenjskih oziroma bivalnih pogojev za zaprte osebe nismo ugotovili. Največkrat so se zavodi za prestajanje kazni zapora oziroma Uprava za izvrševanje kazenskih sankcij (UIKS) ob tem sklicevali na nezadostna finančna sredstva, potrebna za prenove za občutnejše izboljšave bivanjskih razmer. V nekaterih primerih (npr. ZPKZ Koper, Oddelek Nova Gorica) so razmere še dodatno zapletene zaradi mešanega lastništva objektov, kar otežuje dodatna investicijska vlaganja. Zavodi so načeloma upoštevali naše predloge v zvezi s tekočimi vzdrževalnimi deli (popravila zavodskega inventarja, zamenjava izrabljenih sredstev, pleskanje ipd.).

Določba 42. člena Zakona o izvrševanju kazenskih sankcij kot pravilo določa bivanje obsojenca v samski sobi. Pri tem za primer skupne spalnice (kot izjeme) določa, da ima lahko takšna spalnica največ osem postelj, sobne površine spalnic z več posteljami pa naj bi dosegale standard 7 m<sup>2</sup> na osebo. Kljub temu je skupinsko prestajanje kazni zapora v zavodih še vedno najpogostejša oblika namestitve. Naših predlogov o ustrezni preureditvi prostorov, npr. s prezidavo, zavodi niso udeležili. Ob funkcionalni neustreznosti zgradb, ki so bile večinoma zgrajene za povsem drugačne namene (ne za zapor), naj bi bila zavodom taka preureditev prevelik finančni zalogaj (npr. ZPKZ Ig).

Treba je še izpostaviti, da so predvsem priporniki opozarjali na prostorsko stisko in druge vidike slabih bivalnih razmer. V tem pogledu je še posebej izstopal ZPKZ Koper, Oddelek Nova Gorica, kjer so priporniki bivali v sobah, ki spominjajo na grajske ječe. Pogosto smo ugotavljali, da so bili priporniki dejansko v mnogočem v slabšem položaju kot obsojenci, kar seveda ni dopustno. Obveznost države je zagotoviti ustrezne bivalne razmere tudi pripornikom in pri tem ne gre spregledati, da velja za njih domneva nedolžnosti.

## **Kadrovska zasedba**

ZPKZ mora imeti toliko osebja za delo z zaprtimi osebami, ki ni v škodo zaposlenih niti zaprtih oseb. Treba je namreč zagotoviti spoštovanje vseh predpisov z delovnopravnega področja in nemoteno delo z zaprtimi osebami. V tem pogledu se je za najbolj sporno izkazalo pomanjkanje paznikov. Ti so pogosto (pre)obremenjeni tudi zaradi opravljanja nalog, ki niso del pazniške službe. V ZPKZ Ljubljana, Odprti oddelek Ig, so na primer pazniki ob pomanjkanju kadra opravljali tudi povsem administrativna dela z novo sprejetimi osebami. Tako ni bilo presenetljivo, a še vedno nič bolj sprejemljivo, da so pazniki pogosto tudi že krepko presegli zakonsko dovoljeno število nadur na leto.

Vpliv (pre)majhnega števila paznikov oziroma njihove (pre)obremenjenosti se lahko začne hitro kazati tudi v razmerju do zaprtih oseb. Ob sklicevanju na pomanjkanje paznikov se tako pogosto ni izvajalo določenih aktivnosti (npr. ZPKZ Ljubljana, Oddelek Novo mesto) ali se je celo odpovedovalo določenim varnostnim ukrepom (npr. ZPMZ in KZ Celje). Nekaterim zavodom še vedno uspeva zagotavljati vsa spremstva zaprtih oseb na zdravniške preglede in na sodišča (npr. ZPKZ Koper), drugi pa morajo za pomoč pri tem zaprositi druge zavode (npr. ZPKZ Koper, Oddelek Nova Gorica), nekaterim pa takšnih spremstev celo ne uspe vedno izvesti (npr. ZPKZ Maribor).

(Pre)malo paznikov pomeni tudi nevarnost nepravočasnega oziroma neučinkovitega odziva v primeru nepredvidenega dogajanja, ki lahko ogrozi življenje in zdravje oziroma varnost v zavodu. To se pokaže še posebno pri izmenah zunaj rednega delovnega časa, ko je paznikov še manj kot sicer.

## **Living conditions**

We did not find major improvements in the life or living conditions of prisoners. Prisons, or the Prisons Administration (UIKS) most often referred in this connection to insufficient funds, and the need for renovation for more significant improvements in living conditions. In some cases (e.g., ZPKZ Koper, Nova Gorica Department) conditions were additionally complicated because of mixed ownership of facilities, which made additional investment difficult. Institutions in principle accepted our proposals in connection with current maintenance work (repair of institutional inventory, replacing worn-out articles, painting etc.).

The provisions of Article 42 of the Enforcement of Penal Sentences Act specify as a rule the accommodation of convicts in a single room. In the case of a common dormitory (as an exception) it specifies that such a dormitory may have a maximum of eight beds, and the area of a room with more than one bed is supposed to achieve a standard 7 m<sup>2</sup> per person. Nevertheless, in serving sentences in institutions, dormitories are still the most frequent form of accommodation. Our proposals on a suitable reorganisation of rooms, e.g., with rebuilding, were not realised by institutions. In addition to the functional unsuitability of buildings, which were mostly built for completely different purposes (not as prisons) such a rearrangement would be too great a financial investment for the institution (e.g., ZPKZ Ig).

It must be stressed that prisoners drew attention above all to spatial pressures and other aspects of poor living conditions. From this point of view, ZPKZ Koper, Nova Gorica Department stood out in particular, where prisoners live in cells that are reminiscent of castle goals. We often found that arrested persons in many instances were in a worse situation than convicted persons, which is of course impermissible. It is the responsibility of the state to provide suitable living conditions also for arrested persons, and it must not be overlooked that in their case the presumption of innocence applies.

## **Staffing levels**

A prison institution should have sufficient staff for work with prisoners which is not to the detriment of either staff or prisoners. It is necessary, in other words, to ensure respect for all regulations in the sphere of labour law, and undisturbed work with prisoners. From this point of view, a lack of guards appeared to be most questionable. These are frequently (over)burdened also because of performing tasks which are not part of a guard's duties. In ZPKZ Ljubljana, Open Department Ig, for example, guards, due to the lack of staff, also performed completely administrative work with newly accepted persons. It was thus not surprising, but still nevertheless unacceptable, that guards also frequently greatly exceeded the legally permitted number of hours of overtime per year.

The effect of (too) few guards or their being (over)burdened can also quickly start to appear in relations with prisoners. Due to the lack of guards, therefore, certain activities were often not carried out (e.g., ZPKZ Ljubljana, Novo mesto Department) or even certain security measures were abandoned (e.g., ZPKZ and KZ Celje). Some institutions still succeed in providing all escorts of prisoners to medical examinations and to courts (e.g., ZPKZ Koper), but others must request help in this from other institutions (e.g., ZPKZ Koper, Nova Gorica Department), and some even do not always succeed in providing such escorts (e.g., ZPKZ Maribor).

(Too) few guards also means a risk of slow or ineffective response in the event of unanticipated events, which could threaten lives or health or safety in the institution. This appears in particular with shifts outside normal working hours, when there are even fewer guards than usual.

Ugotavljamo torej, da je potreba po povečanju števila delovnih mest paznikov, medicinskega osebja in strokovnih delavcev zavodom bolj kot ne skupna značilnost. Zavodi načeloma sami redno preverjajo ustreznost kadrovske zasedbe in sistemizacije, vendar ne gre pozabiti, da o (povečanem) kadrovskega načrta odloča Vlada Republike Slovenije.

### **Ravnanje z zaprtimi osebami in uporaba prisilnih sredstev ali ukrepov, ki posegajo v pravice zaprtih oseb**

Na podlagi obiskov ZPKZ v letu 2008 ni mogoče skleniti, da bi bilo ravnanje paznikov z zaprtimi osebami neprimerno, saj v tej zvezi nismo prejeli veliko pritožb. V nekaterih zavodih (npr. ZPKZ Koper, Oddelek Nova Gorica) so urejenost odnosov med zaprtimi osebami in pazniki potrjevale tudi zaprte osebe, kar je bilo še posebej spodbudno. Nekaj več pritožb zoper paznike smo slišali le ob obisku PD Radeče, vendar je UIKS pojasnila, da so bile te že predmet obravnave, ki pa ni potrdila resnejših nepravilnosti.

V prav nobenem od obiskanih zavodov nismo ugotovili prekomerne uporabe prisilnih sredstev ali ukrepov, ki posegajo v pravice zaprtih oseb v primeru kršitve pravil hišnega reda in discipline. Je pa treba omeniti, da smo v dveh primerih opozorili na neustrezno ureditev posebnega prostora za izločitev zaprtih oseb oziroma mladoletnikov. V PD Radeče je bilo najbolj sporno to, da v prostoru ni bil nameščen zvonec, kar je povzročalo zapoznelo odzivanje paznikov. V ZPKZ Ljubljana, Oddelek Novo mesto, pa je bil prostor za odstranitev zaprte osebe na podlagi 236. člena Zakona o izvrševanju kazenskih sankcij brez ustrezne dnevne svetlobe, glede na opremo pa tudi ni bila zagotovljena zadostna varnost pred samopoškodbami. Žal po navedbah UIKS ne gre pričakovati, da bi se prenova tega prostora opravila prednostno.

### **Vzgojna služba**

Zavodi naj bi med drugim izpolnjevali tudi prevzgojno funkcijo. Resocializaciji storilcev kaznivih dejanj je namenjeno prav delo vzgojne službe. Delavci te službe morajo namreč skrbeti za takšno organizacijo življenja in dela v zavodu, ki pospešuje ustrezno vključitev obsojenca v normalno življenje. Stremeti je treba k temu, da je vzgojna služba vsakodnevno in samoiniciativno med zaprtimi osebami, predvsem z obiski in pogovori v prostorih zaprtih oseb. Žal je stalna navzočnost prevzgojnega delavca na oddelkih še vedno prej izjema kot pravilo. Pogosto smo morali zavodom predlagati, naj temu namenijo večjo pozornost.

Kljub nekaterim pomanjkljivostim lahko sklenemo, da so zavodi funkcijo prevzgoje načeloma izvajali v okviru objektivnih kadrovskega zmožnosti, ki največkrat niso bile zadostne. Opozarjamo, da mora država nujno zagotoviti tudi dovolj pedagogov, socialnih delavcev in psihologov, ki lahko ustrezno obravnavajo številne obsojence v zavodih. Prevzgojno funkcijo je namreč mogoče izvajati le ob zadostnem številu vzgojnih delavcev, saj je odziv vzgojne službe odvisen tudi od obsega dela, ki ga posamezni strokovni delavec opravlja z zaprto populacijo. Žal smo, podobno kot pri paznikih, tudi na tem področju večinoma ugotavljali kadrovske nezadostnosti, zaradi česar smo predlagali, naj se v kar najkrajšem času zasedejo nezasedena delovna mesta v vzgojni službi (npr. ZPKZ Koper).

### **Zdravstvena oskrba**

Zdravstvena služba v zavodih je načeloma premajhna. Tudi ta problematika je močno povezana s kadrovskega načrtom, ki ne omogoča zaposlovanja dodatnih zdravstvenih kadrov.

We therefore find that the need to increase the number of working positions of guards, medical personnel and professional workers of institutes is more a common characteristic than not. In principle, institutions themselves regularly check the suitability of staffing levels and job positions but it must not be forgotten that the Government of the Republic of Slovenia decides on the (increased) staffing plan.

### **Treatment of prisoners and use of coercive means or measures that encroach on the rights of prisoners**

On the basis of visits to ZPKZ in 2008, it was not possible to conclude that the behaviour of guards with prisoners was inappropriate, since in this connection we did not receive many complaints. In some institutions (e.g., ZPKZ Koper, Nova Gorica Department), well-ordered relations between prisoners and guards were also confirmed by prisoners, which was particularly encouraging. We heard some more complaints against guards only during the visit to PD Radeče, but the Prisons Administration explained that these had already been investigated and more serious irregularities had not been confirmed.

In none of the visits to institutions did we find excessive use of coercive means or measures that encroach on the rights of prisoners in the case of violation of the rules of house order and discipline. However, it must be mentioned that in two cases we drew attention to the inappropriate arrangement of a special place for isolating prisoners or young offenders. In PD Radeče, it was most questionable that there was no bell installed in the room, which meant that guards responded with delay. In ZPKZ Ljubljana, Novo mesto Department, the room for separating prisoners on the basis of Article 236 of the Implementation of Penal Sanctions Act was without suitable daylight, and in terms of equipment sufficient security against self-harm was not ensured. Unfortunately, according to the statements of UIKS it cannot be expected that the renovation of this room will be carried out on a priority basis.

### **Education service**

Institutions should, among other things, perform a re-education function. The work of the education service is precisely devoted to the resocialisation of perpetrators of crime. The staff of this service, in other words, must ensure such an organisation of life and work in the institute as accelerates the suitable inclusion of convicts in normal life. It is necessary to strive that the education service is present among detained persons every day and on their own initiative, mainly with visits and discussions in the detainees' rooms. Unfortunately, the permanent presence of re-education staff in departments is still more the exception than the rule. We often had to propose to institutions that they devote more attention to this.

Despite some deficiencies, we can conclude that institutions carry out the re-education function in principle within the framework of objective staff possibilities, which are usually inadequate. We draw attention that the state must also urgently provide sufficient pedagogues, social workers and psychologists, who can adequately deal with the number of convicts in institutions. The reeducation function can only be carried out with a sufficient number of educational staff, since the response of the education service is also dependent on the extent of work that an individual professional worker performs with the prison population. Unfortunately, as with guards, in this sphere, too, for the most part we found staff insufficiencies, because of which we have proposed that in the shortest possible time unfilled working posts in the education service should be filled (e.g., ZPKZ Koper).

### **Healthcare**

The healthcare service in institutions is in principle too small. This problem, too, is greatly connected with staffing plans, which does not allow the employment of additional healthcare staff.

Zavode smo pogosto opozarjali, da si morajo v primeru neuspeha pridobitve dodatnih delovnih mest za medicinsko osebje vsaj prizadevati za večjo navzočnost medicinske sestre v zavodu. Stalnica namreč še vedno ostaja, da opravljajo delitev zdravil kar pazniki po navodilih zdravstvene službe. UIKS se je z našimi opozorili, da to ni ustrezno, saj delitev zdravil ni naloga paznikov, za tako delo pa tudi niso strokovno usposobljeni, sicer strinjala, vendar je po drugi strani pojasnjevala, da je to pomanjkljivost mogoče tolerirati, saj je treba dati prednost zaposlovanju paznikov (in drugih strokovnih delavcev).

Resnejših oziroma številčnejših pritožb zaradi nedostopnosti ali (slabe) kakovosti zdravstvene oskrbe v času obiskov načeloma nismo slišali. Izjema je bil ZPMZ in KZ Celje, kjer smo prejeli veliko pritožb na odnos zdravnika do zaprtih oseb, v ZPKZ Dob pa nekaj pritožb na delo specialistke za psihiatrijo.

### **Gibanje na svežem zraku, rekreacija, aktivnosti**

Vsaka zaprta oseba je upravičena do najmanj dvournega (mladoletniki pa triurnega) bivanja na svežem zraku dnevno in ta pravica se ne sme omejevati. ZPKZ Maribor smo tako morali opozoriti, da rekreacija v fitnes sobi ne sme biti alternativa bivanju na svežem zraku. Razen tega drugih takšnih primerov nismo ugotovili.

ZPKZ gibanje na svežem zraku omogočajo na svojih dvoriščih, igriščih ali sprehajalnih prostorih. Pri tem je prav, da zavod na takem prostoru poskrbi tudi za ustrezen nadstrešek za primer slabega vremena. V treh primerih (ZPKZ Ljubljana, Oddelek Novo mesto, ZPKZ Maribor, ZPKZ Ljubljana, Odprti oddelek Ig) smo tako predlagali, naj se tak nadstrešek zagotovi, v enem pa, da se ga poveča (ZPKZ Ig). Izpostaviti velja tudi ZPKZ Koper, Oddelek Nova Gorica, kjer je sprehajališče, ki je v ta namen na voljo pripornikom, obsojencem zaprtega in (delno) polodprtega oddelka, povsem neprimerno (premajhno, obdano z visokimi stenami, brez kakršne koli opreme za rekreacijo).

Vsak zavod naj bi imel tudi notranji prostor za rekreacijo. Najpogosteje so bile v zavodih to sobe za fitnes, ki so bile v večini primerov temu tudi ustrezno opremljene. V tem pogledu je ponovno izstopal ZPKZ Koper, Oddelek Nova Gorica, ki takega prostora sploh ni imel. Žal bodo očitno te spremembe mogoče le z gradnjo novega objekta.

Na splošno smo opazili, da bi bilo treba zaprtim osebam ponuditi več organiziranih aktivnosti. Ob naših obiskih je bilo teh za zaprte osebe praviloma malo (npr. v ZPKZ Maribor le občasne prireditve), ali sploh niso bile organizirane (npr. ZPKZ Ljubljana, Oddelek Novo mesto). Obsojenci tako veliko časa preživijo v brezdrlju ali ob gledanju televizije, kar seveda ne more v celoti izpolniti cilja odvzema prostosti. Nekateri zavodi so temu kljub vsemu namenjali pohvalno veliko truda (npr. ZPKZ Koper, ZPKZ Ig).

Zavodom smo tudi pogosto predlagali, naj bi se pripornikom omogočilo, da bi bili zunaj priporniških sob več, kot le dve uri na dan, ko se lahko gibajo na prostem. Žal pa z upoštevanjem varnostnega vidika oziroma potrebe ločenosti posameznih pripornikov v kombinaciji z že izpostavljenimi težavami s kadrovsko zasedbo in prezasedenostjo to velikokrat ni mogoče.

### **Pravica do dela**

Zagotavljanje možnosti dela za zaprte osebe je med najbolj perečimi težavami, s katerimi se srečujejo ZPKZ. Izjemi sta bili le PD Radeče in ZPKZ Ljubljana, Odprti oddelek Ig, kjer (za zdaj še) lahko zagotavljajo delo vsem, ki želijo delati in so za delo sposobni.

We often drew the attention of institutions that, in the event of being unsuccessful in obtaining additional posts for medical personnel, they must at least strive for a greater presence of nurses in institutions. It still remains a constant, namely, that guards perform the distribution of medicines under the instructions of the healthcare service. UIKS agreed with our warning that this is not appropriate, since the distribution of medicines is not a task of guards, and they are also not professionally trained for such work but, on the other hand, they explained that it is possible to tolerate such a deficiency since it is necessary to give priority to the employment of guards (and other professional workers).

We did not in general hear more serious or more frequent complaints during our visits about the inaccessibility or (poor) quality of healthcare. The exception was KPMZ and KZ Celje, where we received a lot of complaints about the attitude of the physician to detainees, and in ZPKZ Dob some complaints about the work of the psychiatric specialist.

### **Exercise in the open air, recreation, activities**

Every detainee is entitled to at least two hours (young persons three hours) in the fresh air daily and this right may not be restricted. We therefore had draw the attention of ZPKZ Maribor that recreation in the fitness room may not be an alternative to being in the open air. We did not find any other such cases.

ZPKZ allow exercise in the open air in their courtyards, games courts or walking spaces. It is appropriate for an institution also to provide a suitable roof to such places for the event of bad weather. In three cases (ZPKZ Ljubljana, Novo mesto Department, ZPKZ Maribor, ZPKZ Ljubljana, Ig Open Department) we thus proposed that they provide such a projecting roof and in one case (ZPKZ Ig) enlarge it. It is also worth highlighting ZPKZ Koper, Nova Gorica Department, where the walking area available for this purpose to persons under arrest and convicts of the closed and (partly) semi-open departments, is completely unsuitable (too small, surrounded by high walls, without any equipment for recreation).

Each institution should also have inside premises for recreation. These were most often fitness rooms in institutions, which in most cases were also suitably equipped for this. From this point of view ZPKZ Koper Nova Gorica Department again stood out, which did not have such premises at all. Unfortunately, these changes will clearly only be possible with the building of a new facility.

We noticed in general that prisoners need to be offered more organised activities. There were generally few of these for prisoners during our visits (e.g., in ZPKZ Maribor only occasional events), or were not organised at all (e.g., ZPKZ Ljubljana Novo mesto Department). Convicts thus spend a great deal of time idle or watching television, which cannot of course entirely fulfill the aims of deprivation of liberty. Some institutions nevertheless devoted a commendable amount of effort to this (e.g., ZPKZ Koper, ZPKZ Ig).

We also often proposed to institutions that they should enable detainees to be out of their cells more than only two hours a day when they can exercise outside. Unfortunately, bearing in mind the security aspect or the need for the separation of individual detainees, in combination with the already highlighted difficulties with staffing levels and overcrowding, this is often not possible.

### **Right to work**

Providing the possibility of work for prisoners is among the most pressing difficulties with which prisons are confronted. The exceptions are PD Radeče and ZPKZ Ljubljana Ig Open Department where they can (still) provide work for all who want to it and are fit for work.

Težave na tem področju se kažejo tudi v pomanjkanju ustreznih prostorov za delo (npr. ZPKZ Ljubljana, Oddelek Novo mesto, kjer se montažno delo opravlja kar v skupnem dnevnem prostoru) in zlasti v pomanjkanju dela. Javni gospodarski zavodi imajo nemalo težav tudi z inštruktorji (bolniške odsotnosti, odhodi ipd.). Problematika je še posebej izstopala pri pripornikih, saj imajo ZPKZ ob upoštevanju varnostnih zahtev (predvsem zaradi potrebne ločenosti tako med določenimi priporniki kot tudi med priporniki in obsojenci) težave predvsem pri zagotavljanju primernih prostorov za delo (npr. ZPKZ Maribor ima težave zaradi razporeditve delovnih prostorov v Javnem gospodarskem zavodu Kozjak, ki ne omogoča ločenega dela za pripornike in druge kategorije zaprtih oseb).

Ni prav, da zaprte osebe zaradi težav, za katere niso odgovorne, nimajo možnosti za delo. Pomembno je namreč, da je vsaki zaprti osebi dana možnost, da dela, če želi – lahko gre za hišna dela, delo v javnih gospodarskih zavodih ali delo zunaj zavoda. Delo pripomore k socialni rehabilitaciji in pozitivno vpliva na posameznikovo psihično stanje ter zadovoljstvo, spremeni pa tudi posameznikovo doživljanje časa in občutka, da je storil nekaj koristnega. Tako smo zavode spodbujali, naj čim prej sprejmejo vse potrebne ukrepe za zagotovitev dela vsem, ki to želijo, vključno s priporniki.

### **Stiki z zunanjim svetom**

Zaprtim osebam so bili obiski praviloma zagotovljeni dvakrat na teden. V nekaterih primerih so si z delom lahko »prislužili« tudi kakšen dodaten obisk.

Pogoji za izvajanje obiskov so bili pogosto neprimerni. ZPKZ Koper je bil eden redkih zavodov, kjer so prostori za obiske zadoščali trenutnim potrebam. ZPKZ Ljubljana, Odprti oddelek Ig, posebnega prostora za obiske sploh nima in ti potekajo v okolici zavoda ali v skupnih prostorih. Drugje se zaradi premajhnih prostorov obiski izvajajo tudi na hodnikih (npr. ZPKZ Maribor), v drugih prostorih v zgradbi zavoda (npr. PD Radeče) in na prostem (npr. ZPMZ in KZ Celje, kjer težave pri izvajanju obiskov povzročata tudi pomanjkanje paznikov). Čeprav te rešitve niso nujno vedno slabe za obisk, bi morali zavodi nedvomno imeti primerne prostore za obiske. Zavodom smo tako pogosto predlagali, naj proučijo dodatne prostorske in druge možnosti za obiske, vendar so bili naši predlogi večinoma zavrtnjeni ob sklicevanju na nezadostna finančna sredstva (npr. zagotovitev sobe za prenočitev v ZPKZ Ig).

Ob obiskih sta tako pogosti gneča in posledično nezadostna zasebnost. Ta je ključna in mora biti zagotovljena pri nenadzorovanih in nadzorovanih obiskih. Kot smo opozorili ob obisku PD Radeče, je naloga paznika le preprečitev izmenjave predmetov in zavod mora poskrbeti, da pazniki vsebine pogovora ne morejo slišati.

Obisk brez osebnega stika mora biti izjema, ne pravilo. Vsaka odločitev za obisk v prostoru za stekleno pregrado mora biti tako sprejeta ob upoštevanju okoliščin vsakega primera. Zavodi se za take obiske odločajo predvsem z namenom preprečevanja vnosa nedovoljenih predmetov ali snovi. Ob obiskih nismo ugotovili tovrstnih nepravilnosti.

Tako kot število obiskov je pomembno tudi to, da ti niso organizirani le med tednom in med delovnim časom, kot je bilo to v primeru pripornikov v zavodu ZPKZ Koper, Nova Gorica, in ZPKZ Maribor. Takšna ureditev je lahko za marsikaterega obiskovalca, še zlasti zaposlenega, resna težava. Naši predlogi, da bi imeli tudi priporniki, tako kot obsojenci, obiske ob koncu tedna, po pojasnilu UIKS ne bodo uresničeni zaradi kadrovske težave.



Difficulties in this field also appear in the lack of suitable premises for work (e.g., ZPKZ Ljubljana Novo mesto Department, where assembly work is performed in the shared day room) and especially in the lack of work. Public economic institutions also have significant difficulties with instructors (sick leave, departure etc.). The problem stands out in particular with prisoners on remand since prisons, bearing in mind security requirements (mainly because of the need for separation both of specific detainees and also between remand prisoners and convicts) have difficulty mainly in providing suitable premises for work (e.g., ZPKZ Maribor has difficulty because of the disposition of working premises in Kozjak Public Economic Institution, which does not enable separate work for remand prisoners and other categories of prisoner).

It is not right that prisoners do not have the possibility of working because of difficulties for which they are not responsible. It is important, in other words, that each prisoner is given the opportunity to work if he or she wishes, whether it is work in-house, work in a public economic institution or work outside the institution. Work contributes to social rehabilitation and positively influences an individual's mental state and satisfaction, and it also changes an individual's perception of time and the feeling that he or she is doing something useful. We therefore encouraged institutions to adopt as soon as possible all the necessary measures for providing work for all who wish this, including remand prisoners.

### **Contacts with the outside world**

Prisoners were generally allowed visits twice a week. In some cases they could 'earn' additional visits through work.

Conditions for visits were often unsuitable. ZPKZ Koper was one of the few institutions in which premises for visits are sufficient for current needs. ZPKZ Ljubljana Ig Open Department does not have special premises for visits at all and these take place in the surroundings of the institution or in common rooms. Elsewhere, because of too little space, visits also take place in corridors (e.g., ZPKZ Maribor) in other premises in the buildings of the institution (e.g., PD Radeče) and in the open (e.g., ZPKZ and KZ Celje, where the lack of guards also causes difficulties in providing visits). Although these solutions are not necessarily always bad for visits, institutions should undoubtedly have suitable premises for visits. We often proposed to institutions that they should study additional spatial and other possibilities for visits, but our proposals were for the most part rejected on the grounds of insufficient funds (e.g., providing rooms for overnight accommodation in ZPKZ Ig).

There are often very large numbers during visiting times and consequently insufficient privacy. This is crucial and must be provided for both unsupervised and supervised visits. As we highlighted during a visit to PD Radeče, the task of the guards is only to prevent the exchange of objects; the institution must ensure that guards cannot overhear conversations.

A visit without personal contact must be an exception, not the rule. Each decision on a visit behind a glass partition must therefore be adopted taking into account the circumstances of each case. Institutions decide on such a visit mainly for the purpose of preventing the transfer of unpermitted objects or substances. We did not find this kind of irregularity during visits.

Just as with the number of visits, it is also important that they are not organised only during the week and during working time, as was the case for remand prisoners in ZPKZ Koper Nova Gorica Department and ZPKZ Maribor. Such an arrangement can be a serious difficulty for some visitors, especially those who are employed. Our proposals that remand prisoners as well as convicts should have visits at the weekend, according to the explanation of UIKS, will not be realisable because of staffing problems.

## **Kajenje**

Zavod je zavezan osebam na prestajanju kazni zapora omogočiti kajenje, primerno skrb pa nameniti tudi nekadilcem. Pri nameščanju zaprtih oseb v bivalne prostore jim mora biti zagotovljeno, da so kadilci ločeni od nekadilcev oziroma da so nekadilci skupaj s kadilci nameščeni samo, če s tem izrecno soglašajo. Nekadilcem je namreč treba zagotoviti spoštovanje njihove pravice, da niso proti svoji volji izpostavljeni škodljivim vplivom cigaretne dima. V zavodu je lahko dovoljeno kaditi le v kadilskih sobah in zunaj, ne pa tudi na hodnikih, delovišču ali v drugih skupnih prostorih.

Ugotovili smo, da zavodi načeloma skrbijo za spoštovanje določil Zakona o omejevanju porabe tobačnih izdelkov, a želje nekadilcev ne morejo dosledno upoštevati. Ob obiskih smo tudi opazili (sami ali pa so se glede tega pritoževale zaprte osebe), da nekateri posamezniki, ne glede na hišni red, kadijo tudi tam, kjer ne bi smeli. Zavodi imajo težave z doslednim preprečevanjem takega početja, predvsem če kršitelji niso deležni ugodnosti, ki bi jim jih bilo mogoče odvzeti.

## **Higiena**

V zvezi z zagotavljanjem pripomočkov za osebno higieno in čiščenjem prostorov nismo prejeli veliko pritožb, le v PD Radeče in ZPKZ Maribor so nekateri mladoletniki oziroma zaprte osebe zatrjevale slabo kakovost čistilnih sredstev.

Smo pa zato morali zavode toliko bolj spodbujati, naj pripornikom zagotovijo pogostejšo možnost prhanja. V nasprotju z obsojenci se lahko priporniki v nekaterih zavodih večinoma prhajo le dvakrat na teden. Žal naši predlogi za pogostejše prhanje niso bili uresničeni. Največkrat smo dobili pojasnila UIKS, da prostorske in kadrovske razmere vsakodnevnega prhanja pripornikov pač ne omogočajo. Pogostejša možnost prhanja se pripornikom tako načeloma zagotavlja le, če delajo, telovadijo in pred odhodom na sodišče ali obiskom zdravnika.

## **Izobraževanje**

Možnosti za tovrstne izboljšave je še ogromno. Formalne oblike izobraževanja v zavodu so namreč omogočali le ZPKZ Koper, ZPKZ Ljubljana, Oddelek Novo mesto, ZPMZ in KZ Celje in PD Radeče. Drugi zavodi so omogočali vsaj neformalne oblike izobraževanja (npr. ZPKZ Ig), medtem kot ZPKZ Koper, Oddelek Nova Gorica, glede izobraževanja sploh ni imel organiziranih nobenih aktivnosti.

Tudi pri izobraževanju se je kot problematično pokazalo pomanjkanje paznikov. Zato so v nekaterih primerih (npr. ZPKZ Maribor) nastajale težave pri zagotavljanju obiskovanja izpitov v zunanjih izobraževalnih zavodih.

## **Prehrana**

V zvezi s prehrano smo ob obisku prejeli le malo pritožb. Največkrat je šlo za nekaj občasnega nezadovoljstva bodisi s količino bodisi z enoličnostjo hrane, vendar nismo ugotovili stanja, ki ne bi ustrezalo predpisanim standardom. Tudi v zvezi s prilagajanjem obrokov hrane glede na veroizpoved oziroma zdravstvene razloge, nekaterim pritožbam navkljub, nismo ugotovili nepravilnosti.

## **Smoking**

An institution is obliged to allow persons serving a prison sentence to smoke, and also to devote suitable care to non-smokers. In allocating prisoners to living quarters it must be ensured that smokers are separated from non-smokers or that non-smokers are only accommodated with smokers if they explicitly agree to this. The right of non-smokers not to be exposed to the harmful effects of cigarette smoke against their will must be respected. Smoking in an institution may only be allowed in smoking rooms and outside, and not also in corridors, workplaces or other common areas.

We found that, in principle, institutions took care of respect of the provisions of the Restricting the Use of Tobacco Products Act but they cannot consistently respect the wishes of non-smokers. We also noticed during visits (ourselves, or prisoners made complaints about this) that some individuals also smoke where they are not allowed to, irrespective of the house rules. Institutions have difficulties in consistently preventing such behaviour, mainly when the violators do not have benefits of which they can be deprived.

## **Hygiene**

We did not receive many complaints in connection with providing aids to personal hygiene and the cleaning of premises, only in PD Radeče and ZPKZ Maribor, some young people or prisoners claimed a poor quality of cleaning accessories.

We therefore had to encourage institutions to do more to provide remand prisoners with more frequent possibilities of showering. In contrast with convicts, remand prisoners in some institutions for the most part can only shower twice a week. Unfortunately, our proposals for more frequent showering were not realised. We usually received the explanation from UIKS that spatial and staffing conditions do not make possible daily showering of remand prisoners. More frequent possibility of showering is thus only provided to remand prisoners in principle if they work, exercise and prior to departure to the courts or visits to the doctor.

## **Education**

There are huge possibilities for improvement. Formal forms of education in institutions are only made possible in ZPKZ Koper, ZPKZ Ljubljana Novo mesto Department, ZPKZ and KZ Celje and PD Radeče. Most other institutions enabled at least informal forms of education (e.g., ZPKZ Ig), while ZPKZ Koper Nova Gorica Department had no organised activities in relation to education.

The lack of guards also appeared as a problem with education, so in some cases (e.g. ZPKZ Maribor) difficulties occurred in provided attendance at exams in external educational institutions.

## **Diet**

We received only a few complaints in connection with diet during visits. It was usually some occasional dissatisfaction with the amount or the monotony of food but we did not find conditions that did not meet prescribed standards. In connection with adapting meals in relation to beliefs or for health reasons, too, we did not find any faults, despite some complaints.

## 2. Obiski policijskih postaj

Z namenom, da se preveri ravnanje z osebami, ki jim je odvzeta prostost, in se opravi pregled prostorov za policijska pridržanja, smo obiskali 17 policijskih postaj. Ob obiskih smo ugotovili, da so bili policisti dobro seznanjeni z našimi nalogami in pooblastili, tako da je naše delo potekalo nemoteno, kar vsekakor pozdravljamo.

Vsi obiski policijskih enot so bili nenapovedani, opravljeni v dopoldanskem času oziroma zgodaj popoldne. Po vsakem obisku je bilo izdelano poročilo o ugotovitvah s priporočili in poslano na Ministrstvo za notranje zadeve (MNZ) in na policijsko postajo (PP), kjer je bil opravljen nadzor.

V času naših obiskov se na nobeni izmed obiskanih policijskih enot ni izvajalo pridržanje oseb, tako da so poročila nastala samo na podlagi pregleda prostorov in pogovora z vodstvom PP. MNZ se je redno odzivalo na naša poročila. V večini primerov je soglašalo z našimi ugotovitvami in zagotovilo, da so bile nekatere pomanjkljivosti že odpravljene oziroma da so predvidene skorajšnje izboljšave prostorov za pridržanje.

Ob prihodu na PP je skupina, ki so jo sestavljali predstavniki Varuha in ene ali obeh pogodbenih nevladnih organizacij, opravila pogovor z vodstvom PP (največkrat s komandirjem ali z dežurnim policistom) o izvajanju pridržanj in si ogledala vse prostore za pridržanje, vključno s pomožnimi prostori (prostori za sprejem, za tujce in za odvetnika, skladišče, prostor za sprehod), in intervencijska vozila, če so bila na PP v času obiska.

Ob ogledu prostorov za pridržanje smo se osredotočili predvsem na:

- to, ali je zagotovljena ustrezna svetloba (dnevna in umetna);
- to, ali je zagotovljena primerna temperatura in prezračevanje prostorov;
- označevanje prostorov;
- čistočo;
- opremljenost in velikost prostorov;
- sanitarije;
- dostop do pitne vode;
- oskrbo s hrano;
- video nadzor prostorov in klicno možnost;
- opremljenost prostorov z informacijami in brošurami o pravicah pridržanih oseb in možnost za gibanje na prostem.

Ogledu prostorov je sledil pogovor z vodstvom PP, v katerem smo podali prvo oceno primernosti prostorov za pridržanje in opozorili na morebitne opažene pomanjkljivosti ter pozdravili dobre rešitve. Ob vsakem obisku smo tudi pregledali dokumentacijo pridržanj naključno izbranih primerov (spisov), in sicer za pridržanja na podlagi zakonov o prekrških, o kazenskem postopku, o varnosti cestnega prometa, o policiji in o nadzoru državne meje. Pridobili smo tudi statistične podatke o številu pridržanih in zadržanih oseb na obiskanih PP v letu 2008 (od 1. 1. 2008 do dneva obiska).

## 2. Visits to police stations

In order to check the treatment of persons who had been detained, and to carry out an inspection of premises for police detention we visited 17 police units. During the visits we found that the police were well acquainted with our tasks and authorities so that our work took place undisturbed, which we certainly welcome.

All visits to police stations were unannounced, carried out in the morning or early afternoon. A report on the findings with recommendations was produced after each visit and sent to the Ministry of Internal Affairs (MIA) and to the police station (PS) in which monitoring had been performed.

At the time of our visits, none of the visited police stations held detainees so that the reports were made only on the basis of an examination of the premises and interviews with the leadership of the PS. MIA regularly responded to our reports. In the majority of cases, it agreed with our findings and assured us that some of the deficiencies had already been rectified or that improvements of the premises for detention were envisaged in the near future.

On arrival at the PS, the group, which consisted of representatives of the Ombudsman and one or both contracted non-governmental organisations, held discussions with the leadership of the PS (usually with the commander or the duty officer) on carrying out detention, and examined all premises for detention, including auxiliary premises (premises for reception, for aliens and for legal counsel, storehouses, exercise areas) and intervention vehicles if they were at the PS at the time of the visit.

During examinations of premises for detention we focused mainly on:

- whether suitable light was provided (daylight and artificial);
- whether suitable temperature and ventilation were ensured;
- marking of premises;
- cleanliness;
- fittings and size of premises;
- sanitary arrangements;
- access to drinking water;
- food supply;
- video monitoring of premises and possibility of (emergency) call;
- supplying premises with information and brochures on the rights of detained persons and possibility of exercise in the open air.

Examination of the premises was followed by discussion with the leadership of the PS, in which we gave an initial assessment of the suitability of the premises for detention and drew attention to possible observed deficiencies and welcomed good solutions. During each visit, we also examined the documentation of detention of randomly chosen cases (files), to wit for detention on the basis of the Violations Act, of the Criminal Procedure Act, Safety of Road Traffic Act, Police Act and Control of the State Border Act. We also obtained statistical data on the number of detained and arrested persons at visited PS in 2008 (from 1.1.2008 to the day of the visit).

## **Osnovni podatki o prostorih za pridržanje**

Število prostorov za pridržanje se razlikuje po postajah. PP imajo od enega do deset prostorov za pridržanje. Na nekaterih PP, ki smo si jih ogledali, teh prostorov sploh nimajo (imajo pa prostor za postopke s tujci) in tako za pridržanje uporabljajo prostore drugih policijskih enot. Večje število prostorov za pridržanje omogoča, da se nekateri prostori uporabljajo za krajša pridržanja (do 12 ur), drugi pa za daljša pridržanja (do 48 ur). Prostore za pridržanje na drugih PP uporabljajo tudi nekatere PP, ki imajo take prostore, vendar jih iz različnih razlogov ne uporabljajo (npr. nepravilnosti v zvezi s posteljami, prezračevanjem, dotokom vode idr.). Posledica tega je lahko tudi večurna vožnja pridržanih (ki je lahko zlasti za osebe pod vplivom alkohola še dodatno neprijetna), kar se kaže kot negospodarna rešitev, zato smo predlagali, naj se razlogi, ki preprečujejo uporabo prostorov za pridržanje, čim prej odpravijo.

Dostop do prostorov za pridržanje je v večini primerov mogoč neposredno čez dvorišče (z vozilom) ali mimo dežurnega policista; le na štirih PP so v kletnih prostorih in je zato dostop do njih mogoč (le) po stopnicah.

Prostori po velikosti ustrezajo standardom. Veliko prostorov (tako kot tudi 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 oznake prostorov ujemale z oznakami v uradnih zaznamkih.

## **Svetlost prostorov za pridržanje**

V večini primerov so bili prostori za pridržanje ustrezno svetli, na petih PP pa smo ugotovili, da prostori nimajo ustrezne dnevne in/ali umetne svetlobe. Naši predlogi so se pri umetni svetlobi zato nanašali za zagotovitev močnejših svetlobnih teles. MNZ je v odzivnih poročilih sporočilo, da bodo naši predlogi upoštevani.

Na eni PP so nam zatrdili, da so luči v prostoru za pridržanje stalno prižgane, ker v nasprotnem primeru video nadzor ni mogoč. Opozorili smo, da to lahko onemogoča normalen (nočni) počitek pridržani osebi, in predlagali, naj PP preveri, kako bi bilo mogoče to spremeniti.

## **Čistost**

PP imajo za čiščenje prostorov, vključno s prostori za pridržanje, običajno zaposleno čistilko oziroma sklenjeno pogodbo s čistilnim servisom. Z izjemo ene PP so bili prostori za pridržanje ob naših obiskih ustrezno čisti. PP smo predlagali, naj uredi težavo s čistočo in neprijetnimi vonjavami. V enem primeru smo opazili, da so stene prostora za pridržanje popisane in potrebne pleskanja, s čimer se je strinjalo tudi MNZ.

## **Oprema**

V večini primerov so prostori za pridržanje po velikosti namenjeni pridržanju do dveh oseb, vendar se le redko tudi dejansko uporabijo za pridržanje dveh oseb. Ležišča (običajno lesena) so opremljena s PVC-žimnicami, ki jih je mogoče tudi prati. Običajno dobi oseba ob prihodu posteljnino, drugače pa je ta shranjena v posebnem skladišču. Nekatera ležišča ob našem obisku niso bila opremljena z žimnicami. Ker mora biti osebi, ki je pridržana čez noč, zagotovljeno ustrezno ležišče, smo zato v takšnih primerih predlagali, naj policijska postaja zagotovi zahtevane žimnice. MNZ je pojasnilo, da nakup opreme, tudi žimnic, poteka po načrtu in postopno v vseh policijskih enotah.

### **Basic data on detention rooms (cells)**

The number of cells differed among PSs. PSs normally have from one to ten cells. At some PSs that we inspected, they do not have such rooms at all (but they have a room for procedures with aliens) and so they use the cells of other police stations for detention. A larger number of cells enables some cells to be used for short detentions (up to 12 hours) and others for longer detentions (up to 48 hours). Some PSs that have cells but for various reasons do not use them (e.g., inadequacies in connection with beds, ventilation, water outlets etc.) use cells at other PSs. This can result in a drive of several hours for detainees (which can be additionally unpleasant, especially in the case of persons under the influence of alcohol), which appears to be an uneconomic solution, so we proposed that the causes of the cells being unusable be rectified as soon as possible.

Access to cells in the majority of cases is possible directly across a courtyard (from vehicles) or past the duty officer: only at four PS are cells in the basement and so access to them is (only) possible by stairs.

Premises meet size standards. Many premises (as well as PS) are new, which is a result of the introduction of the Schengen system. In some cases, for the sake of easier and more transparent organisation of work and recording detention, we advised PS that cells should be marked numerically or markings corrected so that the designation of the cells corresponded to the designation in the official notices.

### **Lighting of cells**

In the majority of cases cells were suitably illuminated, but at five PS we found that cells do not have either suitable daylight or artificial light. Our proposals in the case of artificial light related to providing a stronger light body. In the responses to our reports, MIA reported that our proposals will be respected.

At one PS they asserted that the lights in cells are constantly switched on because video monitoring is otherwise not possible. We drew attention that this can prevent normal (night) rest of detainees and proposed that the PS should check on possibilities of changing this.

### **Cleanliness**

PS normally employ a cleaner or conclude a contract with a cleaning service for cleaning the premises, including cells. With the exception of one PS, the cells were adequately clean at the time of our visit. We proposed to this PS that the difficulty with cleaning and unpleasant smell be arranged. In one case, we noticed that the walls of cells had been written on and needed painting, with which MIA also agreed.

### **Fittings**

In the majority of cases, cells were intended in terms of size for the detention of two persons but only rarely were they used for the detention of two persons. Beds (normally wooden) were fitted with PVC mattresses which can also be washed. A person normally receives bedding on arrival, otherwise this is stored in a special storage place. Some beds were not fitted with mattresses at the time of our visit. Because a person who is detained overnight must be provided with a suitable bed we proposed in such cases that the PS should provide the required mattresses. MIA explained that the purchase of equipment, including mattresses, is taking place according to plan and gradually in all police units.

## **Sanitarije**

Sanitarije prostorov za pridržanje so bile v večini primerov ustrezno urejene. Prostorji so običajno opremljeni z WC-počepnikom z izplakovanjem v prostorih, ki so namenjeni krajšemu pridržanju, ali WC-školjko v prostorih za daljše pridržanje; pridržane osebe lahko splakovanje opravijo same.

## **Video in zvočni nadzor**

Večina prostorov za pridržanje je pod video nadzorom in opremljenih s klicnim zvoncem. V zvezi s tem smo opazili kar nekaj pomanjkljivosti, ki se nanašajo na opozorilo o nadzoru: to večkrat ni bilo nameščeno v prostorih, kjer se izvaja pridržanje, ali pa je bilo opozorilo o video nadzoru nameščeno zunaj prostorov, npr. na hodniku. Naš predlog, naj policijske postaje zagotovijo opozorilo (nalepko) tudi v prostorih za pridržanje, je MNZ sprejelo in zagotovilo, da bo to urejeno.

Da se lahko preverijo morebitne navedbe pridržanih ali zadržanih oseb o neprimernem ravnanju uradnih oseb z njimi, je potrebno, da so pod video ali zvočnim nadzorom tudi prostori za pogovore. Tudi Evropski odbor za preprečevanje mučenja in nečloveškega ali ponižujočega ravnanja ali kaznovanja je ob obiskih v Sloveniji pozval, naj se sprejmejo ukrepi, s katerimi se bo zagotovilo, da se bo elektronska oprema za snemanje policijskih pogovorov redno uporabljala. Kot je opozoril Odbor, je elektronsko snemanje (avdio in/ali video) policijskih pogovorov namreč pomembna dodatna varovalka zoper grdo ravnanje s pridržanimi osebami, ki lahko zagotovi popoln in avtentičen zapis postopka pogovora in s tem močno olajša preiskavo kakršnih koli trditev o grobem ravnanju. Zato smo ob obiskih opozarjali, da je video ali zvočni nadzor v interesu tako oseb, s katerimi naj bi policija grdo ravnala, kot policistov v primeru trditev, da so bili vpleteni v grdo ravnanje. Elektronsko snemanje policijskih pogovorov tudi zmanjšuje možnost, da bi pridržane osebe pozneje lažno zanikale, da so podale kakršne koli izjave.

## **Prehrana in voda**

Večina PP zagotavlja pridržanim osebam hrano v obliki t. i. lunch paketov, ponekod imajo tudi posebne za vegetarijance, kar je vsekakor pozitivno. Kar nekaj PP dostavlja toplo hrano iz bližnjih gostiln (zlasti v primeru pridržanj do 48 ur). V nekaj primerih smo ob obiskih opazili, da je lunch paketom že potekel rok uporabe, na kar smo sogovornike takoj opozorili. V izogib temu, da bi bil pri dodeljevanju hrane pridržani osebi ponujen paket s pretečenim rokom uporabe, smo poudarili, da je treba roke uporabe hrane redno preverjati in neuporabne pakete tudi ločiti od uporabnih. S predlogom se je strinjalo tudi MNZ.

Na nekaterih PP prostori za pridržanje nimajo tekoče vode, zato jo pridržanim dostavljajo policisti. Predlagali smo, naj se tudi to v doglednem času spremeni in pridržanim osebam omogoči stalen dostop do pitne vode.

## **Dokumentacija**

Pregled dokumentacije o pridržanju pri naključno izbranih primerih je pokazal, da je ta praviloma skrbno urejena. Nekatere policijske postaje so prav izstopale po skrbno urejeni dokumentaciji in zapisih vseh relevantnih okoliščin v zvezi s pridržanjem. Pri nekaterih pa smo opazili nekatere nepravilnosti:



### **Sanitary arrangements**

Sanitary arrangements for detainees were in most cases suitably arranged. Premises are normally fitted with crouch WCs with flushing mechanism in premises which are intended for shorter detentions or WC-basins in premises for longer detentions; detainees can flush them themselves.

### **Video and sound monitoring**

The majority of cells are under video monitoring and fitted with a call bell. In this connection, we noticed several deficiencies relating to a warning about the existence of monitoring; this was often not placed in the premises where detention is carried out, or the warning about video monitoring was placed outside the rooms, e.g., in the corridor. MIA accepted our proposal that PS should provide a warning (sticker) also in cells and assured us that this would be done.

In order to check possible claims by detained and arrested persons about their improper treatment by official persons, interview rooms need to be under video and sound monitoring. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, during its visit to Slovenia called for the adoption of measures to ensure that electronic equipment for recording police interviews be regularly used. As the Committee warned, electronic recording (audio and/or video) of police interviews is an important additional protection against brutal behaviour with detainees, which can provide a complete and authentic record of the procedure of interview and thus greatly alleviate investigation of any claims of brutal behaviour. During our visits, therefore, we drew attention that video or sound monitoring is in the interests both of persons whom the police are supposed to have treated brutally and the police in cases in which they are claimed to have been involved in brutal treatment. Electronic recording of police interviews also reduces the possibility of a detained person later falsely denying having made a particular statement.

### **Food and water**

The majority of PS provide detainees with food in the form of 'lunch packets', in some PS they also have such packets specially for vegetarians, which is certainly positive. A number of PS have hot food delivered from nearby restaurants (especially in the case of detention up to 48 hours). In some cases, we noticed during visits that the use-by date of lunch packets had already passed, to which we drew immediate attention. To avoid providing detainees packets with the use-by date expired when distributing food, we stressed that it is necessary to check the use-by date of food regularly and to separate unusable packets from usable ones. MIA also agreed with the proposal.

At some PS, cells do not have running water, so the police deliver it to detainees. We proposed this be changed in the foreseeable future and that detainees be given permanent access to drinking water.

### **Documentation**

An inspection of documentation on detainees in randomly chosen cases showed that this is generally carefully arranged. Some police stations stood out for their carefully arranged documentation and records of all relevant circumstances in connection with detainees. We noticed some irregularities at some PS:

- nedosledni uradni zaznamki o uri in številu ponujenih obrokov;
- neujemanje podatkov o pridržanju med računalniško evidenco in dejanskim krajem pridržanja (računalniška baza ne upošteva na novo ustanovljenih policijskih postaj);
- nepravilno popravljane podatkov na uradnih zaznamkih (s korektorjem), zaradi česar prvotno besedilo ni vidno;
- nepodpisane odločbe s strani policista ali pridržane osebe;
- ni zapisana ura, ko je bila pridržana oseba izročena delavcem zapora;
- oznaka prostora za pridržanje v dokumentaciji se ne ujema z dejanskimi oznakami prostora;
- nepravilno hranjena dokumentacija (ne zagotavlja se varstvo osebnih podatkov);
- odločba o pridržanju tujca ni izdana v zakonitem roku;
- sklep o pridržanju ne vsebuje časa vročitve;
- nepravilnosti pri izpolnjevanju obrazca JRM-3, na kar opozarjamo v poglavju *Policijski postopki* (pomankljiv računalniški obrazec).

V takšnih primerih smo opozorili na pomen skrbno vodene evidence, s čimer se je strinjalo tudi Ministrstvo za notranje zadeve v odzivnih poročilih. Prav je, da tudi računalniška evidenca vodi dejanske okoliščine posameznega primera, ne pa, da izkazuje podatke, ki niso točni.

Pri pregledu nekaterih naključno izbranih primerov smo opazili tudi skopo obrazložitev razlogov za pridržanje. Pridržana oseba ima pravico, da je pisno seznanjena z razlogi za pridržanje, kajti s tem se poseže v človekovo pravico, to je v pravico do osebne svobode. Zato poudarjamo, da odločitev o pridržanju zahteva navajanje in utemeljitev vsebinskih razlogov v vsakem posameznem primeru. Nujen je individualni pristop, ki je najbolj konkretiziran prav z izdajo obrazložene pisne odločbe. Prav tako ni dovolj le sklicevanje na zakonske razloge, v vsakem posameznem primeru je treba razloge za pridržanje izkazati konkretno in jih čim bolj utemeljiti.

### **Zdravstvena oskrba pridržanih oseb**

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

### **Intervencijska vozila**

Pri ogledu vozil smo v nekaj primerih ugotovili, da so v posebnem prostoru za prevoz oseb umazana tla in da nekatera vozila nimajo držal, ki zagotavljajo (večjo) varnost med prevozom.

### **Prostor za odvetnike**

PP imajo ali poseben prostor za odvetnike ali pa v ta namen uporabljajo druge prostore (prostor za sprejem, za zaslišanje). Seznam odvetnikov se vodi na intranetni strani Ministrstva za notranje zadeve, le nekaj PP ima seznam odvetnikov tudi v tiskani obliki v samem prostoru. Prostori so različno opremljeni z video ali zvočnim nadzorom. Kjer prostor ni opremljen s telefonom, je odvetnika mogoče poklicati iz prostora, namenjenega dežurnemu policistu.

### **Sprehajališča**

Vse PP nimajo posebnega sprehajališča za gibanje pridržane osebe na svežem zraku (zlasti v primeru daljših pridržanj), zato v ta namen uporabljajo dvorišče, temu primerno pa policisti zagotovijo spremstvo ali nadzor. Sicer so posebna sprehajališča primerno velika, razlikujejo pa se v pokritosti (nepokrita, delno pokrita, v celoti pokrita). Opremljena so z video in zvočnim nadzorom (ponekod je manjkalo opozorilo o video nadzoru), zagotovljeni so pepelniki, v večini primerov so bila tudi čista.

- inconsistent designation of the time and number of meals provided;
- discordant data on detention between computer records and the actual place of detention (computer databases are not taken into account in newly established PS);
- improper correction of data in official notices (with corrector) because of which the original text is not evident;
- detention orders not signed either by the police or by the detainee;
- the time not recorded when a detainee was handed over to prison staff;
- designation of cell in the documentation not corresponding to the actual markings of the cell;
- improper storage of documentation (not ensuring the protection of personal data);
- detention order for an alien not issued within the statutory time limit;
- decision on detention not containing the time of delivery;
- improprieties in completing form JRM-3, to which we draw attention in the section *Police Procedures* (incomplete computer form).

In such cases, we drew attention to the importance of carefully kept records, with which MIA agreed in responses to reports. It is right that a computer record be kept of the actual circumstances of an individual case, but not that it shows data that are not accurate.

In examining some randomly chosen cases, we also noticed sparsely reasoned reasons for detention. A detained person has the right to be acquainted in writing with the reasons for being detained, since this encroaches on a human right, the right to personal freedom. We therefore stress that an arrest order requires a statement and reasoning of the causes in each individual case. An individual approach is essential, which is most concretised precisely with the issue of a reasoned written order. Similarly, it is not enough only to refer to the statutory reason, in each individual case it is necessary to show the reasons for arrest specifically and as thoroughly grounded as possible.

### **Healthcare of detainees**

PS provide healthcare assistance by taking detainees to the nearest health centre with a 24-hour duty service, and in some places a physician comes to the PS.

### **Intervention vehicles**

In an examination of vehicles we found that in some cases the floor in the special area for the transport of persons was dirty and that some vehicles do not have handgrips that ensure (greater) safety during transport.

### **Room for legal counsel**

PS have either a special room for legal counsel or use other rooms for this purpose (reception room, interview room). A list of legal counsel is kept on the website of the Ministry of Internal Affairs; only a few PS also have a list of legal counsel in printed form at the place itself. Rooms are variously fitted with video or sound monitoring. Where a room is not fitted with a telephone, a legal counsel can call from the room intended for the duty officer.

### **Exercise areas**

Not all PS have a special area for the exercise of detainees in the fresh air (especially in the case of longer detentions) so they use for this purpose courtyards, and police provide suitable escort or monitoring. Special exercise areas are suitably large, but they differ in terms of cover (uncovered, partially covered, fully covered). They are equipped with video and sound monitoring (in places they lacked a warning about video monitoring), ashtrays are provided, and in the majority of cases they were also clean.

## Prostori za postopke s tujci

Večinoma so bili ti prostori primerno čisti in opremljeni, vključno s plakatom o pravicah pridržanih oseb in z brošuro v več jezikih ter raznimi zloženkami. Policijskim postajam, kjer tega nismo zasledili, smo predlagali, naj zagotovijo te plakate in brošure.

## Seznanjenost pridržanih oseb z njihovimi pravicami

Kot nam je zagotovilo MNZ, pridržano osebo o pravicah podrobneje seznanijo policisti med postopkom. V primeru tujcev, ki ne razumejo slovenskega jezika, policisti uporabljajo »rumene kartončke«, na katerih so zapisane pravice v več tujih jezikih.

Policija je pred leti izdala brošuro Obvestilo o pravicah osebe, ki ji je bila odvzeta prostost. Ta brošura na nekaterih obiskanih PP žal prevečkrat ni bila na mestu, kjer je najbolj potrebna, in tako je bilo včasih potrebno nekaj časa, da so policisti brošuro sploh našli.

Seznanjenost s pravicami se zagotavlja tudi s plakati, ki morajo biti nameščeni v prostorih, kjer se pridržane osebe zadržujejo največ časa. Če so plakati nameščeni le na hodniku, dvomimo, da je osebam omogočeno, da se seznanijo z njihovo vsebino.

Ob obiskih smo lahko še ugotovili, da plakati s pravicami pridržane osebe še vedno ne vsebujejo besedila o pravici do zdravnika po lastni izbiri, zato smo MNZ opozorili, da bi bilo treba vsebino ustrezno dopolniti. Ena izmed temeljnih pravic osebe, ki jo pridržijo policija, je namreč **tudi pravica do dostopa do zdravnika po lastni izbiri**. To pravico zagotavlja tudi drugi odstavek člena 44.a Zakona o policiji, ki določa, da ima pridržana oseba pravico, da jo na njene stroške pregleda zdravnik, ki ga sama izbere. Pridržana oseba mora biti o tej pravici tudi seznanjena. Tako bi moral tudi sklep o pridržanju (obrazec JRM-11), ki ga uporabljajo PP, vsebovati zapis, ali je bil kršitelj seznanjen s to pravico.

Od MNZ smo prejeli odgovor, da so na plakatu zapisane pravice, s katerimi morajo policisti seznaniti pridržano osebo ob odvzemu prostosti. S pravicami (npr. s pravico do zdravnika po lastni izbiri, do pitne vode) so pridržane osebe seznanjene tudi pri izpolnjevanju uradnega zaznamka o pridržanju in z brošuro.

Tudi Evropski odbor za preprečevanje mučenja in nečloveškega ali ponižujočega ravnanja ali kaznovanja je ob obisku v letu 2006 izrecno opozoril na obveznost, da se sprejmejo ukrepi, s katerimi bi zagotovili, da se informacije o pravicah sistematično posreduje vsem osebam, ki jih pridržijo policija, od trenutka, ko jim je odvzeta prostost. Odbor je še opozoril, da letak z informacijami, ki se ga izroča pridržanim osebam ali je obešen v prostoru za pridržanje, ne navaja pravice o dostopu do zdravnika. Hkrati je priporočil, da se sprejmejo ukrepi, s katerimi se ta pomanjkljivost odpravi. Policija je v zvezi s tem že sporočila, da bo plakat ob ponatisu dopolnjen s priporočili Odbora glede zapisa o pravici do dostopa do zdravnika po lastni izbiri, zato predlagamo, naj policija to priporočilo (čim prej) tudi izpolni.

## Pritožbene poti

Policijske postaje imajo različno urejene pritožbene poti. Na tem mestu bi izpostavili policijsko postajo Ormož kot primer dobre prakse: dostop do nabiralnika, namenjenega pritožbam in pohvalam strank, ima le posebna komisija Policijske uprave (poseben ključ), tako da lahko stranke oddajajo pritožbe in pohvale neodvisno od delavcev PP.

### **Rooms for procedures with aliens**

For the most part these rooms were adequately clean and equipped, including with posters about the rights of detainees and brochures in several languages and various leaflets. We proposed to police stations where we did not find these that they should provide such posters and brochures.

### **Acquainting detainees about their rights**

We were assured by MIA that during the procedure detained persons are acquainted in detail of the rights of arrested persons. In the case of aliens who do not understand Slovene, the police use »yellow cards« on which are written rights in several foreign languages.

A few years ago, the police published a brochure, Information on the Rights of Persons Who Have Been Deprived of Liberty. At some visited PSs, unfortunately, this brochure was not in the place where it was most necessary and so it sometimes took some time for the police to find the brochure at all.

Information on rights is also provided by posters, which must be placed in rooms in which detainees are held for the longest time. If these posters are only placed in corridors, we suspect that persons are prevented with being informed of their rights.

During visits, we also found that posters giving the rights of arrested persons still do not contain text on the right to a physician of choice, so we drew the attention of MIA that it is necessary appropriately to supplement the contents. One of the basic rights of persons arrested by the police, namely, is the right to access to a physician of one's own choice. This right is also guaranteed by Article 44a of the Police Act, which determines that an arrested person has the right at their own expense to an examination by a physician whom they choose themselves. An arrested person must also be informed of this right. So the arrest order (form JRM-11) which PS use should also contain a note of whether a violator has been informed of this right.

We received the answer from MIA that the rights with which the police must inform an arrested person at the time of arrest are written on a poster. Arrested persons are also informed of their rights (e.g., the right to a physician of their own choice, to drinking water) in filling out the official record of arrest and with a brochure.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, during a visit in 2006, also drew explicit attention to the obligation to adopt measures by which it is guaranteed that information on rights is systematically communicated to all persons arrested by the police, from the moment of being deprived of liberty. The Committee additionally drew attention that the leaflet with information which is handed to arrested persons or is hung in detention rooms does not state the right to access to a physician. It recommended at the same time that measures be adopted by which this deficiency be rectified. In this connection, the police have already reported that, at the time of reprinting the poster, it will be supplemented with the recommendations of the Committee in relation to a note on the right to access to a physician of their own choice, so we propose that the police should also fulfil this recommendation (as soon as possible).

### **Appeal paths**

Police stations have various appeal paths arranged. In this place we would highlight Ormož police station as an example of good practice: only a special commission of the Police Administration has access (a special key) to a postbox intended for complaints and favourable comments of parties, so that parties can make complaints and favourable comments independent of the PS staff.

### 3. Obisk Centra za tujce Veliki otok pri Postojni

Ob obisku Centra za tujce je bilo ugotovljeno, da prostorske zmogljivosti centra presegajo potrebe. Glede na to, da je to zavod zaprtega tipa, smo bili zadovoljni z ugotovitvijo, da je tujcem zagotovljeno najmanj dvournno bivanje na svežem zraku, družine in otroci pa imajo možnost neomejenega gibanja. Opozorili pa smo, da so potrebni dodatni pokriti prostori, saj sta ob zdajšnjih kapacitetah bivanje na svežem zraku in rekreacija v primeru slabega vremena omejena. Ob obisku smo podali tudi več priporočil za izboljšanje stanja. Tako smo opozorili, da bi bilo treba poskrbeti za ureditev in organizacijo organiziranih aktivnosti; tujci so kot težavo namreč pogosto navajali brezdelje in dolgčas.

Ob obisku je bilo slišati pritožbe tujcev glede vrste in količine hrane; ta naj ne bi bila dovolj raznovrstna, obroki pa so premajhni. Tako smo predlagali, naj se poskrbi za raznovrstno in kakovostno hrano, treba pa je razmisliti tudi o potrebi po še eni večerni malici, saj po večerji ob 18.00 tujci ne dobijo nobene hrane več.

Posebna pozornost velja očitkom tujcev o grdem ravnanju nekaterih zaposlenih v Centru ter o besedah in ravnanjih, ki jih tujci razumejo kot ponižujoče in žaljive. Opozorili smo, da morajo biti zaposleni Centra skrbno izbrani in usposobljeni za delo, ki ga opravljajo, da zmorejo s primernim komuniciranjem in človeškim odnosom vsakodnevne napetosti zmanjšati in tako prispevati k boljšemu počutju in varnosti vseh, ki so v centru nastanjeni ali tam opravljajo svoje delo.

Prostori in sanitarije Centra so bili ob obisku čisti in urejeni. Nekateri tujci so zaprosili za dodaten TV-sprejemnik (na vsakem oddelku imajo enega) in tudi Varuh je predlagal, da se preučijo možnosti za zagotovitev dodatnih TV-sprejemnikov, saj so ti osnovni vir informacij za tujce iz različnih držav in kulturnih ter jezikovnih okolij (do svetovnega spleta in drugih, npr. tiskanih medijev v svojem jeziku tujci nimajo dostopa), obenem pa to ne bi smela biti posebna finančna obremenitev centra.

Ob obisku ni bilo opaziti zloženk z informacijami, ki bi bile na voljo tujcem. Tujci so se tudi pritožili, da ne vedo, koliko časa bodo še v Centru, kaj je z njihovimi postopki in zaradi katerih razlogov so še v Centru. Zato smo opozorili, da bi bilo treba tovrstne zadeve nujno urediti in tujcem dati na voljo vse relevantne informacije, ki bi jim bolj pojasnile ali olajšale bivanje v centru.

Hkrati smo še predlagali, da se rešijo pritožbe tujcev zaradi prepovedi uporabe mobilnih telefonov in na možnost podaljšanja trajanja obiskov, saj stiki z zunanjim svetom tudi prispevajo k boljšemu počutju nastanjenih tujcev. Znova smo tudi opozorili, naj bo uporaba prisilnih sredstev le skrajni ukrep za zagotovitev reda in discipline v centru in naj se policiste opozarja, da smejo prisilna sredstva uporabiti le, če je to res nujno.

### 3. Visit to the Centre for Aliens Veliki otok by Postojna

During the visit to the Centre for Aliens, it was found that spatial capacities of the centre exceed need. In view of the fact that the institution is a closed type, we were satisfied with the finding that aliens are provided with at least two hours in the open air, and families and children have the possibility of unlimited movement. However, we drew attention that additional covered space is needed, since with current capacities exercise and recreation in the fresh air are limited in the case of bad weather. During the visit, we also made a number of recommendations for improving conditions. We thus drew attention that it is necessary to ensure the arrangement and organisation of organised activities; aliens, namely, often stated as a difficulty idleness and boredom.

During the visit, complaints were heard from aliens in relation to the type and quantity of food; there was said to be not enough diversity and the portions were too small. We thus proposed that the diversity and quality of food is ensured and it is necessary to think also of the need for another evening snack, since in the evening they do not receive any food after 18.00.

Special attention was paid to a reproach by aliens of unpleasant treatment from some employees in the centre and of words and treatment which aliens understand as degrading and insulting. We drew attention that staff of the centre must be carefully chosen and trained for the work that they perform, that they must use suitable communication and a humane attitude in order to reduce daily tension and thus contribute to a better feeling and security of all accommodated in the centre or performing their work there.

The rooms and sanitary facilities of the centre were clean and arranged at the time of the visit. Some aliens asked for an additional television set (there is one in each department) and the Ombudsman also proposed that the possibility be studied for ensuring additional TV sets, since these are a basic source of information for aliens from different countries and cultural and language environments (aliens do not have access to the internet and other, for example printed, media in their own language) and at the same time this should not be a particular financial burden for the centre.

During the visit, we did not observe leaflets with information available to aliens. The aliens also complained that they do not know how long they will be in the centre, what is the situation with their procedure and for what reasons they are in the centre. We therefore drew attention that it is urgently necessary to arrange these matters and make available to aliens all relevant information which would better explain or alleviate residence in the centre.

At the same time, we additionally proposed that the complaints of aliens be resolved in relation to a ban on the use of mobile phones and the possibility of extending the duration of visits, since contacts with the outside world also contribute to a better feeling of the accommodated aliens. We also again drew attention that the use of coercive means should be only an extreme measure for ensuring order and discipline in the centre and that the police should be warned that they may only use coercive means if this is really necessary.

## 4. Obisk azilnega doma

Glavni namen obiska je bil preveriti ravnanje s tujci, ki so izrazili namen vložiti prošnjo za mednarodno zaščito in so nameščeni v sprejemih prostorih, ter ravnanje s prosilci za mednarodno zaščito (prosilci), ki jim je omejeno gibanje v oddelku za omejevanje gibanja (zaprti oddelek).

Ugotovili smo, da so prostorske zmogljivosti azilnega doma (AD) ustrezne, da so prostori primerni in lepo urejeni, da je za osebno higieno prosilcev dobro poskrbljeno ter da so odnosi med prosilci in osebjem AD korektni. Prosilci z začasno omejitvijo gibanja niso več omejeni na gibanje v zaprtem oddelku, temveč se na območju AD gibajo prosto. Prosilcem so zagotovljeni trije obroki hrane na dan, prilagojeni posamezniku, otrokom pa še dopoldanska in popoldanska malica.

Pomanjkljivosti, ki bi jih bilo treba odpraviti, se nanašajo na potrebe po boljši obveščeni prosilcev, dostopu do sodobnih komunikacijskih sredstev, širšem zagotavljanju psihosocialne pomoči ter vodenju uradnih evidenc v primerih izreka ukrepa omejitve gibanja. Opozorili smo, da bi morali biti dnevni jedilniki in razporedi dejavnosti objavljeni ne le v slovenščini, ampak v vsaj še enem, prosilcem najpogosteje razumljivem jeziku (razporedi dejavnosti so že zdaj delno prevedeni v angleščino ali srbsščino, ne pa vsi). Tudi predpisi s področja azila bi morali biti na voljo prosilcem v njim razumljivem jeziku.

Tudi zdravstvena in psihosocialna oskrba bi morala biti prosilcem zagotovljena ne le v jutranjem, ampak tudi v popoldanskem času, ko socialnih delavcev ni v AD (takrat so v AD navzoče le nevladne organizacije, ki izvajajo razne družbene, kulturne in psihosocialne dejavnosti). Hkrati bi bilo treba zagotoviti boljšo dostopnost do psihiatra v AD.

Prosilce za azil (zlasti mlajše in tiste, ki jim je bil izrečen ukrep omejitve gibanja na območje AD) zelo moti, da nimajo možnosti dostopa do svetovnega spleta in elektronske pošte, zato bi bilo nujno vsem zainteresiranim prosilcem zagotoviti dostop do svetovnega spleta, ki ne bi bil vezan na tisto računalniško omrežje, ki ga uporabljajo zaposleni AD (zaradi varnosti uradnih in osebnih podatkov v tem omrežju).

Na vse pritožbe prosilcev bi moral biti dan pisni odgovor in bi se o tem morala voditi posebna evidenca.

Glede ukrepa omejitve gibanja se mora zagotoviti: prvič, da se na zapisniku o ustnem izreku ukrepa omejitve zapiše tudi ura (ne le datum), ko je bil ukrep prosilcu ustno naznanjen, na vročilnici pa naj se prav tako zapiše ura, ko je bil pisni odpravek sklepa tudi dejansko vročen; drugič, na zapisniku o ustnem izreku omejitve gibanja naj se evidentira navzočnost ali odsotnost tolmača; tretjič, kopije spisov naj vsebujejo vse listine, ki so podlaga za ugotavljanje pravilnosti vročenja sklepa o omejitvi gibanja.



#### 4. Visit to the asylum hostel

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 (applicants) whose movement is restricted in the department with restricted movement (closed department).

We found that the spatial capacities of the Vič asylum hostel (AH) are adequate, that the rooms are suitable and well-arranged, that the personal hygiene of applicants is well catered for and that relations between applicants and AH staff are correct. Applicants with temporary restriction of movement are no longer restricted to movement within the closed department but move freely within the area of the AH. Applicants are given three meals a day, adapted to the individual, and children additional morning and afternoon snacks.

Deficiencies that need to be rectified relate to the need for better information for applicants, access to contemporary means of communication, wider provision of psycho-social help and keeping official records in cases of ordering a restriction on movement. We drew attention that the daily menu and schedule of activities should be published not only in Slovene but in at least one other language most often understandable to applicants (schedules of activities are already partly translated into English or Serbian, but not all). Regulations in the sphere of asylum should also be available to applicants in a language they understand.

Healthcare and psychosocial care should be provided to applicants not only in the morning but also in the afternoon, when social workers are not in the AH (at that time, only non-governmental organisations are present in the AH, who carry out various social, cultural and psychosocial activities). At the same time, it is necessary to provide better access to a psychiatrist in the AH.

Asylum applicants (especially younger ones and those who have been ordered restricted movement within the area of the AH) are very upset that they do not have the possibility of access to the internet and e-mail, so it is urgent to provide for all interested applicants access to the internet which is not connected to the computer networks that AH staff use (for the safety of official and personal data in these networks).

There should be a written answer the same day to all complaints of applicants and special records should be kept of this.

In relation to the measure of restriction of movement, it must be ensured: first, that in the record of the oral sentence of the measure of restriction is noted also the time (not just the date) when the measure was orally announced to the applicant, and on the note of delivery should similarly be noted the time at which the written dispatch of the decision is actually served; second, in the record of the oral sentence of the measure of restriction of movement should be recorded the presence or absence of an interpreter; third, copies of files should contain all documents that are the basis for ascertaining the correctness of serving decisions on restriction of movement.

## 5. Obiski psihiatričnih bolnišnic

Obiskali smo psihiatrični bolnišnici Ormož in Begunje. Obiskali smo tudi psihiatrično bolnišnico Vojnik, vendar so pri tem obisku predstavniki nevladnih organizacij sodelovali le v vlogi opazovalcev, saj je bil obisk opravljen še pred začetkom izvajanja nalog državnega preventivnega mehanizma. Nekatere od predstavljenih ugotovitev se tako nanašajo tudi na to bolnišnico.

Ob obiskih smo ugotavljali, da so nekatere sobe v bolnišnicah (pre)velike, z večjim številom postelj. Takšne sobe posamezniku ne zagotavljajo dovolj zasebnosti in bivanje v njih nedvomno ni prijetno. Varuh zato spodbuja ureditev sob z manj posteljami, če prostorski pogoji in arhitekturne rešitve to omogočajo.

Na varovanih oddelkih psihiatričnih bolnišnic velikokrat tudi ni bilo primernih prostorov, ki bi posamezniku ob obisku zagotavljali zasebnost. Obiski se tako izvajajo na hodniku, v jedilnici oziroma dnevnem prostoru, tudi v sobah, kar je moteče za druge paciente.

Zaznali smo tudi kadrovsko stisko glede zdravnikov. Teh velikokrat ni dovolj, zato si bolnišnice pomagajo tudi z zaposlovanjem zdravnikov iz tujine. V eni izmed bolnišnic je stanje že tako kritično, da na ženskem oddelku ob našem obisku sploh ni bilo zdravnika. Posebej skrb zbujajoča pa je bila navedba, ki smo jo med pogovorom ujeli od enega izmed zaposlenih. Razumeli smo namreč, da zdravnik nima dnevnega stika s pacienti, razen če sam presodi nujnost tega srečanja. Tako naj bi bil edini zanesljiv stik med zdravnikom in pacientom le ob tedenskih vizitah. Takšno ravnanje nedvomno pomeni omejenost dostopa do zdravnika, kar je po našem prepričanju nedopustno.

Pritožbene poti so velikokrat izdelane zelo ohlapno, največkrat se najde nekaj določb o tej možnosti le v hišnem redu. Pacienti so z njimi (pre)slabo seznanjeni, saj jih praviloma ni na oglasnih deskah, tudi nabiralnikov za anonimno oddajo pritožb velikokrat ni. Zato smo predlagali, naj se na oglasnih deskah oddelkov ali na skupni oglasni deski (in ob tem posebej na oglasni deski varovanega oddelka) obesita hišni red in pojasnila o obravnavi morebitnih pritožb ter pohval pacientov in svojcev. Predlagali smo še, naj se na istem mestu obesi tudi zloženka s predstavitvijo bolnišnice in da se na varovanih oddelkih namesti nabiralnik, ki bo omogočal (tudi) anonimno oddajo pritožb. Morebiti pacienti na tem oddelku ne bodo sposobni svoje pritožbe zapisati, kljub temu je prav, da se jim omogoči možnost anonimne oddaje pritožbe.

Posebna težava v psihiatričnih bolnišnicah so forenzični pacienti, saj so tako oni sami kot pazniki, ki jih varujejo, moteči za druge paciente, pomenijo pa tudi veliko finančno breme. Tako je bila v obeh obiskanih bolnišnicah posebej izpostavljena potreba po vzpostavitvi forenzične bolnišnice.

V eni od obiskanih bolnišnic spodbujajo preoblačenje v dnevna oblačila tudi na varovanih oddelkih, v drugi pa dosledno zahtevajo pižame tudi čez dan. Pozdravljamo možnost, da bolniki lahko uporabljajo svoja oblačila, po potrebi pa jim oblačila zagotovita Rdeči križ ali Karitas. Menimo namreč, da dnevna oblačila pripomorejo h krepitvi človekove osebnosti in samozavesti ter so tako nedvomno pomemben element, ki prispeva h kakovosti bivanja.

## 5. Visits to psychiatric hospitals

We visited Ormož and Begunje psychiatric hospitals. We also visited Vojnik psychiatric hospital but for this visit representatives of non-governmental organisations cooperated only in the role of observers since the visit took place prior to the start of them implementing the tasks of national preventive mechanism. Some of the findings presented thus also refer to this hospital.

During the visits we found that some rooms in the hospitals are (too) large, with a large number of beds. Such rooms do not provide an individual with enough privacy and living in them is undoubtedly unpleasant. The Ombudsman thus encourages an arrangement of rooms with fewer beds if spatial conditions and architectural solutions enable this.

There were also often not suitable premises in secure departments of psychiatric hospitals which would provide individuals privacy during visits. Visits thus take place in corridors, in the dining room or dayroom, even in patients' rooms, which is disturbing for other patients.

We also noted staffing pressures in relation to physicians. There are often insufficient of these, so hospitals resolve the problem by employing physicians from abroad. In one of the hospitals, the situation is so critical that there was no physician at all for the women's department at the time of our visit. Especially worrying was the claim that we caught during discussions from one of the staff. We understood, namely, that a physician does not have daily contact with patients, unless he or she judges such a meeting to be necessary. Thus the only reliable contact between physician and patients would be during the weekly visits. Such behaviour undoubtedly means a limitation on access to a physician, which in our opinion is impermissible.

Complaint paths are often made very loosely, some provisions on these possibilities are usually found only in the house rules. Patients are badly acquainted with them since they are not generally on notice boards, and there was often even no postbox for the anonymous handing in of complaints. We therefore proposed that the house rules and an explanation of the handling of possible complaints and commendations from patients and their families should be hung on the notice boards of departments or on a common notice board (and in that case individually on the notice board of secure departments). We also proposed that a leaflet should be hung in the same place with a presentation of the hospital and that in secure departments a postbox be placed which will enable (also) anonymous handing in of complaints. It may be that patients in such a department will not be capable of writing their own complaints, but it is nevertheless right that there is the possibility of handing in anonymous complaints.

Forensic patients are a particular difficulty in psychiatric hospitals, since they themselves and those who guard them are disturbing for other patients, and they are also a major financial burden. In both visited hospitals therefore the need was especially highlighted for the establishment of a forensic hospital.

In one of the visited hospitals, they encourage changing into day clothes also in secure departments, in the other they consistently require pyjamas during the day, too. We welcome the possibility of patients using their own clothing and as necessary, the Red Cross or Karitas providing clothing. We believe that dressing during the day contributes to strengthening human personality and self-confidence and they are thus undoubtedly an important element that contributes to the quality of life.

Ugotovili smo zelo različno prakso glede nadzora fiksiranih pacientov. Ponekod zagotavljajo stalen fizični nadzor, drugod le občasnega, skozi (odprta) vrata sobe. Zato smo opozorili, da je to neprimerno tudi za fiksirano osebo, saj je takšna oseba v stiski, ko ga gledajo drugi pacienti, poleg tega je lahko prizadeto tudi njeno dostojanstvo.

Ob obiskih smo ugotovili, da bolnišnice v obvestilih sodišču običajno navedejo le datum, ko je bila oseba pridržana, ne pa tudi ure začetka pridržanja. Opozorili smo, da bi bilo treba v obvestilih navesti tudi uro, saj se le tako lahko izkazuje spoštovanje 48-urnega roka, ki ga ZNP določa za obvestilo sodišču.

Ugotovili smo primere, ko so bolnišnice ob sprejemu na varovani oddelek s privolitvijo pacienta sprejele le ustno soglasje. V tej zvezi smo predlagali pripravo posebnega obrazca, ki ga pacient podpiše in v katerem je naveden tudi pouk pacientu, da to soglasje lahko kadar koli prekliče.

V eni izmed bolnišnic so posebej opozorili na razlike med odločitvami sodišča in mnenjem lečečih zdravnikov o potrebnosti zdravljenja na varovanem (zaprtem) oddelku. Bolnišnica se trudi, da bi zdravljenje potekalo v korist pacienta, ob tem pa je v določenih primerih posledica prehitre premestitve na odprti oddelek odhod pacienta iz bolnišnice. Takšni pacienti lahko povzročijo kaznivo dejanje, kar precej zaplete nadaljnje zdravljenje (v bolnišnico ga vrnejo vkljenjenega, v kazenskem postopku mu je izrečen varnostni ukrep psihiatričnega zdravljenja v zdravstvenem zavodu). Te navedbe je potrdil tudi oddelčni zdravnik na enem od obiskanih moških sprejemnih oddelkov. Pojasnil je, da sodišče v postopku le redko zasliši lečečega zdravnika, ravno tako tudi starše oziroma svojce pridržane osebe (čeprav bi jih po Zakonu o nepravdnem postopku morale).

Ena izmed bolnišnic je posebej izpostavila težave pri vročanju sklepov pacientom. Sklepe vroča vsem pridržanim osebam, razen tistim redkim, pri katerih bi vročitev lahko negativno vplivala na potek zdravljenja, ter v primerih, ko se pri bolniku izvaja posebni varovalni ukrep ali ko je pod močno medikamentozno terapijo. V teh primerih sklep vroči, ko je bolnik sodno pisanje sposoben sprejeti in razumeti. Opozorili smo, da je takšno ravnanje napačno oziroma zanj ni zakonske podlage. Seveda se zavedamo, da je določenim osebam odločitev sodišča dejansko morda nemogoče vročiti, saj je možno, da oseba ni sposobna sprejeti odločitve, podpisati vročilnice ali sploh razumeti vsebine sodne odločbe. Zato bi bilo primerno, da bi zakon posebej uredil primere, ko nekomu odločitev sodišča ni mogoče vročiti. Predvsem bi moral določiti, kdo je pristojen za takšno odločitev in kako na splošno ravnati v takšnem primeru. Ob tem ugotavljamo, da tudi Zakon o duševnem zdravju, ki je bil v tem času sprejet, ni uredil odprtih vprašanj glede (ne)vročanja sklepov pacientom. Kljub vsemu za začasno ali trajno nevročitev sodne odločbe pacientu ne moremo ugotoviti pravne podlage in je torej ravnanje bolnišnice, ko sklepa ne vroči, nezakonito.

We found very different practice in relation to the monitoring of immobile patients. In some places permanent physical monitoring is provided, elsewhere only occasional, through the (open) door of the room. We therefore drew attention that this is also unsuitable for immobile persons, since such a person is under pressure when other patients look at them, and their dignity can also be affected.

We found during visits that when informing the courts normally only the date when a person was detained is stated, but not also the hour of detention. We drew attention that it is necessary to state also the hour in such notifications, since only thus can the 48-hour time limit for informing the courts specified by ZNP be respected.

We found cases in which hospitals accepted only oral consent at the time of acceptance into a secure department with the consent of the patient. In this connection we proposed the preparation of a special form which the patient signs and in which the patient is also informed that this agreement may be revoked at any time.

In one of the hospitals, they drew particular attention to differences between court rulings and the opinion of the treating physicians on the need for treatment in a secure (closed) department. The hospital strives that treatment should take place to the benefit of the patient but, at the same time, in certain cases the consequence of an overhasty allocation to an open department is that the patient leaves. Such patients can commit criminal offences, which considerably complicates further treatment (they return to the hospital under restraint and the measure of compulsory treatment is handed down in the criminal proceedings). The departmental physician in one of the visited men's reception departments confirmed this assertion. He explained that the courts only rarely examine the attending physician in a proceeding and, similarly, also the parents or family of a detained person (although under the Non-litigious Procedure Act they should).

One of the hospitals highlighted in particular the difficulty in serving court rulings on patients. A ruling is served on all detained persons, except rare cases in which doing so could have a negative impact on the course of treatment, and in cases when special security measures are introduced for a patient or when the patient is under strong medicinal therapy. In such cases, the ruling is served when the patient is capable of receiving and understanding court papers. We drew attention that such behaviour is mistaken, or that there is no statutory basis for it. We are, of course, aware that it is perhaps actually not possible to serve court decisions on certain persons, since a person may not be capable of accepting the decision, signing the delivery note or in general understanding the content of a court ruling. It would therefore be appropriate that the law regulate specifically cases in which it is not possible to serve court rulings on a person. It should above all specify who is competent to take such a decision and in general how to behave in such a case. In addition, we find that the Mental Health Act that was adopted at this time did not regulate open questions in relation to the (non)serving of rulings on patients. Nevertheless, we cannot find a legal basis for the temporary or permanent non-serving of court rulings on patients and the behaviour of hospitals when they do not serve rulings is unlawful.

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

V okviru izvajanja nalog in pooblastil državnega preventivnega mehanizma smo v letu 2008 obiskali štiri domove za starejše (Sončni dom Maribor, dom starejših občanov Ljubljana Šiška, Pegazov dom v Rogaški Slatini in dom Petra Uzarja Tržič) in dva posebna socialnovarstvena zavoda (dom Nine Pokorn, Grmovje, in zavod Hrastovec - Trate).

Vsi obiski domov za starejše so bili nenapovedani. Po vsakem obisku je skupina, ki so jo sestavljali predstavniki Varuha človekovih pravic RS in ene ali obeh pogodbenih nevladnih organizacij, pripravila poročilo o svojih opažanjih in priporočilih ter ga posredovala domu, kjer je bil opravljen obisk in v nekaterih primerih tudi Ministrstvu za delo, družino in socialne zadeve. Domovi na naše ugotovitve niso imeli pripomb, seznanili pa so nas z nekaterimi aktivnostmi, ki so jih v domu načrtovali v zvezi z našimi priporočili.

Ob prihodu v dom se je skupina najprej pogovorila z vodstvom doma, temu je sledil ogled varovanih oddelkov ter drugih prostorov doma in ponovni pogovor z vodstvom, kjer smo jih seznanili z ugotovitvami in pripombami ali pohvalami, ogledali pa smo si tudi evidence nekaterih namestitvev na varovanem oddelku in statistične podatke.

V nadaljevanju se glede ugotovitev iz teh obiskov predvsem osredotočamo na varovane oddelke.

### Ogled varovanih oddelkov

Na teh oddelkih smo si posebej pogledali, kakšna je možnost dostopa na varovani oddelok. Eden od obiskanih domov ima varovanje oddelka urejeno z vrati, ki se odpirajo na kodo, kar omogoča nemoteno prehajanje na oddelok in z oddelka vsem, razen varovancem (ti vrat s kodo ne zmorejo odpreti zaradi svojega zdravstvenega stanja). Drugi od obiskanih domov ima na notranji strani vrat bunko, ki jo je treba zavrteti, da se vrata odprejo. V tretjem varovani oddelok od glavnega stopnišča razmejujejo rešetke, ki jih srečujemo le v zaporih. Prehod zato ne deluje prijetno in nepotrebno poudarja, da je na tem oddelku svoboda gibanja omejena. Sprejeli smo pojasnilo direktorja, da so z zaprtjem stopnišča omogočili povezavo sob in skupnih prostorov, ki so v hodnikih levo in desno od omenjenega stopnišča, vendar smo menili, da bi dom moral poiskati ustrežnejšo rešitev in prehod zapreti na bolj prijazen način. Tudi vrata obeh hodnikov na nadstropju so bila ob našem obisku prevezana kar z vrvjo, verjetno zato, ker so očitno bolj ali manj vedno odprta in bi se v nasprotnem primeru samodejno zaprla. Zato smo predlagali, naj se najde drugačna rešitev (npr. namestitev opornika). V odzivnem poročilu nam je dom v zvezi s tem sporočil, da gre pri rešetkah za arhitekturni element stopnišča, namenjene pa so prehajanju naravne svetlobe, zraka in večjega vidnega polja.

Drug način za dostop do oddelka v tem domu je z dvigalom. Vendar se je pri tem pokazala težava pri njegovi uporabi. Za priklic dvigala v nadstropje se namreč zahteva pritisk dveh gumbov hkrati (namen te ureditve je, da se varuje dementno osebo, ki tega ne zmore), po drugi strani pa je z njim lažje zapustiti oddelok, kar teoretično omogoča, da varovana oseba zapusti oddelok z dvigalom, ne more pa se vanj vrniti. Zato smo predlagali, naj se ta ureditev spremeni. Dom je v zvezi s tem odgovoril, da bodo s serviserji preučili možnosti za spremembo sistema delovanja dvigala.

## 6. Visits to homes for the elderly and special social security institutions

Within the framework of carrying out tasks and authorities of the national preventive mechanism, in 2008 we visited four homes for the elderly (Sončni dom Maribor, Ljubljana Šiška Old People's Home, Pegazov dom in Rogaška Slatina and the Petra Uzarja Home Tržič) and two special social security institutions (Nine Pokorn Home, Grmovje, Hrastovec Institute - Trate).

All visits to homes for the elderly were unannounced. After each visit, the group, which consisted of representatives of the Human Rights Ombudsman RS and one or both contracted non-governmental organisations, prepared a report on their observations and recommendations and sent it to the home to which the visit had been made and, in some cases, also to the Ministry of Labour, Family and Social Affairs. The homes did not have comments to our reports, but they acquainted us with some activities which they planned in the home in connection with our recommendations.

On arrival at the home, the group first talked with the leadership of the home. Which was followed by an inspection of secure departments and other premises of the home and again a discussion with the leadership, at which we acquainted them with the findings and comments or commendations, and we also examined the records of some allocations to secure departments and statistical data.

Below, in relation to the findings from these visits, we focus primarily on secure departments.

### Inspection of secure departments

In these departments, we inspected in particular what possibilities of access there were to the secure department. One of the visited homes has a secure department arranged with a door that opens by means of a code, which enables undisturbed passage to and from the department to everyone except the inmates (they cannot open the door with the code because of their illness). Another of the visited homes has a knob on the inside of the door which has to be turned to open the door. In a third secure department, they are separated from the main staircase by netting, such as one only sees in prisons. Passage is therefore unpleasant and unnecessarily stresses that freedom of movement is restricted in this department. We received an explanation from the director that by closing off the staircase, the connection of rooms and common areas is enabled, which are to the left and right of the mentioned staircase in the corridor. However, we believed that the home should have sought a more suitable solution and closed the passage in a more pleasant way. In addition, the doors of both corridors on the first floor were tied with wire at the time of our visit, probably because they are clearly more or less always open and they would otherwise automatically close. We therefore proposed that another solution should be found (e.g., placing dividing wall). In response to our report, in connection with this the home reported that the netting is an architectural element of the staircase intended to allow natural light, air and a larger visible field.

Another method of access to the department in this home is by lift. However, there appeared to be difficulties with its use. To call the lift on the first floor requires pressure on two buttons at the same time (the purpose of this arrangement is to protect persons with dementia, who cannot do this) and, on the other hand, it is easier to leave the department in this way, which theoretically enables secured persons to leave the department by the lift and be unable to return to it. We therefore proposed that this arrangement be changed. In this connection, the home replied that they will study possibilities with the servicer for changing the system of operation of the lift.

V enem od obiskanih domov smo predlagali, naj se poskuša na oddelku za demenco zagotoviti čim večjo navzočnost zaposlenega tudi v nočnem času, in izrazili pomislek, ali je navzočnost psihiatra v domu dovolj pogosta.

Ob obiskih socialnovarstvenih zavodov smo še posebej podprli prizadevanja, da se tudi varovani oddelki uredijo (glede pogojev bivanja in opremljenosti prostorov) skladno z novjšimi usmeritvami. Prepričani smo, da lahko tudi naši obiski s prenosom dobrih praks pripomorejo k spremembam in izboljšavam, ki naj imajo za posledico še bolj prijazno okolje za bivanje stanovalcev na varovanem oddelku. Ob enem izmed obiskov smo tako predlagali, naj razmislijo o ustrezni namestitvi nočnih lučk, ki bi posameznikom omogočale (za druge stanovalce) manj moteče ločeno prižiganje luči (ob npr. večernem branju, odhodu na stranišče) in namestitvi klicnih zvoncev za primer klica v sili.

### **Sodni postopek**

Obiski so potrdili, da je v Sloveniji neurejeno vprašanje namestitve na varovani oddelek domov starejših. Tako eden od domov o vsakokratni namestitvi seznanil pristojno okrajno sodišče, ker je to od njih zahtevala socialna inšpekcija, pri čemer pa ravna v nasprotju z navodilom pristojnega ministrstva, da obveščanje ni potrebno. Sodišče se na poslana obvestila o pridržanjih ne odziva. Drugi dom je o namestitvi stanovalke na varovani oddelek obvestil pristojno okrajno sodišče po prejetju pritožbe skrbnice glede omejitve gibanja. Sodišče se – tako kot v primeru prvega doma – na to obvestilo ni odzvalo.

Navodila za organizacijo varovanih oddelkov v domovih za starejše, ki ga je izdala Skupnost socialnih zavodov (oktobra 2006), kot podlago za namestitev na varovani oddelek določajo diagnozo specialista psihiatra in soglasje uporabnika oziroma skrbnika za poseben primer. Ker gre pri neprostovoljni namestitvi na varovani oddelek za poseg v osebnostno pravico, menimo, da volje prizadete osebe ne more nadomestiti skrbnik ali zakoniti zastopnik, zato soglasje teh ni dovolj za neprostovoljno pridržanje, posledično pa je navodilo s tega vidika pomanjkljivo. Menimo, da bi bilo pravilneje v takšnih primerih slediti postopku, ki ga za pridržanje predpisuje Zakon o nepravdnem postopku (ZNP) (členi 70–81). Na zakon napotuje tudi Pravilnik o postopkih pri uveljavljanju pravice do institucionalnega varstva, ki v 6. členu določa, da je ob sprejemu uporabnika v zavod ali med izvajanjem institucionalnega varstva zaradi duševne bolezni oziroma duševnega stanja uporabnika omejitev svobode gibanja uporabnika dopustna le, če je o pridržanju odločilo pristojno sodišče po določbah zakona, ki ureja nepravdni postopek v teh primerih.

Domovom smo zato predlagali, naj v prihodnje upoštevajo to navodilo. Opozorili smo tudi, da ZNP jasno določa, da je treba postopek o pridržanju izpeljati vedno, če se posameznika namesti na varovani oddelek proti njegovi volji oziroma če volje ne more izraziti. Postopek je treba izpeljati tudi, če gre za osebo, ki ji je odvzeta poslovna sposobnost, ali za mladoletnika. Tudi če je takšna oseba negibna, je pridržanje na varovanem oddelku brez odločitve sodišča nezakonito. Zakon namreč ne določa izjem, ko zaradi posameznikovih gibalnih omejitev ne bi bilo treba obvestiti sodišča ali izpeljati sodnega postopka. Zato smo predlagali, naj se nepokretne osebe, ki ne dajo ali ne morejo dati soglasja za nadaljnje bivanje na varovanem oddelku, nemudoma premesti na enega od odprtih oddelkov ali se o njihovi namestitvi oziroma nadaljnjem bivanju obvesti sodišče.



In one of the visited homes, we proposed that they should do everything possible to ensure the presence of a member of staff in the department for persons with dementia also during the night, and expressed the doubt as to whether a psychiatrist attends the home sufficiently often.

During visits to social security institutions, in particular we supported efforts that secure departments are also arranged (in terms of living conditions and fittings of rooms) in accordance with the most recent guidelines. We are sure that our visits, with the transfer of good practices can also contribute to changes and improvements which should result in a more pleasant environment for the life of residents in secure departments. During one of our visits, we thus proposed that they should consider the suitable positioning of night lights, which would enable individuals less disruptive (for other residents) switching on of lights (for example, for reading in the evening, going to the toilet etc), and the placing of call bells for calling in emergency.

### **Court procedure**

Visits confirmed that the question of placing people in secure departments of homes for the elderly is not regulated in Slovenia. One of the homes thus informs the district court of jurisdiction about each placing, because this was required of them by the social inspection service, whereby it behaves in conflict with the instructions of the competent ministry that such reporting is not necessary. The court does not respond to the notifications of restraint. Another home informed the district court of jurisdiction about placing inmates in a secure department after receiving a complaint from an inmate in relation to restriction of movement. The court – as in the case of the first home – did not respond to the notification.

The instructions for the organisation of secure departments in homes for the elderly issued by the Community of Social Institutes (October 2006) specify as a basis for placement in a secure department the diagnosis of a specialist psychiatrist and the consent of the user or, in special cases, guardian. Because non-voluntary placement in a secure department is an encroachment on the right to personality, we believe that the will of the person affected cannot be replaced by a guardian or legal representative, so the consent of these is not sufficient for non-voluntary detention and, consequently, the instruction is in this respect deficient. We believe that it would be more correct in such cases to follow the procedure prescribed for detention by the Civil Procedure Act (ZNP)(Articles 70-81) The Regulation on procedures in exercising the right to institutional care also directs to the Act, which in Article 6 determines that on reception of a user in an institution or during the implementation of institutional care because of mental illness or a mental state of the user, restriction of the freedom of movement of the user is only permissible if a competent court decides on the restraint under the provisions of the law that regulates procedures in such cases.

We therefore proposed to homes that they respect these instructions in the future. We also drew attention that ZNP clearly specifies that it is always necessary to carry out a procedure of constraint if an individual is placed in a secure department against their will or if they cannot express their will. It is also necessary to carry out a procedure if it concerns a person from whom business capacity has been taken, or a minor. Even if such a person is immobile, restraint in a secure department without the decision of a court is illegal. The law does not determine exceptions when, because of an individual's limited movement, it is not necessary to inform the court or carry out a court procedure. We therefore proposed that immobile persons, who do not or cannot give agreement for further residence in a secure department, are without delay transferred to one of the open departments or a court is informed of their placement or further residence.

Iz enega od obvestil o nastanitvi oz. pridržanju stanovalca na oddelku za dementne je razvidno, da je obiskani dom sodišče obvestil, da so osebo »z njenim soglasjem namestili oz. pridržali v varovani skupini za dementne stanovalce«. Če je posameznik sposoben dati soglasje za svojo namestitev na varovanem oddelku in mu ni odvzeta poslovna sposobnost, obvestilo sodišču ni potrebno. V takšnem primeru sodišču tudi ni treba izpeljati sodnega postopka. Zato smo predlagali, naj se obrazec popravi tako, da se sodišče obvešča le pridržanju osebe proti njeni volji oziroma osebe, ki ni sposobna izraziti svoje volje ali ji je odvzeta poslovna sposobnost.

Menili smo še, da ni potrebe, da se sodišču že ob obvestilu o pridržanju osebe posreduje tudi mnenje lečečega psihiatra. Zato smo predlagali, naj se poskrbi, da je sodišče o pridržanju posameznika na varovanem oddelku obveščeno najpozneje 48 ur po pridržanju. Mnenje psihiatra se lahko sodišču, če to pri tem vztraja, predloži tudi pozneje, ko ga je pač mogoče pridobiti.

### **Posebni varovalni ukrepi**

Eden od domov posebnih varovalnih ukrepov (PVU) ne uporablja, in to ne fizičnih (fiksacije) niti medikamentoznih, ker to ni v skladu z njihovimi načeli in metodami dela. Kolikor bi bili potrebni, bi predlagali premestitev stanovalca v drug dom. V tem primeru smo predlagali, naj se spremlja struktura stanovalcev in se pazi, da ne bo prišlo do nenadzorovanih in prikritih uporab PVU. Drugi dom uporablja – zelo redko – medikamentozne PVU, poleg tega pa kot fizičnega varovalnega ukrepa tudi ograjico na postelji in privezovanje na invalidski voziček. Ukrepa se uporabljata preventivno, na predlog zdravnika, soglasje pa dom pridobi tudi od skrbnika. Dodatno je dom pridobil mnenje o privezovanju na invalidski voziček od Komisije za etična vprašanja pri Zdravniški zbornici Slovenije.

Predlagali smo, naj se ob uporabi PVU spoštujejo posamezna določila navodil glede odrejanja ukrepov in evidence izvajanja ter se zagotovi ustrezen nadzor. Uvede naj se tudi enotna evidenca izvedenih PVU z navedbo osnovnih podatkov (s podatki o stanovalcu, vrsti ukrepa, kdo ga je odredil, koliko časa je trajal, posebnosti ipd.), saj bo to omogočilo boljše preglednost in olajšalo nadzor ter preprečilo morebitne nepravilnosti.

### **Čistoča**

Vsi domovi so bili ob našem obisku čisti, prav tako ni bilo mogoče zaznati neprijetnih vonjav.

### **Kajenje**

Ob obiskih smo opozarjali, da je treba glede kajenja upoštevati Zakon o spremembah in dopolnitvah Zakona o omejevanju uporabe tobačnih izdelkov.

### **Sprehajališča**

Poudarjali smo potrebnost rednega bivanja in gibanja stanovalcev na svežem zraku, tudi iz varovanih oddelkov posebnih socialnovarstvenih zavodov. Predlagali smo, naj se uvede evidenca o tem, kdo in koliko časa je bil na sprehodu ali drugi prostočasni aktivnosti zunaj varovanega oddelka. Takšna preprosta evidenca bi preprečila možnost nenamerne neenake obravnave stanovalcev oziroma da se na katerega izmed njih ob tovrstnih aktivnostih »pozabi«. Predvsem pa bi omogočala tudi hiter in učinkovit nadzor nad zagotavljanjem bivanja in gibanja stanovalcev na svežem zraku.

It is evident from one of the notifications of placement or restraint of a resident in a department for dementia that the visited home informed the courts that persons »with their agreement have been placed or restrained in a secure department for residents with dementia«. If an individual is capable of giving agreement for their placement in a secure department and their business capacity has not been taken away, it is not necessary to inform the courts. In such a case it is also not necessary to carry out a court procedure. We therefore proposed that the form be corrected so that a court is only informed of the restraint of a person against their will or of a person who is not capable of expressing their will or from whom business capacity has been taken.

We further believed that it is not necessary at the time of notification of the restraint of a person also to communicate the opinion of the attending psychiatrist. We therefore proposed that it be ensured that a court is informed of the restraint of an individual in a secure department not later than 48 hours after the restraint. The opinion of the psychiatrist, if the court insists on this can also be lodged with the court later, when it is possible to obtain it.

### **Special security measures**

One of the homes does not use special security measures (SSM), neither physical nor medicinal, because this is not in accordance with their principles and methods of work. Insofar as such measures are necessary, they would propose the transfer of a resident to another home. In this case we proposed that the structure of residents be monitored and care be taken that unsupervised and concealed use of SSM did not occur. Another home uses – very rarely – medicinal SSM and, in addition, as security measures, also railings on a bed and fastening in an invalid chair. The measures are used preventively, on the proposal of a physician, and the home also obtains the consent of the guardian. The home additionally obtained an opinion on fastening in an invalid chair from the Commission for Ethical Questions at the Chamber of Medicine of Slovenia.

We proposed that with the use of SSM the individual provisions of instructions in relation to ordering measures be respected and records kept and suitable monitoring ensured. Integral records should also be kept of SSM used, with the statement of basic data (data about the resident, type of measure, who ordered it, how long it lasted, particularities etc.) since this will enable greater transparency and alleviate monitoring and prevent possible irregularities.

### **Cleanliness**

All homes were clean at the time of our visits, and there was also no detectable unpleasant smell.

### **Smoking**

During visits, we observed the need in relation to smoking to respect the Amending Act to the Restriction of the Use of Tobacco Products Act.

### **Exercise**

We stressed the need for residents regularly to spend time and exercise in the open air, also from secure departments of special social security institutions. We proposed that records be kept about who and for how long a person was walking or having other free time activity outside the secure department. Such simple records would prevent the possibility of unintentional unequal treatment of residents or that some of them be »forgotten« during such activities. Above all, this would enable speedy and effective monitoring of guaranteeing that residents spend time in the fresh air.

## **Seznanjenost stanovalcev z njihovimi pravicami**

Na varovanih oddelkih je ob naših obiskih manjkal na vidnem mestu obešen izvleček hišnega reda in pojasnilo o pritožbenih poteh, ki jih imajo na voljo stanovalci in njihovi svojci. V odzivnih poročilih sta dva od obiskanih domov zapisala, da so na varovalnih oddelkih izobesili hišni red in pojasnilo o pritožbenih poteh.

## **Pritožbene poti**

Pritožbe je mogoče podati pisno, v nekaterih domovih tudi ustno. Ob obiskih smo predlagali, naj se krog upravičencev za podajo pritožb razširi tudi na druge obiskovalce doma (ne le na stanovalce in njihove svojce). Predlagali smo tudi namestitev nabiralnikov za anonimno oddajanje morebitnih pritožb, ne glede na pomisleke o (ne)zmožnosti dementnega stanovalca, da bi napisal pritožbo, saj je to za te stanovalce edina možnost oddaje anonimne pritožbe (nimajo dostopa do drugih oddelkov, recepcije). V odzivnem poročilu je Sončni dom Maribor sporočil, da je na varovalnem oddelku že namestil nabiralnik za anonimne pritožbe.

## **Drugo**

Obiskani domovi imajo dobro urejene prostočasne aktivnosti; sodelujejo z različnimi šolami in nevladnimi organizacijami.

## **Zaključek**

Menimo, da je Varuh človekovih pravic RS z implementacijo Opcijskega protokola v Republiki Sloveniji zagotovil učinkovito izvajanje nalog in pooblastil državnega preventivnega mehanizma. Hkrati se je z vključenostjo nevladnih organizacij povečala tudi preglednost njegovega delovanja na tem področju, kar zagotavlja še bolj kakovostno izvajanje prevzetih nalog države po ratifikaciji Opcijskega protokola. Takšna rešitev je v Republiki Sloveniji novost pri uvajanju javno-zasebnega partnerstva in je tudi lahko vodilo za spremembe v delovanju drugih državnih organov, hkrati pa je v mednarodnem pogledu eden izmed možnih uspešnih modelov za implementacijo Opcijskega protokola. Po znanih podatkih je Slovenija namreč edina evropska država, kjer pri izvajanju nalog in pooblastil državnega preventivnega mehanizma Varuh kot državni organ sodeluje z nevladnimi organizacijami. Tako so bile informacije o implementaciji Opcijskega protokola v Sloveniji že posredovane na različnih mednarodnih srečanjih oziroma konferencah (v Parizu, Padovi, Sudaku (Ukrajina), na Češkem in v Ankari) ter predstavnikom Črne gore in Makedonije.

### **Acquainting residents with their rights**

In secure departments during our visits there was a lack of a summary of the house rules and explanation of complaints paths available to residents and their families hung in a visible place. In response to our reports, two of the visited homes noted that house rules and an explanation of appeal paths were hung in secure departments.

### **Complaint paths**

Complaints may be made in writing and in some homes also orally. We proposed during our visits that the circle of those entitled to make complaints be also extended to other visitors to the home (not just residents and their immediate families). We also proposed the placing of a postbox for anonymous complaints regardless of the doubt about the (in) capacity of residents with dementia to write a complaint, since this is the only possibility for these residents to make an anonymous complaint (they do not have access to other departments, reception). In a response to our report, Sončni dom Maribor reported that there is already a postbox for anonymous complaints placed in the secure department.

### **Other**

The visited homes have well organised free time activities; they cooperate with various schools and non-governmental organisations.

### **Conclusion**

We believe that the Human Rights Ombudsman RS, with implementation of the Optional Protocol in the Republic of Slovenia ensured effective implementation of the tasks and authorities of national preventive mechanism. At the same time, the inclusion of non-governmental organisations also increased the transparency of his activity in this field and guaranteed even higher quality implementation of the tasks of the state after ratification of the Optional Protocol. Such a solution is an innovation in the Republic of Slovenia in terms of implementing a public-private partnership and can also lead to changes in the operation of other state authorities and, at the same time, from an international point of view is one possible successful model for implementation of the Optional Protocol. According to available data, Slovenia is the only European country in which the Ombudsman as a state authority cooperates with non-governmental organisations in the implementation of the tasks and authorities of national preventive mechanism. Information on the implementation of the Optional Protocol in Slovenia has thus already been communicated at various international meetings or conferences (in Paris, Padua, Sudaki (Ukraine), in the Czech Republic and in Ankara) and to representatives of Montenegro and Macedonia.



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 ustrahovala ali nanjo izvajal pritisk ali da bi se ustrahoval 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 kvaliteta, 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 državljana, 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 pododboru 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 pododboru 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 ukrepejo 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 uslužbenice.

(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, odgovoren 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 na spletnih straneh Varuha človekovih pravic Republike Slovenije, dne 28.09.07 in v Uradnem listu Republike Slovenije št. 90, 5. 10. 2007.

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 on the website of the Human Rights Ombudsman of the Republic of Slovenia, 28.09.07 and in the Official Gazette of the Republic of Slovenia no. 90, 5. 10. 2007.

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**

Pogodbeni 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, izdela 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

## KRATICE - ABBREVIATIONS

<b>AD</b>	Azilni dom
<b>AH</b>	Asylum Hostel
<b>MNZ</b>	Ministrstvo za notranje zadeve
<b>MIA</b>	Ministry of Internal Affairs
<b>PD</b>	Prezgojni dom
<b>PD</b>	Correctional home
<b>PP</b>	Polijska postaja
<b>PS</b>	Police Station
<b>PVU</b>	Posebni varovalni ukrepi
<b>SSM</b>	Special Security Measures
<b>RS</b>	Republika Slovenija
<b>RS</b>	Republic of Slovenia
<b>UIKS</b>	Uprava za izvrševanje kazenskih sankcij
<b>UIKS</b>	Prisons Administration
<b>VČP</b>	Varuh človekovih pravic
<b>VČP</b>	Ombudsman
<b>ZPKZ</b>	Zavod za prestajanje kazni zapora
<b>ZPKZ</b>	Institutions for serving prison sentences
<b>ZPMZ KZ</b>	Zavod za prestajanje mladoletniškega zapora in kazni zapora
<b>ZPMZ KZ</b>	Young Offenders Institute

**Poročilo Varuha človekovih pravic RS o izvajanju nalog državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji OZN proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju za leto 2008**

**Report of the Human rights Ombudsman of the Republic of Slovenia on the implementation of the tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2008**

**Izdajatelj / Published by:** Varuh človekovih pravic Republike Slovenije

**Pri pripravi publikacije so sodelovali / The following collaborated in the preparation of this publication:**

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**Uredila / Editors:** Ivan Šelih, Liana Kalčina

**Prevod / Translated by:** Martin Cregeen

**Oblikovanje / Design and layout:** Arnoldvuga+ d.o.o

**Tisk / Print:** Impress, d. d., Ivančna Gorica

**Naklada / Print run:** 700 izvodov / copies

Ljubljana, Junij / June 2009

Publikacija je objavljena tudi na spletnih straneh / Publication is also published on the website

**<http://www.varuh-rs.si/>**

**Naslov / Address:**

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**CIP - Kataložni zapis o publikaciji**

Narodna in univerzitetna knjižnica, Ljubljana

351.941(497.4)(082)  
343.255(094.2)

VARUH človekovih pravic Republike Slovenije kot državni preventivni mehanizem po opsijskem protokolu h OZN Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju / [sodelovali Zdenka Čebašek-Travnik ... [et al.] ; urednika Ivan Šelih in Liana Kalčina ; prevod Martin Cregeen]. - Ljubljana : Varuh človekovih pravic Republike Slovenije, 2009

ISBN 978-961-91394-5-5

1. Čebašek-Travnik, Zdenka 2. Šelih, Ivan

246117632

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