REPUBLIC OF CROATIA
Ombudsman

REPORT ON THE PERFORMANCE OF THE ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM FOR 2021

Contents

1. Introduction

Report on the performance of the activities of the National Preventive Mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (NPM) for 2021 presents the manner of operation, overview of visits to places where persons deprived of liberty (PDLs) are located, evaluates the situation concerning protection of citizens' rights in police treatment, protection of rights of PDLs in the prison system, rights of applicants for international protection and irregular migrants, as well as persons with mental disorders with restricted freedom of movement, and it ultimately points out the potential weaknesses and gives recommendations in order to protect the above rights, with the aim of preventing torture and other cruel, inhuman or degrading treatment or punishment.

This year's report is once again based on data collected during unannounced visits, when taking action based on citizen complaints and in cases brought by the ombudswoman, in charge of performance of NPM activities, on her own initiative. The report contains 19 recommendations for competent authorities to eliminate systemic issues.

In 2021, no actions were observed that may constitute torture or inhuman treatment, but as in previous years, we established that actions which could be seen as degrading treatment were present, and we thus gave recommendations that should represent a systemic solution for the problem of treatment of PDLs.

During 2021, in accordance with the mandate of NPM, we visited 10 police stations, two police detention units, two border police stations, one transit centre for migrants, one prison and one psychiatry clinic. Problems observed during such visits or notified to us by PDLs were repeated from previous years, and they pertain to e.g. unlawful deprivation of liberty, use of means of coercion with elements of violence, inadequate accommodation conditions in the police system, illegal actions committed by police officers on the border, failure to inform patients with mental disorders of their rights, healthcare of PDLs in the prison system. In one prison, we conducted an anonymous survey on the conditions in which prison sentences are served during the COVID-19 epidemic.

Like last year, this year we also pointed to the fact that the ombudswoman must be given direct access to data concerning irregular migrants and asylum seekers. Access to such data is extremely important in order to determine the presence of any irregularities in treatment of migrants and, in cooperation with state authorities, to provide assistance and protection of victims from possible violence.

This year, we were also active in terms of international cooperation related to the NPM mandate, so we participated in events organised under the NPM Network in Southeast Europe (SEE NPM Network), IPCAN, Council of Europe, OSCE and other international institutions. We also took part in a number of webinars organised by the Association for the Prevention of Torture (APT), Ludwig Boltzmann Institute and the European NPM Forum. As a result of our Chairmanship of the SEE NPM Network in 2020, we were involved in the preparation of the Report on efficient monitoring of procedural safeguards during police custody, and we also initiated and created the website for the SEE NPM Network, with the help of the Council of Europe.

At the invitation of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), we submitted out opinion concerning Article 4 of the Optional Protocol to the UN Convention against Torture (OPCAT), which refers to the definition of

possible places where persons deprived of liberty can be found, i.e. places where freedom of movement is limited and persons cannot leave of their own free will.

Other than PDLs and employees of the bodies and institutions covered by the NPM mandate, this report is likewise aimed at the professional public and the general public, including representatives of legislative, executive and judicial authorities, as well as civil society organisations, the academic community, the media and many others. The purpose of data, information and recommendations presented herein is primarily to improve the existing situation, to resolve the issues that have been described and all other issues, with the aim of effecting the necessary changes and thus improving human rights and individual freedoms, as well as the society as a whole.

2. Police system

2.1. Protection of citizens' rights in police treatment

During 2021, we took action in 133 cases, based both on citizen complaints and on our own initiative, in relation to unlawful deprivation of liberty, use of means of coercion with elements of violence, omissions in the performance of police duties and unprofessional and unethical conduct by police officers towards citizens.

Art. 22 of the Constitution of the Republic of Croatia provides that human liberty shall be inviolable and that no one shall be deprived of liberty, nor may liberty be restricted, except when specified by law, upon which a court shall decide. Also, Art. 5 of the ECHR defines the right to liberty and security and provides that arrest by a police officer is unlawful if such arrest is not in accordance with the national law or if the laws themselves are in conflict with the Convention. The Police Act provides that the police protects the citizens' fundamental constitutional rights and liberties and other values protected by the Croatian Constitution. Police officers are authorised to perform police duties by applying police powers under the Police Duties and Powers Act.

In this context, there was a case of worrying **conduct by police officers** towards an owner of a catering facility, who was suspected of working despite a ban being imposed by the Croatian Civil Protection Headquarters, which was also covered by the media. Police officers asked her to unlock the facility because they saw a light and heard voices inside. When she refused to do so because she had not been shown a warrant, they arrested her in her pyjamas and took her to the station in their car, where she spent the night in a holding cell. She was arrested on suspicion of having committed the criminal offence of spreading and transmitting an infectious disease under Art. 180 of the Criminal Code. However, it was decided to drop the criminal charge and to charge her with an offence under the Hospitality and Catering Industry Act, in which case she should not have been arrested or detained overnight. Internal police oversight advised that, in cases when there are grounds for suspicion that such a criminal act has been committed, it is necessary to ensure better and faster coordination between police stations and the General Crime Department of the Police Administration to define immediately what action should be taken.

Recommendation
The MoI and the General Police Directorate are advised to strictly observe the obligation to notify the state attorney immediately in case of arrest on suspicion of a criminal offence.

However, it is worrying that the internal oversight failed to state that the obligation specified in Art. 108(5) of the Criminal Procedure Act, under which police officers must immediately notify the state attorney of the arrest, had been ignored. The police station informed the competent state attorney's office about the arrest in a special report only 20 days later. It is therefore worrying that this had not been noticed by the Internal Control Service, just like the fact that the police officers have not been sanctioned. The officers' conduct was not in the spirit of the Croatian Constitution, ECHR or the current legislative framework.

Police officers may not use **means of coercion** in excess of what is necessary to achieve the purpose of coercion itself and they are to stop using coercion as soon as there are no grounds to do so. The use of means of coercion is also regulated by international documents. For instance, the UN Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty (Art. 3). On the other hand, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

However, in a case concerning a citizen, which was also covered by the media, means of coercion should not have been used in the first place. According to his sister's complaint, police officers misidentified the citizen and arrested him using means of coercion. At that point, as suggested by his medical records, he suffered a severe injury. It has been stated that, despite clear indications that a disabled person was involved, the conduct by police officers in this specific case was inappropriate and had elements of brutality. In any case, there should have been no serious injury caused at all and the fact that this was a person with disability only makes matters worse.

Recommendation

The MoI and the General Police Directorate are advised to treat vulnerable groups with extra care and to use police powers in a way that interferes with human rights and freedoms the least, in accordance with the Police Duties and Powers Act.

Internal police oversight showed that the police officer did not use means of coercion justifiably and lawfully. In other words, means of coercion were not used in accordance with the Police Duties and Powers Act, which provides, under Art. 82(2), that means of coercion are to be used against disabled persons with special care. After receiving medical records, which suggested that the citizen suffered a severe injury in the form of an upper tibia fracture and elbow contusion, police officers conducted a criminal investigation and submitted a special report to the state attorney's office. Due to unlawful and unjustifiable use of means of coercion, gross misconduct proceedings were initiated before the competent disciplinary court. Prompt and efficient internal police oversight as well as appropriate actions that were taken are commendable in this case, which should also be used to educate police officers how not to act.

There was also an instance of unjustifiable use of coercion against a member of a football supporter group, who suffered physical injuries. After the details and video footage of this incident were published in the media, the Police Administration formed an expert team, which concluded that three police officers had used means of coercion (physical force) unjustifiably and that one police officer was suspected of committing the criminal offence of causing bodily harm referred to in Art. 117(2) of the Criminal Code. The officer was relieved of duty and a disciplinary action was initiated on suspicion of gross misconduct. Requests for bringing a disciplinary action were also submitted against the other two officers, who had used means of coercion unjustifiably and failed to inform their superiors about it.

Recommendation

The MoI and the General Police Directorate are advised to use police powers in a way that interferes with human rights and freedoms the least while achieving the purpose of the police work, especially when depriving people of their liberty.

In the following case, a police officer punched a person repeatedly in the head after the person was caught committing a traffic violation. Means of coercion had already been used against the person, who was not fighting back at the moment. Based on video footage, another police officer, who accompanied the victim, did not react to his colleague's assault and battery to protect the person. The article published in the media suggests that the Ministry of the Interior (MoI) was not aware of the incident at all. The General Police Director stated that the media reports were checked and it was found that the police officer had used physical force unjustifiably, thus committing gross misconduct due to which a disciplinary action was taken.

In the last two examples, prompt handling of the case by the internal police oversight and taking action to bring a criminal and disciplinary action must be commended, considering that incidents of this kind greatly affect public trust in the police.

"He kept dragging me through the yard all the way to the police car, where he told me I was arrested and to put me in handcuffs. None of his colleagues reacted and I believe there was no need for excessive force because I was not fighting back during arrest. Police officers should have handcuffed me straight away, taken me to the car and then to the station, rather than harassing and throwing me around the house and the yard."

Video footage of one case demonstrates disproportionate use of means of coercion by a police officer, who dragged a woman to the front door during arrest. According to her, he kept dragging her through the yard to the police car, where he used restraint devices and told her she was arrested. It can also be seen that the police officers, while using police powers of arrest, detention and home search, did not wear face masks as required by the then applicable prevention measures.

Considering that fundamental human and citizens' rights and liberties protected by the Constitution and international treaties can be compromised when performing police work and using police powers, police oversight is essential. In this context, civilian oversight of police has a role of promoting the highest standards of police work, monitoring compliance with the rule of law and respect of human rights in police treatment, and increasing public trust in the police. Civilian oversight is carried out by the Commission for Complaints, which is appointed by the Croatian Parliament for a four-year term. After several years of suspension, the Commission was re-established in 2020, when it faced a considerable backlog of cases.

The Commission's clearing of the backlog from previous years must also be looked at in light of the limitation period for disciplinary actions in case a complaint has been found justified. Specifically, if the Commission has found a complaint partly or fully justified, the MoI must review its decision and

notify the complainant within 30 days. However, disciplinary actions due to minor misconduct are subject to a limitation period of three months after finding out about the violation and the perpetrator, and six months after the violation at most. Disciplinary actions due to gross misconduct are subject to a limitation period of one year after finding out about the violation and the perpetrator, and two years after committing the offence at most. Therefore, even if the Commission were to find a complaint dating back to the period between 2013 and 2019 justified, which would warrant a disciplinary action based on the Ministry's review, this could not be possible due to the passage of time.

The Commission should therefore be allowed to fulfil its legal obligations effectively as well as to take measures to ensure efficient internal oversight of the conduct by police officers.

A complaint made by a citizen who compared her case to the case of assault on the former mayor has shown how the Ministry's actions can leave you with a feeling of injustice and inequality. In the mayor's case, the police conducted a criminal investigation and checked CCTV footage immediately after the assault on the mayor was reported. In her case, on the other hand, CCTV footage was requested only 113 days after the assault, when it could no longer be accessed. The internal oversight found the complaint unjustified, while the Commission deemed it justified.

Even when there is functioning civilian oversight of police and efficient internal police oversight, the Croatian Constitution guarantees **judicial control** of police work as well. The Police Act also provides that, besides contacting the internal police oversight and the Commission, citizens may also use other legal remedies. For instance, the General Administrative Procedure Act provides that any person who deems that an action of an administrative body on which a decision is not adopted has violated their right or legal interest may lodge a complaint while such action is ongoing or as long as the consequences of such action are present. The MoI denied citizens that possibility for years, deeming that the complaint referred to in the General Administrative Procedure Act does not apply in the context of examination of lawfulness because "it does not concern administrative procedures". However, in the Judgment Uszp-4/19-5 from 2021, the Administrative Court in Zagreb took a stand that "the specific action of a body governed by public law, in accordance with the Police Act and in accordance with the Act on the State Administration System, was substantially administrative and as such subject to the examination of lawfulness in an administrative dispute," and that the court was therefore obligated to decide on the merits of the case.

2.2. Performance of NPM tasks: Visits to police stations and police detention units

In accordance with their powers, with the aim of preventing torture and other cruel, inhuman or degrading treatment or punishment, NPM representatives visited 10 police stations and two police detention units in the Međimurje County and Split-Dalmatia County Police Administration in 2021. Visits to the Split-Dalmatia County Police Administration were follow-up visits aimed at evaluating the implementation of earlier warnings and recommendations.

Cooperation with police officers during the visits was satisfactory and there were no restrictions on carrying out the NPM mandate. NPM representatives were given access to all the data and records kept in paper or digital form.

After the visits, we submitted 35 recommendations, 26 of which were resubmitted based on the previous visits.

During the visits, accommodation and transport conditions, records of persons deprived of liberty (PDLs) and use of means of coercion were reviewed. As in the previous years, most recommendations concern accommodation conditions.

Regular visits

Accommodation conditions

Accommodation conditions at police administrations/police stations are still not fully in line with the MoI's Standards for Rooms Accommodating PDLs ("Standards") and applicable international standards (CPT Standards), which may represent inhuman and degrading treatment according to the ECtHR practice.

Photograph 15

Photograph 16

At most police stations, custody suites where PDLs are held are spacious enough and equipped with natural and artificial light, ventilation and heating. Nevertheless, the walls and floors in certain rooms must be repaired. Specifically, walls are peeling off and floors are covered with ceramic tiles, which is contrary to the Standards due to a breakable material.

Recommendation

The MoI and the General Police Directorate are advised to secure accommodating conditions for PDLs in line with international and national standards at the police administrations and stations where this has not been done yet.

Recommendation

The MoI and the General Police Directorate are advised to equip the vehicles used for transporting PDLs with adequate safety equipment.

Also, some custody suites have beds with a wooden frame, while one room at a police station does not have a bed, but only a sitting area. Such a room cannot be used as a detention room because the equipment does not comply with the Standards.

Custody suites for PDLs are covered by surveillance cameras, while corridors and other spaces accessible by PDLs are not. Installation of video surveillance in all rooms at police stations where PDLs are located and move around would represent an additional measure of protection against their potential abuse as well as additional protection of police officers against (unjustified) reports of physical or mental abuse.

The condition of Mursko Središće Police Station is worrying. This station monitors the state border with the Republic of Slovenia with a total length of 79.7 kilometres, including six border crossing points. It is located in a building that requires adaptation and the adjacent building, which belongs to the local self-government unit, is also used for official purposes. There are no detention rooms. This puts PDLs and police officers in a difficult position. Considering all these facts, it is necessary to ensure appropriate conditions for accommodating PDLs in line with international and national standards.

Most police stations have transport vehicles available and in good condition. However, they do not have security belts, which does not comply with the CPT Standards, according to which all vehicles used to transport PDLs must have adequate security equipment. Therefore, the vehicles used for transporting PDLs must be equipped with adequate security equipment.

Rights of PDLs

During the visits, we also monitored the respect of the rights of arrested and detained persons. In particular, we watched if they were allowed to contact an attorney, receive medical assistance and contact a family member or a third party. Access to procedural guarantees in the first hours of police custody is extremely important, as it guarantees a fair trial in line with Art. 6 of the ECHR, while simultaneously being an effective way of preventing torture and other forms of violence.

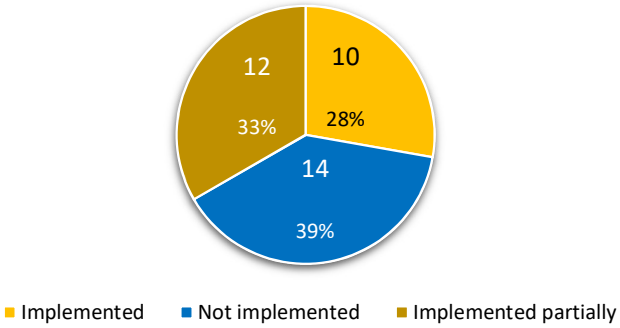
A direct inspection of the cases has shown that the arrestees are informed of the reasons for their arrest and their rights, including the right to an attorney. It can still be noticed that PDLs rarely call an attorney despite having the option of using free legal assistance in line with the Criminal Procedure Act, i.e. most of them waive their right to an attorney.

Follow-up visits

In 2021, a follow-up visit was made to the Split-Dalmatia Police Administration, which covered the detention unit and seven stations in order to ascertain the extent to which the recommendations issued after the regular visits in 2016 had been implemented.

The visit has shown that 28% of the recommendations was implemented, 33% was implemented partially, while 39% was not implemented and have therefore been reissued.

Evaluation of the implementation of recommendations given to Split-Dalmatia County Police Administration



The majority of unimplemented recommendations related to accommodation conditions in rooms for PDLs. For example, none of the police stations have video surveillance covering all rooms accessible to PDLs, which does not comply with the Standards.

At the same time, it is unacceptable that video surveillance of the toilet in the room for accommodating PDLs at Sinj Police Station has not been disabled even after our recommendation, which violates the right to privacy and may represent degrading treatment. Such practice is contrary to CPT Standards because video surveillance may not cover sanitary facilities.

Furthermore, the Standards prescribe that the custody suite must have a sanitary facility with a flush toilet as well as that there must be drinking water. Despite that, a large number of custody suites have no direct access to drinking water or sanitary facilities, so PDLs depend on police officers.

After the follow-up visit, it has remained unclear why most of the police stations have not implemented recommendations which do not require large investments, such as setting up a call button, removing tiles, etc. In contrast, Imotski Police Station is a positive example. During our visit, we were informed that a new police station building was under construction and we were given a short tour of the construction site. The new building will have six rooms for accommodating PDLs and it should be equipped in accordance with the current standards.

Recommendation

The MoI and the General Police Directorate are advised to set up video surveillance in all the areas where PDLs may find themselves as well as an alarm system (a call button), which should be accessible to detention supervisors in operations and communications centres.

3. Applicants for international protection and irregular migrants

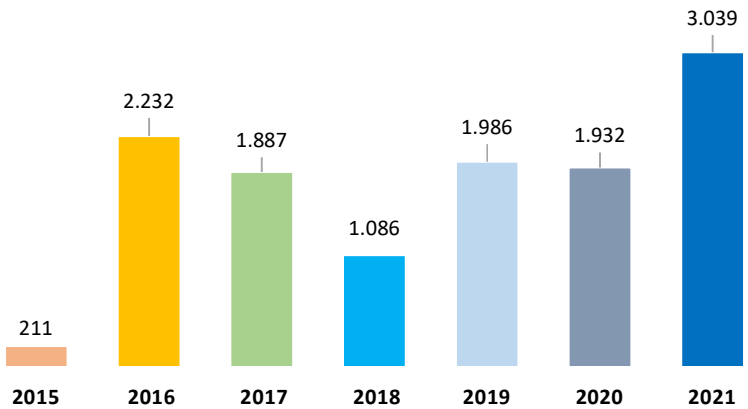
For many years, there has been an increasing number of forcibly displaced persons arriving to the EU as irregular migrants and applicants for international protection. According to the UNHCR, the trend of increasing forced displacement continued in 2021 as well, with over 84 million cases worldwide. The number of refugees also continued to grow, amounting to almost 21 million in H1 2021.

At the same time, the Common European Asylum System is unable to respond to the challenges of migrations, primarily due to a lack of solidarity of EU member states for an even distribution of persons seeking protection within EU borders. As a sign of solidarity, Croatia has answered the call of the European External Action Service and decided to accept a number of persons whose life and safety were in jeopardy after the Taliban came to power in Afghanistan, including people who had worked for the EU Delegation or collaborated with the Croatian Army in Afghanistan and their family members. Consequently, 41 Afghan nationals were accepted between August and December. Three of them left Croatia because of family reunification, while others were granted asylum. Asylum was granted to another 30 persons during the year.

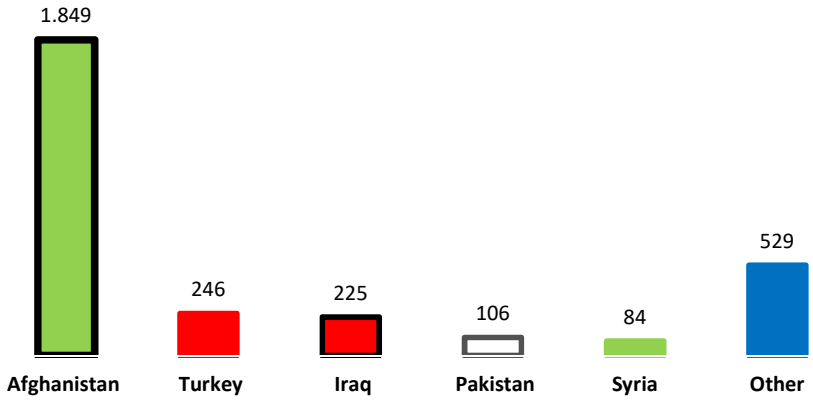
Although not covered by the reporting period, it must be pointed out that the aggression against Ukraine, which started in February 2022, has triggered a wave of migrants towards EU member states. At the moment of writing this report, more than four million people left Ukraine. Therefore, for the first time, the EU has triggered a mechanism allowing quick admission and assistance to migrants, i.e. the Temporary Protection Directive 2001/55/EC of 20 July 2001.

In 2021, there were 57% more applicants for international protection in Croatia than in 2020. Just like in the years before, most of them were from Afghanistan (61%). The rate of discontinuation of examination of the application for international protection has also remained high (75.35%).

NUMBER OF APPLICANTS FOR INTERNATIONAL PROTECTION



BREAKDOWN OF APPLICANTS BY NATIONALITY



In 2021, allegations of pushbacks were in the spotlight. However, the term 'pushback', frequently used in international and national discussions on this topic, is not defined clearly. As explained by the EU Agency for Fundamental Rights (FRA), a pushback is a situation when persons crossing the border irregularly are denied entry and removed without having their individual need for protection fulfilled. In other words, this expression is used when a person is forced back to the neighbouring country from which they arrived after crossing the border illegally, without assessing their individual circumstances on a case-by-case basis. Since this frequently used term is not defined in the national or EU legislation, it is sometimes confused for other expressions, such as 'discouragement', which, on the other hand, is a legitimate border control measure stipulated by EU legislation. Unlike pushbacks, discouragement applies to persons who did not even enter the state territory. To avoid ambiguities when communicating about this topic, we advise to have the term 'pushback' translated or to invent an adequate Croatian equivalent.

Recommendation
The MoI is advised to translate the term 'pushback' or invent an adequate Croatian equivalent.

In addition to alleged pushbacks, there have also been reports of violence and degrading treatment for years. Countries have a legal obligation to protect their borders. However, at the same time, they are obligated to allow migrants who find themselves within the Croatian territory to access international protection and to inform them about their rights. In doing so, they must refrain from violence and degrading treatment, which is prohibited by international, European and national law.

Sending people back without a case-by-case assessment may lead to violations of human rights guaranteed by the ECHR, the Charter of Fundamental Rights of the EU, the UN Convention against Torture, the UN Refugee Convention, the Aliens Act, the Act on International and Temporary Protection and other international, European and national regulations.

Countries also must effectively investigate any alleged unlawful acts and violations of rights. When such allegations involve violence or, as a consequence of being sent back, death or risk of torture, inhuman or degrading treatment, the investigation must comply with high standards, i.e. it must be thorough, effective and conducted in a way that can lead to finding and punishing the perpetrators. Furthermore, persons in charge of the investigation and those conducting it must be independent of the persons involved in the incident. This requires not only the absence of hierarchical or institutional relations, but actual independence and impartiality of the investigators.

In 2021, committees of the Croatian Parliament convened two meetings about these issues. The Domestic Policy and National Security Committee and the Committee on Human and National Minority Rights had a joint meeting about the topic of Republic of Croatia and international migrations, state of human rights and national security. At the meeting, it was highlighted that migrations are a complex issue for both Croatia and the EU. Member states must strike a balance between national security on one hand, and protection of human rights and the rule of law on the other.

The other meeting was convened by the Committee on Human and National Minority Rights about the topic of illegal discouragement (pushbacks) of migrants crossing Croatian borders illegally. The meeting was convened after footage of violence against migrants had emerged. The Ombudswoman stressed the need for an effective and thorough investigation of the violence captured on camera. The meeting also discussed a wider context of migration management and related challenges, such as uneven distribution of responsibility for migration management and reception of applicants for international protection among EU member states. Another issue discussed was Croatia's challenging position as a country on the external border of the EU, which protects its longest external land border.

In 2021, the ECtHR and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT), both of which operate under the Council of Europe (CoE), released their judgment and report concerning certain treatments from the past.

Judgment of the European Court of Human Rights

By virtue of a judgment which is not yet final, the ECtHR has found the Republic of Croatia responsible for numerous violations of the rights of an Afghani refugee family, specifically: a violation of the right to life, right to liberty and security, prohibition of collective expulsions of aliens, right of individual petition and prohibition of torture with regards to children. The judgment concerns the case of the death of a six-year-old girl and her family's detention while seeking international protection (M.H. and Others v. Croatia, nos. 15670/18 and 43115/18). The H. family entered Croatian territory on 21 November 2017. According to the family, police officers instructed them to follow the railroad tracks back to Serbia. While walking by the railroad tracks, a six-year old child was hit by a train and died. Her family re-entered Croatia on 12 March 2018 and requested international protection, after which they were deprived of liberty and placed in a transit immigration centre in Tovarnik.

While investigating the violation of the prohibition of collective expulsions, the Court upheld the family's statements that they had been subjected to expulsions from Croatia to Serbia, stressing that their statements were specific and consistent, while Croatia did not use material evidence, such as video footage of the area under constant surveillance, to clarify the circumstances of the case.

The ECtHR quoted reports by international organisations and NGOs, the Ombudswoman and Children's Ombudswoman. A concurring opinion of judge K. Turković pointed out the important role of the national human rights structures, such as the Ombudswoman, the Children's Ombudswoman and NGOs, which should be viewed as partners in the authorities' efforts to deal with migration challenges. During the procedure, associations, activists and the lawyer were put under pressure, which the ECtHR believed was supposed to discourage the family from taking their case against Croatia.

The ECtHR found serious deficiencies in the investigation of the circumstances surrounding the child's death at the border between Croatia and Serbia, which violated Art. 2 of the ECHR (right to life). A domestic criminal investigation carried out prior to the procedure before the ECtHR concluded that the family had not crossed the border and entered Croatia and that Croatian police officers had been unrelated to the accident. That conclusion was also accepted by the Croatian Constitutional Court. However, in their dissenting opinions, three judges of the Constitutional Court stated that the investigation authorities failed to meet even the basic threshold of the obligation to carry out an effective investigation under the Constitution and the Convention, considering that a human life had been lost, namely a six-year-old child completely dependent on the actions of other people.

In its judgment, the ECtHR stated that changes in the police officers' statements and their inconsistency with the doctor's statement had not been taken into account during the investigation. Also, findings by the Serbian authorities that the family had been forcefully returned from Croatia in breach of the readmission agreement were not considered and the lawyer's proposals concerning material evidence were refused, while the family did not have an effective opportunity to participate in the investigation. In its conclusions, the Court also referred to the Ombudswoman's inquiry into this case and its conclusions. Among other things, it was proposed to investigate GPS locations and obtain recordings of thermographic cameras, which was not done and is deemed an omission in the investigation by the ECtHR.

Moreover, the Court did not consider that the identity check the Republic of Croatia indicated as the reason for the family's placement in the Tovarnik Centre represented justified grounds for the entire duration of detention, thus raising concerns whether Croatia had acted in good faith or not. Since Croatia failed to take urgent and all necessary measures to limit the duration of detention, the family's right to liberty and security was violated. Eleven children aged 1-17 were kept for over two months at an immigration centre without the ability to go out; therefore, due to the duration, police surveillance and a lack of activities for children, and even despite satisfactory material conditions, it was necessary to take into account the consequences such an environment would have for the physical and mental health and on the development of the children already traumatised by their sister's death. At the time of writing this report, a decision on the application to have this judgment reviewed by the whole Court is pending.

On the other hand, the H. family is tied, albeit indirectly, to another final judgment of the Croatian High Misdemeanour Court dating back to 2021. Based on this judgment, an activist was heavily fined after it was found he had helped them cross the state border illegally. At the time, there were fourteen people crossing the border, eleven of whom were children, aiming to seek international protection. Despite claiming that he could not have helped them enter Croatia because the family had already

been in the country when he arrived on the scene, the Court found that it was not the family's location that was decisive, but rather the fact they decided to illegally cross the state border which was undoubtedly in their vicinity. They managed to do so precisely because of the actions of the accused, who guided them using the headlights on his car. He showed them the way to enter Croatia, where they were eventually caught by the police together with the accused. The activist's argument that his actions constituted provision of assistance to a vulnerable group of people with children who wanted to seek international protection was not accepted by the Court. The Court pointed out that any attempt to enable or make it easier for the family to apply for international protection, despite knowing that the family had already been rejected international protection, did not mean that the accused actually wanted to make it easier for the family to submit such applications. However, the judgment of the ECtHR states that the family members were collectively expelled on the night when the girl died, also implying they were prevented from gaining access to international protection.

CPT report

In December, the CPT published a report drawn up based on the information gathered as part of a five-day ad hoc visit dating back to August 2020. The aim of the visit was to inspect the conditions of detention, fulfilment of legal guarantees during the return of foreigners and effectiveness of investigations into alleged ill-treatment. The visit included Cetingrad, Donji Lapac and Korenica Border Police Stations, Karlovac County Intervention Police Unit and Ježevo Detention Centre. The delegation also visited several temporary detention centres and informal accommodation facilities in Bosnia and Herzegovina, where they talked to migrants.

The report stated that, when it came to treating migrants, there were no adequate arrangements in place in Croatia to prevent police officers from acting violently against migrants. At the moment of the visit, it was also found there were no accountability mechanisms with regard to respecting human rights which would allow for the prompt identification and review of the treatment of police officers towards migrants at the border. Similarly, there was no independent complaint mechanism effectively investigating cases of alleged ill-treatment by police officers either, and it was thus recommended to establish strong mechanisms of oversight and accountability.

The report also stated that no specific guidelines on documenting migrant diversion operations had ever been issued and highlights omissions regarding independence and thoroughness in the investigations, which are necessary for preventing ill-treatment.

The CPT has therefore called for effective steps to be taken to ensure that all allegations of police ill-treatment are investigated effectively.

Ombudswoman's investigations

In 2021, the Ombudswoman pursued several investigative proceedings into alleged illegal conduct by police officers at the border, including one investigation into denied access to international protection at a detention centre. Since some of the investigative proceedings are currently undergoing, we are not able to report on all of them.

One of the investigative proceedings was launched based on footage published in the media, showing masked persons beating other people with batons. The footage caused concerns among many stakeholders because there was a possibility it showed police officers using violence at the Croatian border. Consequently, the MoI stated that an Expert Team had been formed by the General Police Directorate and Internal Control Service. Soon after, it was confirmed that these persons were indeed police officers.

While investigating the circumstances of the case, the MoI found that the incident took place on the so-called green border and involved three members of the intervention police, who were performing regular state border protection tasks. Having noticed a group of about 15 migrants coming from the direction of the border with Bosnia and Herzegovina and crossing it near a suspected landmine area, they decided to escort and "discourage" them back at the nearest safe point. According to the Schengen Borders Code, a "discouragement" describes legitimate measures and relates to situations when persons give up crossing the state border, for instance because state officials are present in the border area[1]. However, if a person is caught during or immediately after crossing the state border illegally, a "discouragement" should no longer be possible under EU[2] and national law[3], but rather, individual proceedings should be carried out.

[1] In accordance with Art. 13(2) of the Schengen Borders Code, the border guards shall use stationary or mobile units to carry out border surveillance. That surveillance shall be carried out in such a way as to prevent and discourage persons from circumventing the checks at border crossing points.
Art. 3 provides that this Regulation shall apply to any person crossing the internal or external borders of Member States, without prejudice to:
(b) the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.
Art. 4 provides that, when applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union, relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951, obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights. In accordance with the general principles of Union law, decisions under this Regulation shall be taken on an individual basis.

[2] The Schengen Borders Code, Art. 13(1), provides that a person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC.
Directive 2008/115/EC, Art. 4(4), provides that the minimum rights applicable to persons caught in connection with irregular crossing may not be less favourable than those relating to other migrants in an irregular situation, including the right to emergency health care, taking into account needs of vulnerable persons, and that the principle of non-refoulement is to be respected.
Directive 2013/32/EU provides that, where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so (Art. 8(1)). Also, Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it (Art. 6(2)).

[3] Art. 181(3) of the Aliens Act provides that the measures for ensuring return shall not apply to third-country nationals encountered at the time of or immediately following illegal entry. Rather, their treatment is stipulated by the Ordinance on the Treatment of Third-Country Nationals, according to which (Art. 33(2)), such third-country nationals are to be provided with the "Notification of Treatment at the Border" form (Form No. 12), which is to be signed by them and by a police officer. Among other things, the form contains information about belonging to a vulnerable group and possible reasons indicating that the persons concerned require international protection. Furthermore, Art. 33(6) provides that protective measures are to be taken if a third-country national is a vulnerable person or suffers from a severe medical condition.

It was also stated that the three members of the intervention police had used means of coercion despite the fact there had been no legal grounds to do so and that they had worn the uniform improperly. Consequently, the three police officers were temporarily suspended and disciplinary actions were brought against them. The competent County State Attorney's Office ordered the General Police Directorate to carry out an investigation on grounds of a suspected criminal offence of torture and other cruel, inhuman or degrading treatment or punishment committed by the police officers. The disciplinary court imposed a suspended sentence of termination of civil service with a probation period of seven months for two officers and six months for the third officer. In January 2022, the officers returned to work. At the moment of writing this report, we received no information about the state attorney's final decision.

Recommendation
The MoI is advised to carry out procedures in line with EU and international law in relation to irregular migrants apprehended on the Croatian territory.

Another investigative proceeding that attracted public attention regarded the case of a woman with two children who allegedly entered Croatia from Bosnia and Herzegovina 22 times. She intended to seek asylum, but each time, she and her children were returned to Bosnia and Herzegovina during night, through a woodland. Although they did not experience physical violence from the police, she claimed to have been exposed to intimidation and excessively harsh treatment in order to obey police orders. For example, police officers brought a police dog to make them get out of the van. She eventually managed to reach a police station together with her children in July 2021, where she expressed her intention to apply for international protection. The investigative proceeding showed that this case was taken over by the Independent Mechanism of Monitoring the Actions of Police Officers of the Ministry of the Interior in the Area of Illegal Migration and International Protection. In addition, the complainant's allegations suggest there are no official records of the events described. The Ombudswoman's investigation into this case is still in progress.

Furthermore, we also considered a case of a man who applied for asylum at a detention centre before the Ombudswoman's advisors and head of the detention centre because he was afraid he would be expelled to his country origin, where he could be killed because of political activism. He also talked about his intention to apply for international protection with an attorney of his choice and empowered him to represent him in the process of applying for international protection. However, he was not given access to the international protection system, was denied further contact with the attorney due to isolation following a positive COVID-19 PCR test and could not even contact his attorney by phone. After the isolation period was over, the man was issued a decision on return, return travel document, ticket and coverage of travel expenses through countries of transit.

In that regard, we issued a warning that denying him access to international protection and returning him to a country where his life or liberty would be in jeopardy, where he could be subjected to torture, inhuman or degrading treatment, or which could extradite him to such a country, may constitute a violation of international, European and national law, primarily of those provisions guaranteeing the right to asylum and protection in the event of removal, expulsion or extradition (Art. 18 and 19 of the Charter of Fundamental Rights of the EU, Art. 3 of the ECHR, Art. 33 of the UN Refugee Convention

and Art. 6 and 33 of the Act on International and Temporary Protection). We also pointed out that, in accordance with international standards, including Art. 6 of the ECHR, third-country nationals must have unrestricted access to an attorney from the moment of deprivation of liberty. In such cases, if personal contact is not possible due to epidemic measures, it is necessary to provide alternative means of communication, such as video calling, so that the right to an attorney could actually be exercised. After leaving the Croatian territory, the man took his case against Croatia and the ECtHR notified the Croatian Government of the action taken (Y. K. v. Croatia, no. 38776/21).

NPM visits

In 2021, in accordance with the Act on the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ANPM), an unannounced visit was paid to Stara Gradiška Border Police Station and there were also follow-up visits made to Trilj Transit Detention Centre and Imotski Border Police Station.

We have been constantly highlighting the fact that the institution has difficulties accessing information about irregular migrants and asylum seekers. Access to such information is important to us, not only to shed light on alleged irregularities, but also to participate in and assist with developing ill-treatment prevention mechanisms in cooperation with state authorities.

During the visit to Stara Gradiška Border Police Station, institution representatives were not given an insight into the electronic data stored in the MoI's information system on the ground that they had no authorisation to do so and that only police officers were authorised to access the data. The MoI may keep files about third-country nationals subjected to the measure for ensuring return either in its own information system or in a register (index card). At Stara Gradiška Border Police Station, this data is kept in the information system. Instead of a complete insight, we were only given an insight into statistical data about the number of measures for ensuring return under the Aliens Act, into the register of administrative procedures and into cases from said register that we requested. Therefore, after the visit, we warned the MoI that, in accordance with Art. 5 of the ANPM and Art. 20 of the OPCAT, persons performing NPM tasks must be granted access to all information requested, regardless of the storage method.

Recommendation

The MoI is advised to grant NPM representatives access to all information about treatment of irregular migrants, including data stored in the information system.

OPCAT provides that state parties shall allow NPM representatives access to all information referring to the treatment of PDLs in places of detention under public authority and control where persons who are or may be deprived of their liberty are located (Art. 4 and 20).

In addition, the MoI questioned the NPM mandate with regard to PDLs in the context of migrations. Specifically, the MoI believes that transport of persons in a police vehicle or some other police treatment does not necessarily constitute restricted freedom of movement. On the other hand, the CPT believes that, regardless of whether a person has been arrested, detained or simply caught by the

police and detained against their will, they are in fact deprived of liberty and must be provided with guarantees against ill-treatment in proportion to that status. Specifically, the term 'deprivation of liberty' within the meaning of Art. 5(1) of the ECHR has an objective element (confining a person to a particular place for a not-negligible period of time) and an additional subjective element (the person has not consented to that confinement, ECtHR, Storck v. Germany, 2005; Stanev v. Bulgaria, 2012). The fact that a person is not handcuffed, put in a cell or otherwise physically restrained does not constitute a decisive factor in establishing the existence of a deprivation of liberty (ECtHR, M.A. v. Cyprus, 2013).

Also, at Stara Gradiška Border Police Station and Imotski Border Police Station, it was found that irregular migrants and asylum seekers brought to their facilities are usually not tested, i.e. only persons with COVID-19 symptoms or those placed in a detention centre are tested. Everyone else is released from the station after relevant procedures have been completed. Alternatively, if international protection is sought, they are taken to detention centres in a police vehicle. So, irregular migrants who have been issued a decision on voluntary return do not have to have a COVID-19 test certificate, certificate of recovery or vaccination certificate, unlike other third-country nationals and persons from the EEA. Considering a large number of decisions on voluntary return (1,554 decisions issued at Stara Gradiška Border Police Station by 20 December 2021), treatment of irregular migrants must be aligned with the treatment of other persons entering Croatian territory.

During a follow-up visit to Trilj Transit Detention Centre and Imotski Border Police Station, it was found that eight out of 21 recommendations issued during a regular visit in May 2018 were implemented. What is particularly worrying is the failure to implement recommendations not requiring additional material resources. For instance, there is still a visible neglect of the foreign nationals' right to be informed about the rights and obligations related to the possibility of contacting consular or diplomatic missions of their own country as well as of the right to be informed about their rights in a language they can understand. Moreover, detained persons must also be given the right to file complaints.

Monitoring mechanisms

Since allegations about inappropriate addressing of illegal treatment of irregular migrants had been present for years, in October 2019, the European Commission stated that an independent mechanism for monitoring state border control activities would contribute to making border control activities compliant with EU law and international obligations. Therefore, in her 2020 report, the Ombudswoman also advised the MoI to establish an independent mechanism for monitoring the actions of police officers at the border.

There were numerous discussions at the European and national level about which institutions and/or organisations would be the most appropriate for performing that task as well as about which prerequisites should be met to ensure that such a mechanism is independent and effective.

In 2021, the MoI established the so-called Independent Mechanism for Monitoring the Actions of Police Officers of the Ministry of Interior in the Area of Illegal Migration and International Protection

(IMM). The IMM is arranged and implemented by the Croatian Academy of Medical Sciences, Academy of Legal Sciences, Red Cross and the independent legal expert Prof. Iris Goldner Lang with whom a one-year cooperation agreement was concluded in June 2021.

Representatives of the institution of the Ombudswoman participate in the work of the IMM Advisory Board (IMM AB), which is not an integral part of the IMM, but an informal body tasked with providing guidelines for its improvement. Various EU bodies, international organisations and Croatian institutions are also involved in the IMM AB's work. In that regard, we made it clear that the institution's involvement with the IMM AB should not in any way compromise the institution's primary role, which is to inform the Croatian Parliament and public about detected violations of human rights and liberties. Just like at the aforementioned thematic session of the Croatian Parliament, we once again stressed that the Ombudswoman, as an institution, would continue to carry out investigative proceedings into the lawfulness of police officers' actions in accordance with her mandates defined in the Croatian Constitution and international law, regardless of the IMM's establishment. In 2021, the IMM AB held two meetings and, among other things, presented and discussed the first semi-annual report on the IMM's performance.

The establishment of the IMM may be useful, but it is still necessary to evaluate the degree to which the existing IMM is able to respond to all the requirements of an effective and independent monitoring mechanism. Based on the aforementioned discussions, in order for these mechanisms to fulfil the intended function, it is necessary to ensure their institutional and functional independence as well as a legal basis that defines their internal processes, powers, duties and data protection. Ideally, a monitoring mechanism should have the power to analyse every treatment of irregular migrants, be able to make unannounced visits, have access to all the relevant information and be able to interview any official, person alleging violation of their rights and witnesses. It is also necessary to ensure insight into all information about follow-ups and investigations. However, it must be clear that no monitoring of treatment can substitute an efficient investigation.

4. Prison system

The epidemic also greatly affected the rights or PDLs in the prison system and their treatment during 2021, a year marked by the new Act on the Execution of Prison Sentences (AEPS) coming into force. Having acted in 210 cases launched either based on complaints or on our own initiative, we issued 20 warnings, recommendations and proposals. Besides that, in 10 cases which required on-site establishment of facts to assess if the complaint was justified, we carried out on-site investigations. We also carried out a targeted inspection of the Split Prison, during which we conducted an anonymous survey of PDLs on the conditions in which prison sentences are served during the COVID-19 epidemic.

4.1. Protection of rights of PDLs in prison system

Healthcare

PDLs in the prison system belong to the vulnerable groups of getting infected with SARS-CoV-2. COVID-19 prevention measures in the prison system, which have been working well for quite a long time, have been implemented in a way that prevents the virus from spreading to penal institutions. In case it does spread, appropriate measures are taken to stop it from spreading further within the facility. To make the implementation of these measures possible, it is necessary to ensure appropriate conditions, such as reducing prison overcrowding, ensuring good hygiene, making adequate healthcare available and having a sufficient number of officers.

In 2021, all interested PDLs in the prison system could get vaccinated, so, for example, 85% of prisoners at the **Lepoglava Penitentiary** received two doses of the COVID-19 vaccine. Vaccination took place at the Penitentiary, just like RAT and PCR testing. Of 2,118 prisoners tested, 117 tested positive. Over 91% of officers were vaccinated in the same period. Of 1,789 officers tested, 176 tested positive. Good collaboration with the Varaždin Institute of Public Health made it possible to implement prevention measures successfully.

The COVID-19 epidemic has highlighted the existing problems in the prison system. Prisoners keep complaining mostly about inadequate healthcare, with increasing complaints about its insufficient availability. For instance, one prisoner complained that he was asking for a medical examination for three weeks without success, despite feeling pain in his stomach. He was examined only after his brother complained to the warden. Based on the statement received, there was a shortage of physicians during that period and nurses were triaging prisoners' requests so priority was given to the most urgent cases. To avoid such situations in the future, the Penitentiary concluded a service contract with two more physicians.

Taking into account long waiting lists at external health facilities and the increasing number of prisoners suffering from chronic diseases, the Lepoglava Penitentiary has taken certain steps to increase the quality of healthcare and safety. Besides the aforementioned contract concluded with a PM&R specialist, it has also concluded a service contract with a radiologist and procured an ultrasound machine. This means that it is no longer necessary to take prisoners to external health facilities to undergo these examinations because they can now be performed at the Penitentiary, which is an example of good practice.

"...I complained about healthcare to the prison, investigating judge and Ministry of Health, and nobody else responded to my complaints but you… I really do not know what the problem is, which is why I am contacting you, hoping that you can help me within your remit, I mean, however and as much as you can, because you are the only ones who responded and that gave me a little hope…"

A prisoner at the **Zagreb Prison** complained to us that he did not get an approval to have his entire health record copied, or to copy all the pages related to 2020. The explanation was that the health record also contained non-medical documents (doctor's comments and observations regarding the patient during his stay at the prison), so he was not approved to copy and inspect a part of the documents. We believe that the prisoner's health record represents his own medical documentation, which he should be allowed to copy at his own expense. Otherwise, his rights are violated and we have warned the Prison of that fact. If any of the doctor's comments and observations regarding the patient during his stay at a penal institution do not relate to the course of his treatment and do not belong to his medical documents, they should be recorded elsewhere because the original record or its copy should be given to the prisoner after his release from prison to allow for continuity of healthcare.

Prisoners at certain penal institutions have been constantly complaining that judicial officers administer their medicines in the evening and/or on weekends. But, instead of employing a sufficient number of health professionals and thus ensuring that medicines are not administered by security department officers, the new AEPS stipulates that judicial officers may participate in administering medicines prepared in advance to prisoners in cases when different arrangements are not possible. In the Proposed Ordinance on Security Tasks in the Prison System, this legal provision has been merely repeated without defining any exceptions, which we believe are necessary. We have highlighted this issue during e-consultations, but our proposal has not been accepted. There is no doubt that prisoners must be administered medicines regularly. However, this task cannot be entrusted to judicial officers, who are not qualified for that job because it is also important to monitor the person's health status when medicines are administered.

A prisoner receiving substitution therapy complained that he was transferred from the **Zagreb Prison** to another penal institution without his medicines and did not receive therapy for a few days. According to the Central Office for the Prison System (COPS) of the Directorate for Prison System and Probation of the Ministry of Justice and Public Administration (MJPA), some prisoners have difficulties getting their therapy in the first days after their transfer. Therefore, all penal institutions have been instructed to deliver all medicines that prisoners will require in the next 72 hours when they are transferred to or referred from the Diagnostics Centre in Zagreb.

The statement issued by the COPS also suggests a number of organisational issues, particularly with procurement of medicines for prisoners receiving substitution therapy. The Zagreb Prison and the Diagnostics Centre in Zagreb handle about 100 such patients on a daily basis. After contacting doctors of choice, judicial officers go to their offices all around the city, where they take prescriptions and deliver them to the Zagreb Prison infirmary. Prisoners come to the Diagnostics Centre in Zagreb from all around Croatia, which complicates the entire procedure even further. With all this in mind, until the provision of primary healthcare at penal institutions is well-organised, it is necessary that the Ministry of Health (MH) and the MJPA, in collaboration with the Croatian Health Insurance Fund (CHIF), adjust the existing procedure of prescribing and administering prescribed medicines in line with specific healthcare requirements of PDLs in the prison system.

Recommendation

The MH and the MJPA are advised to adjust the procedure of prescribing and administering prescribed medicines to PDLs in the prison system in collaboration with the CHIF.

Recommendation

The MH and the MJPA are advised to ensure that the preconditions for the operation of the Zagreb Prison Hospital as a healthcare institution are met.

The fact that the practice of medical profession in the prison system has not been regulated yet exacerbates the situation even further. Therefore, the MH needs to urgently review the existing legal regulations governing the provision of primary healthcare at penal institutions in line with its competences and, if necessary, propose amendments to address this issue. Moreover, in collaboration with the MJPA, the MH must urgently meet the preconditions for the operation of the Zagreb Prison Hospital as a healthcare institution.

The Health Care Act and AEPS restrict the prisoners' right to choose a doctor of medicine and dental medicine freely and this choice is to be made by the head of the institution. During the investigations, we found that certain regional services of CHIF regional offices still require an insured person to sign a declaration of choice or change of doctor. Therefore, we advised the CHIF to send an instruction to all regional offices regarding the restriction of the prisoners' right to choose a doctor freely, which they have done.

Following media reports from January 2021 about a prisoner's death at the Zagreb Prison, we have launched an investigation on our own initiative, just like after receiving information about the deaths of other prisoners. According to the COPS, 10 prisoners died in 2021. The investigations are still in progress, but based on the information collected so far, one prisoner died of overdose. The final assessment will be made after obtaining and analysing all statements and relevant documents. Regarding the case of overdose, the COPS informed us that the medical staff and judicial officers at the Zagreb Prison act in accordance with professional standards, pharmacotherapy guidelines and instructions on preventing therapy manipulation and abuse given by the COPS. We have requested the COPS to send us the instructions on preventing abuse of prescribed and administered therapy to see what they regulate and if they are implemented, but there has been no reply. We will continue to scrutinise the actions taken in these specific cases, considering that 31 PDLs died in the prison system last year, one third of whom at the Zagreb Prison, as reported by the COPS.

Treatment of prisoners

Just like in 2020, due to COVID-19 prevention measures, shared (group) activities and CSO activities at penal institutions were discontinued for the most part of 2021. The issue of a lack of organised activities is still present at most penal institutions and PDLs spend most of their time in their rooms, regardless of their status. Having dealt with complaints, we can conclude that occasional restrictions of individual rights due to the implementation of COVID-19 prevention measures in the prison system, such as the right to be visited, have still not been compensated for enough. The whole situation is exacerbated even further by some issues we have already pointed out, such as phone calls being too expensive. Although everyone is allowed to have longer phone calls, their costs are above the market rate and are usually borne by PDLs. To some of them, this represents a significant financial burden, especially considering they have limited opportunities for work due to epidemic prevention measures. We should also keep in mind that this is the most common method of communicating with family and friends. Therefore, we suggest to adjust the price of phone calls and units of account charged to PDLs in line with market rates. Furthermore, until the contract with the carrier has been amended, we suggest that the price difference is borne by the MJPA.

Recommendation
The MJPA is advised to urgently adjust the price of phone calls placed by PDLs at penal institutions to market rates.

Recommendation
The MJPA is advised to increase the resources required for PDLs to use video calls at penal institutions.

A remand prisoner complained that, despite multiple requests, he was not able to place a video call to his family. According to the statement received from the **Rijeka Prison**, due to limited resources, prisoners without children could not use video visits until September 2021. After more time slots became available, prisoners who had no visits and were not from around Rijeka were notified that they could request a video visit approval, although priority was still given to parents of underage children and foreign nationals. Although video visits are not one's right and we understand the criteria under which time slots were given due to limited resources, we believe they should also be given to persons without children, especially if they have no visits. Also, if interest for video calls exceeds the resources available at a penal institution, the COPS should consider increasing the number of video call time slots in that case.

During 2021, we received complaints from prisoners requesting that visitations be adjusted to the current epidemiological situation, which we have pointed out to the COPS. The COPS gradually relaxed the measures restricting individual prisoner rights. So, for instance, visits allowing direct contact between the prisoner and visitors were occasionally permitted, while persons who recovered from COVID-19 within the last six months or were vaccinated could be granted approval to work outside of the penal institution as well as to use benefits of going out to local community. However, restrictions were reintroduced as the epidemiological indicators worsened.

Accommodation conditions

"...I am currently placed in a cell of approximately 6 x 3 m, which is about 18 m^2. There are six of us in here. Until recently, there were five of us, which was already too many. Now a sixth bed and person has been added and living in such a space is unbearable. …besides the six of us, there are also three bunk beds, a large dining table, a coffee table, a TV unit and five chairs, which take up 10 m^2… Please, as one human to another, imagine what it is like in the morning, when we all get up and have to go to the toilet to take care of our basic human needs. Sometimes it takes one hour for everyone to have his turn. So, please, help me explain how to avoid conflicts in that tiny room..."

Overcrowding at penal institutions and accommodation conditions not complying with health, hygiene and space requirements and climate conditions have been one of the most common causes of complaints for years. According to the COPS, total prison occupancy as at 31 December 2021 was 104%, even higher than in 2020. At the same time, the rate of overcrowding in closed prisons, which held 91% of all PDLs on that date, was very high – 123%. Of 13 prisons in total, 12 had occupancy exceeding 100%, the worst being the Zagreb Prison (150%), Karlovac Prison (155%) and Osijek Prison (168%). In this context, it must be stressed that the new AEPS does not prescribe a standard for living space of 4 m² and 10 m^3 per prisoner, which affects PDLs' accommodation conditions even further. With all this in mind, we welcome the information that the Požega Penitentiary is currently being adapted, which should ensure closed prison accommodation for 120 more prisoners. Likewise, the documentation for adapting the Lipovica-Popovača Penitentiary is being prepared, with accommodation for 110 more prisoners being planned.

Considering the overcrowding of penal institutions and the fact that the Criminal Code has for the last nine years allowed that prison sentences up to one year be served at home, we asked the MJPA for information about the possibility of serving sentences that way. According to the information we received, that possibility will be discussed soon.

Photograph 17 (Bathroom at Lepoglava Penitentiary)

Photograph 18 (Bathroom at Lepoglava Penitentiary after remediation)

Prisoners have also stressed that accommodation conditions do not comply with legal standards. In response to prisoners' complaint that conditions in the bathroom at the high-surveillance ward of the **Lepoglava Penitentiary** do not comply with hygiene and health standards, our on-site investigation confirmed the claims made in the complaint and we warned the institution of the need to remediate the bathroom. One month after our warning, the Penitentiary notified us that the walls and ceiling had been repaired, which is an example of good practice. The warning about the on-site conditions was also sent to the COPS. Two months later, they informed us that the Penitentiary had made up the deficiencies, but also that they had found no violation of prisoners' rights or irregularities indicated in the complaint.

Despite drawing the COPS' attention to inappropriate conditions at the **Zagreb Prison** on several occasions, the decision of the Constitutional Court U-III4182/2008 from 2009 has still not been implemented. According to this decision, it was found that the PDLs' constitutional right to humane treatment and respect of dignity had been violated. Consequently, the Government was ordered to adjust the Zagreb Prison's capacities in accordance with accommodation requirements within five years. Inappropriate accommodation conditions at the **Diagnostics Centre in Zagreb**, situated in the same building as the Zagreb Prison, were also addressed by the Decision of the Constitutional Court U-III-1192/2018 from November 2020. Among other things, the Decision stated that the complainant spent 22 hours a day in a cell where he occasionally had less than 4 m^2 of personal space, that the room also had a toilet which was not separated from the rest of the cell, that there was no toilet ventilation system and that food was served and consumed in that room. Consequently, in accordance with the views of the ECtHR, it was found that such conditions were inhuman and degrading and that the complainant's rights referred to in Art. 23 and 25 of the Constitution and Art. 3 of the Convention had been violated. Keeping in mind that we have been highlighting these issues over the past years, we advise the MJPA to adjust accommodation conditions at all penal institutions according to legal and international standards.

Recommendation
The MJPA is advised to adjust accommodation conditions at penal institutions according to legal and international standards.

Judicial protection

"…are we really talking about judicial protection when under Art. 47 of the AEPS prisoners have the right to contact the executing judge once a year and be informed about their rights, while I have not exercised that right once in the last four years..."

Prisoners continue to point out the inappropriate behaviour displayed by heads of penal institutions and the COPS, according to the complaints they have been submitting in accordance with Art. 17 of

the AEPS. As we have pointed out in our previous reports, explanations have remained partial or brief and they do not make it clear what has been done to assess the validity of a complaint or what the assessment is based on. A complaint is one of the basic means of protecting PDLs' rights. Therefore, the MJPA is advised to keep insisting on the implementation of its instruction, which provides that, after receiving a written complaint from a prisoner, it is necessary to thoroughly investigate the complainant's allegations and to provide them with a reasoned response within a statutory time limit. The response needs to specify what actions have been taken during the investigation, the facts established and provisions of the primary and secondary legislation that form the basis for assessing the validity of the complaint.

One of the most common causes of prisoners' complaints concerns the amount of time taken by executing judges to make a decision. For instance, we were contacted by a prisoner claiming he had filed an appeal against the executing judge's decision which denied his request for interruption of serving a prison sentence due to poor health. Although the judicial panel, in accordance with Art. 164(3) of the AEPS, was obligated to decide on the appeal within three days of its receipt, the decision was made only two months later, i.e. a few days before the complainant's sentence expired. Despite that, according to the explanation received from the competent court, the case was settled within an appropriate time limit. Although this time limit is indicative, we believe such cases cause prisoners to lose their trust in the judicial system and effectiveness of judicial protection.

Prisoners have also contacted us because of protracted decision-making of executing judges regarding complaints against decisions made in disciplinary proceedings. For instance, one prisoner claimed to have submitted a complaint to the executing judge against a decision imposing a disciplinary measure against him. But, instead of within 48 hours, a decision was made a month and a half later. Although the complaint was partially upheld and the complainant was imposed a disciplinary measure prohibiting him from using money in the prison for 35 days, a disciplinary measure lasting for 40 days had been enforced in the meantime because a complaint does not postpone the enforcement of a disciplinary measure. For years, prisoners have been pointing out that time limits for settling complaints against decisions made in disciplinary proceedings are being exceeded. Therefore, we have reported this issue to the President of the Supreme Court, who asked competent courts for relevant information. We believe this will contribute to faster decision-making about prisoners' complaints and consequently increase the judicial protection of prisoners.

Prisoners have also contacted us because of the way executing judges have handled certain requests for judicial protection submitted in accordance with Art. 19 of the AEPS. For example, we were contacted by a prisoner who submitted a request for judicial protection, believing he had been subjected to inhuman treatment. He claimed that judicial officers kept waking him up every hour during the night by entering his room and turning the lights on. However, the executing judge, contrary to Art. 19(3) of the AEPS, did not adopt a decision to reject or accept the complaint. Had he done so, the prisoner would have been able to file an appeal to the panel of the competent county court. Instead, the judge treated the request as a complaint and responded in the form of a letter, against which a complaint cannot be lodged. This issue, among other things, arises from the impreciseness of Art. 19 of the AEPS, which does not provide for cases of rejecting a request or handling it as a complaint. Recognising the independence of judicial authorities, we reported it to the MJPA and requested it to consider the need for amending the provision at issue. However, we were informed

that the former AEPS contained an identical provision and that relevant case law has existed for years. Nevertheless, we find it necessary to consider the stance of the Constitutional Court in the case U-III-1192/2018, according to which prisoners should lodge complaints about conditions in prisons to the executing judge, whose decision may be complained against to a three-member county court panel, and that a constitutional appeal may be lodged only against such a decision. Therefore, we advise the MJPA to reconsider the need for amending Art. 19 of the AEPS in order to fill the legal vacuum.

Inconsistent enforcement of Art. 141(2) of the Criminal Procedure Act, according to which president of the court or the judge designated by him must check on remand prisoners at least once a week, is another issue we have been pointing out for years. The situation has been exacerbated by the epidemic, as suggested by the data received from the MJPA in July 2021, according to which judicial oversight was irregular and sometimes completely absent. At some prisons, remand prisoners were informed about their rights in writing, which can substitute check-ups in-person only to some extent. At other prisons, judges gathered information about the treatment of remand prisoners from the warden over the phone. This form of direct oversight is one of the most important guarantees that human rights of remand prisoners are respected, which is why its irregular implementation can have a negative impact on the respect of rights.

Treatment by judicial police

Treatment by judicial police has remained one of the most common causes of complaints. Some prisoners have highlighted systemic issues, such as how prisoners are treated during transport. One prisoner claimed that he was using out of prison benefits during the execution of his sentence, that he was permitted an interruption of serving a prison sentence on several occasions and that he would always return to the institution without any problems. However, when he was transported from the institution to court, his hands and feet were restrained. Our investigation showed that such treatment was in accordance with the order of the COPS, which instructs all penal institutions to tie the hands and feet of prisoners sentenced to five or more years in a closed prison when they are being transported (handcuffs, restraint belt, footcuffs). Considering international standards, we warned the COPS that the use of restraint devices must be grounded in a case-by-case risk assessment, respecting the principle of necessity and proportionality. Based on the statement received, the warning has been accepted and the issue has been addressed in the new Ordinance on Security Tasks in the Prison System. From now on, the necessity and proportionality of restraint will be taken into account during transport of prisoners on a case-by-case basis.

Protection of the rights of minors and young adults deprived of liberty

In 2021, we received three complaints from minors and young adults who are serving a juvenile prison sentence or at the Turopolje Juvenile Correctional Facility. We also brought one case on our own initiative based on media reports.

The complaints pertained to the disproportionate use of means of coercion and restraint devices at the Correctional Facility and to the length of stay at the Diagnostics Centre.

In the proceedings based on a complaint about the use of means of coercion, it was found that there had been active resistance and that the judicial officer had acted in accordance with Art. 51 of the Act on the Execution of Sanctions Imposed on Juveniles for Criminal Offences and Misdemeanours. After means of coercion (a baton) was used, the person was examined by a doctor at an external healthcare institution. The next day, the person was re-examined at the Facility infirmary.

By the time of writing this report, we did not receive a statement from the Turopolje Juvenile Correctional Facility regarding the use of restraint devices during the minor's stay in a separate room. However, considering we had received such complaints during our visit in 2020 as well, we are once again highlighting the illegality of their use, which is permitted only when minors are apprehended or discharged. Furthermore, considering that the only special measure of protection for minors prescribed is isolation and stay in a separate room without the possibility of a cumulative use of restraint devices, the MJPA is advised to develop guidelines on the conditions and methods of using special measures to maintain order and security at correctional facilities.

Recommendation

The MJPA is advised to develop guidelines on the conditions and methods of using special measures to maintain order and security at correctional facilities.

In the case concerning a young adult's length of stay at the Diagnostics Centre, it was found that the issue was caused by overcrowding at the juvenile prison, which led to the stay at the centre being extended even after diagnostic tests had been completed. Diagnostic tests were performed within 30 days of admission to the Diagnostics Centre, while the young adult stayed two months longer, which is unacceptable.

In the case of minors who drank a disinfectant at the Turopolje Juvenile Correctional Facility, we were informed that the COPS had carried out an inspection and imposed measures against the irregularities found, which need to be implemented consistently.

4.2. Performance of NPM tasks in the prison system

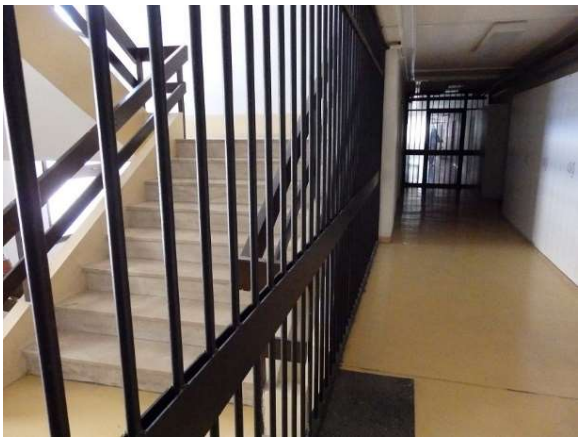
Split Prison

In November 2021, we made a targeted inspection of the Split Prison, focusing on the measures taken to protect the health of all PDLs and officials, to detect potential COVID-19 outbreaks in time and to prevent the disease from spreading further, with a particular emphasis on the prisoner admission process. We also conducted an anonymous survey of PDLs.

It was found that the prison doctor and an epidemiologist from the Teaching Institute for Public Health of Split-Dalmatia County cooperate closely in planning and implementing prevention measures. The procedures related to prevention measures have been arranged in collaboration with local epidemiologists (prisoner admission, notifying competent authorities at discharge, etc.) and constantly adjusted to the changes in instructions applicable to all other institutions accommodating

especially vulnerable groups where the risk of the virus entering and spreading is higher. Prison officials highlight good collaboration with the epidemiology unit and believe it to be one of the reasons why occasional virus outbreaks are stopped quickly. The prison doctor issues vaccination, recovery or probable case certificates required to arrange prisoner transport. Interested prisoners can get vaccinated by an epidemiologist and the prison doctor and the epidemiologist also records vaccinated prisoners in the system. Such collaboration is an example of good practice.

Photograph 19



Photograph 20

When it comes to new arrivals, efforts are made to place persons who arrived at the same time together. Persons are not tested for SARS-CoV-2 when arriving to the prison, but undergo PCR testing before they are released from the admission ward. Therefore, during the inspection, we suggested considering the possibility of doing appropriate tests when entering the penal institution to minimise the risk of an outbreak. Another suggestion was to avoid accommodating persons in rooms in groups until test results have arrived. Finally, it was advised that persons who arrived on the same day or possibly the next day are placed in the same room. In just a few days, we were informed that the prison introduced rapid antigen testing during admission of PDLs in collaboration with the epidemiological unit.

Considering that certain penal institutions test prisoners for COVID-19 on arrival (e.g. the Zagreb Prison, Karlovac Prison, etc.) and that persons are placed in the admission ward only after a negative test, while other penal institutions do not do tests on arrival, but immediately before release from the admission ward (e.g. the Split Prison), we advised the COPS to develop admission process guidelines in order to align the penal institutions' procedures and to protect the PDLs' rights. The recommendation has not been accepted, with an explanation that this is not necessary. Explanation we received from COPS stated that the admission process was the responsibility of the heads of penal institutions and it was arranged in collaboration with the prison doctor and local epidemiological unit and that such practices had led to good results so far and the number of positive cases had been kept to a minimum.

The job occupancy rate observed against the Split Prison job classification was 81%, with a lack of judicial officers being felt the most. We have been constantly highlighting the lack of officers at penal institutions. We believe that the MJPA, besides the Admission Plan for the calendar year (short-term plan), should also adopt a medium-term plan (for a two-year period). This would make it possible to respond to possible higher staff reductions (due to retirement and alike) in time.

Photograph 21

During the inspection, we also discussed the issue of asbestos in the prison facade, which must be resolved permanently. We already highlighted this issue in the 2015 report on the visit to the Split Prison, but it still has not been resolved. Panels must be removed and a new facade must be installed on the entire building, which would also fix the issue of excessive condensation and dampness in certain areas. During the visit, damage caused by dampness was detected on the ceiling near the common bathroom in the 2nd prison ward. According to the explanation we received, it was caused by dampness resulting from a large amount of condensate.

During the visit, we conducted an anonymous survey of PDLs on the conditions in which prison sentences are served during the epidemic.

The survey was taken by 49 PDLs, including 24 prisoners (one female) and 25 remand prisoners (three female). Three quarters of the respondents consider themselves well-informed about COVID-19 and its prevention (92% of remand prisoners and 57% of prisoners), while 25% of the respondents do not.

The majority of the respondents said they were given disposable masks during their stay at the prison. 44% of them believe that protective equipment is supplied in an adequate amount (56% of remand prisoners and 30% of prisoners), while 56% of them think more equipment should be provided.

The PDLs' average rating of their compliance with prevention measures was 3.4 (on a scale from 1 to 5, 1 meaning they do not comply with the measures at all). The average rating of compliance with prevention measures given by remand prisoners and prisoners was 3.8 and 3, respectively. The PDLs' average rating of the officials' compliance with prevention measures was 3.9 (remand prisoners = 4.2, prisoners = 3.5).

Fear of infection is greater among prisoners (50%) than among remand prisoners (24%).

94% of the respondents stated they communicated with their family and friends by phone, while 31% of them also use letters and 23% also use video visits. Three prisoners and 12 remand prisoners have visitors (they talk to them through the plexiglass using phones, which they claim are often broken). One remand prisoner and one prisoner do not communicate with their family and friends.

In the survey, PDLs mostly highlighted overcrowding, which makes both the prisoners and officers nervous. They also claimed they spent 22 hours in their rooms, with no activities. The prisoners also stated they had no visits and out of prison benefits. Some of them also stressed specific issues (e.g. money cannot be transferred by payment order and going to the post office requires a COVID-19 certificate). Most remand prisoners indicated issues in communication with attorneys, claiming it was hard to communicate "through glass" and over phone because it is sometimes very difficult to hear the other person. Besides that, they believe that a lack of privacy in communication with an attorney makes it harder to prepare a defence. They do not like having court hearings by a video link because they consider them a mere formality. They also said a 50-minute phone conversation with their family a week is not enough and that they missed open visits by children. They claimed only one of the three phones in the visiting room works, while the other two are faulty. The phone often does not work during walks.

Most respondents are not in favour of relaxing the current prevention measures. Remand prisoners believe that new arrivals must be tested immediately on arrival and then isolated in order to prevent outbreaks. They were informed about the possibility of getting vaccinated. Those in favour of relaxing the prevention measures believe rapid antigen tests should suffice for visits if the persons are vaccinated, since PCR tests are expensive. They also suggested allowing direct contact with attorneys and family.

Legislative framework improvement activities

Acting in accordance with Art. 19 of the Optional Protocol to the Convention Against Torture, in 2021, we were involved in a public discussion on proposed rules on the treatment of prisoners, expert supervision in the prison system, probation with electronic monitoring and security tasks in the prison system.

Since individual actions of judicial officers limit human rights and liberties, during e-consultations, we suggested that the Proposed Ordinance on Security Tasks in the Prison System be revised. For instance, we highlighted the need to provide more detailed rules of using video surveillance in a way that would guarantee the respect of data subjects' rights and personal data safety and privacy. However, the proposal was not accepted. We also proposed amendments to other provisions compromising human rights, such as the invasion of privacy in case of a thorough search (strip search). Our suggestion was that such provisions apply based on case-by-case security assessments, respecting the necessity and proportionality criteria. However, this proposal was not accepted either.

Furthermore, prisoners often complain to us that they are not informed about their own prison sentence execution program at all or sufficiently, nor about changes in that program. So, during the e-consultations about the Proposed Ordinance on the Treatment of Prisoners, one of our proposals was that, in addition to a decision on the initial sentence execution program, prisoners also be given a decision on program changes. This would allow them to actively participate in the execution of the program, which is necessary for fulfilling the purpose of serving a prison sentence. The MJPA rejected our proposal, explaining that this would unnecessarily overload the officers with administrative tasks at penal institutions with many prisoners.

Collaboration with the Directorate for Prison System and Probation

Last year, we held lectures at the 36th, 37th and 38th basic training for judicial police officers. During the lectures, besides human rights, we analysed the judgments of the Constitutional Court and ECtHR in cases against Croatia concerning the prohibition of torture. Besides showing certain cases from the ombudswoman's practice, the trainees also had a focus group aimed at gaining an insight into their understanding of the judicial officer's role at penal institutions and their attitudes about the human rights of PDLs.

In 2021, collaboration with penal institutions was good and we also noticed some progress in collaboration with the COPS. However, there is still room for improvement when it comes to cases concerning systemic or normative issues.

5. Persons with mental disorders with restricted freedom of movement

In 2021, we received 19 complaints from persons with mental disorders concerning their forcible detention and accommodation at psychiatric institutions, insufficient knowledge about their legal status, medical diagnosis that is, failure to exercise the right to full information.

> *"I was placed in a psychiatric institution without being told why I was FORCIBLY left there. Not only was I uninformed about anything, but when I asked the people who worked there, who should be more responsible than me based on their age and profession, they kept ignoring me and digressing. If you have any free advice, I would appreciate it."*

We highlight the complaints from persons placed in closed departments at psychiatric institutions, who believe to have been committed forcibly. On the other hand, psychiatric institutions have informed us that the persons concerned have signed an informed consent. Signing a consent to treatment, i.e. informed consent, must result from the process of communication between a doctor and a patient, through which the patient will receive all the information required to make a decision about their treatment. What is more, these persons are placed in a more unfavourable position than those being forcibly committed (i.e. without their consent) because they lack the guarantees that would serve to verify the justifiability of them being committed.

This year we have initiated an investigation in connection with the death of a patient at the Psychiatric Ward of Dr Tomislav Bardek General Hospital caused by the patient setting himself on fire with a lighter. Medical staff had confiscated cigarettes from the deceased patient but found no lighter on his person on that occasion, which eventually led to a tragic outcome. Confiscation of lighters and cigarettes is a standard procedure when a person is found confused or disoriented. According to the terms of the hospital's Occupational Health and Safety Rules, patients are permitted to smoke in the

living room area, which is constantly supervised by nurses and doctors, as the hospital claims. However, the investigation showed that the incident was first noticed by a patient sitting on the terrace. Seeing as the safety of medical procedures implies those procedures being protected from unwanted events, we have recommended consistent implementation of all security standards imposed by the Healthcare Quality Act and other regulations from the field of health and medical care. This is why we have called for amendment of Art. 29 of the hospital's Occupational Health and Safety Rules, which permit smoking in the living room area of the hospital, because this provision is in contravention of the Act on Restrictions on the Use of Tobacco and Related Products.

Nobody talks to patients at the psychiatric ward (which implicitly sends the message that they are unworthy), there are no types of therapy (other than pharmacotherapy) or activities that may encourage them to be active, give them a purpose and hope, help them socialise, maintain hygiene, etc. What kind of treatment methods are those if they mainly boil down to ignoring, sedating, restraining patients? I presume that methods of that kind could mitigate the manifestation of some symptoms of disease, but they are without a doubt degrading and harmful for the patients.

From a letter sent by a person whose sister stayed at the University Hospital of Split

In 2021, NPM representatives made an unannounced follow-up visit to the Psychiatry Clinic of the University Hospital of Split with the aim of examining the implementation of warnings and recommendations given during the visit in 2018. Both visits revealed treatments that may constitute inhuman and/or degrading treatment.

Recommendation
The MH is advised to make accommodation conditions at psychiatric institutions compliant with international and legal standards.

It was found that accommodation conditions do not comply with international or national standards. For example, patients do not have the possibility of being outdoors in the fresh air every day, as required by the CPT Standards. Specifically, during the pandemic, the patients staying at the Clinic could only spend time outdoors on the terrace, which does not have a protective fence and could thus pose a security issue. Certain rooms at the Clinic are still poorly maintained, particularly sanitary facilities and bathrooms, which need to be thoroughly renovated. Consequently, accommodation conditions at psychiatric institutions have to be made compliant with international and legal standards.

A follow-up visit revealed some worrying treatments in connection with the use of restraining measures, inadequate keeping of medical records, failure to use appropriate de-escalation techniques, in particular actions performed at the time of applying those measures that may constitute degrading and/or inhuman treatment, such as putting restrained patients in diapers even if they do not suffer from incontinence and allowing them to be seen like that by others, or patients

being kept restrained for a long time (Judgment of the ECtHR in M.S. v. Croatia (no. 2), 75450/12 of 19 February 2015). Use of coercive measures on persons with mental disorders is permitted as an exception in extremely urgent cases, when their own heath or the health of others is at risk, and only to the extent and in the manner necessary to eliminate the risk once non-coercive measures were insufficient to eliminate it first. In this regard, we recommend that education programmes be systematically conducted for healthcare workers about the rights of people with mental disorders and the use of means of coercion.

During this follow-up visit to the Clinic, as was the case during the previous, regular one, it was found that the medical documents kept by the nurses contained adequately detailed information, whereas the documents kept by the psychiatrists do not comply with the Rules on Coercive Measures or the recommendations from the Clinic's Rules of Procedure. There is an insufficient level of detail in the medical documents serving as a record of the reasons of using coercive measures, procedures conducted before those measures were used in order to prevent their use, description of the clinical condition including how the person's life or lives of other persons are threatened, and the fact that the risk to health was such that it could not be eliminated by other means (de-escalation and other). Record is made of the times when psychiatrists made their rounds (which was between every two to four hours) in order to extend or end the use of the restraining measure. However, there is no indication of the reason why the patient was restrained. There is also no indication of a treatment plan expected to shorten the time during which the patient is to be restrained. Moreover, reasons for using coercive measures or extending their use are not detailed in the patient's personal medical records either. In this context, it is important to keep medical records of such measures as prescribed by the Act on Protection of Persons with Mental Disorders (APPMD) and the Ordinance on the Forms and Modes of Application of Coercive Measures on Persons with Severe Mental Disorders.

Recommendation

The MH is advised to systematically conduct education programmes for healthcare workers about the rights of people with mental disorders and the use of means of coercion.

Recommendation

The MH is advised to keep adequate records of the use of means of coercion in all psychiatric units.

From the procedural aspect of the right to protection from inhuman and degrading treatment, when applying convention law, courts can judge that rights have been violated if medical records were imprecise and incomplete and that, as such, it was insufficient to determine the decisive facts with certainty, as ruled, for example, by the ECtHR in its judgment in Bureš v. the Czech Republic. In this case, relevant documents did not contain explicit reasons for using coercive measures. More specifically, only general notes were made about the patient being restless and aggressive, with indication of a certain time when that happened, but there was no information about any supervision of the applicant's condition.

Considering the great number of times when restraining measures were used (between 1 January and 29 September 2021, they were used on 810 occasions, on 304 persons), it was found that the Clinic

lacks a sufficient number of rooms where these measures could be used. Specifically, there is only one room that can be directly supervised and where medical staff is constantly present. However, this room is mainly used for patients with serious bodily injuries, which results in the restraining measures being implemented in various other rooms where there is no video surveillance or possibility of the patient being continuously supervised by medical staff, which is in contravention of Art. 63 of the APPMD and the CPT Standards. To be more specific, during this follow-up visit, restrained patients were found in rooms that were not under the supervision of healthcare professionals or under video-surveillance. Moreover, the doors to these rooms were kept open while the patients were restrained in them, exposing them to the views of anyone passing down the hall. Not only that, some of those patients were found only in their underwear or diapers. According to the medical staff and the restrained patients themselves, they are often put into diapers regardless of not being incontinent, which is a practice that may constitute degrading treatment.

Restraining measures are applied even on patients in voluntary commitment. However, according to the CPT Standards, these patients may be restrained only if they consent to it. Where use of coercive measures is deemed necessary in case of voluntary commitment, but the patient has not consented to it, the patient's legal status has to be re-examined. However, not one medical history contains information about a patient in voluntary commitment consenting to use of coercive measures.

In addition to that, some patients were restrained by one arm as a way of preventing them to escape from the Clinic, owing to the fact that it is possible to escape over the balcony rails. In several annual reports, we have underlined that means of physical restraint should never be used solely as a result of inadequate spatial or technical conditions for the implementation of involuntary hospitalisation or due to a lack of a locked ward. It is precisely the lack of spatial or technical conditions that can have a significant impact on the frequency of use of methods of restricting one's freedom of movement, which is a way of violating the rights of persons with mental disorders. Consequently, we have recommended the MH to issue implementing acts stipulating the conditions pertaining to the space, staff and medical and technical equipment that are to be fulfilled by all healthcare institutions or their units implementing involuntary detention and commitment of persons with mental disorders. Despite the fact that an ordinance has been issued that lays down safety standards for psychiatric wards, those standards apply solely to locked wards and pertain to the appearance and size of rooms for work with groups and rooms for supervision.

What is particularly worrying is the long duration of use of restraining measures. In this context, we would like to refer to an example of a patient who has been subjected to restraining measures lasting longer than 10 hours a day, for 16 consecutive days. Out of a total of 349.5 hours spent at the Clinic, the patient was restrained for 286.5 hours. According to the views of the CPT, depriving patients of their freedom of movement has to be the subject of a clearly defined policy, which has to imply completely unambiguously that any initial attempts to calm down patients who are distressed or violent have to, as much as possible, involve measures other than physical ones (e.g. verbal instructions). Restraining patients for several days, according to the CPT, cannot be justified as a therapeutic procedure and constitutes abuse. According to the revised CPT standards from 2017, the period of restraint should be as short as possible and it should usually involve minutes, rather than hours. In this context, it is noted that restraining patients for days can lead to abuse. Moreover, in the judgment of the ECtHR in M.S. v. Croatia (no. 2), 75450/12 of 19 February 2015, it was found that,

upon her admission to the psychiatric institution against her own will, the applicant was subjected to inhuman and degrading treatment in the form of being tied to a bed for 14 hours, which was not proportional to the situation and constituted a violation of the material aspect of Art. 3 of the ECHR.

Consequently, it can be concluded that violations of human rights sometimes result from inadequate material conditions and resources, insufficient knowledge of the APPMD or international standards, and sometimes even from normative gaps as well. Sufficient material resources have to be provided and continuous education is to be implemented. What is especially important is providing adequate spatial and technical conditions for persons being detained or committed involuntarily in order to prevent their rights being unnecessarily limited.

In this regard, on the occasion of the Persons with Mental Disorders Rights Day, Vrapče Psychiatry Clinic, CIPH and the Croatian Medical Association, Croatian Society for Clinical Psychiatry organised a seminar titled "Prevention of the use of involuntary and coercive measures in treating persons with mental disorders". The discussion involved solutions that could improve the position of persons with mental disorders, which includes amending the regulations when necessary and adequate material investments in the system, as well as continuous training of all medical professionals involved. In addition to that, we emphasised that, in order to protect the human rights of persons with mental disorders, it is important to align theory and practice through a multidisciplinary approach that takes into account international human rights protection standards, such as the CPT Standards.

A lack of facilities for accommodating mentally incapacitated minors is still a problem handled on a case-by-case basis. Despite the fact that in 2020, after several years of warnings being issued by special ombudswomen, a Draft Ordinance on amendments to the Ordinance on the list of psychiatric institutions for involuntary commitment of mentally incapacitated persons and psychiatric institutions where mentally incapacitated persons are treated without being committed was prepared, based on which the Psychiatric Hospital for Children and Youth was to be declared as an institution for involuntary commitment of mentally incapacitated minors, this Draft Ordinance has never entered into effect.

Recommendation 149

The MH is adviced, to systematically resolve the forced accommodation of uncountable minors in accordance with their needs and security requirements

Meanwhile, the practice has been such that minors were first placed into the Prison Hospital, and once they are found to be mentally incapacitated, an application is made for their relocation to the Psychiatric Hospital for Children and Youth. However, this hospital lacks adequate conditions for accommodating minors found to be mentally incapacitated during a criminal procedure nor is it on the current list of psychiatric institutions for involuntary commitment of mentally incapacitated persons, which is why the MH, for lack of an adequate institution, opted to have such persons committed in accordance with the available resources. Failure to resolve this issue could lead to possible degrading or inhuman treatment. Therefore, the issue of involuntary commitment of mentally incapacitated minors in accordance with their needs and safety requirements has to be systematically resolved.

6. International cooperation among NPMs

During 2021, we also had active international cooperation related to the NPM mandate and police treatment, so we participated in events organised under the SEE NPM Network, IPCAN, Council of Europe, OSCE and other international institutions. We also took part in a number of webinars organised by the Association for the Prevention of Torture (APT), Ludwig Boltzmann Institute and the European NPM Forum.

At the recommendation of the SPT, we also contributed to making a general comment on Art. 4 of the OPCAT, which governs the powers of international and national mechanisms at places where persons are or may be deprived of their liberty.

As part of the SEE NPM Network, we participated in the first online meeting organised by the Hungarian NPM as the Chair of the Network, which discussed the impact of COVID-19 on NPM activities. We also participated in the second meeting in Budapest on the topic of specific techniques of interviewing members of vulnerable groups in places of deprivation of liberty. As a result of the Chairmanship of the SEE NPM Network in 2020, we were involved in the preparation of a report on efficient monitoring of procedural safeguards during police custody in collaboration with the Ludwig Boltzmann Institute and APT. This year, we also initiated and coordinated the development of the SEE NPM Network website – https://see-npm.net/, which was funded by the CoE.

We continued our work on the project to promote and protect migrants' rights at the borders as part of the ENNHRI's Asylum and Migration Working Group, through which we issued guidelines for monitoring the conduct on the borders and migrations in the context of challenges presented by the COVID-19 pandemic. We also took part in the NHRI Academy, organised by the OSCE/ODIHR, ENNHRI and FRA, the topic of which was "Framing migration from a human rights perspective: the role of the NHRI".

7. Recommendations

Police system:

1. The MoI and the General Police Directorate are advised to strictly observe the obligation to notify the state attorney immediately in case of arrest on suspicion of a criminal offence;

2. The MoI and the General Police Directorate are advised to treat vulnerable groups with extra care and to use police powers in a way that interferes with human rights and freedoms the least, in accordance with the Police Duties and Powers Act;

3. The MoI and the General Police Directorate are advised to use police powers in a way that interferes with human rights and freedoms the least while achieving the purpose of the police work, especially when depriving people of their liberty;

4. The MoI and the General Police Directorate are advised to secure accommodating conditions for PDLs in line with international and national standards at the police administrations and stations where this has not been done yet;

5. The MoI and the General Police Directorate are advised to equip the vehicles used for transporting PDLs with adequate safety equipment;

6. The MoI and the General Police Directorate are advised to set up video surveillance in all the areas where PDLs may find themselves as well as an alarm system (a call button), which should be accessible to detention supervisors in operations and communications centres;

Applicants for international protection and irregular migrants:

7. The MoI is advised to translate the term 'pushback' or invent an adequate Croatian equivalent;

8. The MoI is advised to carry out procedures in line with EU and international law in relation to irregular migrants apprehended on the Croatian territory;

9. The MoI is advised to grant NPM representatives access to all information about treatment of irregular migrants, including data stored in the information system;

Prison system:

10. The MH and the MJPA are advised to adjust the procedure of prescribing and administering prescribed medicines to PDLs in the prison system in collaboration with the CHIF;

11. The MH and the MJPA are advised to ensure that the preconditions for the operation of the Zagreb Prison Hospital as a healthcare institution are met;

12. The MJPA is advised to urgently adjust the price of phone calls placed by PDLs at penal institutions to market rates;

13. The MJPA is advised to increase the resources required for PDLs to use video calls at penal institutions;

14. The MJPA is advised to adjust accommodation conditions at penal institutions according to legal and international standards;

15. The MJPA is advised to develop guidelines on the conditions and methods of using special measures to maintain order and security at correctional facilities;

Persons with mental disorders with restricted freedom of movement:

16. The MH is advised to make accommodation conditions at psychiatric institutions compliant with international and legal standards;

17. The MH is advised to systematically conduct education programmes for healthcare workers about the rights of people with mental disorders and the use of means of coercion;

18. The MH is advised to keep adequate records of the use of means of coercion in all psychiatric units;

19. The MH is advised, to systematically resolve the forced accommodation of uncountable minors in accordance with their needs and security requirements

8. Conclusion

In its operation, the National Preventive Mechanism identifies systemic issues. It is important to accept the recommendations and to take further measures and actions with the aim of strengthening the protection of PDLs' rights.

Although last year we highlighted the failures in the performance of police duties, inadequate healthcare in the prison system, inadequate accommodation conditions in the police system, failure to inform patients with mental disorders of their rights, the need to conduct an independent investigation concerning alleged violence toward irregular migrants, and the need to give the ombudswoman direct access to data, such problems are still observed during NPM visits and actions taken based on citizen complaints.

For example, it is still necessary for police officers to treat vulnerable groups with extra care and to use police powers in a way that interferes with human rights the least. Although we pointed out on several occasions that means of coercion may only be used to the extent necessary to achieve the purposes of such coercion, it was concluded in the conducted investigations that the necessity and proportionality of use of means of coercion by police officers remains a major issue. It is also important to have prompt and efficient internal police oversight in case of failure in the performance of police duties and to allow the Committee for Complaints to fulfil its legal obligations as the external authority for oversight of police conduct in an efficient manner. The police system still has the problem of inadequate accommodation conditions for PDLs; they have to be made compliant with national and international standards.

There are still many challenges concerning the treatment of irregular migrants, particularly in regard to treatment at the border and denying of access to international protection. Denying of access to international protection and returning of the individual to a country where their life or liberty would be in jeopardy may constitute a violation of the provisions of international and national law. It is also important to give NPM officials free and unhindered access to all data concerning the treatment of irregular migrants, in accordance with OPCAT, the ANPM and the Ombudsman Act.

It is necessary to ensure that prisoners have access to adequate healthcare, as well as that the preconditions for the operation of the Zagreb Prison Hospital as a healthcare institution are met. In addition to healthcare, accommodation conditions are still not compliant with legal and international standards; another issue is the lack of organised activities in most penal institutions, which is why PDLs spend most of their time in their rooms. Due to the need to prevent the spread of COVID-19, certain rights pertaining to visits and contact with families are still restricted; for that reason, the capacities for enabling contact via video calls for PDLs in penal institutions must be increased.

Likewise, accommodation conditions in psychiatric institutions have to be made compliant with international and legal standards, and adequate records concerning the use of means of coercion must be kept.

These examples represent only some of the possible solutions to issues described in this report. They are included in the recommendations for preventing torture, inhuman or degrading treatment or punishment and for strengthening the protection of PDLs' rights; their adoption would certainly contribute to achieving this objective and to enabling the introduction of necessary changes.