REPUBLIC OF CROATIA
Ombudsman

REPORT ON THE PERFORMANCE OF THE ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM FOR 2022.

Content:

1. Introduction

The report on the work of the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM) for the year 2022 contains an assessment of the human rights situation of the persons deprived of their liberty and an overview of the activities aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment.

The report is based on the data collected during our 30 unannounced visits to police stations, police detention units, reception centres for foreigners, penitentiaries, prisons and psychiatric institutions. In addition, it contains 29 recommendations aimed at improving the treatment of persons deprived of their liberty and the conditions in which they are accommodated, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

We did not identify any behaviours or conditions that would constitute torture, but we have identified those that indicate inhuman and degrading treatment and violations of the constitutional and legal rights of the persons deprived of liberty. It is particularly worrying that we had warned about some of these issues in the previous years.

Accommodation conditions in police stations and detention units are still not aligned with the prescribed standards, and in none of the police stations visited does the video surveillance cover all of the areas where persons deprived of their liberty are located or move, although this would represent an additional measure of protection against torture and other cruel, inhuman or degrading treatment or punishment. Although we have been warning about this issue for several years now, the work process in detention units is still not organized in such a way that detention supervisors are dedicated only to this duty and they do not also perform tasks in the operational and communications centre. This makes regular supervision of detained persons more difficult, which is an additional risk for inhumane or degrading treatment.

2022 was marked by the completion of the process for the entry of the Republic of Croatia into the Schengen area, a large increase in the number of registered irregular migrants and the largest number of requests for international protection received so far. We paid special attention to the situation of the persons deprived of their liberty accommodated in reception centres for foreigners, who experience difficulties in exercising their rights and contacting lawyers, whereas assistance and support programs organized by CSOs are not available to them due to the fact that civil society organizations have very limited access to these locations. Of particular concern is the fact that we have not been given access to all of the data on the treatment of irregular migrants, including those that are stored in the information system of the Ministry of the Interior.

Insufficient accessibility of health care and the quality of the accommodation conditions are still the biggest problems in the prison system. Overcrowding increased further, leading to an occupancy rate of 205% in the Osijek Prison, while in the Zagreb Prison it reached the highest point since 2015. The situation is further aggravated by the insufficient number of the prison officers. Given that over the course of 16 months out of the total of the six overdose deaths in prisons five took place in the Zagreb Prison, we undertook an analysis of the problems in the organization of the distribution of the substitution therapy in that penal institution.

Despite the fact that we have been warning about them for years, the normative deficiencies, above all when it comes to the CPA and the AEPS, which result in varying treatment, have still not been eliminated.

Inadequate accommodation conditions in psychiatric institutions affect patients' privacy, restrict their free movement, and represent obstacles in the provision of quality diagnostic and treatment procedures. Patients are still not sufficiently familiar with their rights nor with the functioning of the concept of informed consent to being admitted to a psychiatric institution, so for example, they are not familiar with the fact that consent applies to the entire period of their hospital treatment. At the same time, we noticed that voluntary patients experienced restrictions to their freedom of movement and were being subjected to coercive measures. Coercive measures are not being entered into the records consistently enough, patients complain that they last too long, and the need for their extension is not clearly explained. Bearing in mind the applicable international standards, we pointed out to the need for a more detailed definition of the application of coercive measures in the Act on the Protection of Persons with Mental Disabilities.

We actively engaged in international cooperation and participated in numerous events organized within the Network of NPMs of the Southeast Europe (Network of NPM JEE), the Independent Police Complaints Authorities' Network (IPCAN), Council of Europe, OSCE and other international institutions. In September 2022, representatives of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) undertook a periodic visit to the Republic of Croatia, within which they met with the representatives of our institution with the aim of discussing our assessment of the situation of the rights of persons deprived of their liberty. At the ninth meeting of the States Parties to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which took place in October 2022, 13 new members of the SPT were selected, among them the adviser to the Ombudswoman, Ms. Anica Tomšić.

2. Police system

Regarding police treatment, the Ombudswoman acts in accordance with the authorisations under the Ombudsman Act and the Act on the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2.1. Protection of citizens' rights in police treatment

In 2022, we took action in 103 cases opened in that year, both based on citizen complaints and at our own initiative, concerning unlawful deprivation of liberty, use of force with elements of violence, omissions in policing and unprofessional and unethical conduct of police officers toward citizens.

EVERYTHING WAS CAPTURED ON CAMERA

Outraged father of chef beaten by police officer: 'You beat him with no reason!'

"If they had put him in handcuffs, taken him in for questioning and determined why he had been at that location, I would accept it as a police error. But beating him on the back with a baton, with no warning, restraining him, arresting him, confiscating his phone... What in the world is this?" This comment was made by the father of a 21-year-old (information known to the Slobodna Dalmacija editorial team) who found himself in the vicinity of the clash between the police and a group of fans that occurred on 21 October after the Hajduk–Dinamo football match at the Poljud stadium. He was beaten and arrested, along with five others.

The following day, he was released from custody without charges, or as stated in the police press conference, because he had an alibi. The young man's alibi is solid, as it was confirmed by, among others, his colleagues at the restaurant where he works as a chef, and which he left that night only a few minutes before the street clashes between the riot police and the fans, heading toward his car parked in the Zrinsko-Frankopanska Street.

jutarnji.hr, 24 October 2022

Police interventions in two cases concerning fans of the same football club attracted particular attention in the public. In both cases, force was used, and despite the existence of video footage of the events and suspicion of unlawful conduct by police officers, the problem arose in identifying all the participants in the events.

In Split, police officers responded to a call from citizens regarding noise during night hours. They issued an order to cease such behaviour, but then they were attacked and requested backup. The Split-Dalmatia County Police Administration informed the public that four police officers were injured and six individuals were arrested. However, the media published a video recording of a police officer's brutal treatment of a citizen (repeatedly kicking the citizen in the head and body, using a baton while the person was lying on the ground) who did not put up any resistance, in the presence of two police officers who made no attempt to stop their colleague's violent behaviour. Subsequently, it was revealed that the citizen just happened to been present at the scene of the incident and that he had not participated in the disturbance of peace at all.

We received a report from the expert team of the General Police Directorate, which, contrary to the previous assessments by the management of the Split-Dalmatia County Police Administration, established two instances of unlawful use of force resulting in bodily injuries. Taking of measures to determine the identities of all police officers who unlawfully used force was ordered, as was the conducting of criminal investigations to determine any potential criminal offences, both by members of the fan group and by police officers. The Head of the Police Administration publicly announced that the identity of the "police officer in the video" had been established and that he "would be dismissed from service, with initiation of urgent disciplinary proceedings".

Three months later, the media published a statement issued by the competent State Attorney's Office that investigative steps had been taken regarding the excessive use of police force, and that a special report from the Police Administration indicated that "the police, through their previous work, failed to determine the identity of the person on whom force was applied while they were on the ground and not offering resistance, despite conducting interviews with several individuals who were believed to have the relevant information." For the rule of law, it is necessary that further actions result in establishment of the accurate factual situation, especially in order to dispel any suspicion of obstructing possible criminal proceedings against the police officer who used violence. It is also necessary to clarify the discrepancy between the initial assessments of the Head of the Police Administration regarding the justification of the use of force and the subsequent assessment of the expert team that the actions were in fact not lawful. In order to build trust in police treatment, it is important to identify all participants in the events, including all police officers, for the purpose of determining if there is any liability. The CPT also emphasises that any prohibition of abuse loses credibility if persons performing police duties are not held accountable for such actions.

The Act on Police Tasks and Authorities (APTA) stipulates that force may be used to protect lives, overcome resistance, prevent escape, repel attacks and eliminate danger if it is likely that warnings and orders will not achieve the desired result.

In the second incident, at the Desinec gas station on the A1 motorway, a conflict likewise occurred between football fans and police officers who used force as a response. The police assessed that the use of force was lawful and justified. However, one video recording shows a police officer using a baton against a person who is sitting in a vehicle and is not resisting, meaning that the conditions for lawful use of force were not met. The General Police Directorate later agreed, stating that the officer's actions were contrary to "standards of training and consistency in treatment." However, the inability to identify the police officer is questionable, and the statement "that the video material will be used for educational purposes in training of police officers in order to emphasise the need for consistent law enforcement and respect for human rights" is not an adequate measure. We believe that effective methods of identifying police officers should be implemented in order to enable their recognition in all disputed cases. This could be ensured through the use of body cameras or visible markings on multiple parts of the uniform, such as a sufficiently sized identification number on the shoulder or the police helmet, rather than by solely relying on the official badge number, since the badge is often not visible or not worn in a way that would make it visible.

Recommendation 1.

For the Ministry of the Interior and the General Police Directorate to: introduce more effective methods of identifying police officers with regard to police treatment

Recommendation 2.

For the Ministry of the Interior and the General Police Directorate to: ensure that force is used only when it is necessary and proportionate

In 2015, the MI launched the e-Police project, which aimed to enable video recording of police treatment in order to protect citizens from unlawful or unethical treatment by the police, as well as to protect police officers from unfounded complaints. However, such a system is not yet in place. Back in 2016, we determined that a significant number of complaints regarding unprofessional and inappropriate conduct of police officers remain unconfirmed due to a lack of evidence, as facts are established based on typically contradictory statements from police officers and citizens.

According to the APTA, police officers are obligated to always use the lowest level of force that

guarantees success, meaning the one that inflicts the least harm on the person to whom it is applied. According to CPT recommendations, force should be used only when it is necessary and proportionate, in order to bring individuals behaving violently under control.

In the conflict at the Desinec rest area, citizens sustained gunshot wounds, and despite the passage of time, the circumstances remain unclear. According to publicly available information, despite organised police escort, the fans stopped at the rest area and attacked the police officers who were securing the gas station. They used physical force, threw stones, and used fire extinguishers, flares and other objects suitable for causing bodily injuries and significant property damage. The police officers used force against multiple individuals and fired shots from firearms under circumstances that remain unexplained in the context of criminal law, resulting in several individuals sustaining gunshot wounds. The police stated in the media that the shots were fired into the air as a call for help and to repel the attack on the lives of the police officers.

According to the APTA, firearms can be used, among other reasons, in self-defence or in extreme necessity, where it is not possible to avert imminent or direct danger to one's own life or the life of another person without it. The use of firearms is not permitted if it endangers the lives of others, except where it is the only means to defend against an attack or eliminate danger. Under the APTA, firing a warning shot when the conditions for the use of firearms in self-defence or extreme necessity are met and firing a shot to seek assistance do not represent the use of firearms as a means of force.

Recommendation 3.

For the Ministry of the Interior, the General Police Directorate and the State Attorney's Office to: conduct an effective investigation in cases of potential overstepping of authority by police officers, especially when this leads to grievous bodily injury as a result of the use of firearms by police officers

The fact is that, in the specific case, several individuals sustained gunshot wounds under circumstances which are still unknown. Therefore, the assessment of whether the shots were fired in self-defence or to seek assistance should be determined by the State Attorney's Office and ultimately by a court of law. According to publicly available information, the State Attorney's Office is still to establish all the relevant facts of this incident. In the context of establishing all the facts, an effective investigation should certainly be conducted, which should involve the victims. To foster public trust in the judicial system, it is especially important that the public is provided with sufficient information about the investigation and its results. We acted upon citizens' complaints regarding unlawful deprivation of liberty without the legal conditions for it having been met.

For example, a citizen who had previously complained about the conduct of police officers during a border crossing and filed a criminal report to the State Attorney's Office was subsequently arrested. The Commission for Complaints deemed this complaint about the unprofessional conduct of police officers well-founded, contrary to the previous two levels of internal police control. The State Attorney's Office forwarded the criminal report to USKOK for further action. However, while the State Attorney's Office was still taking actions, the police arrested the citizen "on reasonable suspicion of filing a false criminal report," after it was "established that the allegations in the complaint were unfounded, untrue and false" in the process of determining the veracity of the allegations made in his criminal report and complaint to the police. It is unclear in which process this was "established," since the Commission had found the allegations in the complaint justified, and the State Attorney's Office was still acting on the citizen's criminal report. Subsequently, the State Attorney's Office dismissed the police's criminal

complaint against the citizen. The citizen believes that this was retaliatory behaviour by the police, sending a message to citizens about the consequences of daring to complain about police treatment and persisting in doing so. The State Attorney's Office is responsible for establishing all the circumstances of this case, and both the Constitution of the RC and the ECHR stipulate that no one shall be deprived of their liberty or have their liberty restricted, except in cases stipulated by law.

Deprivation of liberty under questionable circumstances was also recorded in the case of a citizen who sought police intervention due to an ongoing dispute with a neighbour, whom she had reported to the police multiple times over several years for various criminal offences, including threats, to no avail. After requesting police intervention once again, she was taken to the police station and spent more than five hours in the premises for persons deprived of liberty because the neighbour had also filed a complaint against her for threats. The reasons for deprivation of liberty are unclear, considering that she voluntarily responded to the invitation of the police officers to provide a statement. It is evident that she was arrested, but she was not informed thereof, and the appropriate documentation regarding the arrest was not completed. Shortly thereafter, the State Attorney's Office dismissed the criminal charges against her. The citizen believes that the police's actions were a form of retaliation because several years before, the ECtHR had issued a judgment regarding the ineffective investigation of her criminal report. She states that the police's handling of the neighbour's report is biased since in cases where she filed reports against the neighbour for threats, as well as in other cases, the neighbour was not deprived of liberty, and the State Attorney's Office was not informed about the reports.

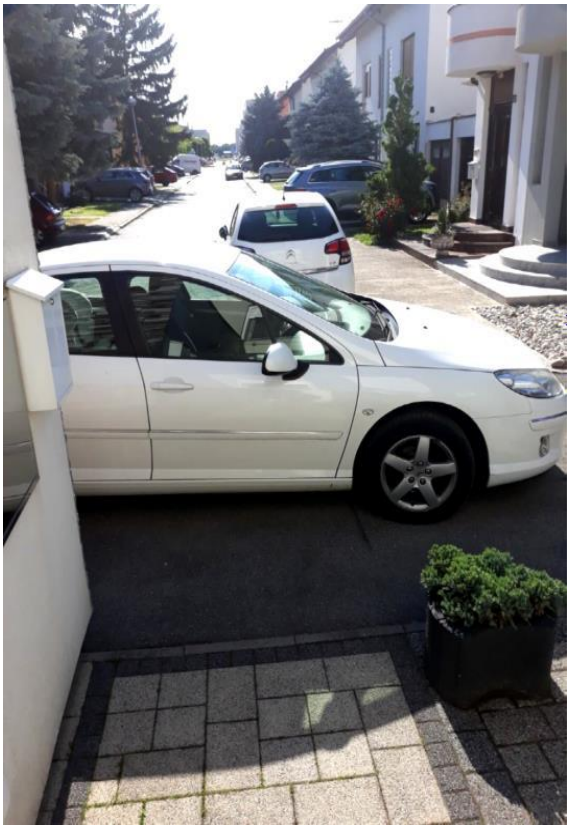
"A female police officer searched me and I was locked in a cell. When I asked, 'Why is this happening?', I was told that it was so ordered. I am reporting the person who made the decision to unlawfully deprive me of liberty for violating my human rights to defence and for prohibiting me from informing anyone that I was in custody.
The second police officer, whom I had not seen before that day, was with me the whole time. I asked why I was detained, why I hadn't been told that I would be detained – so that I could take my medication and leave water for my dog, when I would be interrogated, how long they were planning on keeping me and what I was even accused of. Being locked in the cell, I have to say that that was the first time in my life that I had been locked up, and after about an hour and a half, I felt weak and afraid. I realised that they could do whatever they wanted to me because no one knew where I was, and I started having a panic attack, which felt very much like I was going to have a heart attack. I was breathing heavily and loudly, so I asked them to call an ambulance because I was feeling unwell. I sat on the floor to cool down my body, the veins in my arms pulsated and I placed my palms on the floor. The ambulance did not arrive for at least half an hour, and I had the worst panic attack in my life. Then a police officer, an investigator, appeared and threatened that if I didn't stop screaming, I would be interrogated the day after tomorrow, which made my condition even worse."

It is concerning that there are cases where citizens have been calling the police for several years and we found that sufficient measures have not been taken to provide them with adequate protection.

For example, a citizen has been verbally abused by a neighbour for 17 years due to disturbed interpersonal relationships. The police documented the existence of threats as well as physical violence over an extended period. A recommendation was sent to the MI to conduct an effective and efficient investigation in order to reassess, based on the overall established facts, the validity of the allegations made in the complaint and to resolve any doubts regarding whether there are elements of a misdemeanour or a crime.

"It is an extremely challenging and sad experience in the urban environment to carry babies one by one, switching arms, over car tops, boots or other parts of vehicles parked in public areas. The experience I usually have after returning from exhausting oncology appointments and treatments is equally sad, when, due to my health, the patient transport workers or persons accompanying me cannot wheel me or carry me on stretchers into my own house. Instead, with great effort and improvisation, they have to carry me over parts of parked vehicles or carefully manoeuvre me through the minimal space available."

Photograph 4



In another case, a citizen who is undergoing cancer treatment is being blocked from entering his family home by a neighbour who parks vehicles in front of the entrance. Access to the house is necessary for both the arrival of EMS ambulances and the passage of baby prams. It is concerning that police officers have shown insensitivity and have not taken any available measures to regulate parking in an acceptable manner. We recommended that the police take actions aimed at preventing the escalation of neighbour disputes and that they inform the city's competent administrative office about the issue. This is because the neighbour, at his own discretion, marked parking spaces on the city's public property.

Of particular concern and questionable legal validity is the behaviour of the Police Administration, which provided the complainant's information and the complaint they had sent us, which we forwarded to them for appropriate handling, to a law firm hired by the head of the police station.

The law firm requested the information, which we did not provide to them, in order to protect the rights and interests of their client, who they claim "suffered loss and damage to professional and personal reputation as a result of the complainant's actions." However, it is unclear how acting on a complaint about police conduct became an issue of protecting the private interests of the head of the police station, and whether the head of the police station, if protecting their private interests by hiring a law firm, had made every professional effort to investigate the submitted complaint.

Considering the above, there is no doubt that the police apply different criteria and act differently in comparable situations. In this case, information received from the Ombudswoman for the purpose of the investigation was provided to the attorney of a private individual before filing a lawsuit in court. However, in other cases known to us, provision of personal data was conditional upon the filing of the appropriate lawsuit and the court's request in that regard. We already pointed this out in the 2019 Report and warned the police that they are obliged to handle the provision of personal data in a non-arbitrary manner and in a way that will not result in inequality.

The Ombudswoman is independent and autonomous in her work, and according to the Ombudsman Act, any form of influence on the Ombudsman's work is prohibited. In this context, the communication from the police station chief to the Ombudswoman through a law firm could be characterised as an attempt to influence the work of the Ombudswoman and to send a message that taking further actions for investigating the allegations made in the complaint could result in legal proceedings, which is unacceptable.

Recommendation 4.

For the Ministry of the Interior and the General Police Directorate to act uniformly when investigating complaints about police conduct and ensure the protection of personal data of the complainants

2.2. Activities of the NPM: Visits to police stations and police detention units

In line with the mandate of preventing torture and other acts of cruel, inhuman or degrading treatment or punishment, in 2022, NPM representatives visited 16 police stations and two detention units in the Karlovac County and the Primorje-Gorski Kotar County Police Administrations. Visits to the Primorje-Gorski Kotar County Police Administration were conducted as follow-up visits to determine whether the warnings and recommendations given during the previous visits had been implemented.

Cooperation with police officers during the visits was satisfactory, and there were no restrictions on carrying out the mandate. NPM representatives were provided access to data and records kept in written or electronic form.

Following the visits, 27 recommendations and one warning were issued, and six new recommendations were given during the monitoring visit.

2.2.1. Regular visits

As part of regular visits, accommodation and transport conditions were inspected, as were records on persons deprived of liberty.

- Accommodation conditions

During the visits, it was established that most police stations have facilities for accommodation of detained persons that are sufficiently large, with natural and artificial lighting, ventilation, heating, access to sanitation facilities and drinking water. However, it is unclear why measures have not been taken to align the accommodation conditions with the prescribed standards, which does not require a significant investment. For example, the walls and floors of some rooms require adaptation, as they have tiles or parquet flooring, which is contrary to the Standards of Premises in which persons deprived of liberty are held, issued by the MI. Similarly, most of the accommodation rooms have beds with wooden frames, even though the Standards do not provide for wooden beds.

Recommendation 5.

For the Ministry of the Interior and the General Police Directorate to: ensure that accommodation conditions in the premises for persons deprived of liberty are in accordance with the Standards of Premises in which persons deprived of liberty are held

Recommendation 6.

For the Ministry of the Interior and the General Police Directorate to: establish video surveillance in the premises where persons deprived of liberty are held

The fact that video surveillance does not cover all areas where persons deprived of liberty are held in any police station is concerning. Introducing video surveillance in all these areas would represent an additional measure of protection against potential abuse. Therefore, the introduction or upgrade of video surveillance should be a priority.

- Rights of persons deprived of liberty

During visits, it was determined that the detainees were informed about the reasons for their arrest and their rights, including the right to legal representation. A positive example is the exercise of the right to temporary free legal aid in accordance with the CPA, which these individuals exercised. However, in the past years, it was observed that despite this possibility, persons deprived of liberty rarely requested the assistance of lawyers, with the majority waiving their right to legal representation. This is important because access to procedural guarantees in the first hours of deprivation of liberty ensures a fair trial in accordance with Article 6 of ECHR, and it is also an effective way to prevent torture and other forms of violence.

In some police stations, the case files did not indicate who conducted the search of detained women, making it impossible to determine whether the search was conducted by a person of the same sex, in accordance with Article 76, paragraph 1 of the APTA. Therefore, it is recommended that official notes regarding the search of persons deprived of liberty be made, indicating which officer conducted the search.

Furthermore, it has been shown that multiple repetitions of the recommendation to organise the work process in a way that detention supervisors are solely dedicated to their duties and are not also involved in operational and communication centre tasks were justified. In its notice the General Police Directorate claimed that monitoring of the work of police officers performed up to that point had showed that based on the number of detainees received in the detention unit, there was no justified reason for detention supervisors to perform only those tasks and that through the examination of the cases, it was established that, in addition to their roles as shift manager or assistant shift manager, detention supervisors likewise effectively performed their duties in the detention unit. During our visits, it was directly observed that detention supervisors do not supervise the detained persons as stipulated by Article 52 of the Ordinance on Reception and Treatment of Arrested Persons and Detainees and on Records of Detainees in Police Detention Units, especially when persons deprived of liberty are accommodated in premises that are not part of the detention unit but are located within police stations. This poses an additional risk of inhuman or degrading treatment. Since, according to the Ordinance, detention supervisors are responsible for the proper application of the regulations on the treatment of detainees, we deem it necessary to organise and carry out supervision of the work of the detention unit in accordance with Article 52 of the Ordinance.

- Transport vehicles

It is still observed that transport vehicles do not have grab handles and seat belts in the area intended for the transportation of the persons deprived of liberty, which would minimise the risk of injuries during transport. This would be in line with the CPT standards, which require that transport be conducted in a humane manner, while ensuring personal and general safety.

Recommendation 7.

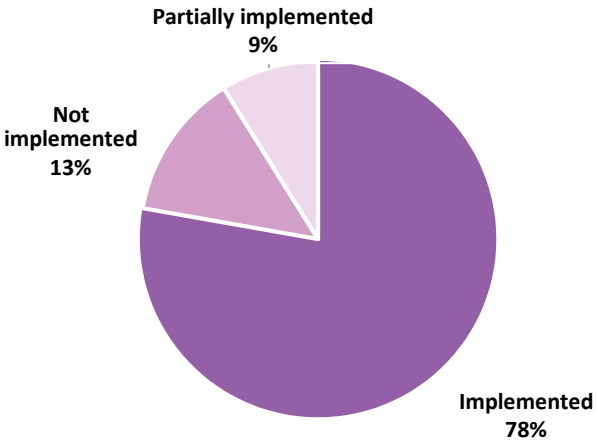
For the Ministry of the Interior and the General Police Directorate to: equip the vehicles used for the transport of detained/arrested persons with appropriate safety equipment

2.2.2. Follow-up visits

The follow-up visit to the Primorje-Gorski Kotar Police Administration included the detention unit and nine police stations. It was conducted to determine the level of implementation of our recommendations given after our regular visits conducted in 2017 and 2018.

During the follow-up visit, it was determined that 78% of the recommendations were implemented, 9% were partially implemented and 13% of the recommendations were not implemented and were thus reiterated.

EVALUATION OF IMPLEMENTATION OF RECOMMENDATIONS IN THE PRIMORJE-GORSKI KOTAR POLICE ADMINISTRATION



The percentage of implemented recommendations indicates a significant improvement in the accommodation conditions in facilities for persons deprived of liberty.

However, the MI and the General Police Directorate still need to find a solution for the remaining premises in police stations where the accommodation conditions are still not in line with the Standards. Since these Standards stipulate direct access to drinking water and sanitation facilities, their implementation is a priority. It is unacceptable that access to drinking water and sanitation facilities for persons deprived of liberty depends on police officers.

A positive example is the Opatija Police Station, which was relocated to a new facility where the accommodation conditions have significantly improved.

2.3. Commission for Complaints

The year 2022, the third year of the current term of the Commission for Complaints, which represents civilian supervision of the work of the police, provided an opportunity to better assess the position of the Commission in practice, the manner in which the police perceive civilian supervision and the perception of citizens regarding the effectiveness of the Commission's decisions in which complaints are deemed justified.

Recommendation 8.

For the Ministry of the Interior and the General Police Directorate to: include information about further complaint procedures in their responses to citizens' complaints after each stage of internal review

According to the Police Act, if the Commission determines that a complaint is partially or fully justified, the MI is obligated to review its decision within 30 days and inform the complainant accordingly. We were contacted by citizens whose complaints were deemed justified or partially justified by the Commission, but who were subsequently informed by the MI that it would stand by its decision stating that the complaint was unfounded.

Such responses, in which the reasoning behind the rejection of the Commission's decision by the MI is

not provided, undermine the arguments of citizens and the Commission itself. It is unknown what happens within the police system following the receipt of the Commission's decision regarding the justification of allegations made in the complaint and whether any consideration is given to improving future actions and preventing the situations that had led to the complaints. In order to ensure that citizens are informed about all possibilities of protection in accordance with the principle of sound administration, it is necessary for the police to include information about further complaint procedures in their responses to citizens after each stage of internal review.

Citizens also point out that the MI informs them that complaints regarding police treatment received via email do not meet the requirements of the PA, without providing them with information on how to remedy the deficiencies. This ultimately prevents them from accessing further complaint mechanisms, including the Commission.

The post on the website of the MI, which reads:

"*Complaints which are made after the prescribed time limit and which do not include the necessary prescribed information as specified in Article 5 of the Police Act, as well as complaints which pertain to other employees of the Ministry of the Interior or do not pertain to exercise of police powers will not be handled pursuant to the provisions of the Police Act; instead, provisions of the act regulating the state administration system will apply to them. In this case, a grievance expressed about the response of the competent police administration or organisational unit of the Ministry of the Interior will not be considered by the competent Commission for Complaints; instead, the grievance will be considered by the Internal Control Service, and its response will not be considered any further.*"

is an example of discouraging and misleading information for citizens who are trying to exercise their legal right to file a complaint. Therefore, the post on the website needs to be harmonised with the General Administrative Procedure Act and the case-law.

In that regard, in accordance with the General Administrative Procedure Act, the MI is obligated to ensure that the lack of knowledge or ignorance of the party and other persons involved in the procedure does not harm their legal rights, which is also confirmed by the judgment of the Administrative Court in Zagreb no. Uszp-4/195 from December 2021.

Recommendation 9.

For the Ministry of the Interior and the General Police Directorate to issue conclusions in order to warn the complainants of the deficiencies of the complaint and to set a time limit for it to be remedied, with a warning of legal consequences if the complainants fail to do so

3. Applicants for international protection and irregular migrants

Regarding the treatment of applicants for international protection and irregular migrants, the Ombudswoman acts in accordance with her competences under the Ombudsman Act and the Act on the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3.1. Arrival of irregular migrants and applications for International protection

Migration is a global challenge due to the impact it has on the countries of origin, transit and destination. It changes the population structure and, due to the large number of people moving along migration routes, requires a collective solution from multiple states. In 2015, the EU witnessed a significant influx of applicants for international protection and irregular migrants, which required a multi-level response, primarily calling for solidarity in the approach of the Member States and a fairer division of responsibilities. Therefore, since the refugee crisis in 2015, when the EU recorded 1.25 million first-time applications for international protection, a reform of the Common European Asylum System has been in the works. In 2020, the EC presented the EU Pact on Migration and Asylum (the Pact), which, among other things, defines faster procedures, proposes new possibilities for demonstrating solidarity among Member States and suggests a revision of the Dublin Regulation, which determines the state responsible for processing asylum applications. The Dublin Regulation has been the subject of dispute among Member States, mainly because the state of first entry has been responsible for asylum seekers in the majority of cases. However, Member States and the European Parliament still need to reach an agreement on all the proposals that make up the Pact.

In such circumstances, Croatia was finalising the process of joining the Schengen Area, which it joined on 1 January 2023, after fulfilling 281 recommendations in eight areas of the Schengen acquis, 145 of which related to the area of external border control. This naturally entails the responsibility for external border control and application of the Schengen acquis. The focus of public attention in recent years has been on external border control and allegations of pushbacks, calling for effective investigation of such allegations.

During 2022, there was a decrease in the number of complaints regarding pushbacks, but CSOs continue to report testimonies from individuals about pushbacks and the inability to apply for international protection.

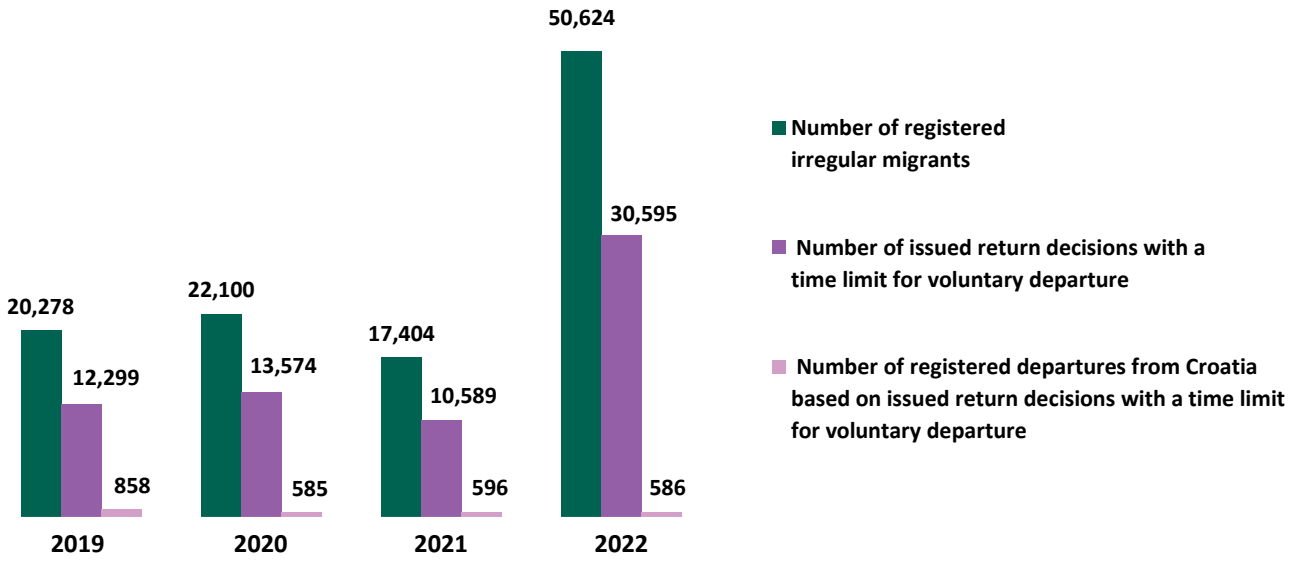
However, during 2022, we received a large number of reports from citizens about groups of people present in Croatian territory who wanted to apply for international protection. These reports often included the names of individuals, locations and sometimes information about medical conditions requiring emergency medical assistance. Acting on such reports, police officers visited the indicated locations and carried out procedures with different outcomes. According to the MI, in some cases, individuals had already left the indicated area by the time the police officers arrived. Sometimes, individuals applied for international protection and, following the procedure at police stations, they were subsequently taken to reception centres for applicants for international protection. In the case of some individuals, return measures were applied, most commonly by issuing decisions with a time limit for voluntary departure from the EEA, which was usually seven days.

The large number of individuals who received return decisions with a fixed time limit for departure from the EEA and their gathering at railway stations in Rijeka and Zagreb, attracted public attention. For a number of years, the MI has been issuing return decisions to individuals who irregularly crossed the border and failed to apply for international protection in the territory of RC, usually with a time limit of seven days for voluntary departure from the EEA. However, a significant number of migrants find it difficult to comply with these decisions because they do not have personal documents, and obtaining travel documents is generally not possible due to the absence of diplomatic missions and

consular posts in Croatia. We have repeatedly recommended that the MI, in accordance with the Act on Foreigners, provide assistance in organising returns primarily by entering into agreements with other government bodies, international organisations and CSOs. In 2022, the MI signed an agreement with the International Organization for Migration (IOM) on cooperation in the implementation of a project for assisted voluntary return and reintegration, and assistance was provided to nine individuals for their voluntary return to their countries of origin.

According to data of the MI, in 2019, 20,278 irregular migrants were registered and 12,299 were issued voluntary return decisions; in 2020, 22,100 were registered and 13,574 were issued such decisions; in 2021, 17,404 irregular migrants were registered and 10,589 were issued return decisions; in 2022, 50,624 were registered, and 30,595 were issued return decisions. However, only a small number of individuals have been documented as having left the territory of Croatia via border crossing points, and it is unknown whether they are still in Croatia, whether they have gone to other EU Member States or have left the EEA.

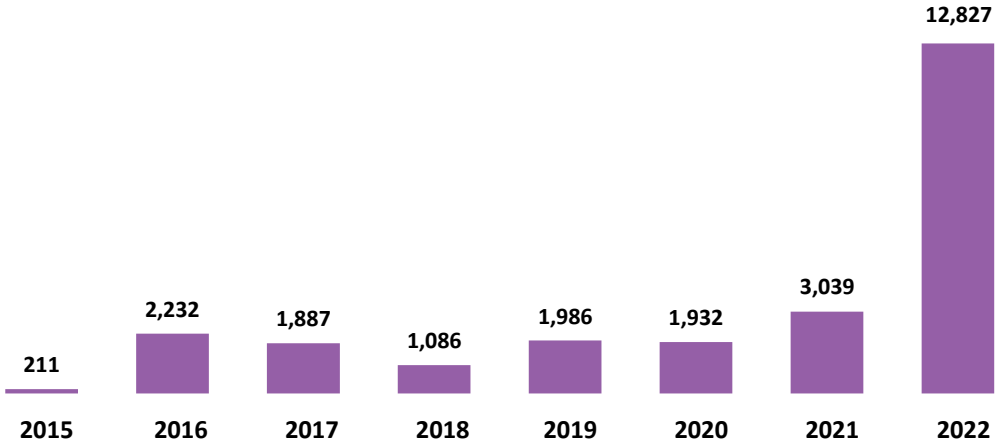
VOLUNTARY RETURNS



In 2022, the highest number of applications for international protection was recorded since 2004, when the first Asylum Act had been adopted. A total of 12,827 individuals applied for international protection, with 10,087 applying at border police stations and 137 at airport police stations.

In 2022, only 21 applications were approved, 81 were rejected and 3,406 procedures were discontinued. According to the MI, due to administrative burdens resulting from the record number of international protection seekers and the need to conduct the Dublin Procedure for over 3,430 individuals who expressed their intention to apply for international protection but did not submit the application, the process of discontinuing proceedings is still ongoing. Given the number of applicants for international protection and the complexity of the administrative procedure for deciding on the applications, it is necessary to increase the number of officials working on processing the applications and to increase the reception capacities in the reception centres for applicants for international protection in Zagreb and Kutina.

APPLICANTS FOR INTERNATIONAL PROTECTION



3.2. Immigration detention centres – exercise of rights

During 2022, we paid special attention to immigration detention centres, where we examined accommodation conditions, treatment and protection of their rights. During NPM visits and investigative procedures, we found that all three detention centres (in Tovarnik, Trilj and Ježevo) are investing in reception conditions by constructing new or improving existing accommodation facilities. However, difficulties have been identified in exercise of rights guaranteed to persons deprived of liberty who are accommodated in these centres.

Croatia (and the EU) provides various forms of protection, assistance and support to persons accommodated in the detention centres, including families with children, pregnant women and elderly persons. They are often not familiar with the legal system and the protection provided for them, they do not speak the language and they may lack trust in official persons and/or be unwilling to talk about their traumatic experiences. Therefore, it is essential to inform persons accommodated in reception centres about their rights in an appropriate manner. The rights of persons deprived of liberty are of little significance if such persons are not aware of their existence. In the context of accommodating foreigners in centres, clear and precise information about their rights is crucial, as is information regarding whom they may contact and how if they need protection and assistance, including access to legal aid and complaint mechanisms. As persons deprived of liberty, foreigners in the centres also have to be aware of their rights and obligations during their stay. This includes information about healthcare, maintaining hygiene and personal care, visits, telephone use, access to fresh air, nutrition and religion, security screening and search procedures, receiving letter post, packages and cash, etc. They should also be informed about the reasons for their placement in the centres and the intended duration of their stay. Being informed about rights and applicable procedures involves prompt communication in a language they understand.

Recommendation 10.
For the Ministry of the Interior to: ensure that information on rights in immigration detention centres are highlighted and communicated in an accessible, visible and clear manner

Recommendation 11.
For the Ministry of the Interior to: draft a proposal of the amendments to the International and Temporary Protection Act that will regulate the judicial review of lawfulness of decisions on restriction of freedom of movement in the same way as it is currently regulated for irregular migrants under the Act on Foreigners

Recommendation 12.
For the Ministry of the Interior to: ensure adequate translation and interpretation services during the process of deprivation of liberty of irregular migrants and applicants for international protection

Recommendation 13.
For the Ministry of the Interior to: ensure access to effective complaint mechanisms in the reception centres for foreigners

In 2022, we found that insufficient and inadequate information was provided to persons accommodated in all three centres regarding their rights. While documents containing information about rights were posted on notice boards in the centres, they were often buried among various other pieces of information and were not translated into the necessary languages (which are the only languages used by some individuals). During our conversations with some of the foreigners, they generally stated that they were unaware of the reasons for their placement in the centre or theintended duration of their stay, nor did they know whom to contact for legal or other assistance. Given the importance of certain information, it is necessary to highlight and communicate them in an accessible, visible and clear manner.

By conducting an investigative procedure based on the complaints of applicants for international protection and members of their families, as well as information received from CSOs, it was determined that translation and interpretation services had not been provided for them in the process of issuing decisions on the restriction of freedom of movement by the border police station. Such actions are contrary to Articles 7 and 8 of the GAPA, i.e., to principles of establishing the substantive truth and providing assistance to the party, as well as to Article 30, which stipulates that the party must be provided with an opportunity to express their opinion about facts, circumstances and legal issues important for adopting a decision regarding the administrative matter.

They also complained that they had not been informed about the reasons for their deprivation of liberty and that they did not know the status of their cases. Some stated that judicial proceedings had been initiated regarding the decision to restrict their freedom of movement, but upon review of the file, no documents related to the initiated proceedings were found. In order to ensure timely judicial control of the lawfulness of all decisions on restriction of the freedom of movement for applicants for international protection, we propose that judicial review, as referred to in Article 54, paragraphs 12 and 13 of the AITP, be regulated in the same way as it is currently regulated for irregular migrants under Article 216, paragraph 4 of the Act on Foreigners.

During NPM visits and investigative procedures, persons accommodated in the centres raised issues related to food, telephone (un)availability, inadequate healthcare and the conduct of police officers, among other concerns. However, none of those complaints were recorded in the centres in 2022. Since the right to lodge complaints is guaranteed, it is important to make their lodging easier by providing

clear information, creating complaint forms and installing complaint boxes in visible locations. For complaint mechanisms to make sense, they must be accessible, involve effective complaint procedures and adhere to principles of independence, impartiality and confidentiality. Access to effective complaint mechanisms is a fundamental guarantee against abuse.

Persons accommodated in Ježevo complained about the restriction of access to fresh air. However, since no records are kept regarding this matter, it was not possible to investigate the complaint allegations. Therefore, it would be beneficial to keep such records. Furthermore, there are two rooms in the Centre that serve a dual function: conducting stricter police surveillance and isolating persons suspected or confirmed to have an infectious disease. Accommodated persons stated that they were held in these rooms for several days without justification. However, due to the absence of records, it was not possible to verify these claims. Therefore, keeping such records is necessary.

During NPM visits, it was observed that contact between the accommodated persons and the outside world, particularly with family members in their countries of origin, was made difficult. Upon admission to the centres, persons receive phone cards provided by the Croatian Red Cross. However, the balance on these cards is quickly depleted due to international calls. There are often difficulties in obtaining new phone cards, and calls cannot be made to some countries.

Applicants for international protection and irregular migrants deprived of liberty are guaranteed the right to free legal aid under certain conditions. However, during NPM visits and investigative procedures, limited access to legal aid providers was observed in all three centres, and it was also reported by the CBA. The Ordinance on Accommodation in the Reception Centre for Foreigners and the Method of Calculating the Costs of Forced Removal (the Ordinance) specifies the manner in which visits by lawyers can be arranged. The Ordinance states that legal aid providers may visit persons in the centres in accordance with the provisions applicable to all visitors. They must provide written notice of their visit two days in advance, and the visit may be denied if it is determined that the visitor is not the person that had been announced; if they pose a threat to public policy, security, and health; or if they are prone to improper behaviour or infringement of regulations. The duration of the visit is limited to one hour, with exceptions being made only in rare cases.

In addition to having to announce their visit two days in advance, lawyers who are not on the list of providers of free legal aid and do not have power of attorney because they are visiting clients for the first time, come to the centres only as visitors and not in their capacity as lawyers.

Recommendation 14.
For the Ministry of the Interior to: ensure unimpeded access for lawyers to reception centres for foreigners

Accommodated persons must consent to the announced visit and the visitor before the visit can take place. Due to this method of organising lawyer visits and the additional need to coordinate schedules with interpreters, access to legal protection is hindered and can lead to missed deadlines for pursuing legal remedies, which are typically very short. Considering the described difficulties in telephone communication, communicating with lawyers by telephone is also challenging, especially when contacting lawyers who are not on the list of providers of free legal aid for the first time for the purpose of granting power of attorney for representation. Subsequently, if they want to establish faster communication, accommodated persons wait for a call from the lawyer in front of a telephone booth. Therefore, after the visits, we warned that this is contrary to international standards that

guarantee the right of third-country nationals to unimpeded access to a lawyer from the very beginning of the restrictions of freedom of movement, without any limitations.

Regarding contact with a lawyer, it is necessary to take into account all the difficulties and circumstances in which migrants find themselves in the process of being issued decisions on expulsion and restriction of freedom of movement, as well as the lack of clear instructions on the possibilities of contacting a lawyer and other legal aid providers. Irregular migrants in police stations who are in the process of being issued a decision on expulsion and deprivation of liberty are given a list of legal aid providers, but most of the persons accommodated state that they are not aware of the purpose of the list, and some claim that they did not receive it at all.

Directive 2008/115/EC guarantees that international and non-governmental organisations shall have the possibility of visiting centres under certain conditions, which was also transposed into the Act on Foreigners. However, the Ordinance conditions their visits on a signed cooperation agreement with prior notification of the visit according to criteria stipulated for all visitors. UNHCR has access to the centres without a cooperation agreement, but based on its mandate, UNHCR provides assistance to applicants for international protection, but not to irregular migrants. A cooperation agreement was concluded with the CRC, which undertook to organise and implement psychosocial support and activities for family reunification at its own expense and within its capabilities. The CRC visited the centres in Tovarnik and Trilj twice during 2022 (until the date of NPM visits in October) and it visited Ježevo 41 times, while UNHCR visited Tovarnik and Trilj twice and Ježevo four times.

Recommendation 15.

For the Ministry of the Interior to: allow civil society organisations to have access to the immigration detention centres

Considering the number of applicants for international protection and irregular migrants accommodated in the centres throughout the year – for example, one centre accommodated 534 individuals, including ten families with children, a pregnant woman, an unaccompanied child and 76 individuals who had expressed their intention of applying for international protection – such scope and number of visits are insufficient. In this regard, the ECtHR, in the judgment 15670/18 and 43115/18 in *M.H. and Others v. Croatia*, stated that Article 3 of ECHR was violated in its substantive aspect based on the fact that children were detained for two and a half months in a centre with a high level of police surveillance and where no activities were provided to occupy their time. Therefore, it is necessary to allow CSOs to have greater access to the centres, especially those that provide additional support, legal and other aid, organise education sessions, workshops and playtime activities for children, and so on.

3.3. System of supervision and accountability for respecting rights

When police officers encounter an irregular migrant or a group of them, they are obliged to assess whether there are any persons among them who require assistance or protection, such as victims of human trafficking, children without adequate parental or other care, persons coming from areas where their lives or freedoms would be at risk, persons requiring emergency medical assistance and similar cases. Based on this assessment, the prescribed procedure should be initiated. If there are no such needs, and there is no other basis for them to legally stay in Croatia, the police are obligated to take measures to ensure that person's return to their country of origin or to the country from which they directly entered Croatia. Therefore, police officers have a challenging task of verifying circumstances

which are sometimes hard to detect, such as indicators of human trafficking and compliance with numerous legal safeguards. It is necessary to document all actions in order to be able to monitor this complex task.

The task of the police is somewhat different when police officers discourage persons from circumventing the checks at border crossing points (Schengen Borders Code, Article 13, paragraph 2). This refers to actions at the so-called green border, when individuals abandon their attempt to cross the state border due to the presence of official personnel in the border area.

In such cases, if a person has entered the national territory, they can no longer be discouraged; instead, it is necessary to conduct the legally prescribed procedures, which include conducting an individual assessment of the person's need for protection. According to information provided by the MI, actions of discouragement are not recorded, which makes it difficult to monitor and supervise such actions.

It can be challenging to determine in which specific situations discouragement is permitted and in which it is not, especially considering that the border is not established and regulated in all parts. We have dealt with cases where the application of measures of discouragement was subject to investigation. In relation to this, guidelines of one border police station were published in the media in 2022, stating that during discouragement from the depth, a group leader should be present, that discouragement should be dispersed and that it should be carried out by police officers who have previously dealt with migrants. Considering that discouragement should not be applied to individuals who have entered the national territory, we requested clarification from the MI on how discouragement can be implemented "from the depth", which police actions toward migrants could precede discouragement and how discouragement, which is based on positioning, can be dispersed. The MI stated that "discouragement from the depth" is merely a colloquial term used in the guidelines of that border police station to denote a location at the state border that cannot be considered part of the Croatian national territory because that specific section of the border is undefined.

Recommendation 16.

For the Ministry of the Interior to ensure that precise terminology is used in the instructions provided to police officers regarding actions at the border

Recommendation 17.

For the Ministry of the Interior to document discouragement actions and other activities at the border

They further explained that actions toward migrants which precede discouragement involve spotting individuals, directing police patrols to the expected irregular crossing points and giving verbal and non-verbal signals, as well as sound and light signals. Regarding dispersion, its aim is to prevent the spread of COVID-19, conflicts between different ethnic groups, reduce the number of individuals in a group and prevent accidents due to unfavourable terrain configuration, weather conditions or minefields. However, to avoid the possibility of different interpretations of the terms "from the depth" and "dispersion," and consequently different actions taken by officials, it is necessary to use precise terminology in the instructions provided to police officers. Additionally, it is important to record discouragement actions and other activities at the borders, especially in light of frequent and long-standing allegations of pushbacks, which was also recommended by the CPT after their visit in 2020.

In 2022, the Independent Mechanism for Monitoring the Actions of Police Officers of the Ministry of the Interior in the Area of Illegal Migration and International Protection (IMM) operated in Croatia. It was established in 2021 in order to ensure that police actions are in line with EU law and international

obligations. The IMM included the Academy of Medical Sciences, the Academy of Legal Sciences, the Croatian Red Cross, the Centre for Cultural Dialogue and an independent legal expert. In June 2021, the MI signed a one-year Cooperation Agreement with those organizations. It was defined in the Agreement that the activities of the IMM would include observing the actions taken by police officers at border crossing points, in police stations and police administrations, conducting announced visits to the green border and inspecting finalised documents related to complaints about alleged illegal treatment of irregular migrants and applicants for international protection (which had become final within one year before the Agreement was signed).

However, the IMM also examined individual cases that were not yet final and regarding which we conducted investigative procedures. In one of those cases, the IMM acted based on a video published in the media in October 2021, which suggested the possibility of police violence at the border. Just two days after the video was released, the IMM visited the relevant locations, held a meeting with representatives of the MI and established its findings. At the time of the IMM's activities, the criminal investigation had only just begun and the criminal proceedings regarding the incident were still pending, so it was evident that the case had not yet been finalised. Similarly, in another investigative procedure related to a case that likewise received media attention, as the competent institution, we conducted an interview with the complainant and requested the MI to investigate allegations of illegal actions taken by the police toward her and her children. The MI responded that the IMM had taken over the investigation of that case.

We generally welcomed the establishment of the IMM, as we believed that it would provide additional insight into the actions of police officers in the area of illegal migration and international protection. However, it must be emphasised that the IMM, as a mechanism established based on an agreement, cannot replace or assume the duties of competent institutions to investigate allegations of illegality or irregularities in the work of the police. In its Semi-Annual Report for 2021, the IMM itself emphasised that it is not a "complaint" or "internal affairs" supervisory body, but rather "a body of limited competence, whereby precisely the competences of other stakeholders in the general system of police monitoring condition the competence of the Mechanism." Therefore, it is important for the MI, within the scope of its competence, to investigate complaints regarding the actions of police officers and to provide authorised bodies with access to all information and documentation upon request.

Regarding the work of the IMM, the Advisory Board has been established as an informal body with the task of making recommendations for the enhancement of the effectiveness and independence of the IMM's work. We are members of this Advisory Board, together with the EC, the FRA, FRONTEX, the IOM, the UNHCR and the Ombudswoman for Children. In fulfilling its mandate, the Advisory Board issued recommendations regarding the Annual Report of the IMM published in 2022. In them, it emphasised the need to expand and clearly define the scope and mandate of the IMM in order to effectively monitor the protection of fundamental rights at external borders. This particularly includes ensuring protection for the right to effective access to asylum procedures, the principle of non-refulgent, the prohibition of collective expulsions and the prohibition of torture and other forms of ill-treatment. The Advisory Board also believed that unannounced visits to the green border and consultation of primary and secondary sources of relevant information should be allowed, particularly highlighting the right to review all documents necessary for independent monitoring. Furthermore, the Advisory Board believed that the Annual Report of the IMM would benefit from including evidence supporting the findings and establishing a clearer link between observations and interviews conducted during monitoring and the conclusions drawn from those observations.

It also suggested that the Annual Report of the IMM could provide additional information on the

specific methodology used during interviews with migrants and that the comprehensive methodology used to reach individual conclusions should also be stated (e.g., types of primary and/or secondary sources, list of interviews with stakeholders, etc.). Other recommendations focused on strengthening cooperation and relationships with stakeholders, the public and the media, as well as launching a public call for the selection of new/additional members of the IMM based on objective criteria to ensure diversity and expertise among the members.

In November 2022, a new Cooperation Agreement was signed, extending the work of the IMM for an additional 18 months and involving the same stakeholders. We commend the fact that the new Agreement includes certain positive changes, but we emphasise that it is not stipulated that the IMM will oversee all police actions, whether recorded or unrecorded, particularly those related to access to the international protection system and the prohibition of collective expulsions.

It is also unclear what review of data and files entails, and the method of data collection is not sufficiently clear. Similarly, although unannounced observations at the green border are stipulated, they still require prior written notice. Finally, for the monitoring mechanism to truly fulfil its purpose, it must meet the complex requirements of independence and effectiveness.

During 2022, FRA published guidance for establishing possible mechanisms to monitor fundamental rights compliance at the EU external borders, which, in eight sections, sets out the requirements for independence and effectiveness, largely based on the criteria of the so-called Paris Principles (which establish minimum standards that NHRIs must meet to be considered credible and effectively perform their tasks), as well as other international standards. According to this guidance, the powers of the monitoring mechanism should be stipulated by law, its effectiveness and independence should be periodically evaluated based on objective indicators, and members should be recruited through transparent procedures to ensure independence and operational autonomy. Requirements are also outlined regarding the scope of action (such as unimpeded access to all border-related activities at any time, without any undue geographical and procedural limitations); powers (such as the ability to make unannounced visits to all areas where police officers operate, access to documents, registers and records, including files, video and electronic records); expertise of members; funding (sufficient and in line with the principle of independence); reporting, transparency and accountability (such as publicly presenting findings and recommendations to competent authorities and the national parliament, external and independent evaluation of the mechanism's independence in accordance with professionally recognised standards); synergy with existing mechanisms (especially national human rights institutions and ombudsman institutions) and cooperation with the migration authorities.

From the above, it follows that after the initial phase of introducing the IMM as a "pilot" project in 2021 and renewing the Agreement in 2022, a decision will need to be made on its introduction as a monitoring mechanism that should be established by law and have legally defined powers, or on abandoning this "pilot" project. If a new mechanism or body were to be established, it should likewise be subject to parliamentary scrutiny (including with regard to the selection of stakeholders, reporting on operations, etc.), in accordance with the valid practice in Croatia. This will become particularly relevant if an obligation to establish independent monitoring mechanisms for fundamental rights compliance at EU external borders is introduced under European law. In that case, Member States would have the choice of specifying the powers of existing independent national human rights institutions, NPMs and/or ombudsman institutions or establishing new mechanisms.

In 2022, we advocated for the establishment of an accountability and monitoring system that would enable effective investigations and the determination of potential infringements of fundamental rights

by border police officers, including with regard to the execution of the judgment in the case of *M.H. and Others v. Croatia*.

This concerns the case of the death of a six-year-old girl and the detention of her family during the process of their application for international protection. In its judgment, the ECtHR ruled that Croatia was responsible for numerous breaches of the rights of the Afghan refugee family, including the right to life, the right to liberty and security, prohibition of collective expulsion of aliens, the right to individual application and the prohibition of torture in relation to children. The judgment became final on 4 April 2022, and the Office of the Representative of the Republic of Croatia before the ECtHR initiated the process of developing an Action Plan for its implementation. The Expert Council for the Execution of Judgments and Decisions of the ECtHR (Expert Council) is involved in this process and its task is proposing specific measures to be implemented in order to prevent the recurrence of similar violations of the ECHR in similar future cases.

As one of the members of the Expert Council, we were provided with a draft Action Plan in order to present our opinion. Based on our work in the field of migration and asylum, as well as the findings and conclusions in this case and in similar cases, we highlighted the need for introducing revisions to certain proposed general measures, having in mind that the judgment has been designated as a "leading" judgment and that its execution is under "enhanced supervision" by the Committee of Ministers of the Council of Europe.

Regarding the requirements for an effective investigation, in the investigative procedure that we initiated in 2021, the MI failed to interview the complainant regarding the circumstance of unlawful conduct of the police, even though she had stayed in Croatia from 25 June 2021 until at least August 2022 together with her children. This relates to a case involving a woman who, according to her claims, entered Croatia from Bosnia and Herzegovina with her two children on 22 occasions with the intention of seeking asylum, only to be returned to Bosnia and Herzegovina each time, sometimes from deep within Croatian territory. She stated that during the police procedure, they were subjected to intimidation and excessive force in order to compel them to comply with the orders of the police officers. In June 2021, they requested asylum in Croatia, and in July 2021, we requested the MI to investigate the allegations made in the complaint. We also emphasised that, unlike many other similar cases, the complainant and her children were available and located in Croatia. We considered it necessary to examine her regarding all the circumstances in order to conduct a proper investigation. However, an interview with her was not conducted for more than a year while she was in Croatia. When the MI intended to conduct the interview, they found that the complainant was unavailable. They assessed that it was not possible to confirm or refute her claims because their records did not contain any data on the conduct of police officers toward her and her children.

Furthermore, in our work throughout 2022, as in previous years, we emphasised our need to have access to all data regarding the treatment of irregular migrants, including the information in the information system of the MI. In this regard, we draw attention to the fact that the 2022 Rule of Law Report of the EC highlights the inability to access data on the treatment of irregular migrants, including direct access to the information system of the MI.

The EC recommended that Croatia ensure a more systematic response to the recommendations of the Ombudswoman and her requests for information. In order to effectively assess the overall situation of identified violations of rights and freedoms in Croatia, the institution has a special role in, among other things, investigating allegations of unlawfulness and irregularities in the work of state bodies and conducting regular visits to places of deprivation of liberty to prevent torture other cruel, inhuman or degrading treatment or punishment, including treatment of irregular migrants and applicants for international protection. To fulfil these tasks, we should have access to all information, data and documents of state bodies, as this would enable the monitoring of the situation and the detection of problems at the national level, which we have already reported in annual reports. Therefore, we reiterate our recommendation for access to data.

Recommendation 18.
For the Ministry of the Interior to enable the institution of the Ombudswoman to review all data regarding the treatment of irregular migrants, including the data contained in the information system of the MI

4. Prison system

4.1. Protection of rights of persons deprived of liberty in the prison system

In accordance with the powers stipulated by the Ombudsman Act and the Act on the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Ombudswoman has a dual role in protecting the rights of persons deprived of liberty within the prison system.

In the first part, we present the actions taken based on complaints and the investigative procedures initiated on our own initiative, while in the second part, we describe the situation established during preventive visits as part of the NPM mandate. We provide an assessment of the treatment of persons deprived of liberty within the prison system through both mandates.

In 2022, we took action in 176 cases opened in that year or in the years before, in which we issued 17 warnings, recommendations and proposals, of which 79% were implemented or in the process of being implemented. In cases where it was necessary to directly establish facts and circumstances in order to assess the merits of the complaint, we conducted investigative procedures within the penal institutions. Although the majority of complaints covered multiple areas, the most common reasons for complaints were once again healthcare and accommodation conditions. In addition, persons deprived of liberty approached us regarding the conduct of officials, the use of benefits and requests for assistance regarding transfers.

- Healthcare

"...They also say that I was examined, but I was never examined, not even once. When I arrived, the doctor called me and only asked me in the hallway whether I drink, whether I use drugs, whether I take any medication and how much I weigh. She did the same to all the other guys in the room. After I wrote all of that on slips of paper – I wrote about 20 slips in total – they didn't call me at all. Only once, after I wrote 'poor mother who gave birth to you' on one of the slips, did I finally see the doctor, after 20 slips, for the first time since I came to the prison infirmary. I told her that I had scabies and that my whole body was covered in blisters from the dirty sheets and blankets because they hadn't washed my sheets for 56 days, and they had only washed them once. She told me to take off my shirt to show her the blisters. The first thing she asked me was if I had been like this when I arrived, and I asked her if she had examined me when I arrived. Then she fell silent…"

There continues to be an increase in prisoners' complaints regarding insufficient access to healthcare. Most penal institutions do not have doctors on staff; instead, their services are provided through service contracts. Due to the shortage of doctors in public healthcare, they are increasingly engaged in their regular workplaces and are less available to work additional shifts in penal institutions, which leads to longer waiting times for prisoners' medical examinations.

However, in urgent situations, penal institutions use public healthcare institutions for medical examinations. In investigative procedures regarding complaints about not being referred for specialist examinations, we generally found that persons deprived of liberty are scheduled for appointments but cannot be informed of the specific time of appointment due to security reasons. The problem is that they often do not receive feedback on whether they have been scheduled for an appointment, which leads to dissatisfaction. Complaints about insufficient access to dental care, particularly in terms of dental treatment, are also frequent. In several penal institutions, they report that mainly tooth extractions are available.

"I refuse to go to a dentist because he only pulls out teeth."

We would like to highlight the complaints of two prisoners; they stated that the competent county police administration deregistered their place of residence, subsequently preventing them from using their compulsory health insurance. In order to ensure that they are not deprived of healthcare, the costs are borne by the penal institutions. In response to their complaints, we initiated investigative procedures, which were not yet concluded at the time of writing this report.

The provision of healthcare in the prison system is still not regulated in accordance with the Healthcare Act (HA). According to the position of the MH from March 2022, they are not competent for determining whether the Zagreb Prison Hospital meets the norms and standards for providing healthcare services, and they cannot confirm whether the hospital has the approval of the MH to provide healthcare services, or whether it is authorised to provide such services if it does not have such approval.

They suggest seeking the opinion of the MJPA, as the Zagreb Prison Hospital is a structural unit of that Ministry. This position is unacceptable and shows a lack of understanding of the issues concerning healthcare for persons deprived of liberty.

Recommendation 19.

For the Ministry of Justice and Public Administration and the Ministry of Health to: ensure the prerequisites for providing healthcare services within the prison system in accordance with the Healthcare Act

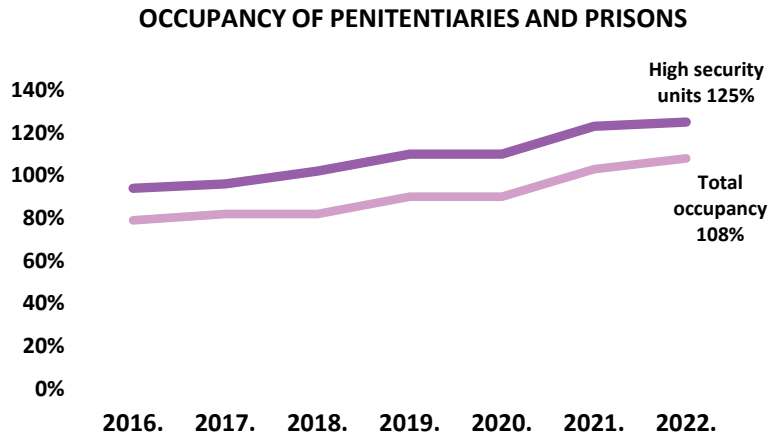
According to information from the MJPA, a draft proposal for an ordinance on norms and standards regarding space, medical and technical equipment and healthcare staff has been prepared, and in accordance with Article 256, paragraph 1 of the HA, it should have been adopted within six months of the entry into force of the HA (which entered into force on 1 January 2019). The MJPA further states that until the new ordinance enters into force, compliance with norms and standards regarding space, equipment and personnel is determined based on the Ordinance on Minimum Conditions Regarding Premises, Staff and Medical and Technical Equipment of a Healthcare Institution Providing Healthcare to Persons Deprived of Liberty, which was adopted in 2014. This implementing regulation was adopted based on the previous HA, and the transitional and final provisions of the new HA failed to specify that it shall remain in effect until the new ordinance is adopted.

An attempt was made to resolve this with the new 2021 Execution of Prison Sentence Act (EPSA). Article 23, paragraph 4 of the EPSA stipulates that the norms and standards of the Zagreb Prison Hospital shall be determined by the Minister of Justice by virtue of an ordinance, with the prior approval of the Minister of Health, in accordance with the act regulating healthcare. The final provisions state that the existing ordinance shall remain in force until the new one comes into effect. Such actions lead to legal uncertainty. Despite repeated requests, we have not yet received for review the decision referred to in Article 76 of the HA, which establishes that the Zagreb Prison Hospital meets the stipulated conditions for providing healthcare services, and we thus conclude that it has not yet been issued, which is unacceptable. It is necessary for the MJPA to urgently submit a request to the MH for the issuance of this decision, and it is also necessary to regulate the status of healthcare departments in penal institutions (known as infirmaries), which provide primary healthcare services, as we have previously pointed out. This situation leads to a number of problems in practice, such as the lack of connection between prison doctors and the Central Health Information System of the Republic of Croatia (CHIS), which causes difficulties in ensuring adequate healthcare for persons deprived of liberty.

- Accommodation conditions

"...So the room I am staying in is only 14 square meters in size, and I share it with four other prisoners. There is no toilet or drinking water in the room during certain parts of the day, and at night when we are locked in the rooms, we have to ring a bell and wait for the prison officer to unlock the door and let us use the shared bathroom. There is not enough natural or artificial light in the room... Just 10 meters away from the Penitentiary, there is a pen with lambs and sheep, and 50 meters further, there is a pig farm, so there is a constant unbearable stench in the Penitentiary, especially in the evenings."

The overcrowding of penal institutions, which results in the restriction or violation of numerous rights of persons deprived of liberty within the prison system, further increased during 2022. When comparing the data from the Report of the Government of the RC on the condition and work of penitentiaries, prisons, reformatories and centres for 2021 with the data on occupancy as at 31 December 2022, provided by the MJPA, an upward trend in overall occupancy is observed. The same trend has been identified when comparing data on the occupancy in high security units, which we collected for the purpose of preparing this and previous annual reports (2016–2021).



On 31 December 2022, the occupancy in high security units in all prisons, except for the Šibenik Prison, exceeded 100%. The highest occupancy was in the Osijek Prison, with an alarming rate of 205%, followed by the Karlovac Prison (170%) and the Zadar Prison (153%). In this context, the EC Recommendation from December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions should be mentioned, which states, among other things, that Member States should ensure a minimum of 6 m² in single-person cells and 4 m² in multi-person cells for each person deprived of liberty.[1]

Considering the presented data, it is not surprising that staying in inadequate conditions of overcrowded rooms is one of the most common causes for complaints. Acting based on a complaint from a prisoner subject to pre-trial detention, we found that he was staying in the Osijek Prison in a room with a surface area of 19.98 m² (17.90 m² without sanitary facilities) with seven other persons, leaving him with only 2.23 m² of personal space. In that regard, it is important to note that the ECtHR, particularly in the case of *Muršić v. Croatia*, assumed the position that when a person deprived of liberty has less than 3 m² of personal space at their disposal, there is a strong presumption that there has been a violation of Article 3 of ECHR. Since the ECtHR case-law states that lack of space can be compensated by sufficient freedom of movement and appropriate activities outside the cell, we recommended that all penal institutions be informed of the need to implement measures and activities to compensate for the lack of space, such as extended outdoor time, provision of suitable conditions for physical exercise, organisation of various leisure activities, and so on, which has been implemented.

We positively note the opening of a new unit in the Lipovica-Popovača Penitentiary in December 2022, which increased the capacity of closed conditions by 140 beds, as well as the information that the MJPA is considering funding the construction of a new penal institution in Gospić, which would increase the

[1] https://commission.europa.eu/document/b59ddb88-b9c3-420c-98d5-622807f8729b_en

capacity for high-risk prisoners. However, increasing accommodation capacity is not the only solution to the problem of overcrowding; it is necessary to implement a series of different measures and activities.

The announced introduction of electronic monitoring for conditional release and the adoption of the Ordinance on Pre-trial Detention at Home with the Application of Electronic Monitoring, which is currently being drafted, is certainly a step in the right direction. For years, we have emphasised the need for establishing a normative framework for the serving of prison sentences lasting up to one year at home, in accordance with Article 44, paragraph 4 of the CC. According to the information provided by the MJPA in January 2022, the prerequisites for implementing the serving of prison sentences at home will be considered as part of the tasks of the next Working Group for amendments to criminal legislation. Despite our requests, as at the date of writing of this Report, we have not received any information as to whether the Working Group has been formed.

Long-term solution to the problem of overcrowding, which in certain situations leads to the infringement of Articles 23 and 25 of the Constitution, as well as Article 3 of the ECHR, can only be achieved through comprehensive measures that encompass both crime prevention and better prisoner reintegration into society. The view presented by the CPT in its 2021 Report can be helpful in considering the necessary activities. According to that view, overcrowding is primarily the result of a strict criminal policy, more frequent and longer pre-trial detention, longer prison sentences and as yet limited use of alternative criminal sanctions[2].

"...I sleep on a mattress that may be as old as I am, meaning more than 40 years old. It is so worn out that it feels like I am sleeping on a board, and it is also infested with some kind of creatures, possibly mites... The toilet is so cramped that when we need to use it for a bowel movement, the door has to be left open so that we can sit on the toilet properly, and we have to go while everyone is watching, which is embarrassing and uncomfortable..."

The lack of harmonisation of the present conditions with the standards of appropriate accommodation continues to be one of the common causes for complaints. The complaint from a prisoner regarding the accommodation conditions in the Diagnostic Centre in Zagreb, which is located within the premises of the Zagreb Prison, is a consequence and an example of such inappropriate conditions. Among other things, one prisoner stated that the toilet is separated from the rest of the room only by a low wall, which does not allow for privacy when using it, so they had to hang blankets to shield that part from the view of other prisoners. He stated that his bed was very close to the toilet, as was the table where they ate. They were allowed to shower only once a week, so other days, they washed themselves while sitting on the toilet. Despite their requests, the prison officers did not allow them to shower more frequently. He emphasised that there were 17 of them in a room that was too small (43.71 m^2), and the situation was further aggravated by the fact that some people smoked in the room. The hygiene supplies that they received once a month were insufficient. The sheets, which were supposed to be washed every fifteen days, had only been washed once during his stay (56 days) in the Centre. The rooms were not air-conditioned, and they were not provided with a fan. One prisoner bought a fan at his own expense. He also complained that they were served lunch and dinner at the same time, and

[2] 31st General Report of the CPT, Council of Europe, April 2022

due to the high temperature in the room, the dinner would become inedible after a short time.

We have continuously warned of the inappropriate accommodation conditions in the Zagreb Prison and other penal institutions, which can be degrading, but unfortunately, no significant activities have been undertaken yet to improve the situation. As in previous reports, we remind of the Decision of the Constitutional Court of the Republic of Croatia U-III-4182/2008, by means of which the Croatian Government was ordered to adjust the capacities of the Zagreb Prison to the needs of accommodation of persons deprived of liberty in accordance with the CoE standards and the ECtHR practice, in a manner that will not be degrading for prisoners subject to pre-trial detention and other prisoners; this has not yet been implemented.

Acting on the complaints received from individual prisoners about accommodation conditions, we noticed that in some penal institutions, prisoners allocated to work in, for example, animal husbandry or agriculture, do not receive an adequate amount of hygiene products that would enable them to maintain proper personal hygiene after work. Instead, they are told of the possibility of purchasing additional quantities of hygiene products at the prison canteen. According to Article 83, paragraph 3 of the EPSA, prisoners are required to maintain personal hygiene, and the penal institution provides water and hygiene supplies. By examining the List of basic hygiene products, which was part of the then applicable Ordinance on Standards of Accommodation and Nutrition for Prisoners, it is concluded that prisoners are provided with one 125 g hand soap per month. Since implementing regulations based on the EPSA were in the process of being drafted, we recommended that prisoners engaged in work activities be provided with additional quantities of hygiene products sufficient for maintaining proper body hygiene, taking into account the specific nature of tasks to which they are assigned. This recommendation was adopted.

- Correctional treatment of prisoners

The shortage of correctional treatment officers is present in most penal institutions. For example, in the Požega Prison, which houses 120 persons deprived of liberty, there are only two correctional treatment officers. As there are stipulated time limits for completion of administrative tasks, this mostly affects their presence in the prison wards. It is therefore not surprising that some persons deprived of liberty stated in anonymous surveys that there is not a sufficient number of correctional treatment officers and that they are therefore not sufficiently available to them.

The inconsistent practices of penal institutions are the cause of continuous dissatisfaction among prisoners. Several penal institutions, such as the Glina Penitentiary, insist on the definition of a consensual union referred to in the Family Act when approving the privilege of spending time with a spouse or cohabiting partner or civil or informal civil partner in a separate room without supervision. We consider this unacceptable. Although this specific case does not involve a legal right, but rather a privilege, different practices among penal institutions can contribute to the perception that the approval of privileges is characterised by non-transparent procedures with no clearly defined rules. It is important to keep in mind the significant role of deeper emotional connections in the process of rehabilitation and social reintegration of prisoners. At our initiative, the MJPA issued an opinion in 2012 regarding the determination of data on the status of persons who are in an emotional relationship with a prisoner, which cannot be defined as a consensual union in accordance with Article 11 of the Family Act, or as a common-law union of an unmarried woman and an unmarried man that lasts for at least three years or a shorter period if they have a child together or if the relationship is continued by

marriage. According to that opinion, it is necessary to allow the registration of such persons in the visitation record as family members, which enables the prisoner to use privileges in accordance with the Ordinance on Correctional Treatment of Prisoners. Unfortunately, this opinion is not binding on the wardens of penal institutions.

Furthermore, in the complaint submitted by a prisoner regarding the non-approval of conjugal visits with his spouse, who is also serving a prison sentence, dissatisfaction was expressed because they were not granted this privilege after getting married in the penal institution. Additionally, even during approved supervised visits, physical contact was not allowed. The prisoner states that he was told that conjugal visits would be approved if his spouse was not incarcerated. The prisoner spent only a short time serving his prison sentence in the same town where his spouse was serving her sentence. After a few months, he was transferred to another penal institution, located around a hundred kilometres away, which significantly hinders their direct communication. The investigative procedure is still ongoing.

"...Given that after serving my sentence, I will not be able to work in my field of expertise due to being sentenced, I would like to receive an education within the prison system for one of the occupations which are in high demand, such as construction worker (tiler, bricklayer). The state prison is denying me my right to receive an education, even though there is a legal provision stipulating the right to education for prisoners who serve sentences longer than one year... The prison administration keeps us in a mental straitjacket, without adequate rehabilitation, social reintegration and training programmes for prisoners to prepare for life after being released. We are locked in our rooms all day, without any activities, and we are left to ourselves..."

We also received complaints from prisoners regarding insufficient and inadequate preparation for release, which is a problem that was often raised during visits to penal institutions. According to the EPSA and the Ordinance on Correctional Treatment of Prisoners, an integral part of an individual sentence execution programme is a plan of preparation for release and organisation of post-release support, which should be initiated soon after arrival at the penitentiary or prison. Preparation should include a series of measures and activities that persons deprived of liberty may not perceive as a part of it (such as regulating permanent or temporary residence, improving family relationships, providing financial support for essential needs after release, and so on). Completing appropriate education is of great importance for many prisoners, as it helps them find suitable employment after serving their prison sentence. The EPSA stipulates that penal institutions are required to organise primary education for adult prisoners who did not complete their primary education, in accordance with their possibilities. It is also stipulated that, to the extent possible, penal institutions should organise secondary education for adults, reskilling, professional training and upskilling of prisoners. However, considering the importance of education for successful social reintegration, all prisoners should be provided with this opportunity, rather than their education being limited based on the capabilities of the penal institution. In many penal institutions, there is a lack of activities aimed at developing skills that would be beneficial to prisoners following release and facilitate their reintegration into society. However, objective circumstances often hinder the implementation of educational programmes, although some penal institutions have established excellent cooperation with adult education

institutions. Although non-governmental organisations also play a significant role in implementing educational programmes, unfortunately, the 2021 Report on the condition and work of penitentiaries, prisons, reformatories and centres does not provide the total number of prisoners involved in these projects.

According to Article 10, paragraph 3 of the International Covenant on Civil and Political Rights, the essential aim of treatment of prisoners should be their social rehabilitation. Reintegration of prisoners social largely depends on their ability to earn a living. For some prisoners, the time spent serving their sentence may represent their first opportunity to develop professional skills that enable them to find employment. Additionally, the Resolution 1990/20 on Prison Education of the United Nations Economic and Social Council emphasises the need to provide access to education for all prisoners. The Nelson Mandela Rules (Rule 104) highlight the significant role that education plays in preventing recidivism and stress the importance of its accessibility to all prisoners, including compulsory access to education for illiterate and younger prisoners. According to MJPA data for 2021, 12% of prisoners had a low level of education (less than primary education or no formal education), and some lacked basic reading and writing skills.

Therefore, the number of prisoners enrolled in various educational programmes is concerning. According to the data from the 2021 Report of the Government of the Republic of Croatia on the condition and work of penitentiaries, prisons and reformatories, there is a continuous decrease in the number of prisoners enrolled in educational programmes. Prisoners often state that they are interested in attending relevant vocational programmes for adult education, but that they are organised in other penal institutions and are not accessible to them. It is necessary to include as many interested prisoners as possible in adult education programmes, and if a penal institution is unable to provide such programmes, prisoners should be allowed to transfer to penal institutions that are able to organise them. It should be noted that transfers for the purpose of education are extremely rarely approved.

Additionally, it is concerning that on average, only 29% of persons deprived of liberty are engaged in monthly work activities. Since there are more prisoners interested in work engagement within the prison system than there are available job positions, it is necessary to increase the number of appropriate job opportunities, especially for prisoners serving their sentence in closed conditions.

- Treatment by officials

In 2022, prisoners, especially the Roma, complained to us about unprofessional or unlawful conduct by officials, alleging that prison officers insult and demean them. Although we are sometimes unable to unequivocally verify the validity of these complaints, since according to the claims of prisoners, such incidents frequently occur without the presence of other persons that may confirm that such behaviour occurred, we consistently emphasise the necessity of professional conduct and respect for the dignity of all persons deprived of liberty. Such behaviour not only contradicts Articles 11 and 12 of the EPSA, which prohibit unlawful conduct and discrimination, but it may also constitute an infringement of Articles 3 and 14 of the ECHR, as well as of Articles 14, 23 and 25 of the Constitution of the Republic of Croatia.

Moreover, some prisoners contacted us out of fear for their own safety, stating that they had received

threats from other prisoners. Although certain measures are taken within the prison system to prevent inter-prisoner violence, such measures are predominantly reactive rather than preventive, as required by the obligations outlined in Article 3 of the ECHR. It is worth noting that the CPT, in its Report following the visit to Croatia in 2017, recommended the establishment of an effective national strategy for addressing violence among prisoners, which has not yet been implemented. In that regard, it should be emphasised that the failure to take preventive measures to protect the physical and mental integrity as well as the well-being of persons deprived of liberty may constitute a violation of the guarantees contained in Articles 23 and 25 of the Constitution.

Several prisoners also complained about the conduct of correctional treatment officers, who, for the purpose of procedures related to recognition of social welfare benefits, provided opinions stating that all basic life necessities of prisoners were met without considering individual circumstances. This caused dissatisfaction and a sense of injustice among those prisoners, since the lack of sufficient job opportunities generally prevented them from being engaged in work activities, they rarely received financial support from family members or friends and, for example, they had to cover co-payments for certain medications, top up their telephone card to be able to call their family members and so on. In such situations, it is necessary to adopt an individualised approach and ensure the conditions are in place for the received benefits to be used for their intended purposes.

Recommendation 20.

For the Ministry of Justice and Public Administration to: enhance professional capacities within penal institutions, particularly in the areas of security, correctional treatment and healthcare, in order to increase the level of human rights protection for persons deprived of liberty

The actions of officials are greatly influenced by their insufficient number. We continuously emphasise the need to fill as many of the established positions as possible, as the current staffing level of 72%[3] needs to be considered in light of overcrowding, particularly in closed conditions.

2.1. NPM activities in the prison system

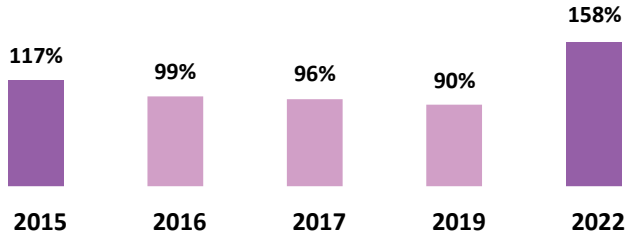
Acting in accordance with the powers granted by the Act on the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ANPM), during 2022, we made unannounced visits to the Glina and Požega Penitentiaries, as well as the Zagreb Prison. The visits focused on ensuring the respect for the rights of persons deprived of liberty, particularly regarding accommodation conditions, maintenance of order and security, as well as activities related to preparation for discharge or release. Additionally, during the visit to the Zagreb Prison, special attention was given to the organisation of the distribution of opioid substitution therapy and the conduct of officials with the aim of preventing its abuse.

[3] Report of the Government of the Republic of Croatia on the Condition and Work of Penitentiaries, Prisons, Reformatories and Centres for 2021

- Accommodation conditions

Numerous persons deprived of liberty are held in conditions that are not in compliance with the legal and international standards for appropriate accommodation. This is often due to overcrowding and/or the age and inadequacy of the buildings. For example, female prisoners serving their sentences in closed conditions in the Požega Penitentiary were accommodated in a dilapidated building that is more than 100 years old. In the case of the Zagreb Prison, based on the data collected during our last five visits, the level of overcrowding was the highest since 2015.

OCCUPANCY OF THE ZAGREB PRISON
(data collected during previous visits)



Photograph 5

Numerous rooms in the Zagreb Prison are untidy and neglected, with observed damage to furniture, walls and floors. In most cases, there is an insufficient number of lockers, resulting in persons deprived of liberty keeping their belongings and footwear in bags under or next to their beds. Jackets and towels are hung on the walls of sanitary facilities and beds.

Many mattresses and pillows are old, and visible damage and stains are present. In most rooms, the beds are not spaced 80 cm apart, which is contrary to Article 5, paragraph 2 of the Ordinance on Standards of Accommodation and Nutrition for Prisoners.

Photograph 6

During our previous visits to the Zagreb Prison, we raised concerns about the inadequate accommodation of persons deprived of liberty in former workshops which have been converted into dormitories. Although in 2019, we positively evaluated the fact that these rooms were no longer used for accommodation of persons deprived of liberty but only for work and occupational activities, during this visit, we found that these rooms were being used for accommodation once again.

Fourteen persons were accommodated in a room with a surface area of 43.7 m^2 (41.8 m^2 without sanitary facilities). There were two tables in the room, and due to limited space, some persons had to eat in bed. Additionally, the sanitary facilities were only partially separated from the rest of the room. In addition to such conditions being degrading, large-capacity dormitories inevitably lead to a lack of privacy and a high risk of intimidation and violence, as repeatedly pointed out by the CPT.

During the visit to the Požega Penitentiary, we spoke with a prisoner who in September 2021 fell from a scaffolding while working and broke his femur. Based on the doctor's recommendation, he was not allowed to use stairs, so he was thus not able to go for a walk for five and a half months, since the closed ward is located on the first floor and the walking area is accessed via stairs. Given that such accommodation conditions are inhumane, we recommended that in any similar situation in the future the person deprived of liberty be accommodated in an appropriate ground-floor room that provides access to outdoor space.

The building of the Glina Penitentiary, which houses the largest number of prisoners, was constructed in 2011, and the conditions are thus better compared to many other penal institutions. However, due to existing limitations caused by the building's design, the room where the disciplinary measure of solitary confinement is carried out lacks sufficient daylight, which is not in line with Article 155, paragraph 4 of the EPSA.

After the visit to the Požega Penitentiary in 2018, we warned that the accommodation conditions, especially in the closed ward for female prisoners, were largely not in compliance with the legal and international standards for appropriate accommodation and that they could be degrading. Furthermore, the already dilapidated building suffered additional damage as a result of severe weather in June 2021. During the visit, we received positive information that the female prisoners will temporarily be relocated to a new separate facility, after which energy renovation will commence, including adaptation and rehabilitation of the building as well as improvement of accommodation conditions.

- Maintaining order and security

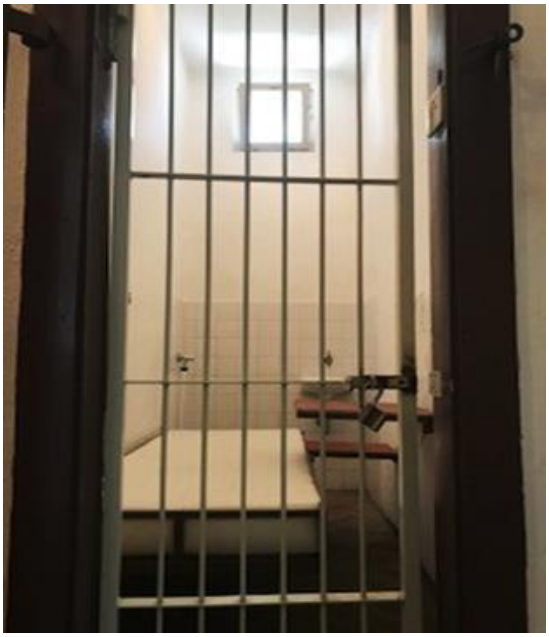
The EPSA stipulates a series of measures and procedures aimed at maintaining order and security, some of which further restrict the rights and freedoms of prisoners (such as disciplinary measures, special measures to maintain order and security, use of force, searches and body searches, etc.). During our visits, we considered these actions and gathered data on the implementation of specific measures in order to determine whether the restrictions are in accordance with the Act, proportionate to the reasons for their application and necessary to achieve the purposes stipulated by the Act.

It is concerning that we have repeatedly warned of many actions that are not in line with international and legal standards, which we observed in 2022 as well as in previous years.

For example, during a visit to the Glina Penitentiary, some prisoners pointed out the issue of the use of restraints, stating that they are restrained while being escorted elsewhere, regardless of the fact that they are accommodated in the semi-open ward (medium security unit) and/or that they are using privileges outside the prison. One of them stated that he refuses to go to medical examinations in external healthcare facilities because he is ashamed of the restraints. Such practice is explained based on implementation of an order issued by the COPS in September 2021, which stated that the decision to use restraints during the escort of prisoners should, among other things, be based on the length of the imposed sentence and the conditions in which the prisoner serves their sentence. However, such

actions are contrary to international standards, as the necessity and proportionality of restraints on persons. Therefore, considering that such actions could be degrading and even inhumane, we warned the COPS that the relevant order needed to be amended or repealed, which was done.

Photograph 7



We have likewise repeatedly warned about the inappropriate conditions in the premises designated for the disciplinary measure of solitary confinement imposed on female prisoners in the Požega Penitentiary. In 2013, we recommended that the existing four rooms be converted into two, in accordance with international standards. We also wrote about the non-compliance of the conditions with legal and international standards in the 2018 Report on the visit to the Penitentiary. An additional problem was observed in situations where two prisoners were simultaneously subjected to the disciplinary measure of solitary confinement or a special measure of isolation. In such situations, one prisoner stays in the isolation room, while the other stays in the solitary confinement room, even though the conditions in the solitary confinement room are significantly worse. Such unequal execution of certain disciplinary and special measures, or the execution of the same measure in different conditions, where some are significantly worse than others, can cause a sense of injustice among the prisoners, which is not good. Therefore, we believe that after the rehabilitation and renovation of the building, the conditions for implementation of special and disciplinary measures will be equal.

As part of the Working Group for the development of the EPSA, as well as of e-consultations, we advocated for a more detailed regulation of special measures for maintaining order and security in an ordinance, but the proposal was not adopted. The absence of clear rules, particularly regarding measures that further restrict prisoner rights, is not in line with the principle of the rule of law. For example, during a visit to the Glina Penitentiary, we found that the special measure for maintaining order and security – enhanced supervision – was imposed on 54 prisoners, usually due to "non-compliant behaviour," and to a lesser extent due to the risk of escape and the possibility of abuse by other prisoners. At the same time, the measure of enhanced supervision was not applied to 97 prisoners assessed as high-risk for suicide attempts, which is erroneous and may lead to tragic consequences. During our visits, we noticed that in some penal institution, the special measure of enhanced supervision was not applied to prisoners who were assessed as high-risk for suicide; instead, the so-called enhanced precautionary measures are implemented, which are not legally stipulated and it is not clear what they entail. Similarly, we determined in some penal institutions that no measure of enhanced supervision was ordered in any case, but some prisoners were being closely monitored, even though close monitoring is not stipulated by law. Acting on our recommendation, the COPS sent an instruction to penal institutions on how to implement enhanced supervision. However, our warning that the special measure of enhanced supervision should be applied to all prisoners assessed as high-risk for suicide was not accepted.

Although this specific example concerns a special measure that minimally impairs human rights (enhanced supervision), it clearly indicates the lack of clear rules for the application and imposition of

special measures, which we have been pointing out for years. Therefore, taking into account the fact that the provisions of the EPSA relating to special measures for maintaining order and security do not meet the requirements of predictability and determination, we recommend that the MJPA consider amending Chapter XIX of the EPSA.

Recommendation 21.

For the Ministry of Justice and Public Administration to: draft a proposal of amendments to the Execution of Prison Sentence Act in the part related to special measures for maintaining order and security

Recommendation 22.

For the Ministry of Justice and Public Administration to: draft a proposal of amendments to the Criminal Procedure Act in order to harmonise disciplinary offences and disciplinary measures stipulated by this Act with those stipulated by the Execution of Prison Sentence Act

During the visit to the Zagreb Prison, the conduct of prison officers in preventing abuse of opioid substitution therapy was considered. According to the data obtained from 1 January to 20 December 2022, 33 disciplinary proceedings were initiated against persons deprived of liberty suspected of committing the disciplinary offence of possessing or consuming alcohol or any narcotic or psychoactive substance, including medication without specific approval. However, a major problem in preventing the abuse of opioid substitution and other therapy is the outdatedness and inadequacy of the provisions of the Criminal Procedure Act, particularly Article 140, which stipulates disciplinary offences.

The relevant Article considers *bringing* narcotic or alcoholic substances into prison or *preparing* them in prison a disciplinary offence, but not the possession or consumption of alcohol or any narcotic or psychotropic substance, including medication without specific approval. Therefore, there is no possibility of sanctioning prisoners subject to pre-trial detention who are found to have such substances in their possession. We have repeatedly pointed out the need to amend Article 140 of the CPA (for example, in the 2017 Report and in a letter sent to the Minister of Justice in September 2019), but it has not yet been amended, which could negatively affect the order and security in prisons. Therefore, we recommend that the MJPA harmonise Article 140 of the CPA with the provisions of the EPSA which stipulate disciplinary offences and disciplinary measures.

- Opioid substitution therapy

Taking into account the fact that, according to the data available to us, of the total of six people who died from overdoses in the prison system between 1 January 2021 and 30 April 2022, five died in the Zagreb Prison (including the Diagnostic Centre in Zagreb), special attention was paid to the organisation of distribution of opioid substitution therapy to persons deprived of liberty and to the conduct of officials aimed at preventing abuse of opioid substitution and other therapy in that penal institution.

The unregulated issue of organising the work of infirmaries in penal institutions concerning the provision of primary healthcare to prisoners necessarily leads to a series of problems in practice. The Zagreb Prison, which houses the Diagnostic Centre in Zagreb, where prisoners from all over Croatia come for diagnostic evaluation, generally buys opioid substitution therapy for persons deprived of liberty because officials are unable to visit general practitioners' offices to be issued paper prescriptions for medication containing narcotic and psychoactive substances.

This represents a significant additional cost for the prison system, as they are paying for medications

that can be obtained through compulsory health insurance.

In addition to organisational deficiencies, the situation is further complicated by a shortage of healthcare staff, which can lead to omissions in record-keeping. There are no records of entry of opioid substitution therapy for persons deprived of liberty transferred to the Prison from another penal institution, which must be kept. Furthermore, there is no record of therapy that remains when a person decreases the dosage on their own initiative. There is also no record of the amount of therapy used, so it is not clear which person deprived of liberty received what dosage of therapy. Such omissions are unacceptable. It is necessary to ensure a sufficient number of healthcare workers and to keep complete records, including monitoring the so-called "path of therapy" from the pharmacy to the patient, which would, in accordance with the country's obligations under Article 2 of the ECHR, significantly decrease the possibility of overdoses, including those with fatal consequences.

Recommendation 23.
For the Ministry of Justice and Public Administration to: urgently ensure a sufficient number of healthcare workers in the Zagreb Prison

Recommendation 24.
For the Ministry of Justice and Public Administration to: keep records in all penal institutions that enable the monitoring of the so-called "path of therapy" from the pharmacy to the patient

- Activities concerning improvement of the legal framework

Pursuant to Article 19 of the Optional Protocol to the UN Convention against Torture, in 2022 we participated in public consultations on several proposed ordinances: the Ordinance on the Work and Management of the Prisoners' Funds; the Ordinance on Underwear, Clothing, Footwear and Bedding for Prisoners; the Ordinance on Standards of Accommodation and Nutrition for Prisoners; the Ordinance on Standards and Procedures for Determining, as well as Appointment of Members and the Work of the Commission for Determining the Special Health Condition of Prison Officers; and the Ordinance on Registers, Personal Information, Logbooks, Personal Files and Records Kept within the Prison System.

Since the work of persons deprived of liberty is an important part of their individual programme for serving their sentence, and the organisation and manner of work should resemble the organisation and manner of work outside of the penal institution as much as possible, one of our proposals during the e-consultation on the Proposal for the Ordinance on the Work and Management of the Prisoners' Funds was to delete the provision based on which the prisoner would lose their right to use annual leave if the warden adopts a decision terminating their work. If a prisoner has obtained the right to annual leave, the warden's decision to terminate their work cannot derogate the acquired right. However, our proposal was not accepted, and the provided explanation stated that annual leave is a benefit stipulated by the EPSA, and one of the disciplinary measures is the denial of benefits, which means that the disciplinary measure of loss of the opportunity to use annual leave may be imposed on the prisoner. However, annual leave is a right, and only to the ability to use part or all of the annual leave in the semi-open or open wards of the penal institution is stipulated as a benefit (stipulated in more detail in Article 27, item 10 of the Ordinance on Correctional Treatment of Prisoners).

Prisoners pointed out situations that they found humiliating: receiving clothes that are too small or too

big, so they had to use ropes to tie their pants, as well as ill-fitting footwear. Some prisoners refused to accept the footwear because it was foul-smelling, and they were afraid that they would get a fungal infection. We believe that upon arriving at the penal institution, it is necessary for the prisoner to receive a blanket that no one has used since it was last washed. In general, prisoners receive used blankets that are already in the room. Instead of duvet covers, prisoners usually receive two sheets, and some complain that they have developed skin diseases from dirty blankets. During the e-consultation on the Proposal for the Ordinance on Underwear, Clothing, Footwear and Bedding for Prisoners, one of our proposals was to include a provision that all equipment provided to prisoners must be clean and in the appropriate size. Our proposal was accepted.

During the e-consultation on the Draft Ordinance on Standards of Accommodation and Nutrition for Prisoners, we proposed, among other things, the stipulation that working prisoners be allowed to shower every day. For example, for prisoners working in animal husbandry, showering every day is necessary for proper hygiene maintenance; simply allowing prisoners to clean themselves over a sink is not sufficient. Additionally, the EPSA requires prisoners to maintain personal hygiene, which is certainly not possible in these situations. Some penal institutions allow working prisoners to shower every day, while others allow them to shower twice a week, which is the minimum standard ensured for all prisoners regardless of their work status. Our proposal was accepted.

- Cooperation with the MJPA (Directorate for the Prison System and Probation)

In 2022, we held lectures at the 40th and 41st basic course for prison officers. In addition to the area of fundamental human rights, in the lectures, we provided an overview of judgments of the Constitutional Court and the ECtHR in cases against the Republic of Croatia pertaining to the prohibition of torture. Furthermore, through specific cases from the practice of the institution of the Ombudswoman, we clarified our role in protecting the rights of persons deprived of liberty.

A focus group was also conducted with the participants in order to gain insight into their perception of the role of a prison officer in a penal institution and their views on the human rights of persons deprived of liberty.

3. Persons with mental disorders with restricted freedom of movement

The Ombudswoman, in accordance with the competences stipulated by the Ombudsman Act and the Act on the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has a dual role in protecting the rights of persons with mental disorders whose freedom of movement is restricted.

In the first part, we present working on complaints and the examination procedures initiated on our own initiative, while in the second part, we describe the situation established during preventive visits as part of the NPM mandate. We provide an assessment of the treatment of persons with mental disorders whose freedom of movement is restricted based on both mandates.

3.1. Protection of people with mental disorders as a vulnerable social group

The complaints received mainly concerned the denial of the right to be informed about own health condition, confirmed diagnosis and medical assessments of the results and outcomes of specific diagnostic or therapeutic procedures, unjustified or improper use of coercive measures, inability to exercise certain rights stipulated by the Act on Protection of Persons with Mental Disorders (APPMD), as well as forced bringing, detention and hospitalization in psychiatric institutions.

According to the data of the Commission for Protection of Persons with Mental Disorders, from 1 January to 31 June 2022, a total of 2,321 coercive measures were recorded in all psychiatric institutions, while from 1 July to 31 December 2022, there were 571 recorded coercive measures, with the note that not all institutions provided data for the latter period. In that regard, there is a noticeable disparity in the use of coercive measures in different institutions. For example, in 2022, in the "Dr Josip Benčević" General Hospital Slavonski Brod (PDGH Slavonski Brod), those measures were used 40 times, while in the Psychiatry Clinic of the University Hospital Centre Osijek (PC UHC Osijek), they were used 77 times. On the other hand, the medical staff at the Psychiatry Clinic of the University Hospital Centre Rijeka (PC UHC Rijeka) applied coercive measures toward patients a total of 570 times in the first six months. According to the provided data, PDGH Slavonski Brod is one of the general hospitals with a lower number of coercive measures used, while concerning psychiatry clinics, the highest number was recorded in the Psychiatry Clinic of the University Hospital Centre Split (PC UHC Split), where as many as 893 instances of coercive measures were documented in just the first reporting period. This disproportion raises doubts about the justification of the use of coercive measures, which should be used in particularly urgent cases of serious and direct endangerment of one's own or others' lives, health or safety, where this is the only means to prevent a patient from endangering their own or others' lives, health or safety through their actions.

We emphasise that according to the CPT standards, coercive measures should always be used in accordance with the principles of legality, necessity, proportionality and responsibility. They should never be used as punishment, to facilitate the work of staff, due to shortage of staff or as a substitute for proper care or treatment.

"After a brief conversation with a psychiatrist, who asked me a few questions, the police officers told him that I had constantly been talking about wanting to commit suicide, which was completely false. The psychiatrist then called in the nurses, who instructed me to remove my jacket, and after that, they tied me to the bed and fixed my arms and legs. At no point did I resist or refuse to cooperate."

Based on the complaint, we initiated an examination procedure regarding the use of coercive measures in the PC UHC Rijeka, taking into account the patient's complaint that he was restrained without justification, meaning that he did not resist or seriously endanger their own or others' lives, health or security, which is why coercive measures should be applied. By reviewing the documentation regarding the use of a coercive measure, we established that there is no basis for the extension of the coercive measure, that nursing and medical documentation is inconsistent, that there is no record of physical exercise of the patient while restrained and no mention of preventive measures taken to reduce the risk. As a result, we warned that the use of coercive measures without real reasons can lead to patient

abuse. In addition to the allegations of unjustified use of coercive measures, the complainant stated that he did not sign the consent for voluntary hospitalization, although by reviewing the documentation, we found that it had been signed. From this, we concluded that the patient did not know what he has signed. Therefore, in this case, the validity of informed consent is questionable, as it requires that the person can understand the information provided by the doctor and that he knows what he is signing. Otherwise, if there is no valid consent, such detention can lead to unlawful deprivation of liberty. It is particularly concerning that on the same day when the complainant signed the consent, he was also restrained, and the medical documentation lists numerous reasons for the need for fixation that could indicate that the patient was not capable of giving consent.

Recommendation 25.

For the Ministry of Health to: ensure that coercive measures are used in psychiatric institutions only when it is necessary to avert imminent danger arising from the patient's behaviour, which seriously and directly threatens their own or others' life or health

In such situations when, according to the doctor's assessment, a person needs to be detained in a psychiatric facility but is unable to give valid consent, he/she can be involuntarily detained for 48 hours following admission, after which he/she should be informed again about voluntary hospitalisation or the need for forced accommodation, regarding which a decision is adopted by the court.

We initiated an examination procedure on our own initiative regarding the possible involuntary hospitalisation of an individual in UHC Split due to poor physical condition and unsatisfactory living conditions. In the response from the PC UHC Split, it was emphasised that the patient was admitted to the emergency department, where he signed a consent for hospitalisation and was treated at PC for one day and transferred to another hospital department following a consultant examination and consultations.

In the supplement to the report, it is noted that the patient was admitted with a clinical presentation of acute and transient psychotic disorder. Coercive measures/restraints were applied upon admission to the PC in order to prevent self-harm. In regard to the provided reports, we pointed out Article 61 of the APPMD, which states that coercive measures for persons with severe mental disorders may only be applied as an exception, if they are the only means to avert imminent danger arising from their behaviour, which seriously and directly endangers their own or others' life or health. Coercive measures may only be applied to the extent and in the manner necessary to avert the danger. Before applying coercive measures, it is important to use de-escalation techniques stipulated in the Ordinance on the Types and Methods of Applying Coercive Measures to Persons with Severe Mental Disorders. According to the Guidelines of the Croatian Medical Association – Croatian Society for Clinical Psychiatry, they are an important method of communication used to calm agitated patients, help them regain self-control and establish cooperation in treatment.

We asked the question of specifying acute (short-term) and transient psychotic disorders and the stipulated clinical indications referred to in Article 8 of the Ordinance on Coercive Measures, which serve as the basis for the application of restraint measures. We warned about the need for consistent implementation of all regulations as well as national and international standards in the application of coercive measures. We recommended further education of medical staff in order to improve and enhance their handling of aggressive patient behaviour, as well as training on communication skills and de-escalation techniques. ECtHR likewise pointed out the unjustified and non-selective use of coercive

measures in its judgment in the case of M.S. v. Croatia (no. 2) (2015), where violations of Articles 3 and 5 of the ECHR were established; it emphasised that such measures should only be used if calming the patient and preventing harm cannot be achieved through other methods. Among other things, this judgment highlighted the lack of alternative methods for calming the patient and the inability to prove the absolute necessity of the coercive measures. The prolonged application of these measures affected human dignity and resulted in degrading treatment.

"The practice of illegal detention in psychiatric institutions is a barbaric practice that still exists in Croatia. Here we have a case where psychiatrists are performing the duties of the judiciary, and the police are acting as psychiatrists, self- initiative assessments of who should be placed in closed wards and giving statements instead of that person"

We acted upon the complaint submitted by a patient, who stated that he was forcibly hospitalised at the Psychiatric Hospital Ugljan (PH Ugljan) without any medical reasons, but rather due to a conflict with his family. According to the statement of PH Ugljan, the patient was brought in accompanied by police officers and provided written consent for treatment after being informed about the reasons and objectives of the hospitalization. However, during the examination procedure, we were unable to determine that he was sufficiently informed about the reason for hospitalisation, nor that he knew that he could withdraw consent for voluntary hospitalization. Namely, in accordance with Article 25, paragraph 2 of the APPMD, a person can withdraw their consent at any time because voluntary consent applies not only at the moment of admission but is presumed throughout the entire stay. Since the patient signed the consent for hospitalisation upon admission, he/she should have also been informed that the voluntary nature of consent applies to the entire period of hospital treatment, because otherwise it may result in unlawful stay in a psychiatric institution or involuntary detention of a voluntary patient, which would constitute a violation of Article 5 of the ECHR.

In 2022, the ECtHR issued a judgment in the case of *Miklić v. Croatia*, finding a violation of Article 5 of the ECHR. In relation to that specific case, we conducted an examination procedure in 2018, questioning the validity of the legal basis for Mr. Miklić's involuntary hospitalisation. We emphasised the need for the application of Articles 37–41 of the APPMD, which should have included the obligation of the court to, upon request of the involuntarily detained person or their lawyer, obtain an expert opinion from a psychiatrist who is not employed at that psychiatric facility regarding the existence of severe mental disorders that seriously and directly endanger their own or others' life, health or safety.

By virtue of the final judgment, it was determined that the applicant committed criminal offences as a minor while being of unsound mind. In September 2017, he was placed in the Psychiatric Hospital Rab (PH Rab) for a period of six months with a diagnosis of paranoid schizophrenia. In February 2018, PH Rab proposed to the County Court in Rijeka that forced hospitalization be replaced with outpatient treatment. In the subsequent proceedings, based on a psychiatric expert report, it was considered necessary to continue the applicant's treatment in a psychiatric institution. As a result, the County Court in Rijeka prolonged the involuntary hospitalization for another year. Upon the applicant's appeal, this decision was abolished with an instruction to commission an additional expert report or a new expert witness evaluation. In the repeated proceedings, without conducting a new expert witness evaluation, the representative of the Hospital and the same experts who had previously treated the applicant were heard, resulting in the prolongation of the involuntary hospitalization for another year.

In the meantime, he again requested outpatient treatment, based on a privately commissioned expert witness evaluation. The courts rejected his proposal as well as the request for a new expert witness evaluation, and the Constitutional Court dismissed his complaint as ill-founded. However, the ECtHR concluded that Croatian courts are obligated to obtain a new report and expert opinion when deciding on the periodic prolongation of forced hospitalization in a psychiatric institution or on a person's request for out-of-hospital treatment, which should be prepared by a person not employed by the institution where the patient is treated, except in special circumstances stipulated by the APPMD.

Therefore, the ECtHR determined that the assessment of the applicant's mental state at the time of extension of involuntary hospitalization had not been made in a procedure based on the applicable legislation and that the process was marked by numerous deficiencies. The court rejected the request for a new expert witness evaluation with superficial explanations and contrary to the APPMD; neither of the two court instances provided reasons regarding why the expert witness evaluation was not conducted by a person who was not employed by the hospital where the applicant was being treated; the county court took no action on the applicant's request for release for almost three months, even though strict deadliness and urgent procedures are provided for by national legislation; the submissions in which the hospital opposes release and proposes the continuation of involuntary internment were only served to him at the hearing. His right to liberty guaranteed by Article 5, paragraph 1 of the ECHR was thus violated.

"My opinion is that the majority of people there were unlawfully held due to the actions of psychiatrists who kept them institutionalised without a court order, with the exception of those who were there voluntarily and had signed consent. I was not among those exceptions."

Acting on the complaint regarding involuntary hospitalization of a patient in PH Ugljan, based on the hospital's statement, we determined that the person in question had been deprived of their legal capacity for making decisions regarding medication and placement in an appropriate institution and he signed a consent form for voluntary institutionalisation.

In the statement of PH Ugljan, it was emphasised that they had acted in accordance with Article 12, paragraph 3 the APPMD, which states that "loss of legal capacity does not imply incapacity to give consent, so the capacity to give consent must be determined before implementing a medical procedure, even for individuals deprived of legal capacity." However, in this particular case, the person's legal capacity had been taken away by a court decision precisely regarding his ability to make decisions about medication, the provision of treatment and placement in an appropriate institution or hospital treatment. Therefore, consent from the designated guardian, as defined by the decision of the SWC, is necessary. While the consent of a person deprived of legal capacity is undeniably important to prevent institutionalisation without consent, in cases where a court has decided to take away legal capacity in regard to treatment and hospitalisation, the consent of the guardian is mandatory. Therefore, we recommended that in such situations, written consent of the guardian should be required, as we pointed out during the NPM visit to PH Ugljan in 2014.

3.2. Activities of the NPM: Visits to psychiatric institutions

We conducted unannounced regular visits to the PDGH Slavonski Brod and the Psychiatric Hospital Sveti Ivan, Jankomir (PH Sveti Ivan). With the aim of assessing the implementation of previous warnings and recommendations, we also conducted follow-up visits to the PC UHC Osijek and the PC UHC Rijeka.

During the visits, cooperation with the management and medical staff of these institutions was correct, and there were no restrictions in terms of carrying out the NPM mandate. Representatives of the NPM were granted access to the data and records kept in written or electronic form.

3.2.1. Accommodation conditions

Accommodation conditions for patients within the healthcare system of the Republic of Croatia are regulated by the Ordinance on Norms and Standards for the Provision of Healthcare Services, which also applies to psychiatric institutions.

Based on the conducted NPM visits and previous years of experience regarding the existing conditions, it can be concluded that the accommodation conditions in certain psychiatric departments are not satisfactory and are in contradiction with the standards set by the Ordinance on Norms and Standards, as well as the recommendations of the CPT.

It was noticeable that in some situations, inadequate accommodation conditions affect the privacy of patients and limit their free movement, as well as lead to challenging circumstances in providing quality diagnostic and treatment procedures.An example of spatial and organisational deficiency is the Emergency Admission Unit of PDGH Slavonski Brod.

The Unit is part of the Department, but it does not have pre-planned medical staff. Instead, physicians and nurses/technicians leave their regular duties in case of an emergency intervention, which can pose a safety problem in terms of the need for supervision of patients accommodated in the ward. In addition to the mentioned organisational issue, the emergency room is inadequate, which hinders the work of the medical staff who frequently intervene with individuals with mental disorders, requiring greater therapeutic effort and additional activities.

Due to limited spatial capacities of the healthcare institutions we visited, as well as inadequate organisational solutions, a common problem identified is the lack of facilities for a day room for patients, dedicated spaces for meal service and rooms for working with larger and smaller groups. According to the standards, a psychiatric ward must have a room of at least 20 m² for working with a small group and a room of at least 40 m² for working with a large group.

Recommendation 26.
For the Ministry of Health to: harmonise the accommodation conditions in psychiatric institutions with international and legal standards

For example, PDGH Slavonski Brod has two separate rooms used as a day room and for meal service, where, due to the limited accommodation capacities, group therapies with patients are also organised and conducted by teams composed of physicians, occupational therapists and nurses, focusing on thematic, work-related and organisational therapies.

Photograph 8

As an example of aggravating circumstances in working with patients, it was observed that one of the departments of the PC UHC Osijek, divided into male and female wards located on different floors of the Clinic, does not have a day room in the female ward, while the day room in the male ward, due to its smaller size and limited capacity, cannot accommodate all the patients stationed in the wards at the same time. As a result, patient meals and therapy are organised in groups, with female patients being escorted from the female ward by nurses to the male department using the lift for the purpose of having meals, undergoing treatment activities and for leisure time.

The room in the closed male ward of PH Sveti Ivan, which also serves as a smoking room (i.e., a room where smoking is allowed) represents an example of inadequate space for a day room and meal service.

Photograph 9

Photograph 10

A problem of lacking rooms for enhanced patient monitoring was identified, as Article 53 of the Ordinance on Norms and Standards stipulates that psychiatric departments must have two monitored rooms equipped with video surveillance.

In that regard, we recommended to PDGH Slavonski Brod to install video surveillance in the rooms for enhanced patient supervision in order to ensure continuous monitoring by the medical staff, who previously carried out this task through small windows on the doors.

The issue of special facilities for applying coercive measures was noted at the PC UHC Osijek, as restraint measures are applied in rooms where the patients stay and in the presence of other patients. This is contrary to the purpose established by the Ordinance on Coercive Measures, considering the manner of application, which includes a conversation with the patient and the use of de-escalation

techniques, which should be applied in a quiet room without the presence of other patients.

Similarly, there are no special facilities for the application of coercive measures in the PDGH Slavonski Brod, so they are applied in rooms where the patients stay and in the presence of other patients. Therefore, we recommended that special facilities be provided in the ward, equipped for safe restraint (video surveillance, alarm system), in order to protect patient privacy and reduce the risk of violence in shared rooms.

During the follow-up visit, we found that two rooms in PC UHC Rijeka were still being used for coercive measures toward patients, despite being entirely inadequate according to CPT standards. The psychiatric institution in question was warned that accommodating patients in rooms with a surface area of 5.3 m², closed with iron doors, embedded in the ground (which prevents the installation of windows, obstructs natural light and fresh air flow) and with walls covered with ceramic tiles that can pose a danger to isolated patients, can further distress and traumatise patients, making their continued use inhumane treatment. Although PC UHC Rijeka stated in their response that the rooms are used for short-term confinement during agitation or aggressive behaviour of patients that may endanger other patients, accommodation in these rooms can lead to inhumane and degrading treatment and should therefore be discontinued.

Photograph 11

Regarding safety concerns, we also pointed out the issue with the so-called "ramp," which is a fenced access structure at the entrance to PDGH Slavonski Brod. Due to its flat and smooth surface, it poses a risk regarding loss of control over transportation equipment and considering that some hospital beds do not have proper braking devices, this can lead to injuries of patients and staff.

3.2.2. Informed consent and voluntary institutionalisation

According to Article 25 of the APPMD, individuals with mental disorders may only be hospitalised in psychiatric institution with their written consent if treatment cannot be carried out outside of such institutions, and consent can be withdrawn at any time. This provision regulates the voluntary hospitalisation of patients in healthcare institutions, which requires the patient's valid informed consent. However, in order for informed consent to be valid, the following conditions must be met: adequacy of information for decision-making, communication of information in an appropriate manner so that the patient can understand it, voluntary consent and the patient's capacity to make decisions about their treatment[4].

During visits, through focus groups and individual interviews, we found that most patients at the PC UHC Rijeka do not know which document they signed and that they have the right to withdraw their consent for treatment and request release. Their experience is that doctors alone decide on release

[4] Informed Consent to Treatment in a Psychiatric Institution: Guidelines for Psychiatrists, 2020

from hospital, and that they are not consulted on the matter. Moreover, they report that due to their mental state, they cannot recall details about signing the consent form. Therefore, based on the experiences shared by patients, the consent may have been signed while they were in such a mental state that they could not understand the information presented about why hospital treatment was recommended for them. Considering that a large number of patients are agitated and have reduced capacity to comprehend information upon admission, it is necessary to assess the patient's capacity to understand the information in order to obtain consent for voluntary treatment (valid informed consent).

On the day of the visit to the PH Sveti Ivan, there were no involuntary hospitalisations, but through conversations with voluntary patients, we established that they were not fully aware of their hospitalisation status and that they believed that they were involuntarily accommodated.

By inspecting the documentation of the PC UHC Rijeka and the PH Sveti Ivan, it was found that coercive measures were applied to individuals who had signed informed consent for hospitalisation but had not given consent for the possible application of coercive measures. Therefore, if coercive measures are applied to a patient who has signed the consent but objects to such measures or no longer has the capacity to give consent, it is necessary to change the patient's legal status and to initiate forced hospitalization proceedings, provided that the criteria of Article 27 of the APPMD, stipulating when a person can be involuntarily accommodated, are met.

Recommendation 27.

For the Ministry of Health to: ensure that patients are informed of their rights during their stay in psychiatric institutions and of the fact that voluntary consent applies to the entire period of hospital treatment

Most of the patients in the PC UHC Rijeka who signed informed consent and were admitted to closed ward cannot freely move, and it can be concluded that their treatment is contrary to the APPMD. In fact, if voluntary patients are kept in closed wards.
In fact, if voluntary patients are kept in closed wards and any movement or exit requires a decision to be made in that regard by a doctor or medical staff, this is not voluntary hospitalisation but rather deprivation of liberty, and such treatment is therefore not lawful.[5]

In cases where restriction of movement is necessary for treatment reasons, such as risk of suicide in a cooperative patient, the restriction may only be implemented with the patient's consent, which needs to be recorded in the medical documentation.

3.2.3. Coercive measures

By inspecting the medical documentation of the PC UHC Rijeka, it was determined that coercive measures were long-lasting, with 30-minute interruptions within a 24-hour period. The documentation contained no explanation for the prolongation of the coercive measures or the required indications for such actions. According to Article 61, paragraph 1 of the APPMD, coercive measures may only be applied as an exception, if they are the only means to avert imminent danger arising from the behaviour of a person with a mental disorder, which seriously and directly endangers their own or other's life or health.

[5] V. Grozdanić: Commentary on the Act on Protection of People with Mental Disorders with Implementing Regulations, Examples of Court Decisions, International Documents and Judgments of the European Court of Human Rights), Faculty of Law in Rijeka, 2015

Upon inspecting the reports of the PDGH Slavonski Brod, it was found that from 1 January to 30 June 2021, coercive measures were used 17 times, lasting on average for 26 hours, while from 1 July to 31 December 2021, they were used 18 times, with an average duration of 20 hours.

Upon inspecting the documentation of the PC UHC Osijek, we determined that there was no explanation given in the medical documentation for the reasons for prolonged application of coercive measures.

Recommendation 28.

For the Ministry of Health to: ensure that appropriate records are kept in all psychiatric wards regarding the use of coercive measures

It can be concluded that coercive measures were used for too long, contrary to the provisions of the APPMD, and that the need for their prolonged use was not clearly explained. Some patients who were subjected to coercive measures complained about the length of time they were restrained, which was often done at night, and one patient stated that dippers were also put on him.

We would like to emphasise that putting diapers on patients who are not incontinent is humiliating treatment, and the lack of staff cannot justify such treatment.

Most of the patients we spoke with did not know why these measures had been applied to them. We interviewed a patient who had been isolated and restrained in a room without natural light and who told us that he felt claustrophobic in the room in which he was restrained, with no way to communicate with the staff, who were difficult to reach through the intercom in the room.

We found contradiction in the monitoring of the health status of patients subjected to coercive measures between the documentation kept by nurses and that kept by psychiatrists. For example, the documentation kept by nurses stated that the patient was sleeping or cooperating, while at the same time, the psychiatrist's monitoring form stated that the patient was unpredictable, dangerous to themselves and others, with low self-control, and that the use of coercive measures should be prolonged. It was likewise observed that the documentation was not consistently filled out, which was attributed to a shortage of medical staff. The staff shortage is particularly noticeable when it comes to the use of coercive measures, given that according to Article 10 of the Ordinance on the Types and Methods of Applying Coercive Measures, the process should be carried out by a team of at least five nurses/technicians in the team, and the procedure itself should last from 15 to 20 minutes. In conversations with patients who had been restrained, it was established that in general, two staff members apply this measure. It is thus necessary to employ a sufficient number of healthcare workers in order to apply the restraint measure in accordance with Article 10 of the Ordinance on the Types and Methods of Applying Coercive Measures.

Recommendation 29.

For the Ministry of Justice and Public Administration to: define the use of coercive measures in more detail in the Act on Protection of Persons with Mental Disorders

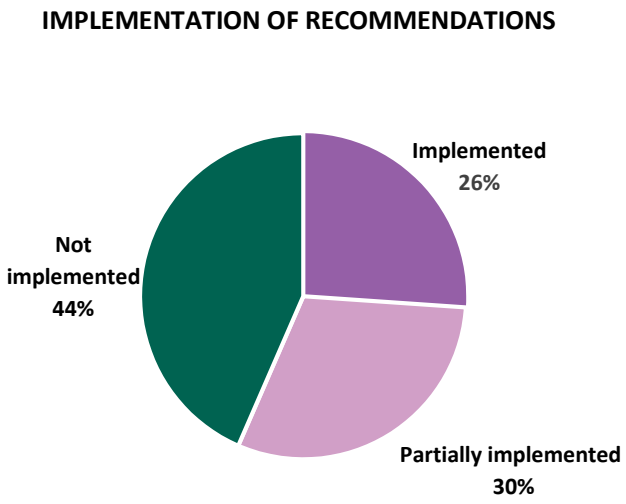
Through analysis of the APPMD, we established that coercive measures are not stipulated by law as stated in the CPT standards, and that they are only defined in the Ordinance on the Types and Methods of Applying Coercive Measures to Persons with Severe Mental Disorders. According to the CPT standards, all types of coercive measures and criteria for their use should be regulated by law.

Furthermore, the Ordinance on the Types and Methods of Applying Coercive Measures does not specify minimum standards for rooms in which coercive measures are applied, and this needs to be regulated in order to protect the dignity and safety of persons with mental disorders.

It is likewise necessary to define the application of restraint measures more precisely. While the APPMD emphasises necessity and proportionality, i.e., it stipulates the use of coercion only in exceptional cases and for the duration necessary to avert the danger, this is not sufficiently emphasised in the Ordinance.

3.2.4. Evaluation of implementation of recommendations during follow-up visits

Follow-up visits were made to the PC UHC Rijeka and the PC UHC Osijek, with the aim of determining whether previously given warnings and recommendations had been implemented.



During the follow-up visits, it was established that there is a high percentage of recommendations that had not been implemented, specifically that 48% of recommendations had been partially implemented, while 10% had not been implemented at all. Aside from the recommendations, seven warnings were issued to the PC UHC Rijeka, and during the follow-up visit, only one was found to have been fully implemented, regarding the use of diapers for incontinent patients. The majority of unfulfilled recommendations pertain to accommodation conditions in the facilities housing persons with mental disorders, such as the lack of wardrobes, spatial constraints, inadequate day rooms and group work rooms, overcrowded patient rooms, lack of adequate elements on building façades and in courtyard spaces, as well as other factors that mostly compromise the patients' right to privacy, which can be considered as degrading treatment according to the CPT standards.

As an example of good practice, we highlight that the PC UHC Osijek, despite having limited space and accommodation capacities, implemented certain recommendations. For instance, during occupational therapy sessions, the staff closes off the day room, which then becomes a workspace for group activities. A corresponding notice is placed on the entrance door, and only authorised medical staff with electronic cards are allowed to access the area, in order to prevent unauthorised individuals from disrupting group therapy.

Photograph 12

Photograph 13

Furthermore, as an example of good practice in implementing recommendations, we highlight the Clinic's decision to no longer use part of the corridor for meal distribution to patients. It is likewise important to note the progress made in informing patients about their rights, although there is still a need to improve the complaint system to make it more accessible and simpler for patients through the use of available forms and complaint boxes.

4. International cooperation among NPMs

During 2022, we were active in terms of international cooperation and participated in numerous events organized within the Network of the NPMs of Southeast Europe (SEE NPM Network), Network of Independent Institutions Responsible for Police Complaints (IPCAN), Council of Europe, OSCE and other international institutions. As part of the SEE NPM Network, we participated in two meetings held in Vienna, organised by the Austrian NPM as the Chair of the Network on the topics of care and health protection of persons deprived of liberty in the prison system, treatment of prisoners with mental illness in high-security prisons, minors with mental and physical disabilities in places of detention, and application of coercive measures on persons with disabilities and minors. At the same time, within the framework of bilateral cooperation, we visited NPM in Slovenia.

In September 2022, representatives of the CPT of the Council of Europe visited Croatia as part of a periodic visit. We held a meeting with them for the purpose of an evaluation of the situation concerning the rights of persons deprived of liberty.

At the ninth meeting of the States parties to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, held in October 2022, 13 new members of the SPT were appointed, including Anica Tomšić, advisor to the Ombudswoman.

Also, we participated in a webinar organised by the SPT on the role of national mechanisms in monitoring places where migrants are deprived of liberty, in the ODIHR Regional Training in Warsaw on sexual and gender-based violence and monitoring of places of detention, in an online workshop organised by the CoE on monitoring mental health care in prisons and in meetings and conferences organised by the APT and the ODIHR on the rights of persons deprived of liberty and monitoring of application of coercive measures and equipment in the criminal justice system.

5. Recommendations

Police system:

1. For the Ministry of the Interior and the General Police Directorate to: introduce more effective methods of identifying police officers with regard to police treatment;
2. For the Ministry of the Interior and the General Police Directorate to: ensure that force is used only when it is necessary and proportionate;
3. For the Ministry of the Interior, the General Police Directorate and the State Attorney's Office to: conduct an effective investigation in cases of potential overstepping of authority by police officers, especially when this leads to grievous bodily injury as a result of the use of firearms by police officers
4. For the Ministry of the Interior and the General Police Directorate to act uniformly when investigating complaints about police conduct and ensure the protection of personal data of the complainants;
5. For the Ministry of the Interior and the General Police Directorate to: ensure that accommodation conditions in the premises for persons deprived of liberty are in accordance with the Standards of Premises in which persons deprived of liberty are held;
6. For the Ministry of the Interior and the General Police Directorate to: establish video surveillance in the premises where persons deprived of liberty are held;
7. For the Ministry of the Interior and the General Police Directorate to: equip the vehicles used for the transport of detained/arrested persons with appropriate safety equipment;
8. For the Ministry of the Interior and the General Police Directorate to: include information about further complaint procedures in their responses to citizens' complaints after each stage of internal review;
9. For the Ministry of the Interior and the General Police Directorate to issue conclusions in order to warn the complainants of the deficiencies of the complaint and to set a time limit for it to be remedied, with a warning of legal consequences if the complainants fail to do so;

Applicants for international protection and irregular migrants:

10. For the Ministry of the Interior to: ensure that information on rights in immigration detention centres are highlighted and communicated in an accessible, visible and clear manner;
11. For the Ministry of the Interior to: draft a proposal of the amendments to the International and Temporary Protection Act that will regulate the judicial review of lawfulness of decisions on restriction of freedom of movement in the same way as it is currently regulated for irregular migrants under the Act on Foreigners;
12. For the Ministry of the Interior to: ensure adequate translation and interpretation services during the process of deprivation of liberty of irregular migrants and applicants for international protection;
13. For the Ministry of the Interior to: ensure access to effective complaint mechanisms in the reception centres for foreigners;
14. For the Ministry of the Interior to: ensure unimpeded access for lawyers to reception centres for foreigners;

15. For the Ministry of the Interior to: allow civil society organisations to have access to the

immigration detention centres;

16. For the Ministry of the Interior to ensure that precise terminology is used in the instructions provided to police officers regarding actions at the border
17. For the Ministry of the Interior to document discouragement actions and other activities;
18. For the Ministry of the Interior to enable the institution of the Ombudswoman to review all data regarding the treatment of irregular migrants, including the data contained in the information system of the MI;

Prison system:

19. For the Ministry of Justice and Public Administration and the Ministry of Health to: ensure the prerequisites for providing healthcare services within the prison system in accordance with the Healthcare Act;
20. For the Ministry of Justice and Public Administration to: enhance professional capacities within penal institutions, particularly in the areas of security, correctional treatment and healthcare, in order to increase the level of human rights protection for persons deprived of liberty;
21. For the Ministry of Justice and Public Administration to: draft a proposal of amendments to the Execution of Prison Sentence Act in the part related to special measures for maintaining order and security;
22. For the Ministry of Justice and Public Administration to: draft a proposal of amendments to the Criminal Procedure Act in order to harmonise disciplinary offences and disciplinary measures stipulated by this Act with those stipulated by the Execution of Prison Sentence Act;
23. For the Ministry of Justice and Public Administration to: urgently ensure a sufficient number of healthcare workers in the Zagreb Prison
24. For the Ministry of Justice and Public Administration to: keep records in all penal institutions that enable the monitoring of the so-called “path of therapy” from the pharmacy to the patient;

Persons with mental disorders with restricted freedom of movement:

25. For the Ministry of Health to: ensure that coercive measures are used in psychiatric institutions only when it is necessary to avert imminent danger arising from the patient’s behaviour, which seriously and directly threatens their own or others’ life or health;
26. For the Ministry of Health to: harmonise the accommodation conditions in psychiatric institutions with international and legal standards;
27. For the Ministry of Health to: ensure that patients are informed of their rights during their stay in psychiatric institutions and of the fact that voluntary consent applies to the entire period of hospital treatment;
28. For the Ministry of Health to: ensure that appropriate records are kept in all psychiatric wards regarding the use of coercive measures;
29. For the Ministry of Justice and Public Administration to: define the use of coercive measures in more detail in the Act on Protection of Persons with Mental Disorders

8. Conclusion

In the course of 2022, we did not identify any actions or conditions that would constitute torture; however, we did find those that indicate inhuman and degrading treatment and violations of the constitutional and legal rights of the persons deprived of their liberty. We pointed to some of these occurrences in the previous years and issued warnings and recommendations. Due to the fact that some of the violations have been recurring over the course of time, which is concerning, certain recommendations have also been repeated to address the lack of implementation. In order for the prevention system to function effectively, it is necessary for the relevant institutions to implement the NPM's recommendations and to take into account the conclusions and the recommendations following its preventative visits to the places of detention.

As this report shows, there are still failures in the implementation of the police powers, the conditions of accommodation in police stations and police detention units are still not in line with the applicable standards, persons placed in reception centres for foreigners face difficulties in the access to their rights, the accessibility of health care in the prison system is inadequate as are the accommodation conditions, persons with mental disorders are uninformed about their rights, voluntary patients' freedom of movement is restricted and they are subjected to coercive measures. Furthermore, the Ombudsman still does not have unrestricted access to all data on the treatment of irregular migrants, including the data stored in the information system of the Ministry of the Interior.

Therefore, it is still necessary to carry out effective investigations in the cases of possible overstepping of the police powers, to bring the accommodation conditions in places of detention in line with the applicable standards, to introduce video surveillance that will cover all areas where persons deprived of their liberty are located or move, as well as to enable detention supervisors to perform only the duties related to that role, in order to fully prevent the possibility of inhumane or degrading treatment. We noted that police transport vehicles, in the area intended for the transport of persons deprived of their liberty, do not have handrails and safety belts, therefore it is necessary to equip them with the appropriate safety equipment.

It is necessary to improve the system of monitoring and the responsibility for respecting the rights of irregular migrants and those seeking international protection, which includes allowing the representatives of the NPM free and unhindered access to all data related to the treatment of irregular migrants. Given that persons deprived of their liberty held in reception centres for foreigners do not have satisfactory access to all guaranteed rights, we have given recommendations and warnings to the competent authorities with the aim of their strengthening.

Within the prison system, it is necessary to provide preconditions for the provision of health care in accordance with the provisions of the Health Care Act, so that persons deprived of their liberty could receive health care of the quality and scope prescribed for the public health care system. Furthermore, we warned about the continuing rise of occupancy rates in the closed wards of the penal institutions. The overcrowding generates the restrictions or violations of numerous rights of persons deprived of their liberty in the prison system. Thus, it is important to implement compensatory measures. In order to increase the level of protection of the human rights of persons deprived of their liberty, it is necessary to fill as many vacancies within the prison system as possible, because the insufficient numbers of prison officers are reflected in their manner in which they execute their tasks.

Persons placed in psychiatric institutions should receive information in a clear and comprehensible manner about informed consent and voluntary status as well as be familiarized with the rights they have during their treatment. Means of coercion should be applied to them only when necessary and in exceptional situations. Furthermore, in accordance with the CPT standards, all types of coercive measures and the criteria for their use should be regulated by law; therefore we recommended that their application be defined in more detail in the Act on the Protection of the Persons with Mental Disorders.

Finally, what needs to be stressed is that the implementation of the recommendations is crucial in carrying out the mandate of the National Preventive Mechanism in order to achieve the greatest possible protection of the rights of persons deprived of their liberty and to improve the conditions in which they are accommodated in order to prevent torture and other cruel, inhuman or degrading procedures or punishment.