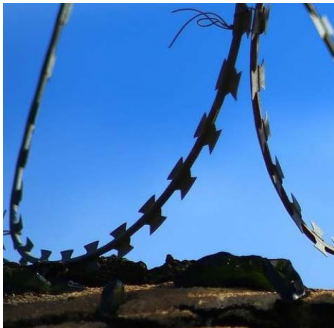




2022 REPORT

ON THE IMPLEMENTATION
OF THE NATIONAL PREVENTION
OF TORTURE



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INTRODUCTION

We are pleased to present the latest annual report of the National Preventive Mechanism and in doing so, welcome the growing confidence and influence of the Lithuanian NPM. The United Nations' Optional Protocol to the Convention Against Torture (OPCAT) provides us with a crucial framework to strengthen our work monitoring places of detention that requires a comprehensive approach. Instead of solving individual situations, the aim is to identify possible causes of misconduct through systematic analysis of detention situations. These activities are aimed at positive change, to prevent torture, reduce the risk of ill-treatment and improve the conditions of persons whose liberty is restricted. The report below outlines the identified deficiencies and violations, provided recommendations as well as observed positive developments that have been made in the performance of the national prevention of torture activities.

In 2022, a total of 6 inspections of places of deprivation of liberty were carried out, 3 of which were initial inspections and will be continue in 2023. Monitoring visits were carried out to places of detention of foreigners, places of imprisonment (prisons) and social care institutions. Three reports on the situation of human rights and freedoms in places of detention of foreigners and social care institution visited were also prepared in 2022. A report on the situation in places of imprisonment (prisons) is going to be prepared in 2023, after completing all the planned inspections of places of imprisonment (prisons). This report provides information on the comments and recommendations made to

the places of detention in 2022 with a view to improving the situation of human rights and freedoms of the persons detained there, and on the developments achieved in these places. The inspections of the places of detention identified later in this report have revealed substantial violations of human rights and freedoms and other systemic problems, which all responsible institutions and bodies have been called upon to address in order to ensure that Lithuania's international obligations in the field of protection of human rights and freedoms are not violated, and that violations of the protection of human rights and freedoms do not recur at the places of detention visited and at similar places.

In 2022, the Seimas Ombudspersons' Office under the leadership of its NPM team also took active part in organisation of trainings as well as sharing of experience and know-how with international organisations and experts. Two workshops–training sessions for staff of social care and imprisonment institutions were organised with an aim of raising their competences in the field of ensuring human rights and freedoms. An external expert was brought in to provide advice and training. Meetings were also held with representatives of the European Union Agency for Fundamental Rights (FRA), the international humanitarian organisation Doctors Without Borders, the European Border and Coast Guard Agency (Frontex) and the United Nations Refugee Agency (UNHCR), discussing topical issues relating to the safeguarding of human rights and freedoms and the prevention of torture in places of deprivation of liberty.

KEY OBSERVATIONS, RECOMMENDATIONS AND CHANGES ACHIEVED

INSPECTIONS OF PLACES OF DETENTION OF FOREIGNERS

A national emergency was declared throughout the country by Resolution No 517 of the Government of the Republic of Lithuania of 2 July 2021 “On Declaring National Emergency and Appointing a National Emergency Operations Manager” due to the mass influx of foreigners from the Republic of Belarus.

Due to the threat to public order caused by the massive influx of foreigners, a state of emergency was introduced in the entire border section along the state border of the Republic of Lithuania with the Republic of Belarus and 5 kilometres inland from the border section, as well as in the places of accommodation of foreigners designated by authorities of the Republic of Lithuania, including the Kybartai Foreigners’ Registration Centre (hereinafter – the Kybartai FRC) of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter – SBGS) by Resolution No XIV-733 of the Seimas of the Republic of Lithuania of 7 December 2021 “On the Introduction of a State of Emergency” from 10 December 2021 till 14 January 2022 00:00. After 14 January 2022, the state of emergency due to the mass influx of foreigners was not prolonged, but the Government Resolution No 517 of 2 July 2021 declared a national emergency due to the mass influx of foreigners in 2022. Thus, during the inspections of the Kybartai FRC, both a national and

a state-level emergency due to the mass influx of foreigners were in force, while during the inspection of the Medininkai Foreigners’ Registration Centre (hereinafter – the Medininkai FRC) a national emergency was in force due to the mass influx of foreigners.

The Law on the Legal Status of Foreigners (version in force until 1 January 2023) (hereinafter – the LLSF) established certain restrictions on the rights of asylum seekers, which may be temporarily and proportionately applied during a state of war, a state of emergency, national emergency or an extreme event resulting from a mass influx of foreigners, if certain rights of asylum seekers (with exceptions) cannot be guaranteed for objective and justified reasons, also establishing that the accommodation of asylum seekers and other foreigners in places adapted for that purpose, without granting them the right of free movement in the territory of the Republic of Lithuania, may last up to 12 months.

In order to prevent torture and other cruel, inhuman or degrading treatment or punishment in places of accommodation of foreigners due to the massive influx of foreigners during the declared state of emergency and national emergency, the Seimas Ombudsperson Erika Leonaitė and employees of the Human Rights Division of the Office conducted inspections at the Kybartai FRC on 22-23 December 2021 and 12 January 2022, and at the Medininkai FRC on 24 May 2022 and 20 June 2022.

INSPECTION AT THE KYBARTAI FOREIGNERS' REGISTRATION CENTRE



The Kybartai FRC was established in the premises of the former Kybartai ward of the Marijampolė Correctional Facility. It accommodates adult males resettled from the temporary migrant camp at the Rūdninkai polygon. The Kybartai FRC was selected for inspection in view of information received from different sources about extremely difficult accommodation conditions and possible cases of violence.

During the inspections at the Kybartai FRC, the following issues were assessed: ensuring the material conditions of reception of foreigners, including accommodation conditions, arrangement of meals and provision of clothing; organisation of employment and the possibility to practise religion; accessibility of information on one's status, rights, obligations, asylum application procedures and the possibility of submitting applications; accessibility of legal aid; accessibility of personal health care services; assessment of the vulnerability of persons and their special needs; management of conflicts and the use of coercion by officials.

The following deficiencies and violations of human rights and freedoms identified during the inspections carried out at the Kybartai FRC are to be taken into account, the totality of which was considered to amount to inhuman or degrading treatment or punishment prohibited by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:



- The nature and degree of actual restrictions imposed on foreigners accommodated in the Kybartai FRC (material reception conditions, nature of supervision/control, severe restrictions on freedom of movement, duration of accommodation, etc.) resembled those of detention;
- asylum seekers and foreigners who did not have the status of an asylum seeker were not differentiated in terms of assurance of material conditions nor restrictions imposed on them;
- material conditions of accommodation of foreigners in Sector A of the Kybartai FRC (living space per person significantly smaller than the minimum; lack of private space; lack of furniture, equipment and other inventory; extremely severe restrictions on movement;

lack of opportunities for personal and environmental hygiene; insufficient number of sanitary facilities; lack of cleanliness and hygiene of the common areas, lack of ventilation, etc.) were not properly guaranteed;

- material conditions of accommodation of foreigners in Sectors B and C of the Kybartai FRC (cell-type living quarters; lack of furniture, equipment and other inventory; extremely strict restrictions on movement) were not adequately ensured;



- The Kybartai FRC had very limited opportunities for spending time meaningfully, a lack of equipment and infrastructure for leisure and sport, and no accessible facilities for non-Christians to pray, which meant that the employment of foreigners and their ability to practise their religion were not adequately ensured;
- Formal, laconic and incomplete information on their rights was provided to foreigners accommodated in the Kybartai FRC, decisions related to the examination of asylum applications and expulsion decisions were provided to the foreigners without metadata, and information on the grounds for the decisions taken in respect of them was not provided in

the languages they understand; there was lack of information on the internal procedures of the Kybartai FRC, including the right to lodge applications and complaints, and there were extremely limited possibilities for foreigners to contact their relatives and the outside world, which did not adequately ensure their right to receive information on their rights and obligations, their legal status in the Republic of Lithuania and the legal procedures related to them;



- the foreigners were not provided with a detailed information on the procedure for allocation of state-guaranteed legal aid, the procedure for informing them about the state-guaranteed legal aid provider (lawyer) assigned to them was not clear; visits of lawyers to the Kybartai FRC were rare and sporadic, thus the right of the foreigners to receive actual rather than formal state-guaranteed legal aid and the necessary and timely information on the possibilities of exercising this right was not properly ensured;
- The position of the head of the Reception Division, which is responsible, inter alia, for providing foreigners with material and domestic necessities, food, primary health care and social employment of foreigners

accommodated in the Kybartai FRC, was vacant, and out of the 26 staff positions available in this Division, only 11 were taken, i.e. there were less than a half of the total required number of staff employed. Only 11 out of the 22 available positions of social workers and assistants were filled;



- although no systemic problems related to physical violence between foreigners themselves or from officials have been identified at the Kybartai FRC, there were reports that Kybartai FRC officials conducted repeated checks at night, waking up foreigners and putting them under psychological pressure to make decisions to return to their countries of origin as soon as possible.

Taking into account the identified shortcomings, the Seimas Ombudsperson made 43 recommendations to the responsible state bodies and institutions and other competent entities (the Ministry of the Interior of the Republic of Lithuania, the Migration Department, the SBGS, the Bar Association) on improving the human rights situation at the Kybartai FRC.

- positions of family doctors and general nurses were vacant, which led to a lack of continuity and systematicity in the provision of services to patients, as well as a lack of timely dentist services. Emergency care was only available at weekends, which clearly shows that access of foreigners to personal health care at the FRC was not properly ensured;
- a comprehensive vulnerability assessment of foreigners was not carried out, the staff of the Kybartai FRC was not trained in assessing vulnerability and special needs, most foreigners were not provided with a Foreigners' Accommodation Questionnaire for completion, so not all initial needs of foreigners were identified right away; vulnerable persons were identified during the inspections whose vulnerability was not known to the administration of the Kybartai FRC; therefore, it can be stated that the vulnerability and special needs of foreigners at the Kybartai FRC were not properly assessed;



It is to specify that most of the recommendations made have been implemented, including improving material conditions of the accommodation of foreigners at the Kybartai FRC (new sanitary facilities were installed, measures were taken to ensure the supply of hot water in the washrooms and toilets, new kitchens were installed and new household appliances were purchased, measures were taken to ensure the proper installation and operation of smoking areas/rooms, a leisure room, a library/reading room and a sewing room

were set up, also renovating outdoor leisure areas); also measures were taken to ensure the cleanliness of living quarters and common-use areas, and the menu was updated to allow foreigners to choose between three types of meals; the menus were translated into languages that foreigners understand and displayed in a place accessible to them. The position of the Head of the Reception Division was filled; a contract for the purchase-sale of psychological services was signed, and monthly plans were drawn up and implemented for the organisation of social and psychological services for foreigners. Detailed information on, inter alia, the procedures and deadlines for examining asylum applications in the Republic of Lithuania, the procedure for submitting and examining complaints, applications and other requests at the Kybartai FRC, the grounds and procedure for confiscating mobile phones of foreigners, have been published on information boards.

INSPECTION AT THE MEDININKAI FOREIGNERS' REGISTRATION CENTRE



the Lithuanian border. The monitoring visit to this registration centre was organised to assess both the nature of the restrictions imposed on the foreigners and the material conditions, in particular in view of the fact that some of the foreigners had already been held for about a year in a camp of container houses with a limited water and electricity supply, which is essentially temporary in nature. Accordingly, the inspections at the Medininkai FRC assessed the following issues: the validity of the placement of foreigners in the Medininkai FRC on the basis of the detention conditions and the restrictions of liberty imposed on them; material conditions of reception of the foreigners, including the infrastructure of the place of residence and the provision of domestic and material facilities; the possibility of submitting foreigners' complaints, requests and other applications to the administration of the Medininkai FRC and their handling procedure.

The following deficiencies and violations of human rights and freedoms identified during the inspections at the Medininkai FRC can be distinguished:

The Medininkai FRC was established on 16 September 2021 as a temporary solution in response to large flows of foreigners irregularly crossing

- The nature and degree of the actual restrictions imposed on the foreigners accommodated at the Medininkai FRC (accommodation

in locked sectors and limited possibilities of movement between the sectors, extremely severe restrictions on liberty, the nature of the supervision/control, limited free space in the residential sectors, failure to ensure active and meaningful activities on a day-to-day basis, and prolonged stay (for more than 10 months) were equivalent to detention;

- material conditions of accommodation of foreigners in Sectors A, B, C and D of the Medininkai FRC (lack of furniture, equipment and other inventory in common areas; lack of sanitary facilities in kitchenettes; lack of cleanliness and hygiene in the common areas; less than the minimum living space per person in Sector B; insufficient number of toilets for women in Sector A; inadequate number of staff in the Reception Division of the Medininkai FRC, etc.) were not properly ensured;



- the procedure of handling applications, complaints and other requests from foreigners was not clear and comprehensive, foreigners were not properly informed about it, and foreigners' requests were answered verbally or not at all; having decided to reject and or to

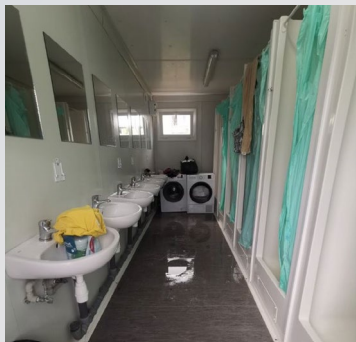
refuse to meet foreigners' requests, foreigners were not provided with written replies indicating the reasons and grounds for such decisions and the procedure for appealing against them, and therefore the right of foreigners to submit applications, complaints and other appeals was not adequately ensured;

- The Reception Division of the Medininkai FRC, which is responsible, inter alia, for the material and household care, food, primary personal health care and social employment of foreigners accommodated at the Medininkai FRC, had 21 positions and 12 positions of social workers and their assistants, however, at the time of the inspections, only one of the 21 planned positions (that of the Head of the Reception Division) was filled, and out of the 12 planned position, only one social worker and one assistant social worker had been recruited on a full-time basis, and the position of one psychologist still was open.

These circumstances allowed concluding that the totality of the restrictions imposed on the foreigners accommodated at the Medininkai FRC amounted to *de facto* detention, that their applications were not handled in accordance with the procedure laid down in legislation, and that the conditions of detention of foreigners at the Medininkai FRC, when they were held in detention for a prolonged period of time, without the right of freedom of movement, amounted to treatment that violates human dignity prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Taking into account the identified shortcomings, the Seimas Ombudsperson made 17 recommendations to the responsible state bodies and institutions (the SBGS), the State Food and

Veterinary Service (SFVS), the National Public Health Centre under the Ministry of Health (NPHC)) to improve the human rights situation at the Medininkai FRC.



After making recommendations on improving material accommodation conditions, the Seimas Ombudsperson noted that if the implementation of these recommendations is not possible for some objective reasons (e.g. to ensure water supply to the kitchenettes, to solve the problems of electricity supply), the issue of transferring the foreigners from the Medininkai FRC to other temporary accommodation facilities for foreigners, where adequate material conditions of reception of foreigners are ensured, should be considered.

In its report on the implementation of the recommendations, the SBGS indicated that a decision was made to close the Medininkai FRC relocating all foreigners residing there to other centres. It also informed that despite the closure of the Medininkai FRC, the SBGS had comprehensively assessed the shortcomings identified in the report, paying particular attention to the recommendations concerning the possibility for foreigners to lodge complaints and other appeals with the management of the Medininkai FRC concerning material conditions, violence, etc.

The foreigners' accommodation centres under the subordination of the SBGS were informed about the shortcomings identified during the inspections at the Medininkai FRC, instructing their management to ensure that a concise information document on the procedure for submitting and processing applications, complaints and other requests in the foreigners' registration centres is prepared as soon as possible, if not already, translated into the languages commonly spoken by the foreigners residing at the centres, and posted in places that are readily accessible to them, to ensure that complaints, applications and other requests submitted by foreigners are answered properly and as quickly as possible; also to send translations of the internal rules of procedure of the accommodation centres and of provisions of the procedure of temporary accommodation of foreigners of the SBGS to translators for checking in order to ensure that the translations are accurate, without interpretation or distortion of the original meaning of the document.

Having conducted an inspection on the basis of the recommendation of the Seimas Ombudsperson, Officials of the SFVS, Vilnius Department, found that foodstuffs were transported to the Medininkai FRC without ensuring

hygienic conditions (the interior surface of the car transporting packaged food was not clean, the cleaning of the car was of poor quality), the weight of the served hot meals was not checked, the size of the portions was not uniform (for example, after weighing 4 portions of fried fish, it turned out that one of the portions weighed 66 g, while the documented yield was 85 g), the storage conditions of hot food were not ensured, i.e. it was stored at a temperature below +63 °C, a device maintaining heat was set up at the place where food was handled/distributed, but was not turned on; documents confirming medical check-up of one employee and his completion of hygiene training were not provided. In light of the deficiencies found, the SFVS obliged the catering establishment to remedy the deficiencies identified during the inspection, provided methodological assistance and instructed it to comply with the requirements of the legislation when carrying out its food processing activities.

INSPECTION AT THE MACIKAI SOCIAL CARE INSTITUTION



Macikai Social Care Home is the largest care home in Lithuania, with 340 residents living there at the time of the inspection conducted in 2022. The first inspection of this institution

was carried out by the Human Rights Division in 2020, and it revealed a number of shortcomings, which indicated that the standards of human rights protection were not sufficiently met. In this context, 44 recommendations were made in 2020 to address these shortcomings, recommending the Macikai Social Care Home to ensure, inter alia, that:

- physical restraint is applied only on the decision of a psychiatrist, in accordance with the law and without violating the dignity of the person;
- all cases of physical restraint measures are properly recorded;
- furniture and objects in rooms where physical restraint is applied are fixed, free of sharp corners and/or other dangerous parts, and the rooms have clocks hanging in them;
- the residents' rooms are always screened for personal hygiene procedures; staff members always knock before entering the residents' rooms;
- residents are given the opportunity to make requests for a range of foodstuffs or meals, taking requests into account where possible;
- in order to increase residents' participation in free-time activities, motivate and encourage residents in all wings of the facility to engage in a wider range of activities that match their skills and interests;
- engagement of residents who are unable to get out of bed because of their health conditions is better organised, offering activities tailored to their individual needs and social skills, taking them outdoors periodically when possible;

- residents' individual social care plans take into account a comprehensive assessment of their health status and their resulting special needs, and include information on their visual, hearing and other impairments, as well as dental, oral and other diseases, and the health care services they need;
- residents' clothing is personalised and assigned to each individual.



Taking into account the number of residents at the Macikai Social Care Home and the nature of the violations found in 2020 (e.g. the procedure of applying restraint measures was assessed as potentially amounting to inhuman and degrading treatment), the Seimas Ombudsperson Erika Leonaitė instructed the staff of the Human Rights Division to carry out a follow-up inspection of the Macikai Social Care Home in 2022, assessing the implementation of the recommendations made in 2020.

The results of the follow-up inspection of the Macikai Social Care Home revealed a number of positive developments, indicating that most of the recommendations had been implemented. For example, the practice of using physical restraints on agitated residents, which is highly critical from

a human rights based approach, has been discontinued, aiming to resolve difficult situations by talking and allowing the person to calm down. The inspection also found that the residents of the institution were given the opportunity to express their preferences regarding the menu, the residents interviewed appreciated the quality of the food provided to them, kitchenettes were installed in the wings of the care home where residents could cook their own food. Staff have received training on the protection of rights of persons with mental and behavioural disorders.

The inspection also assessed issues related to ensuring the privacy of residents of the Macikai Social Care Home, ensuring freedom of movement, promoting independence, drawing up an individual social care plan, access to employment and other issues related to the situation of human rights in the institution.

The following deficiencies identified during the follow-up inspection; however, should be mentioned:

- failure to ensure that a blind for personal hygiene procedures in residents' rooms is used, so that other residents could not observe the procedures;
- failure to ensure that staff always knocked and waited at least a few seconds for residents to answer before entering their rooms;
- failure to ensure that staff knowledge of residents' right to privacy and the rights of persons with disabilities is periodically improved, with training focusing on changing staff attitudes towards persons with disabilities;
- there was no periodic awareness-raising of residents about their right to privacy and the rights of persons with disabilities;



- no measures have been taken to record how many of the residents and how often they participate in engagement activities and physiotherapy sessions, and what the demand for engagement is, in order to ensure effective engagement planning for less active residents on the basis of this data;
- failure to ensure that residents with more severe disabilities who are unable to move without a wheelchair are taken outside periodically, recording this fact in order to assess the frequency and periodicity of residents going outside;
- failure to ensure that residents are provided with more frequent engagement and activities tailored to their individual needs and social skills, and that staff activities are organised in a way consistent with residents' agendas;
- failure to ensure that all residents of the Macikai Social Care Home have their own personal clothing;
- failure to encourage more independent residents to wash their own clothes, providing them with the necessary tools for that;

- there was no ongoing communication between physiotherapists and nursing professionals to improve the effectiveness of physiotherapy services in improving personal motor skills;



- failure to ensure that meetings of the Residents' Council of Macikai Social Care Home are held periodically, without prolonged interruptions;
- insufficient attention to the timeliness and quality of personal healthcare services provided to residents of the Macikai Social Care Home;
- insufficient measures have been taken to make the living environment close to home, to encourage residents to settle in comfort and to personalise their living spaces;
- additional shortcomings of inadequate use of chemicals in the premises of the Macikai Social Care Home, including living rooms, were identified.

Taking into account the identified shortcomings, the Seimas Ombudsperson made 17 recommendations to responsible state bodies and institutions (the Macikai Social Care Home and the Ministry of Social Security and Labour) on improving the human rights situation at the Macikai Social Care Home.

To inform about the implementation of these recommendations, the Macikai Social Care Home provided an implementation plan and additional information on the execution of the recommendations. The Macikai Social Care Home indicated that many of the recommendations made had already been implemented, including that measures had been taken to ensure that a blind was always used in the residents' rooms during personal hygiene procedures so that other residents were not able to observe the procedures; social workers and general nurses have been obliged to talk to service staff to ensure that staff members always knock and wait at least a few seconds for residents to answer before entering their rooms; measures have been taken to improve the knowledge of staff and residents of the residents' right to privacy and the rights of persons with disabilities; measures have been

taken to ensure that residents with more severe disabilities who are unable to move without a wheelchair are taken outside periodically and that this fact is recorded; measures have been taken to ensure that all residents have their own personal clothes assigned to them; more independent residents are encouraged to wash their own clothes and are provided with the necessary tools for that; social workers in the wards have been instructed to discuss with residents the personalisation of their living rooms; the description of the procedure for ensuring the privacy of the residents of the Macikai social care home has been updated; measures have been taken to ensure that residents, especially those who are not able to move around independently, are never left in a room that is not ventilated or has a pungent smell of chemicals from the use of cleaning agents.

CONTROL OVER IMPLEMENTATION OF RECOMMENDATIONS

The implementation of the National Prevention of Torture Programme in 2022 was significantly affected by insufficient material and human resources of the Seimas Ombudspersons' Office, as a result of which there were fewer visits to places of detention. The staff of the Human Rights Division used a variety of methods to monitor the implementation of the recommendations made in the reports. The responsible institutions were consulted by telephone, e-mail and other means of communication, and, following an analysis of the implementation plans submitted to the Seimas Ombudspersons' Office, the institutions were provided with proposals for improving and executing those plans and were asked to revise them in case the plans lacked information.

In terms of the implementation of the recommendations made following the inspections of

places of deprivation of liberty, 79 recommendations were made to the respective public authorities in 2022, the majority of which concerned improving material conditions in places of deprivation of liberty, improving the right to lodge complaints, applications and other requests and the right to information, improving access to personal health care services, and ensuring a more diverse and tailored organisation of engagement activities for individuals.

Thus, 87.32% of all recommendations made in the National Prevention of Torture Report of 2022 have been implemented. It should be noted that the implementation of the recommendations addressed to the Medininkai FRC and the Kybartai FRC, which have not yet been implemented, has become irrelevant since a decision was made to close these foreigners' registration centres.