



Ref. no. KMP.570.2020.MZ

**Report of the National Mechanism for the Prevention of Torture
on ad hoc visits to the rooms for detained persons or persons brought for sobering up
within the units reporting to the Warsaw Police Headquarters
and to the Voivodeship (i.e. Regional) Police Headquarters in Radom**

1. Introduction

Pursuant to Article 19 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in New York on 18 December 2002 (Journal of Laws [Dz. U.] of 2007, No. 30, item 192), hereinafter referred to as OPCAT, and acting at the request of the Commissioner for Human Rights, from 23 October to 14 December 2020 the National Mechanism for the Prevention of Torture (hereinafter: NMPT) carried out visits to the following rooms for detained persons or persons brought for sobering up (RDP), operated within the structures of the Warsaw Police Headquarters and the Regional Police Headquarters in Radom:

- 23 October 2020: Deputy Commissioner for Human Rights Hanna Machińska, Ph.D., and NMPT Director Przemysław Kazimirski (lawyers) made a visit to District Police Station Warsaw V (Żeromskiego Street);
- 23 October 2020: NMPT Deputy Director Marcin Kusy and Michał Żłobecki (lawyers) made visits to the RDP at the District Police Station Warsaw IV (Żytnia Street) and to the RDP at the Warsaw Police Headquarters (Nowolipie Street);
- 27 October 2020: Klaudia Kamińska (lawyer) made a visit to the RDP at the Ostrołęka Police Headquarters;
- 27 October 2020: Aleksandra Osińska (psychologist) and Rafał Kulas made a visit to the District Police Station Warsaw I (Wilcza Street);

- 31 October 2020: Aleksandra Nowicka (criminologist, security expert) and Michał Żłobecki (lawyer) made a visit to the RDP at the District Police Station Warsaw IV (Żytnia Street);
- 31 October 2020: Dr Justyna Józwiak (sociologist, political scientist specializing in social rehabilitation) made a visit to the RDP at the District Police Station Warsaw VII (Umińskiego Street);
- 31 October 2020: NMPT Deputy Director Marcin Kusy (lawyer) and Aleksandra Osińska (psychologist) made a visit to the RDP at the District Police Station Warsaw Ursynów (Janowskiego Street) and to the RDP at the Poviast Police Station in Piaseczno;
- 31 October 2020: NMPT Deputy Director Marcin Kusy (lawyer) made a visit to the RDP at the Warsaw Police Headquarters (Nowolipie Street);
- 31 October 2020: Justyna Zarecka (political scientist, security expert) made a visit to the RDP at the District Police Station Warsaw VI (Jagiellońska Street);
- 10 November 2020: Magdalena Dziedzic (lawyer) made a visit to the RDP at the District Police Station Warsaw VI (Jagiellońska Street);
- 19 November 2020: Michał Żłobecki (lawyer) made a visit to the RDP at the District Police Station Warsaw IV (Żytnia Street);
- 19 November 2020: Magdalena Dziedzic (lawyer) made a visit to the RDP at the District Police Station Warsaw I (Wilcza Street);
- 19 November 2020: NMPT Deputy Director Marcin Kusy (lawyer) made a visit to the RDP at the Warsaw Police Headquarters (Nowolipie Street);
- 19 November 2020: Aleksandra Osińska (psychologist) and Klaudia Kamińska (lawyer) made a visit to the RDP at the District Police Station Warsaw II (Malczewskiego Street);
- 20 November 2020: Aleksandra Nowicka (criminologist, security expert) made a visit to the RDP at the Poviast Police Station in Grodzisk Mazowiecki;
- 20 November 2020: Klaudia Kamińska (lawyer) made a visit to the RDP at the District Police Station Warsaw VI (Jagiellońska Street);
- 20 November 2020: NMPT Director Przemysław Kazimirski (lawyer) made a visit to the RDP at the Poviast Police Station in Legionowo and to the RDP at the Poviast Police Station in Piaseczno;
- 14 December 2020: Michał Żłobecki (lawyer) made a visit to the RDP at the Poviast Police Station in Grodzisk Mazowiecki.

Due to the epidemiological situation, the NMPT representatives, while performing their duties, used personal protective equipment such as protective masks and disinfectant.

The visits were of an *ad-hoc* nature, and their objective was to examine the situation of those detained by the police in connection with the protests which took place between 22 October and 13 December 2020 in connection with the Constitutional Tribunal judgment of 22

October 2020 in case no. K1/20 on the tightening of the legislation on abortion. In the reviewed period, a total of 21 visits were conducted.

During the visits, the conditions in which detainees were held were also inspected in the context of the implementation of the so-called minimum anti-torture guarantees.

The following activities were carried out during the visits:

- talks were held with 57 detainees in conditions ensuring confidentiality of the talks;
- photographic documentation was taken of detention reports, duty record books and injury records of the detainees.

Following the visits, the above-mentioned documentation was analyzed, including the documentation requested in writing by the NMPT Director from commanding officers of the units in which the protestants were placed but which had not been visited by the NMPT. The representatives of the National Mechanism also studied the documentation and video surveillance recordings made available by the Director of the Warsaw Sobering-up Facility with regard to the placement there of a person with whom the NMPT spoke. The findings presented in this report are also based on the statistical data provided by commanding officers of the Warsaw police units in which the RDPs are located.

Based on the collected information, applicable international standards and national commonly binding legislation the NMPT assessed the treatment of the persons detained by police officers and the execution of minimum anti-torture guarantees, i.e.: the exercising of the right of defence, the possibility of informing a third party about the detention, the conducting of a medical examination, the exercising of the right to information and the possibility of lodging a complaint.

This report includes only those areas that need to be strengthened from the point of view of the prevention of torture and other forms of ill-treatment of detainees.

2. Activities of the Commissioner for Human Rights

The Commissioner for Human Rights, as the constitutional body safeguarding human and civil rights and liberties is responsible, under the relevant act of parliament, for regular monitoring of the treatment of persons deprived of liberty¹. Regardless of the NMPT preventive visits the Commissioner for Human Rights, since the beginning of the protests, has been undertaking numerous interventions relating to the rights of the protesters, also in the context of people's detention or the adequacy of direct coercion measures used by police officers.

On 26 October 2020 the CHR's Regional Representative in Katowice requested² the Voivodship Police Commander based in Katowice to provide information e.g. on the legal basis

¹ Article 8(2) of the Act of 15 July 1987 on the Commissioner for Human Rights, Journal of Laws [Dz. U.] of 2020, item 627.

² Letter no. BPK.570.2.2020.

of using direct coercion against MPs who took part in the protest on 24 October 2020, on the circumstances of using tear gas against the protesters on 25 October, and on the observance of the important rights of persons detained during the assembly, such as the right to receive information on their rights and access to legal aid. The CHR's Regional Representative was present in front of the Katowice City Police Station on 24 October in the evening³. The Commissioner, acting ex officio, also took steps in connection with the police intervention concerning the protesters, which took place on 24 October in Łódź. Given his objections as to the manner in which direct coercive measures were applied with regard to the demonstrators, the CHR requested the Voivodship Police Commander in Łódź to provide explanations.⁴ He also stressed that police officers are required to protect all participants of peaceful demonstrations, regardless of their views, and stated that police officers responsible for related violations should be held responsible under disciplinary and penal law regulations.

The Commissioner for Human Rights also intervened before the Commander-in-Chief of the Warsaw Police in connection with the detention of activists of the trade union named Ogólnopolski Związek Zawodowy Inicjatywa Pracownicza, who travelled to Warsaw on 30 October 2020 to take part in a protest⁵. On their way to the city, the activists were stopped three times by police patrols (twice by the same patrol). Direct coercion was used in the form of force and handcuffing detainees behind their back. The detainees were not informed of the factual and legal grounds for their detention and were taken to the Poviast Police Station in Piaseczno where they were searched and tested for the presence of alcohol in the blood. After three hours, the persons were released. Yet, they did not receive detention reports or information about the reasons for their detention.

The Commissioner reminded the Commander-in-Chief of the Warsaw Police that in the case of people taking part in the assembly in Smolna Street on 11 November 2017 in Warsaw, who found themselves in a similar situation, the court concluded that despite the lack of detention reports the officers' action should be classified as detention which, as the court ruled, was ungrounded and non-compliant with the law.

In view of the controversy surrounding the demonstration held in Warsaw on 18 November 2020, in particular the use of force and expandable batons against the protesters by non-uniformed police officers wearing no identification, and the use of violence by a police officer against the Deputy Speaker of the Sejm of the Republic of Poland, the Commissioner requested the Commander-in-Chief of the Warsaw Police to provide explanations regarding the case.⁶ The CHR was particularly interested in the factual and legal grounds of the police action, the scale of the coercive measures and detentions, the actual duration of the detainees' deprivation of liberty, as well as their possible complaints regarding the detention.⁷

The Commissioner for Human Rights was particularly concerned with the information concerning the instances of violation of the immunity of parliamentarians who took part in the

³ <https://www.rpo.gov.pl/pl/content/rpo-bada-sprawe-przemarszu-strajku-kobiet-w-katowicach>

⁴ CHR's letter to the Voivodship Police Station in Łódź of 29 October 2020, II.519.1549.2020.PS.

⁵ CHR's letter to the Commander-in-Chief of the Warsaw Police of 3 November 2020, II.519.1590.2020.PS.

⁶ CHR's letter to the Commander-in-Chief of the Warsaw Police of 19 November 2020, IL519.1694.2020.PS.

⁷ CHR's letter to the Ministry of the Interior of 11 December 2020, KMP.570.12.2020.RK.

protests, and the failure to respect the rights of journalists reporting on them. In particular, the Commissioner found that the use of gas against female MPs and the damage of an MP's ID during the police intervention had been unacceptable actions⁸. The CHR requested the Commander-in-Chief of the Warsaw Police to investigate the police officers' actions taken with regard to persons who had parliamentary immunity and to provide information on his findings and possible actions taken against the police officers by whom the immunity had been violated.

In response to media reports on the detention of a photojournalist reporting on the protests held in front of the Ministry of National Education on 23 November 2020 and who showed her press ID, the CHR wrote a letter to the Commander-in-Chief of the Warsaw Police in which he underlined the need to protect media representatives performing their duties during demonstrations⁹. He also referred to the existing standards of journalists protection during public gatherings.

According to the case law of the European Court of Human Rights, the dissemination of information, e.g. on public demonstrations, is one of the key responsibilities of the media as a so-called public watchdog in a democratic society.¹⁰

On 24 November 2020 the Commissioner for Human Rights, his Deputy and the NMPT Director took part in a meeting of the Senate Committee on the Rule of Law, Human Rights and Petitions¹¹. During the meeting, the CHR presented his activities and findings concerning the women's protests and related detentions. The Commissioner expressed his concern about the escalation of police officers' attitude which was manifested e.g. by the use of gas and expandable batons, violation of the parliamentary immunity, detention of journalists, and participation of an anti-terrorist group among security services during a peaceful demonstration. He also expressed his concern with the fact that detainees had been transported to police stations outside the city, near Warsaw.

The Commissioner for Human Rights also delivered a speech during the Polish Senate plenary session on 27 November 2020¹². In the speech, he drew attention e.g. to the intensification of police operations relating to protesters, including detention of persons under the age of 18. The Commissioner also referred to situations in which demonstrators were surrounded by the police and separated from other people. This method should only be used to isolate aggressive persons or persons who violate the law. According to the persons detained in this way, in some cases they remained surrounded by police officers even for 6 hours, without the possibility to use a toilet.

The CHR pointed out that the police had not drawn conclusions from their earlier interventions. In this context, he referred to the reply of the Commander-in-Chief of the Warsaw

⁸ CHR's letter to the Warsaw Police Headquarters of 20 November 2020, II.519.1694.2020.PS.

⁹ CHR's letter to the Warsaw Police Headquarters of 24 November 2020, VII.564.123.2020.MM.

¹⁰ ECHR judgment of 2 October 2012; case: Najafli v. Azerbaijan, application no. 2594/07, and ECHR judgment of 20 October 2012; case: Pentikainen v. Finland, application no. 11882/10.

¹¹ <https://www.rpo.gov.pl/pl/content/rpo-w-senackiej-komisji-eskalacja-zachowan-policji>

¹² The text of the speech is available at: <https://www.rpo.gov.pl/pl/content/rpo-bv-policja%C2%A0bvla-bardziej-nastawiona-na%C2%A0przestrzeganie-prawa-czlowieka>

Police, according to which in 79 detentions during entrepreneurs' protests in May 2020 had been found by the courts to be ungrounded or illegal¹³.

The Commissioner also presented preliminary findings of the ad hoc visits conducted by the NMPT. In the conclusion, he suggested the Senate should draft an act of parliament aimed at strengthening the observance of human rights during actions taken by the police.

"I believe that the Senate should take a legislative initiative with a working title "the Act on Human Rights Observance in Activities of the Police". Its objective should be to highlight the importance of the fundamental constitutional standards in police operations.

The drafting of the act would also create space for holding public hearings. Many citizens would like to share their stories, and to complain about the manner in which they have been treated or how they felt in contact with the power of the authorities. I also think that many police officers would like to be part of a service that is trusted by the society to a similar extent as the Fire Brigades or the army. Unfortunately, this has not been the case recently, as due to various reasons the police has lost the public trust."

Commissioner for Human Rights, Prof. Adam Bodnar

As regards detentions connected with the protests, emphasis should be placed on activities of the Deputy Commissioner for Human Rights who, during the reviewed period, personally visited police stations in Warsaw, also at late evening hours¹⁴. On those occasions she spoke with detainees, lawyers and police officers. She also made telephone contacts with other detainees wishing to provide information on the methods of their detention, the conditions in which they were held and the detainees' treatment by police officers. Due to the significance of her findings for the assessment of the situation of the persons deprived of liberty, the conclusions on the Deputy Commissioner' visits have been included in this report.

The Deputy Commissioner also took part in a meeting of the Parliamentary Committee on Administration and Internal Affairs, devoted to police actions taken in connection with the protests against the tightening of the legislation on abortion¹⁵. The meeting was also attended, inter alia, by the Minister of the Interior and Administration and the Police Commander-in-Chief who positively evaluated the actions of the officers who secured the assemblies.

It should be emphasized that between 22 October 2020 and 7 January 2020, the CHR Office registered the total of 40 cases relating to police interventions during the protests that

¹³ <https://www.rpo.gov.pl/pl/content/stoleczna-policia-bezzasadnie-zatrzymuje-manifestantow-rpo-do-senatu>

¹⁴ The Deputy CHR made the following visits: on 24 October 2020 – to the police station Warszawa Żoliborz (Rydygiera Street), on 25 October 2020 – to the police station Warszawa I (Wilcza Street), on 23 November 2020 – to the police station Warszawa I, on 28 November 2020 – to the police station Warszawa VI (Jagiellońska Street), on 28 November 2020 – to the Poviast Police Station in Piaseczno, on 9 December 2020 – to the police station Warszawa I.

¹⁵ <https://www.rpo.gov.pl/pl/content/zastepczvni-rpo-interweniuie-na-komendzie-policii>

took place after the announcement of the CT judgment. 16 of those cases related to the protester's detentions and 9 were cases proceeded on the initiative of the Commissioner.

3. Violation of the NMPT mandate

During the visits carried out on 10 November 2020 to the District Police Station Warsaw VI and on 19 November 2020 to the District Police Station Warsaw I, a representative of the National Mechanism for the Prevention of Torture encountered difficulties in exercising the NMPT powers arising from the OPCAT and the Act of 15 July 1987 on the Commissioner for Human Rights.

During the first of the visits, the NMPT representative was informed of the presence of a detained person at the police station and of the fact that her lawyer was expected there in connection with the procedural steps planned to be undertaken by police officers. In view of the above, the visiting representative expressed her intention to speak with the detainee before the arrival of her lawyer.

During a telephone conversation with the officer responsible for the case, the NMPT representative was refused a meeting with the detainee because of the planned procedural steps. The questioning of the detainee, however, did not start until approximately 30 minutes later. Before, the visiting representative could have carried out the intended activities and therefore the refusal of a meeting with the detainee should be considered ungrounded.

Finally, the meeting took place after the questioning. Initially it was held in a waiting room but the conditions did not ensure confidentiality and the NMPT representative requested the officer on duty to make another room available. The officer offered the questioning room but only for a few minutes as other procedural actions were planned there.

During the second of the visits i.e. the one to the District Police Station Warsaw I on 19 November 2020, the National Mechanism representative was informed by the Deputy Commander of the station that as a result of the earlier activities carried out by the NMPT, the Prosecutor's Office as the authority conducting pre-trial proceedings demanded the indication of the legal basis on which information on detainees is provided to the National Mechanism for the Prevention of Torture. The police officers were also informed that, according to the provisions of the Code of Criminal Procedure, only the parties and their attorneys/defence counsels may be granted access to information on detentions.

Having provided the information about the legal basis for the operation and powers of the NMPT verbally, the Deputy Commander contacted the Warsaw Śródmieście-Północ District Prosecutor competent for the area. The District Public Prosecutor refused granting access to the NMPT representative to the documentation concerning the detainee, and informed she would contact the Regional Public Prosecutor with regard to the matter. Subsequently, she was informed that the prosecutor upheld the decision.

As a result of an intervention by the NMPT Director, a decision on granting access to the case file was finally taken by the assistant prosecutor from the Warszawa Śródmieście-Północ District Prosecutor's Office. The officer who provided access to the documentation asked the visiting representative to confirm in writing that he had read the documentation and made photographic documentation.

In view of the above, the National Mechanism for the Prevention of Torture reminds that according to the OPCAT, the NMPT has unlimited access to all places of detention within the meaning of the optional protocol, including ones within police units.¹⁶ The NMPT may also access all places of detention within the meaning of the OPCAT. The NMPT also has access to all information on the treatment of detained persons, the conditions of their detention, and files on pre-trial proceedings. In particular, representatives of the National Mechanism have the right to speak to persons deprived of their liberty in private, without witnesses¹⁷. Moreover, according to the Act on the Commissioner for Human Rights, representatives of the National Mechanism, i.e. of the Commissioner, are entitled to make audio or video recordings at places where persons deprived of liberty are held, with the consent of the persons recorded.¹⁸

The Commander-in-Chief of the Police was informed about the above-mentioned rights and the methodology of the NMPT's work already before the commencement of the monitoring visits to police stations¹⁹. At that time, the police declared their full cooperation²⁰.

In this context, it is worth emphasizing that in his reply to the letter of the Deputy CHR to the Commander-in-Chief of the Police regarding the taking of measures to inform police officers on the OPCAT and the NMPT mandate²¹, the Police Commander-in-Chief Office Director analyzed the regulations in force, and his conclusions were similar to those of the CHR Deputy²². The office director stated, inter alia:

The right provided for in Article 20(b) of the OPCAT i.e. the right of access to all information on the treatment of persons deprived of liberty (detainees) and the conditions of their detention (pre-trial detention/imprisonment), including through access to case documentation and case files which may relate to pre-trial proceedings, is a separate right, other than the right to request information on the status of a case pending before a court, prosecutors' office or other law-enforcement body, and other than the right to demand the case files for the purpose of their analysis at the CHR Office after the closure of the case-related proceedings before a court, prosecutors' office or other law-enforcement body and

¹⁶ Articles 4, 19 and 20 of the OPCAT and Article 1(4) of the Act of 15 July 1987 on the Commissioner for Human Rights (OJ 2020, item 627).

¹⁷ Articles 20(b) and (d) of the OPCAT.

¹⁸ Article 13(1)(a) of the Act on the Commissioner for Human Rights.

¹⁹ Letter of Deputy CHR Hanna Machinska of 3 October 2018, ref. no. KMP.570.26.2018.RK.

²⁰ Letter of Commander-in-Chief of the Police Jarosław Szymczyk, PhD, of 26 November 2018, ref. no. l.dz. Gpc-841/18.

²¹ Letter of Deputy CHR Hanna Machinska of 3 June 2019, ref. no. KMP.570.14.2019.RK.

²² Letter of the Police Commander-in-Chief Office Director of 2 July 2019, ref. no. Kpp-5054/4583/2019.

the issuance of a judgment on the case, i.e. the right set out in Article 13(1)(3) of the Act on the Commissioner for Human Rights.

Article 13(1)(3) of the Act on the Commissioner for Human Rights may not be a basis for refusal, to the CHR or his/her representative who carries out the NMPT duties, of access to a file on pre-trial proceedings during an NMPT visit (...).

Article 13(1)(3) of the Act on the CHR and the provisions of the Code of Criminal Procedure may not be a basis for refusal of access to a file on pre-trial proceedings or making such access dependent on the consent of a prosecutor or other authority conducting the related criminal proceedings in the case the NMPT visits places of detention within Police units and exercise the powers set out in Article 20(b) of the OPCAT in the field of access to information on the treatment of detained persons (persons deprived of liberty) at that police unit, acting with the mandate of the National Preventive Mechanism.

The closing part of the letter also supported the idea of sending a letter to organizational units of the Police to inform them of the rights and obligations related to the conduct of the NMPT tasks by the CHR and his representatives and the rules of their conduct within organizational units of the Police.

In view of the above, the National Mechanism for the Prevention of Torture recommends that the Commander-in-Chief of the Warsaw Police should inform the heads of police units reporting to him of the content of the above-mentioned letter of the Police Commander-in-Chief Office Director.

Taking into account the duties of public prosecutors arising from Article 2 and enumerated in Article 3(1) of the Act of 28 January 2016 – the Law on the System of Public Prosecutors²³ and the impact of the exercise of those duties on the situation of persons in detention, the NMPT is strongly concerned with the lack of knowledge by prosecutors of the universally applicable regulations. This can be confirmed by the request for explanations from the Police regarding the mandate of the National Mechanism, and the refusal to provide access to documentation on the detained person to a representative of the NMPT. In this context, it is particularly ungrounded to undermine the powers of the NMPT. As indicated above, the mandate of the National Mechanism arises directly from the OPCAT which, as an international agreement ratified based on a prior consent expressed in a relevant act of parliament, is a part of the Polish legal system and is directly applicable. Moreover, in the case of a conflict of laws, the OPCAT should prevail over the act of parliament²⁴.

4. Prohibition of reprisals

²³ Consolidated text: Journal of Laws: of 2019, item 740; and of 2020, items 190 and 875.

²⁴ Article 91 of the Polish Constitution.

According to Article 21(1) of the OPCAT, no person (e.g. detainee, police officer or employee, family member, other person) or organization that has provided information to the NMPT may suffer any sanctions or be prejudiced on that account, whether the information has been true or false.

This is because the OPCAT states that *no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.*

5. Anti-torture guarantees

5.1 Access to a lawyer from the beginning of detention

The possibility of access to a lawyer immediately upon detention is a fundamental safeguard for persons deprived of their liberty. The presence of a professional lawyer during activities carried out with regard to detained persons makes it possible for them to better understand their situation and rights. Moreover, access to a lawyer effectively minimizes the risk of torture or other forms of violence, which risk, as shown by the experience of the National Mechanism for the Prevention of Torture, is the greatest immediately after detention. The large significance of the contact with a lawyer or defence counsel for the exercise of fundamental rights of detained persons has been emphasized also by the legislator when drafting the provisions of the Code of Criminal Procedure:

Article 245(1). A detained person, upon his/her request, shall be promptly given the possibility to contact a lawyer or defence counsel via available means, and to speak to them in person. In exceptional cases, justified by specific circumstances, the detaining officers may be present during such meeting.

The right to obtain legal aid at an early stage of criminal proceedings stems from the case-law of the European Court of Human Rights (ECHR), which has repeatedly stressed that suspect's access to a defence counsel, including enabling their preparation for the defence and the exercise of this right in the course of the proceedings, is extremely important for the fairness of the trial and should be guaranteed from the first police interrogation.

In 2016, the ECHR stated that the right of a person charged with a criminal offence to defend himself through legal assistance, guaranteed under Article 6(3)(C) of the European Convention on Human Rights, is one of the fundamental features of a fair trial. prompt access to a lawyer constitutes an important counterweight to the vulnerability of suspects in police custody²⁵.

²⁵ ECHR judgment of 13 September 2016, case Ibrahim and Others v. the United Kingdom (Grand Chamber, complaints no. 50541/08, 50571/08, 50573/08 and 40351/09).

In the context of the above-mentioned provision of the Code of Criminal Procedure, it should be noted that in practice not all detainees in Poland have real access to a lawyer or defence counsel immediately upon detention. Particular emphasis should be placed on the situation of poor people who cannot afford to cover the costs of legal aid. The NMPT has been highlighting for several years that the procedure of selecting a public defender does not in practice ensure access to such a defender immediately upon detention. The request for the appointment of a public defender may only be submitted following the first hearing as a suspect and not immediately upon apprehension. Thus, the situation is such that prior to the appointment of a public defender and their first contact with and the client, police officers conduct their work-related duties involving the detained person (e.g. interrogation, preliminary hearing).

Difficulties in ensuring contact with a lawyer/legal adviser from the outset of detention are highlighted by international bodies and institutions, including the European Committee for the Prevention of Torture (hereinafter: CPT), the Committee Against Torture (hereinafter: CAT), and by Polish bar associations and professional self-governments.

The NMPT is strongly concerned with the lack of any progress in this area. The NMPT's position is consistent with the findings made by the CPT during their first ad hoc visit in Poland held on 9-16 September 2019 with the aim to review the implementation of the Committee's long-term recommendations on the treatment of persons in police custody.²⁶

CPT: The report on the CPT ad hoc visit, published on 28 October 2020 stated, inter alia, that access of detained persons (including minors) to a lawyer should still be considered as exceptionally rare. In practice, contact with an attorney or legal adviser was ensured only to those detainees with whom the CHR representatives had spoken, who could afford legal aid and who knew the name and telephone number of their lawyer. Despite the earlier recommendations, detainees still cannot count on the assistance of an ex officio lawyer before the commencement of the court proceedings²⁷.

The CPT also noted that the Polish authorities have not yet transposed Directive 2016/1919 of the European Parliament and of the Council of 26 October 2016 into the national law. Pursuant to the directive, suspects who lack sufficient resources to pay for the assistance of a lawyer are to have the right to legal aid when the interests of justice so require. Legal aid should be provided without undue delay and at the latest before questioning of the person concerned, by another law enforcement authority or by a judicial authority, or before the specific investigative or evidence-gathering acts.²⁸

The Committee also called on the Polish authorities to take immediate action, in cooperation with the Supreme Bar Council, to ensure an effective and sufficiently financed

²⁶ CPT report on the ad hoc visit to Poland, CPT/Inf (2020)31.

²⁷ Ibid., Article 21.

²⁸ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (Journal of Laws of the EU, .L.2016.297.1).

system of free legal aid available from the beginning of detention if the detained person is unable to cover the costs of such aid.²⁹

In addition, in 2019 the CAT was of the opinion that persons detained in Poland are deprived, in practice, of the possibility of contact with a lawyer or legal adviser from the very outset of detention, including before the first interrogation by the law enforcement authorities. The Committee pointed out to the necessity of taking effective measures by the Polish authorities to guarantee that all detained persons are afforded all fundamental legal safeguards from the very outset of their deprivation of liberty, in accordance with international standards. It also emphasized the need to implement into Polish law Directive 2013/48/UE of the European Parliament and of the Council (EU) of 22 October 2013 and to ensure that the guidelines laid down therein are applied in practice.³⁰

The above-mentioned conclusions are consistent with the findings described in the CPT reports on their visits to Poland in 2017³¹ and of the UN Subcommittee on the Prevention of Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (SPT) in 2018³².

For years, the National Mechanism for the Prevention of Torture has been focusing on the problem of the lack of access to a defence counsel from the outset of detention³³. The problem was also signaled to the Minister of Justice by the Commissioner for Human Rights.³⁴ Unfortunately, since 2017 the Minister has not responded to the general interventions made by the Commissioner for Human Rights with regard to the issue.

According to Directive 2013/48/EU, suspects and accused persons shall have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively. They shall have access to a lawyer without undue delay, before they are questioned by the police or by another law enforcement or judicial authority; upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act; without undue delay after deprivation of liberty; and where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.³⁵

²⁹ CPT report on the ad hoc visit to Poland, CPT / Inf (2020)31, Article 22.

³⁰ Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, point 16.

³¹ CPT report on the visit to Poland, CPT/Inf (2018) 39, Article 23.

³² SPT report on the visit to Poland on 9-18 July 2018, CAT/OP/POL/ROSP/1.

³³ Annual reports of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland.

³⁴ The CHR's general interventions to the Minister of Justice of 18 April 2017 and 27 September 2018. KMP.570.3.2017.RK.

³⁵ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (Journal of Laws UE.L.2013.294.1).

It must be emphasized that since 2017 the Commissioner for Human Rights (CHR) has appealed to the Minister of Justice for the implementation of Directive 2013/48/UE of the European Parliament and of the Council (EU), however the Ministry of Justice has considered that Polish legal regulations are in compliance with it and no change is required in this regard. In its last intervention in 2019 the CHR quoted the arguments of CAT pointing out, *inter alia*, that in the light of the provisions of the Treaty on the Functioning of the European Union, failure to implement the Directive in practice may mean that it is directly applied by the courts in place of the provisions which are contrary to it, and the legality of the procedural steps which are contrary to its requirements may be challenged. In addition, it may result in the state's liability for damages.³⁶

A reference should also be made to the opinion of the Supreme Bar Council in Warsaw. It pointed out that the deadline by which Poland was obliged to implement into its legal order the directive on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings passed in May 2019.³⁷

While assessing the observance of the right to legal aid during the ad hoc visits carried out by the NMPT between 23 October and 14 December 2020, the visiting persons took account of the applicable international standards and legislation. The representatives of the National Mechanism, when assessing the progress in ensuring access to a lawyer to detained persons, also referred to the conclusions of the NMPT report on the ad hoc visit carried out on 8 August 2020.³⁸ As regards persons detained on 7 August 2020, with whom NMPT representatives held talks, it was the issue of access to a lawyer/legal adviser from the outset of detention which was the key problem.³⁹

Based on the talks with detainees it should be concluded that during the detentions connected with the protests held between 22 October and 13 December 2020, there has been an improvement in the access to legal aid for detained persons. The NMPT's interviewees admitted, first of all, that unlike in August 2020, in most cases contact with a lawyer or legal advisor was ensured, even if the detained person did not know personal details of any lawyer but only the so-called "anti-reprisal" number that was passed on between the protesters. Nevertheless, some of the detainees referred to problems in access to legal aid.

A person detained during one of the earliest protests after the publication of the Constitutional Tribunal's judgment informed the NMPT representatives that she was taken to a police station where police officers conducted their initial duties, i.e. drew up the detention report. One of the police officers informed the detainee that she might contact a lawyer only if

³⁶ General Intervention of the CHR of 8 October 2019, ref. no. II.5150.9.2014.

³⁷ Position statement no 1 of the Regional Bar Council in Warsaw of 9 August 2020 on the full-scope exercise of the right of defence by detained persons.

³⁸ Report of the National Mechanism for the Prevention of Torture on ad hoc visits to the rooms for detained persons or persons brought for sobering up, within the units reporting to the Warsaw Police Headquarters, KMP.570.5.2020.MK.

³⁹ *Ibid*, point 3(a).

she had already appointed one as her legal representative. Finally, the lawyer took part in the police activities because the information on the place where the detainee was held had been passed to him by her relative.

During another visit, both the detainee and her lawyer claimed that the right of access to legal aid had not been respected. The detainee reported that the police officers exchanged comments on the situation and said that: “We do not want any MPs around here”. Later, the detainee was allegedly informed that she might contact a lawyer only if she had already appointed one as her defense counsel. The detainee wanted to contact a lawyer she knew but the latter did not answer the call. One of the police officers commented that the detainee had already used the possibility and if the lawyer does not call back, ‘no lawyer’s support will be available”.

Later, the lawyer called back but she lived in another region of the country and probably due to this she could not undertake the case. After some time, another lawyer, notified by third parties, tried to contact the detainee.

According to his information, he was refused the possibility to contact the client. The lawyer reported he had arrived to the police station about 9 p.m. requesting a meeting with the detained person. He also filed a written request for making it possible for him to take part in all procedures conducted with regard to the detainee. Yet, he was told this was not possible as all the procedures had already been completed. However, the detention report shows that it was finished only at 21:10. The detainee reported that the procedures had lasted for a long time after the drawing up of the report. According to the RDP duty record book, the detainee was placed at the RDP only at 01:55. **Therefore, the information provided to the lawyer by the police officers should be considered untrue.**

The detainee reported to the NMPT representatives that she had not been informed that the lawyer was trying to contact her.

Another detainee told a representative of the NMPT that, after being taken to the police station, he was informed by one of the police officers that “this is not an American movie in which people look for their lawyers”. Finally, a lawyer who arrived to the police station took part in the conducted procedures although it had not been the police that informed him of the detention.

In this context a reference should be made to the example of another detained person. During an interview with the NMPT representatives the person reported that despite her request she was not given the possibility to contact a lawyer. The detention report contains no mention of requesting contact with a lawyer. This is inconsistent with the surveillance camera recording in which the detainee asks for a lawyer several times.

The NMPT intends to emphasize the engagement of many attorneys and legal advisers who, regardless of the time of the day, provided free legal aid to detained persons at the places of their detention. In this context, of great importance was the effective system of transfer of information on the detentions and the police units at which the protesters were placed.

However, it should be strongly emphasized that there should be no acceptance for situations in which the exercise of detained persons’ fundamental right to legal aid depends solely on the grassroots-level initiatives and good will of lawyers. In the opinion

of the NMPT, this can be a dangerous attempt to shift the responsibility for protecting fundamental rights of persons deprived of liberty from entities required to ensure such protection under the law, to citizens. Moreover, the majority of detainees interviewed by the NMPT representatives were detained for the first time in their lives and were not aware of their rights.

It should be added that the very existence of initiatives such as the so-called “anti-reprisal” telephone number clearly reflects the lack of system solutions ensuring access to a lawyer from the outset of detention and the related concern of citizens.

The NMPT has been emphasizing for years that, in order to increase access to a legal counsel, a list of attorneys and legal advisers authorized to act as defence counsels should be drawn up for the area within the jurisdiction of the relevant self-government of attorneys and legal advisers. Detainees should be informed by the police of the existence of the list and it should be made available to them if they wish so. This standard is in line with the recommendations of the CPT, which recommended that lists of *ex officio* lawyers available to detained persons should be drawn up in cooperation with professional associations of lawyers. Such lists should be available at every police station.⁴⁰

In accordance with the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, in order to ensure prompt access to legal aid at police stations, it is recommended that a list of lawyers be compiled, in consultation with professional associations of lawyers.⁴¹

CAT, in its concluding observations on Poland’s implementation of the UN Convention against Torture⁴², pointed out the information obligations on the part of police officers in this respect. The Committee emphasised that Poland should take effective measures to guarantee that all detained persons are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, in accordance with international standards. Officers in police stations are responsible for providing detained persons with a list of on-duty attorneys and legal advisors.⁴³

As the NMPT experience shows, the lists of attorneys and legal advisers are kept in the station's duty rooms, and there is access to their electronic version there. In one of the RDP facilities, in the duty room the following information was displayed: "If you need to contact an

⁴⁰ CPT report on the visit to Serbia, CPT/Inf (2018) 21, Article 17; CPT report on the visit to Slovenia, CPT/Inf (2017) 27, Article 15.

⁴¹ Annex: United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A. Introduction, paragraph 2; Principle 3. Legal aid for persons suspected of or charged with a criminal offence, paragraph 21. Principles and Guidelines adopted by the UN General Assembly on 20 December 2012.

⁴² Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the UN General Assembly on 10 December 1984 ((Journal of Laws) of 1989, No 63, item 378)

⁴³ Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, point 15 b) and 16 b).

attorney or legal counsel, please be informed that in the Mozilla Firefox and Chrome browsers there are tabs with current official lists of lawyers and legal counsels, as has been recommended by the NMPT”. At another RDP facility, there was a “list of attorneys who work in Warsaw”, with their full names, telephone numbers, types of undertaken cases and ability to work in English.

It should, therefore, be concluded that the lists of attorneys and legal advisers are useful only when detainees are informed of their existence. During one of the visits, the NMPT representative was informed by a detainee that she had decided not to contact her attorney because of the necessity to provide his telephone number to the police. She was not informed of the existence of the list of lawyers. Another detainee was asked by the police whether he had a lawyer. After his negative answer, he was not informed of the possibility to use the list of lawyers. Yet another detainee, inquired whether he had been informed of the system of legal aid, replied that no explanations had been provided to him. He heard there was “some list” but was not sure whether the legal aid was free of charge or not.

In the opinion of the National Mechanism for the Prevention of Torture, the right of access to a lawyer upon detention by the police must include the right to meet them in private. The direct physical presence of a lawyer by the detained person is essential and should be seen as one of the crucial elements aimed to prevent ill-treatment of persons deprived of liberty. It is an important means of ensuring that the physical and mental state of a particular person is properly assessed. Furthermore, if the meeting with the lawyer is not held in private, the detained person may not feel comfortable enough to reveal how they have been treated.⁴⁴ In the CPT report on its last visit to Poland, the Committee concluded that the right to talk to a lawyer in private had not been complied with only in few cases.⁴⁵

In this context, it should be emphasized that the NMPT representatives were informed by one of detainees that she spoke to her lawyer immediately after being taken to the police station, outdoors, in the presence of two police officers. Due to the situation, the lawyer explained to the detainee what procedures would take place. Another meeting with the lawyer took place when the detention report was ready, before its signature. Another detainee reported that she spoke with her lawyer in the officers’ room, in their presence.

The NMPT recommends:

- **an effective system of legal aid ensuring each detained person access to a lawyer from the very outset of detention be introduced;**
- **meetings with a defence counsel be ensured in private, out of the sight and hearing of police officers;**
- **a list of attorneys and legal advisers authorized to act as legal counsels be drawn up for the area covered by the local professional association of attorneys and legal advisers;**
- **detainees should be informed about the existence of the list and it should**

⁴⁴ CPT/Inf(2011)28-part I.

⁴⁵ CPT report on the ad hoc visit to Poland, CPT/Inf (2020) 31, Article 21.

be made available to them if they wish so.

5.2. Right to have a third person informed of detention

The right of persons deprived of liberty to inform a person of their choice about their detention and their place of detention is one of the fundamental guarantees against torture.

According to principle 16.1 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁴⁶ (hereinafter the UN Body of Principles), promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

In the context of the findings made during the ad hoc visits conducted, it should be pointed out that, as a rule, the detained persons had a possibility to notify a third person of their choice of the detention. In the majority of cases, this right was exercised through officers, whereas in several cases the detainees indicated that they had a possibility to make a call from their own mobile phone. During one of the interventions taken, the Deputy CHR received information from the detained person that the police officers refused him the possibility to inform a close friend about the detention.

However, the National Mechanism for the Prevention of Torture paid attention to the recurrent problem of providing feedback on the notification of the person indicated. Although the detention reports contained notes on officers' telephone conversations with the persons indicated, in many cases the detainees with whom the NMPT representatives talked did not know whether it was finally possible to provide information about the detention. It should be pointed out that the lack of information as to whether the related persons are aware of the whereabouts of the detained person caused additional stress to the interviewees. The necessity of providing detainees with feedback in this respect has also been pointed out by the CPT⁴⁷.

⁴⁶ Resolution of the UN General Assembly 43/173 of 9 December 1988.

⁴⁷ Report on the CPT visit to Poland, CPT/Inf (2018) 39, Par. 24.

In the opinion of the NMPT, detainees should, as a rule, be able to notify the selected person of their detention themselves, and only in special situations, justified by the specific nature of a given situation should the duty to inform be carried out by a police officer. It should be borne in mind that not every reason for detention justifies restrictions on contact with related persons. Lack of contact with a relative, especially for minors or persons detained for the first time, may constitute an additional, unjustified discomfort. Personal contact of detained persons with a related person enables them to communicate possible information about ill-treatment, which may lead to appropriate intervention. It also allows to control stress of the person informed who, when hearing the detainee's voice may get some idea of the detainee's condition.

In a conversation with an NMPT representative, one of the detainees said that the officers had informed her that she could only notify a member of her immediate family of the fact of her detention. When questioned, she confirmed that, according to the police officers, it could not be any person indicated by the detainee, but only a member of her closest family.

In this context, it should be emphasised that, pursuant to the provision of Article 245.3 of the Code of Criminal Procedure, a detained person has the right to demand that a person who is closest to him be notified without delay; this may be a person indicated by the detainee. The provision does not narrow down the catalogue of entities which may be notified of the detention to the members of the detainee's closest family; therefore, it should be recognised that, in the situation quoted above, the provisions of the applicable law were violated.

The NMPT recommends that:

- **detainees should be able to inform, on their own, the selected person about their detention, and only in special situations justified by the specific nature of a given situation the performance of this duty should be entrusted to a police officer;**
- **detainees should be provided with feedback on the notification of the third person indicated;**
- **the detainee's right to have a third person informed of detention be exercised (including a person from outside family), in accordance with the regulations of law.**

5.3 Medical examination

According to principle 24 of the UN Body of Principles, a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Despite the international standard quoted above, there is no obligation in Poland to subject every detained person to a medical examination. The situations when a person is obligatorily subjected to such an examination are specified in the Regulation of the Minister of the Interior⁴⁸:

Article 1(3). A detained person is subjected to a medical examination, if:

- 1) such a person declares that he suffers from a condition requiring permanent or periodic treatment, the interruption of which would present a threat to life or health, he demands a medical examination or has visible injuries not posing an immediate risk to human health;*
- 2) according to the information held by the police or the circumstances of detention, a person detained is:*
 - a) a pregnant woman,*
 - b) a breastfeeding woman,*
 - c) a person with infectious diseases,*
 - d) a person with mental health disorders,*
 - e) a minor intoxicated with alcohol or any other substance that has similar effect.*

Based on the talks with the detainees and the analysis of the documents collected, the representatives of the National Mechanism for the Prevention of Torture established that some of these persons were subjected to a medical examination. **However, it should be noted that practically no detained person was notified of the possibility of demanding a medical examination regardless of the absence of other prerequisites listed in the regulation.** As a rule, the detainees were only asked about their health condition and chronic diseases.

⁴⁸ Regulation of the Minister of the Interior of 13 September 2012 on medical examinations for persons detained by the Police (Dz.U. (Journal of Laws) of 2012, item 1102), Article 1(3).

During one of the ad hoc visits, a detainee told the NMPT representatives that a car had run into her feet/foot during the protest. As a result, she suffered severe pain, her foot was severely swollen, which the visiting persons recorded in a photograph. The detainee allegedly reported to the police officers that she needed medical aid and requested access to a doctor. She was refused and, due to her state of intoxication established, she was taken to a room for sobering up, where she also mentioned her health problems. The paramedic was only to state that she had a sprained ankle, but no medical aid was given. The following day, after being collected from the room for sobering up, the person again reported to police officers that she needed access to a doctor. She was informed that she could see him after the interrogation.

The detention report of the person in question indicated that the detainee was not examined by a doctor and, as regards her health condition: *she did not declare anything due to her state of intoxication*. The report on the suspect interrogation, in turn, contained in the box concerning the state of health, among others, information – *good*.

Another person stated that the medical examination conducted before his placement in the room for detained persons or persons brought for sobering up (RDP) supposedly consisted only of a short conversation with a doctor, while he was in the police van and under the supervision of police officers. According to detainee's own account, the doctor approached the police van parked in front of the clinic and, without getting into the car at all, asked only a few brief questions about the detainee's health condition and then issued a certificate attesting that he can be held in the RDP. The detainee said that he had the thyroid disease and notified the doctor of the medicines he was taking. However, the doctor did not enter in the documentation that he should take them. As a result, the police officers did not give him the medicines and he did not take them during his detention and placement in the RDP.

The National Mechanism for the Prevention of Torture is also concerned about the fact that the documents drawn up by police officers contain, as a rule, information on injuries seen only on the uncovered parts of the body. During the visit, the NMPT representative noticed swelling and bruising on the body of the detained person, inter alia on his back – in the area of the left shoulder, on the back of the left thigh, on the left arm. Despite having visible injuries – including on the face, the man was not examined by a doctor.

The detention report comprised the following information: *he is not undergoing chronic treatment, and he is not in detox, visible skin abrasion on his nose. He does not have any other injuries on the uncovered parts of his body*, while in the section on medical examination, besides the information about the lack of examination, the following was entered: *according to his statement, he is healthy, he does not demand a medical examination*.

According to detainee's own account, due to the lack of a medical examination, police officers did not want to admit him to the RDP. The detainee claimed that he had agreed with the officers that if they allowed him to smoke, he would not demand a doctor and they would not have to go with him at night and wait in line to see a doctor. He admitted that ultimately his injuries were only to be described by the officers somewhere (he did not know where exactly).

The detainee's words were confirmed in the analysed documentation available in the RDP. Based on the detention report, the man was detained at 6.20 p.m. The report was started to be drawn up at 11.50 p.m. and finished at 0.10 a.m. The following entry was made at 2.30 a.m. in the duty record book at the RDP: *An order to admit a person issued by the Officer on Duty of the District Police Station Warsaw VI was accepted: due to numerous bruises and pain in his arm, the above-mentioned man was sent to a doctor.*

Another entry concerning this man in the duty record book was made at 3.55/4.30 a.m. It was about this person's admission, including, inter alia, checking, leaving items on deposit. Then a note was made: *The above mentioned man has extensive bruising on his sides and back and hand, a note on injuries. The Head was summoned to the RDP to learn on what grounds the detainee was sent to the doctor at 2.30 a.m.*

In addition, a hand-written note was attached to the report, stating: *After his arrival at the District Police Station Warsaw VI, Jagiellońska St, it was revealed that the detainee [...] had: skin abrasion on the nose, swelling in the area of the left triceps, two bruises on the back.*

Although national law does not provide for such a requirement, the NMPT thinks that all detainees should undergo mandatory medical examinations. The medical examination of detainees and proper documentation of injuries found during the examination is considered to be the fundamental and minimum safeguards for these persons against torture and violence, which is strongly emphasised by international institutions monitoring the treatment of persons deprived of their liberty⁴⁹. The careful and prompt documenting and reporting of such evidence makes it much easier to investigate cases of possible ill-treatment and to hold the perpetrators responsible, which in turn is an important element of preventing future ill-treatment. Any injuries that are noticed should be entered in a special form provided for this purpose, with body charts to mark the injuries, which will be kept in the medical file. It would also be desirable to photograph the wounds and the photographs should be attached to the medical file⁵⁰.

⁴⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Cf. e.g.: 2nd General Report, CPT/Inf (92) 3, Par. 36-38; Report on the CPT visit to Poland, 25 June 2014, CPT/Inf (2014) 21, Par. 26, 30; Report on the CPT visit to Poland, 25 July 2018, CPT/Inf (2018) 39, Par. 27.

⁵⁰Also CPT recommends that a specific register of injuries be established to record all types of injuries, cf.: Report on the CPT visit to Poland in 2017 [CPT/Inf (2018) 39], Par. 80.

A medical examination aimed to reveal possible traces of violence and torture should meet two basic criteria: it should be carried out as soon as possible after the event has occurred and it should take into account the rules on the effective documentation of torture. The time taken to carry out the examination is also extremely important due to the requirement to determine as precisely as possible the time when the injuries were sustained or complaints were reported. Prompt contact with the doctor can also be of great importance for the people who are mentally ill or display suicidal behaviour. Being in a new, stressful situation, often without information on how long the detention will last, without access to the medication taken on a permanent basis and to quick medical consultation, may, among other things, cause a sense of anxiety, sudden low mood, panic attacks and also long-term consequences for the functioning as regards mental health.

Regarding a mandatory medical examination of all detainees requested by the NMPT, it should be emphasised that it protects police officers as such from false allegations that injuries were sustained when detainees were in police custody. Furthermore, the awareness that possible signs of violence can be detected and documented may act as a deterrent to those considering the possibility of using violence against a person deprived of liberty.

In this context it should be noted that resulting from the NMPT analysis of the detention reports and medical certificates, access to a doctor was ensured as late as after a few hours.

The story of one of the detainees should be quoted. During the activities he was subjected to at the police station after his detention, he informed the officers that he was undergoing psychiatric treatment and treatment for depression, which was noted in the detention report. Despite the fact that the prerequisite for subjecting him to an obligatory medical examination was fulfilled, contact with a doctor was not ensured (in the detention report, in the box where information about a possible medical examination should be entered, it was written: *he does not demand*).

As a consequence of the officers' failure to comply with their obligation to transport the detainee for medical examination, the man was not admitted to the RDP after being transported to another police unit. The police officers in charge of taking him eventually transported the man to the hospital in Banacha St. The doctor carried out an interview, checked his pulse, and then gave consent for him to be placed in the RDP. The officers asked the detainee whether he needed to see a psychiatrist, but he did not express such a need. It should also be noted that the man was detained at 9 p.m. and the examination was not conducted until 1:10 a.m.

During one of the ad hoc visits, an NMPT representative spoke to the detainee who was undergoing psychiatric treatment and had to take medication due to post-traumatic epilepsy. The man was apprehended at 5.35 p.m., but the medical certificate was not issued until 1.43 a.m., more than eight hours after the detention.

The activities undertaken during the visit revealed another problem, raised by the NMPT, of examining people with mental disorders by doctors other than psychiatrists. The detainees reporting mental health problems were examined by doctors on duty in the emergency rooms.

The above-mentioned man undergoing psychiatric treatment for sleep disorders and post-traumatic epilepsy was examined at the hospital in Solec District. First, he was interviewed with the view to COVID-19 in the tent set up in front of the hospital. Next, he was taken to the Emergency Department, where a surgeon conducted an interview with the detainee and measured his blood pressure.

In the opinion of the NMPT, the practice of subjecting persons with symptoms of mental disorders or declaring psychiatric treatment to examinations carried out by doctors other than psychiatrists may result in a threat to the health or even life of detainees in case improper diagnosis is made by the doctor who has no specialist expertise in psychiatry. It should not be forgotten that placing in a police unit a person with mental disorders, who may pose a threat to themselves or others, also causes police officers to cope with a particularly difficult task, which is to ensure safety of such persons during their stay in the RDP. In order to properly perform it, it is essential that the health status of such persons be thoroughly assessed by a specialist doctor.

As early as in 2016, the Commissioner for Human Rights addressed to the Commander-in-Chief of the Police and to the Minister of the Interior and Administration the General Intervention⁵¹ on the examination of persons with mental disorders by doctors other than psychiatry specialists. Unfortunately, he did not share the Commissioner's arguments. Therefore, as the NMPT continues to disclose the cases of not ordering an examination of detainees by a psychiatrist, this issue needs to be re-examined by the Ministry of the Interior and Administration.

A medical examination of all detainees would also permit to demonstrate health problems that do not necessarily have to be reported to police officers, including health-related contraindications for detention. This is particularly important for people from marginalised

⁵¹ General Intervention of the CHR to the Police Commander-in-Chief of 07 Jan. 2016, KMP.570.25.2015.; General Intervention of the CHR of 30 June 2016 to the Ministry of Interior, KMP.400.9.2015.

social groups, which may be connected with an increased risk of the occurrence of health problems. The likelihood of their occurrence may increase due to the stress of deprivation of liberty.

The Commissioner for Human Rights has repeatedly drawn attention to the need to introduce an obligation to carry out medical examinations of every person detained by police officers, among others in the General Intervention of 15 February 2012 addressed to the Commander-in-Chief of the Police⁵² and in annual reports of the National Mechanism for the Prevention of Torture for the following years: 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018. The issue was also raised by the Commissioner in the letters concerning the Strategy of Activities aimed at Counteracting Human Rights Violations by Police Officers, adopted by the Ministry of the Interior and Police Headquarters on 11 March 2015⁵³.

Most of the interviewees claimed that the medical examination was conducted in the presence of an officer, although the medical personnel did not request such assistance. In this context, it is legitimate to quote the provision of the Regulation of the Minister of the Interior of 13 September 2012 on medical examinations for persons detained by the Police, which lays down:

Article 4(2). The decision on the presence of a police officer during a medical examination of a detained person shall be taken by the doctor carrying out the examination.

It is clear from the content of the above Article that the presence of an officer during a medical examination cannot be treated as the rule. The adoption of a different practice weakens, in the opinion of the NMPT, the preventive nature of access to medical examinations as a safeguard against torture.

Primarily it must be observed that in the presence of a police officer detainees may not feel comfortable enough to tell the doctor about the way they have been treated and to give full information about their health, the medication they are taking, their treatment or the psychiatric consultations they have had. The officer's presence also entails the risk of violating the detainees' intimacy, respect for their dignity and medical confidentiality. Doctors are often the first persons, besides police officers, with whom detainees have contact. For this reason, they take on a huge responsibility. Above all, they must determine whether a person's state of health

⁵² File no. RPO-687961-VII-720.8.1/11/WS.

⁵³ File no. KMP.570.24.2015.WS.

allows for his isolation. Medical personnel should also assess and properly document the injuries of a detained person. Victims of violence are often unwilling to reveal their experiences, and therefore the expertise of the staff who deal with them is very important.

Of particular concern is the information provided by one of the detainees about subjecting him to a medical examination handcuffed. The man suffers from epilepsy, he did not resist upon apprehension. The National Mechanism for the Prevention of Torture underlines that the use of handcuffs during medical examinations is unacceptable. Such practice violates human dignity, hinders proper medical treatment, inhibits the development of a proper doctor-patient relationship and may be detrimental to the objectivity of medical findings⁵⁴.

In the view of the National Mechanism for the Prevention of Torture, the irregularities in medical examinations described under this item of this report indicate that it is necessary for the Minister of Health to take actions in order to apply in practice specific rules on the role of medical professionals, laid down in the Istanbul Protocol⁵⁵. The Istanbul Protocol provides detailed information and guidance on how to identify and document cases of ill-treatment for the purposes of investigative bodies and courts. It is aimed, inter alia, at disseminating the knowledge of the methodology of conducting a medical and psychological examination of alleged victims of torture. It contains detailed guidelines on how to reflect the results of medical examinations in the documentation, and provides knowledge of how to interpret the information collected. It also touches upon important ethical problems that doctors may face. This document is therefore a valuable training tool for doctors.

The NMPT recommends that:

- **each time detainees should be provided with information on the possibility of demanding a medical examination;**
- **a medical examination in situations where it is obligatory in accordance with the existing legal regulations should be definitely carried out;**
- **officers should be instructed to remove handcuffs from detainees during medical examinations;**

⁵⁴ Report on the CPT visit to Spain, CPT/Inf (96) 9 [Part 1], Article 150; Essex paper 3 Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, Penal Reform International Head Office and Human Rights Centre University of Essex, February 2017, p. 57 and 163.

⁵⁵**The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (translation into Polish available at: <https://www.rpo.gov.pl/pl/content/protok%C3%B3%C5%82-stambulski-podr%C4%99cznik-skutecznego-badania-idokumentowania-tortur-oraz-innego-okrutnego>)

- **an obligation to subject to a medical examination each person detained by police officers should be introduced;**
- **injuries sustained by detainees should be accurately documented;**
- **persons reporting mental disorders should be examined by psychiatrists;**
- **medical examinations should be carried out of sight and hearing of police officers, unless the doctor requests assistance;**
- **topics, described in the Istanbul Protocol, of detection and documentation methods for cases of torture and other cruel, inhuman and degrading treatment should be included in the professional training programme for doctors.**

5.4. Right to information and right to lodge a complaint

The right to information is the fundamental guarantee of torture prevention. The fact that persons deprived of liberty receive comprehensible and up-to-date information on important issues, such as their rights, the procedures in force and the way of lodging complaints, increases their sense of security, permits to play an active role in safeguarding their own rights.

The SPT recommends that each person deprived of liberty be informed of the reason for his/her arrest and of his/her rights during detention, in a language that they can understand, at the outset of detention, and that this be recorded⁵⁶.

The CPT points out that all persons detained by the police are fully informed of their fundamental rights as from the outset of their deprivation of liberty. Particular care should be taken to ensure that detained persons understand their rights; it is incumbent on police officers to ascertain that this is the case⁵⁷. Persons deprived of their liberty should promptly receive information, both orally and in writing, about

⁵⁶ Report on the SPT visit to Ukraine, 16 March 2016, CAT/OP/UKR/1, Par. 35-36.

⁵⁷ Report on the CPT visit to Poland, 25 July 2018, CPT/Inf (2018) 39, Par. 28.

all avenues of complaint (including appeal procedures), both internal and external to the places in which they are being held. They should also have a clear understanding of the modalities for exercising their right to lodge a complaint⁵⁸.

According to the Directives of the European Parliament and of the Council (EU) the detainees should be informed, in accessible language, of the procedural rights and appeals they are entitled to. This Letter of Rights should be provided immediately after deprivation of liberty⁵⁹. Persons who do not understand Polish should be provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings⁶⁰.

The interviews conducted with the detainees show that the vast majority of them was provided with the written letter of detainee's rights in criminal proceedings. Apart from individual cases, the detainees were not given any additional oral explanations. Many of the persons with whom the NMPT representatives spoke were detained late in the evening and at night. For most of the interviewees, it was also the first detention in their lives, which caused additional stress. Considering the above, some of the detainees, despite signing the detention report and the letter of rights, were not aware of their rights. Other persons indicated that, not being fully aware of the significance of the documents submitted, they did not sign them for fear of worsening their situation.

One of the interviewees said that, due to the misunderstanding of the content of the letter of rights, he thought that he had the right to contact a lawyer or to inform a third party of his choice about the detention. Therefore, he decided to notify a lawyer.

The situation about which the NMPT representatives learned during one of the ad hoc visits should also be considered unacceptable. During the interview, the detained person reported that before signing the detention report, the officers told him that if he signed the report, "everything would go more smoothly" and he would not have to strip naked. The person signed the report because, as he stated, he "wanted to have peace and quiet".

⁵⁸ Fragment of Par. 79 of the 27th General Report [CPT/Inf (2018) 4].

⁵⁹ Directive of the European Parliament and of the Council (EU) 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings (OJ EU L.2012.142.1).

⁶⁰ Directive of the European Parliament and of the Council (EU) 2010/64/UE of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ.EU.L.2010.280.1).

In the course of their interviews, the NMPT representatives also identified another problem concerning the exercise of the right to information, which raises the greatest concern. The analysis of the information obtained during the ad hoc visits shows that almost none of the persons detained in connection with the protests between 22 October and 13 December 2020 were informed immediately after their detention about its legal and factual grounds.

The interviewees indicated that when asked about the cause of the detention, they received perfunctory answers that they would be informed about it later, at the police station. In practice, such information was provided already at the police units, during the preparation of the detention report. Some detainees also pointed out that the officers drawing up the detention reports had problems with specifying the legal basis for the detention.

One of the detainees told the NMPT representatives that the detainee's use of vulgar words in public was originally indicated as the basis for the detention – the detention report, however, mentions insulting an officer. As the man said, he was detained *for swearing*. He was not given the legal basis for his detention. The detention report mentions insulting an officer as the basis, i.e. the act under Article 226.1 of the Penal Code in connection with Article 57a.1 of the Penal Code.

During one of the interventions undertaken at the police station by the Deputy CHR, she received information from the person detained there that initially a violation of the regulations on the prevention of the COVID-19 pandemic and regulations on participation in an illegal assembly were given as the legal basis for the detention. However, upon arrival at the police station, she was informed that she had allegedly violated the physical integrity of a police officer and that the act was of a hooligan nature. According to the detainee, she did not touch any police officer, and therefore she considered the charges unjustified.

Bearing the above in mind, it should be pointed out that a situation in which detained persons do not know the factual and legal grounds for their detention from the outset not only constitutes a violation of international standards of protection of persons deprived of liberty, but is also contrary to the provision of Article 244.2 of the Code of Criminal Procedure, which stipulates:

The arrested person shall be informed immediately about the reasons for his arrest and his rights (...).

The National Mechanism for the Prevention of Torture also finds highly disturbing the information provided by the detainees about the fact that the officers carrying out the detention did not show their IDs. It should be noted that detained persons have the right to know who takes action with respect to them. A special situation is detention by an out-of-uniform policeman. According to the information provided to the NMPT representatives, especially after the protests on 18 November 2020, detentions were also performed by officers in plain clothes, without visible insignia indicating that they belonged to the police. Police officers also did not show their service cards. This caused additional anxiety among the detainees, as they were not aware that a police intervention was being carried out against them.

In this context, it should be recalled that, in accordance with Article 61.1 of the Police Act of 6 April 1990⁶¹, an out-of-uniform police officer is obliged to present a service card in such a way that the person concerned is able to read and note the number and authority which issued the card, as well as the name of the police officer⁶².

The NMPT recommends that:

- **all detained persons be informed about factual and legal basis of their detention, already during the intervention;**
- **a service card should be presented to persons detained by the Police;**
- **all persons detained should be informed of their rights from the outset of their deprivation of liberty. The letter of rights should be provided by giving clear information orally upon detention, and then supplementing it in writing. Policemen should make sure that the detainees have understood their rights. The detainees should also have time to read the detention report prior to signing it. If necessary, police officers should provide the detainees with additional, oral explanations and enable them to familiarize themselves thoroughly with the RDP house rules.**

6. Treatment

6.1. Legality of detention

⁶¹ i.e. Dz. U. (Journal of laws) of 2020, item 360, 956, 1610, 2112.

⁶² CHR Intervention to the Minister of the Interior and Administration of 11 December 2020, KMP.570.12.2020.RK.

In view of the reservations presented under point 5.4. of this Report concerning the lack of information on the grounds for detention during the intervention, the problems with establishing the grounds at the stage of drafting detention reports and the differences indicated by some interviewees between the reasons for detention presented to them and the final entries in the reports, the National Mechanism for the Prevention of Torture believes that the issue of detention should be subject to a thorough analysis by the courts considering complaints against detention. Most of the persons apprehended were accused of committing the act under Art. 254 of the Penal Code⁶³, involving active participation in a riot, knowing that its participants jointly commit a violent assault on a person or property; insulting a public official, i.e. the act under Art. 226.1 of the Penal Code; violating personal integrity of a public official, i.e. the act under Art. 222 of the Penal Code; using violence towards a public official to force him to abstain from a lawful official activity, i.e. the act under Art. 224.1 of the Penal Code. In many cases the charges laid were in conjunction with Art. 57a.1 of the Penal Code, i.e. an act of a hooligan nature.

The National Mechanism for the Prevention of Torture stresses that placement in the RDP as a form of imprisonment should always be the last resort (*ultima ratio*). Its application must be necessary in a specific situation due to the nature of the act the detained person is suspected of having committed as well as the circumstances under which it was committed. Otherwise, this form of deprivation of liberty may be regarded as an instrument of repression and demonstration of state power over the individual.

The abovementioned situations, reported by the persons interviewed, can hardly be regarded as requiring the use of a measure which interferes so much with human rights. Undoubtedly, a mere clarification of the matter at the police station would be a much more proportionate measure to the whole situation. A solution that would allow the detainees to avoid the negative impressions of being deprived of their liberty in the RDP would be to call them to a hearing the following day. The placement in the RDP in the circumstances when the detained persons are ready to cooperate with the police and to demonstrate their innocence, is undoubtedly an attempt to intimidate such persons by having recourse to the last resort, i.e. isolation.

6.2. Apprehension

⁶³ Act of 6 June 1997 – Penal Code (i.e. Dz.U. (Journal of Laws) of 2019, item 1950).

Of greatest concern to the NMPT representatives was the information about the brutality of police officers towards the detainees. Some interviewees reported physical and psychological violence used against them.

During one of the first ad hoc visits, a detainee suffering from epilepsy told the NMPT representatives that he had suffered a suffocation attack during transport in a police car. The officers' reaction to the situation was to laugh, make indelicate comments and belittle the situation. The version presented by the detainee was also confirmed by other persons who were transported with him. The employees of the National Mechanism obtained information from one of the detainees that he was kicked in the face by an officer while he was lying on the ground handcuffed (injuries were visible on his face and body).

The interviewees also reported that they were hit with a police baton while trying to escape. As a result, they lay down on the ground and did not resist. Nevertheless, one of the detainees reported that while he was lying down, he received two more blows with the baton. The police officers allegedly said to him: "You are a turd, you should not be here". He was supposedly hit once more on his way to the police car because he was purportedly walking too slowly. Another person claimed to have been slammed against the police car door and to have been hit with a police baton once he was inside the car. Another interviewee reported that an officer hit him in the face. Yet another was told to sit on the floor during transport, as four police officers who transported him occupied the seats.

During one of the interviews, the NMPT representatives also obtained information about the brutality of the out-of-uniform officers towards the detainee. During the intervention he was allegedly pressed firmly to the ground with the knees, and kicked in the belly and crotch⁶⁴.

The NMPT representatives observed and documented injuries on the bodies of some of the interviewees. The National Mechanism for the Prevention of Torture is deeply concerned about this information. It recalls that, in accordance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Poland, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official

⁶⁴ The case is being investigated by the Criminal Law Section at the CHR Office.

capacity. The prohibition of torture is an absolute prohibition and is not subject to any restrictions. Torture is the most extreme example of a violation of human rights and it shows contempt for human dignity and degrades the society that allows it.

The NMPT sees the need for taking further educational measures among police officers, aimed at treating citizens in a way that respects the inalienable dignity of each and every one of them, because only properly selected and trained police personnel are able to perform their duties properly, without resorting to violence, which is also an effective safeguard against torture for those deprived of their freedom. The CPT stresses that the effective prevention of torture and other forms of ill-treatment by police officers requires change of police culture, targeted at the respect for human rights and the reaction of police officers to any cases of ill-treatment by their colleagues. Violence against persons under police supervision should be seen primarily as a violation of law. A change in the way police think and act should start with a competitive and rigorous recruitment system for service and adequate remuneration, which is an important tool to attract the best candidates and retain highly competent staff⁶⁵.

As information was received that some officers made disparaging comments to the detainees, in particular about the detainees' participation in the protests, and expressed their own views on the ruling of the Constitutional Tribunal that sparked the protests, the NMPT recalls that the police officers' reticence in expressing their personal attitude towards detainees who have committed or are suspected of having committed a prohibited act is a measure of their propriety and professionalism. This is the consequence of the police role as a law enforcement agency, which should be limited to capturing persons who violate the legal order and safeguarding the necessary evidence of such violations. Evaluation of the conduct of persons detained by the Police is reserved for independent courts.

It should be pointed out that it was already during its visit to Poland in 2017 that the CPT called upon the Polish authorities to pursue rigorously their efforts to combat ill-treatment by the police. It emphasised that police officers throughout the country should receive a firm message that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are unlawful and will be punished accordingly. Further, police officers must be trained in preventing and minimising violence in the context of an apprehension. In cases in which the use of force becomes necessary, they need to be able to apply professional techniques which

⁶⁵ 28th General Report of CPT, CPT/Inf (2019) 9, Par. 69-71; Report on the CPT visit to w Poland, CPT/Inf (2014) 21, Par. 24.

reduce as much as possible any risk of harm to the persons whom they are seeking to apprehend⁶⁶.

The NMPT recommends that:

- **police officers should absolutely comply with the obligation to treat detainees in a manner that respects their dignity;**
- **educational measures among officers on the treatment of detainees be taken.**

6.2.1 Apprehension of the man brought to the sobering-up station

During the visit the NMPT representatives spoke to the man who had been detained the previous day at the protest at the Trzech Krzyży Square in Warsaw. As he reported, he was standing very close to police officers separating protesters from counter-protesters. He began shouting slogans in their direction. A police officer allegedly addressed him with the words “fu... home” and pushed him. The man fell over, got up and approached the policeman. He asked vulgarly “whom you defending, fu...?”. The policeman allegedly pushed him away and kicked his phone. There was an exchange of words. The police officers supposedly threw him violently to the ground, pinned him with their bodies and handcuffed his hands behind his back. He was escorted to the police car. He said that he was initially taken close to the police station and then to the Metropolitan Centre for Intoxicated Persons (hereinafter: the MCIP, the sobering-up station, the station).

The man informed the NMPT representatives that he had been beaten by policemen in the police car while being transported to a sobering-up station. He was allegedly strangled, kicked on the legs and beaten with fists in leather gloves. He reported that painful holds were taken on him. The police officers were also to have used vulgar language towards him and to have made fun of his sexual orientation. One of the officers allegedly offered him to “go solo”. After the beating, he was taken to the sobering-up station, and in the morning hours he was taken to the police station for procedural steps. He assessed the later conduct of other officers (those collecting him from the sobering-up station and the interrogating officer) as appropriate.

At the time of the meeting with the NMPT representatives, the detainee had numerous traces of injuries on his body (among others, on his face, throat area, arms and legs). His

⁶⁶ Report on the CPT visit to w Poland, CPT/Inf (2014) 21, Par. 21.

hygienic and mental condition was very bad. The man was shaken, he was crying during the interview.

The man's detention report comprises a very general description of the injuries: *I have visible skin abrasions in the face area.* The official note of the police officer that apprehended the man contains the following information: *A man with visible abrasions of the epidermis on his face, without signs of the COVID-19 disease. He has declared that he is healthy, does not receive any treatment and does not take any medication on a permanent basis.* In turn, the person's examination report drawn up on the same day, after his stay in the MCIP, the police officer conducting the activities documented visible numerous injuries on the exposed parts of the detainee's body, including above the left eyebrow arch, below the left thigh at its edge, near the nose, on the arm and forearm of the right hand, on the arm of the left hand, on the right lower limb, the tibia of the lower limb, the left lower limb, the lower back.

The detainee did not submit any statements, motions or demands in the report. During the activities the detainee was photographed with a digital camera. However, the photos were not included in the case file. The man also notified the inappropriate behaviour of the employees of the sobering-up station.

In view of the serious allegations raised by the detainee, the NMPT Director requested in writing the Director of the Metropolitan Centre for Intoxicated Persons to provide copies of the documents on the detainee's delivery and stay in the sobering-up station and the relevant surveillance camera recordings.

The analysis of the video footage sent shows that the detainee, from the moment he was taken out of the police car until he was placed in the room for persons brought for sobering up, in the station, was handcuffed behind his back all the time, despite the fact that he was not aggressive (in the medical condition record his behaviour was marked as "brawling" and his mood "tense"). The man was brought by three officers. After he entered the station, the police officers told him to sit down in the waiting room, saying: "take a rest". The man was breathing heavily. Next, an employee of the sobering-up station ordered the officers to take the detainee out and to wait outside. After more than 30 minutes, the man was brought back into the building, he went towards the window where he was ordered to take a breathalyser test.

The man asked the sobering-up station staff to contact a doctor, after they left he addressed the police officers with the following words: "this was torture, what were you doing". The amused officer replied: "dude, keep it up, keep it up. Yes, you will write a book".

The person's health record indicates that the detainee was subjected to a medical examination, which is not confirmed by the surveillance camera footage provided. It can only

be seen that an MCIP employee approaches the man and briefly pulls away the mask on his face (visible abrasions of the skin were marked on the body chart) in the undressing room. The recordings also show other injuries, such as redness on the neck, which were not described in the documents.

In the undressing room the detainee addressed the staff of the chamber with the words: “I was detained for innocence, I was tortured, I was tortured in the police car”. An MCIP employee downplayed the information received.

Then the man asked the officer present in the undressing room if he was detained. Having received an affirmative answer, the man demanded contact with a lawyer. He added that he had a right to a lawyer at this moment. The MCIP employee replied: “not at the moment because you are not detained in prison, you are under police custody”. The man asked the officer again: “am I detained or not?”, the man replied: “for the time being you are in the sobering-up station”. The man resisted attempts to remove his shoes and escort him to a sobering-up room. He shouted several times: “I have the right to an attorney!”. The station employee again informed him that he had no right to an attorney because he was intoxicated. In response to the detained man’s question about the specific cause for his detention, the station employee replied: “because you are intoxicated” and turned to the officer: “well tell him what you have detained him for”. The officer responded that the detainee would find out tomorrow. Faced with protests from the detainee and a request from the station employee for specific information, the police officer replied: “for insulting officers”. After a moment’s reflection he added: “and a violation of an officer's integrity”. The detainee again requested contact with the attorney and, when refused, he requested that the report should indicate this contact was prevented by the police and he would sign such a statement. The MCIP replied: “but you will not sign it because you are intoxicated, do you understand, man?”.

Bearing in mind the above, it should be pointed out that the man’s detention report contained information that the detainee did not request to notify his close friends or relatives of the detention and to contact a lawyer or a legal adviser. When asked during the visit by the NMPT representative why such a note was made, the detainee said that it did not correspond to the content of his statement (he refused to sign the report).

The analysis of the surveillance recordings shows clearly that the record in the detention report is not true.

In view of the irregularities described above, the NMPT requests the Commander of the Metropolitan Police to investigate them and to present findings from the explanatory activities.

After being placed in room no.19 for persons brought for sobering-up, the man stood by the door for 27 minutes and hit it with his fist waiting for the MCIP employee to come. Faced with no response to the calls, the man removed his trousers, tied his trouser leg around his neck, hit the door several more times, then hid in an unmonitored alcove of the room. After approximately two minutes, seven MCIP staff members appeared in the room. The detainee turned towards them, after which he was overpowered and strapped into a restraint belt. The man was immobilised for 2 hours. During this time he urinated under himself.

The NMPT is deeply concerned about the performance of immobilisation, during which one of the employees of the station says: “okay, listen, we’ll accept the police version”. From the context, it appears that this could be about the allegedly aggressive behaviour of the detainee.

It should be pointed out that the legitimacy of using direct coercion in the form of immobilisation against the detainee is also questionable. According to the provision of Article 42.1 of the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism⁶⁷ physical direct constraint may be used *against persons admitted to or detained in a police unit, who pose any threat to their own or any other person’s life or health, or who destroy objects in their surroundings*. The following annotation was made in the Record Sheet, part III, concerning the treatment and means of direct coercion applied: *27 October 2020 at 3:20 a.m., based on the caregivers’ report, the patient attempted to hang himself by his trousers. 3:20 - 5:20 a.m. the patient was strapped into a restraint belt.*

The NMPT's has reservations regarding the veracity of the reason for the use of immobilisation laid down in the documentation due to, in particular, the content of the conversation between the employees of the station recorded by the surveillance cameras. The discussion was about the use of direct coercion against the man, which one of the employees commented with the following words: “this will definitely be reported to the Commissioner for Human Rights, one hundred percent”. Another one repeated that he had not heard anything. Further conversation revolved around the alleged suicide attempt. One person stated that “there is not even a hook there” (this probably refers to the hook on which the man would hang himself). Then a member of the station staff says: “then what decision, two more hours? Because he will start banging and freaking out again”.

Moreover, after the immobilisation had finished, the detainee held a conversation, in the corridor, with the sobering-up station’s employee, who said: “if you hung yourself, we would

⁶⁷ Dz. U. [Journal of Laws] of 2019, item 2277, of 2020, item 1492.

all be screwed here”. The detainee replied: “you know very well that I was provoking. What did I do when you came in? I was just standing there. But I called you, and you (...) didn't come, why? The employee: “because you behaved irrationally and everyone was scared of you”.

In view of the information provided, the National Mechanism for the Prevention of Torture requests the Director of the Metropolitan Centre for Intoxicated Persons to undertake explanatory activities as to whether the use of a direct coercive measure in the form of immobilisation complied with the provisions of the applicable law.

The NMPT recommends that the Director of the MCIP should instruct the medical staff subordinate to him on the necessity to carry out a thorough examination of persons brought to sober up.

The NMPT also recommends that the MCIP staff should always provide law enforcement agencies with information on incidents of violence reported by persons brought to sober up.

The detainee decided to lodge an official complaint to the Office of the Commissioner for Human Rights about the treatment by the police officers and staff of the Metropolitan Centre for Intoxicated Persons. Given that the complaint constitutes, in essence, a notification of suspected criminal offence, the Commissioner for Human Rights forwarded it to the District Prosecutor for Warsaw Śródmieście as an enclosure to his letter of 30 October 2020⁶⁸, so that action envisaged by law is taken. In the reply dated 21 December 2020, information was provided that on 19 November 2020 a final decision was issued to refuse to initiate investigation in the case⁶⁹.

The NMPT strongly emphasises that the manifestations of violence against the detainees, displayed by some police officers, should be treated as unacceptable behaviour, negatively affecting the image of the entire police service.

The European Court of Human Rights has repeatedly stressed in its case-law that the use of force by police officers may be justified upon detention. However, such force should only be used if it is lawful and absolutely necessary and should not be excessive. Failure to

⁶⁸ Ref. II.519.1574.2020.KM.

⁶⁹ File ref. PR 1 Ds. 967.2020.DK.

meet these basic requirements may constitute a breach of Article 3 of the European Convention on Human Rights⁷⁰.

6.3 Use of direct coercion measures

During the interviews with the NMPT representatives, the detainees pointed out to the use of direct coercion measures which were disproportionate to their behaviour, e.g. handcuffing detainees behind their back during transportation, spraying gas or using batons, including telescopic batons.

The National Mechanism for the Prevention of Torture recalls that the use of direct coercion measures must always be based on three basic premises: legality, last resort and proportionality. This means that, when applying direct coercion measures, police officers may only use the measures that are laid down in the Act⁷¹. The application of direct coercion measures should be preceded by other forms of non-invasive disciplinary measures, they may not be used in order to deter. If it is necessary to take them, they must be proportionate to the risk posed by the detainee. Officers also have a duty to desist from further use of direct coercion measures when the purpose of their use has been achieved.

6.3.1 Misuse of handcuffs

The detainees indicated that handcuffs were used during transport, during procedures at police stations, and even during medical examinations. They were used despite the fact that the detainees were under the supervision of police officers and were in closed vehicles or police station rooms. Often the detainees had their hands handcuffed behind their backs, which is not always necessary and proportionate.

Several people reported that they had been handcuffed continuously from the moment they were apprehended until they were placed in the RDP. In one case this lasted about 9 hours. Another detainee reported remaining in handcuffs during their stay in a transition room at police headquarters. When this person asked for water, the officers declined to provide it. The detainee

⁷⁰ Kanciał v. Poland, Application no. 37023/13, Par. 72-82; Bouyid v. Belgium, Application no. 23380/09, Par. 100-113; Rehbock v. Slovenia, Application no. 29462/95, Par. 71-78; Layijov v. Azerbaijan, Application no. 22062/07, Par. 39-48.

⁷¹ Act of 24 May 2013 on direct coercion measures and fire arms (consolidated text: Dz. U. (Journal of Laws) of 2019, item 2418.

was forced to drink water from a sink, during which one arm was released from the handcuffs to enable drinking.

Pursuant to the Act on coercive measures and firearms, handcuffs may be used, *inter alia*, to ensure the safety of the convoy or escort, and as a precaution to prevent escape and manifestations of aggression or self-destructive behavior⁷². Regardless of the reasons for using handcuffs, their use should be individual, proportional to the degree of risk and necessary to achieve objectives specified in the Act. When choosing direct coercion measure, police officers should choose the one that causes the lowest possible level of discomfort to the detainee⁷³.

It is the NMPT's view that handcuffs should not be used preventively against all detained persons, but only when their use is clearly justified by risk assessment undertaken on an individual basis. The automatic use of handcuffs by police officers on every detained person can be interpreted as a manifestation of state power wielded against the individual, which should not occur in a democratic state ruled by law.

Handcuffs should not be too tight (as this can have serious medical consequences) and should only be used for as long as absolutely necessary. This standard complies with CPT and SPT recommendations⁷⁴.

According to the CPT, handcuffs should not be used when questioning or interrogating suspects⁷⁵.

The CPT emphasizes that escorted detainees should be transported in secure vans, thereby eliminating the need to wear handcuffs during the trip⁷⁶.

⁷² Article 11 (9, 1-11, 13 and 14); Article 13 (1), Article 15 (1) of the Act of 24 May 2013 on direct coercion measures and firearms (consolidated text: Journal of Laws [Dz.U.] of 2019, item. 2418).

⁷³Cf. Article 6 (1) in conjunction with Article 12 (1)(2a) of the Act of 24 May 2013 on direct coercion measures and firearms.

⁷⁴ Cf. Report on the CPT visit to France, CPT/Inf (2017) 7, paragraph 13; Report on the CPT visit to Cyprus, CPT/Inf (2018) 16, paragraph 15; Report on the CPT visit to the Netherlands CPT/Inf (2017) 1, paragraph 13; Report on the CPT visit to Belgium, CPT/Inf (2018) 8, paragraph 18; Report on the CPT visit to Spain, CPT/Inf (2017) 34, paragraph 8; Report on the CPT visit to the UK, CPT/Inf (2017) 9, paragraph 14; Report on the CPT visit to Serbia, CPT/Inf (2016) 21, paragraph 53; Report on the CPT visit to Gibraltar, CPT/Inf (2015) 40, paragraph 11; Report on the CPT visit to Russia, CPT/Inf (2013) 41, paragraph 28; Report on the SPT visit to Chile, CAT/OP/CHL/1, paragraphs 45-46; Report on the SPT visit to New Zealand, CAT/OP/NZL/1, paragraphs 110-112.

⁷⁵ Cf. Report on the CPT visit to Kosovo, CPT/Inf (2009) 3, paragraph 38.

⁷⁶ Cf. Transport of Detainee, Factsheet, June 2018, CPT/Inf (2018) 24, point 3. Security measures; Report on the CPT the visit to Ireland, CPT/Inf (2007) 40, paragraph 101; Report on the CPT the visit to Great Britain, CPT/Inf (2006) 28, paragraph 23; Report on the CPT the visit to Hungary, CPT/Inf (2006) 20, paragraph 126; Report on the CPT visit to Serbia, CPT/Inf (2016) 21, paragraph 53.

As a rule, handcuffs should not be used during transport⁷⁷. Their use should be justified by a risk assessment in each specific case when their use seems absolutely necessary. They should then be used in a way that eliminates the risk of injury to the escorted person⁷⁸. Handcuffs should not be applied behind the back because of the possibility of discomfort for the detainee and the risk of injury in the event of an accident.

Experts at the University of Essex likewise recommend that handcuffs should not be used automatically every time a detainee is transported. They also point out the need to prevent possible physical injuries to passengers, which may occur when detainees are handcuffed and the vehicle brakes or has an accident. The use of handcuffs limits the ability of detainees to protect themselves from falling⁷⁹.

As already stated in point 5.3. of this Report, it is unacceptable to use handcuffs during medical examinations, particularly when applied behind the detainee's back. This is a degrading practice, which, when combined with supervision of the detainee by police officers, increases tension and discourages the detainee from informing the doctor about any ill-treatment by the officers. It also poses a threat to the objectivity of the examination. Under these circumstances, the detainee may not want to provide complete, truthful information about their health⁸⁰.

The Commissioner for Human Rights informed the Minister of the Interior and Administration about the misuse of the preventive application of handcuffs to detained persons while they are being transported as well as during interrogation in a general intervention on 20 January 2020.⁸¹ In his response, the Minister invoked parts of the Police Act and the Act on direct coercion measures, describing the practice as the rational preventive use of handcuffs by police officers in specific situations. He also promised to send appropriate instructions to provincial police commanders to be used in professional training courses for police officers.

⁷⁷ Cf. Report on the SPT visit to New Zealand, CAT/OP/NZL/1, paragraphs 110-111; Transport of detainee, Factsheet, June 2018, CPT/Inf (2018) 24, point 3 Security measures.

⁷⁸ Transport of detainee, Factsheet, June 2018, CPT/Inf (2018) 24, paragraph 3. Security measures; Report on CPT visit to Serbia, CPT/Inf (2016) 21, paragraph 53.

⁷⁹ Essex paper 3 Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, Penal Reform International Head Office and Human Rights Centre University of Essex, February 2017, Use of restraints, p. 57.

⁸⁰ Report on the CPT visit to Spain, CPT/Inf (96) 9 [Part 1], § 150; Essex paper 3 Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, Penal Reform International Head Office and Human Rights Centre University of Essex, February 2017, pp. 57 and 163.

⁸¹ KMP.570.29.2019.AN.

The NMPT recommends:

- **the use of handcuffs only when doing so is clearly justified by a risk assessment in each individual case;**
- **ceasing the use of handcuffs during medical examinations.**

6.3.2 The use of chemical irritants against protesters

The National Mechanism for the Prevention of Torture is concerned about the increasing use of tear gas and pepper spray against people present at protests.

One of the women apprehended at a protest told NMPT representatives that she was surrounded by a group of police officers, who threw her on the ground, pressed her down and suffocated her (she said it was four police officers). After being overpowered, she heard one of the officers shout, “gas him”. When she turned her head and the officers realized that they were dealing with a young girl, they refrained from using gas. Presumably, however, in different circumstances, this measure would have been deployed, even though the situation did not require it, because the detained person had already been overpowered by the police.

In this context, it’s relevant to cite the opinion expressed by the British Omega Research Foundation in the paper "Risk reduction – reducing the use of chemical irritants during the COVID-19 pandemic", published in November 2020⁸², which addresses the dangers posed by using such measures as tear gas and pepper spray during the COVID-19 pandemic.

The document focuses on the impact of irritating chemicals on human health. It found that they cause sensory irritation, pain in the eyes and upper respiratory tract, and may also result in inflammation of the mucous membrane, including the mucosa of the respiratory tract.

People with

respiratory conditions, children, the elderly and pregnant women are at particular risk of suffering negative consequences of contact with the above-mentioned substances. It should be emphasized that in the most severe cases, death may even occur by asphyxiation or chemical poisoning.

With the above in mind, it should be noted that, in accordance with international standards of human rights protection, the use of chemical irritants is justified to protect human life or health, but not property. **Also, they may not be used during peaceful demonstrations, or against the elderly, children or others who may have difficulty moving in order to avoid**

⁸² <https://www.rpo.gov.pl/pl/content/zgromadzenia-uzycie-gazu-opinia-fundacja-omega-research-foundation>

contact with chemicals. Furthermore, it is impermissible to use chemical irritants in closed rooms or at sports stadiums.

It is particularly important to note that amidst the coronavirus pandemic, the use of chemical irritants may increase the risk of contracting COVID-19 by increasing the susceptibility of the respiratory tract to infections, exacerbating existing inflammations and inducing coughing. As experts point out, these chemicals damage the mucous membrane, which protects the body against viruses and other pathogens.

In particular, the Omega Research Foundation recommends that chemical irritants be deployed only when the level of violence is so high that law enforcement officials cannot avert the danger by taking direct action against the aggressive persons. If their use becomes necessary, only the smallest amount of chemical irritants should be sprayed, and only after an appropriate warning has been issued that gives people time to act and allows them to leave via an appropriate evacuation route to a safe place.

The NMPT recommends:

- **ceasing the use of chemical irritants against peaceful protesters;**
- **not using tear gas and pepper spray on people confined within police cordons, whose ability to avoid contact with the irritating substances is thus limited.**

6.4 Body searches

Interviews conducted with persons detained during the protests against the Constitutional Court's ruling on abortion indicate that application of provisions regulating body searches was highly inconsistent between police units. Some detainees only had the contents of their pockets, bags or backpacks searched. Others were ordered to undress, but not to remove their underwear. Many detainees said, however, that they had been subjected to body searches wherein they were required to strip naked and squat. NMPT representatives also received information about one-stage strip searches, during which a detainee was ordered to remove all their clothes at the same time and stand naked in front of a police officer.

In some cases, body searches were conducted twice – after the detainee had been transported to a police station, and again at the police detention center. One detainee was

subjected to two body searches at the same police station. It should be noted that between body searches, the detained persons were under the constant police supervision, which in practice made it impossible for them to hide any prohibited items on their persons during this time. Therefore, subjecting the same person to a second body search lacks any justification.

Body searches were performed in the presence of police officers of the same sex as the detained person.

In view of the information obtained, the National Mechanism for the Prevention of Torture believes that in some cases invasive body searches of detained persons were improperly applied instead of less invasive searches, which would seem to have been sufficient in the situations described. Because body searches, by their very nature, enter the sphere of human intimacy and should thus be treated as a measure of last resort, their unjustified use or repetition should be considered abusive behavior that bears the hallmarks of degrading treatment.

In the NMPT's view, body searches should not be performed routinely, but only in exceptional cases justified by the specific circumstances and following an individual risk assessment. This standard is in keeping with CPT recommendations:

Detainees should be subjected to a body search for the purpose of ensuring their own safety and the safety of police officers. However, not all detainees should be routinely subjected to strip searches, as this is a very invasive and potentially degrading measure. A strip search should be carried out only when there are reasonable grounds to suspect that a detained person may have hidden on their person dangerous items or items that may be evidence of a crime, and an ordinary search would not result in their discovery⁸³. Furthermore, more than one officer should be present during any strip search as a safeguard for detained persons and police staff alike. Personnel carrying out the search should be of the same sex as the searched person⁸⁴.

A strip search should be carried out in two stages so as to minimize embarrassment felt by the person searched. Persons who are subjected to a strip search should not be required to remove all their clothes at the same time, e.g. a person should have the right to remove clothing above the waist and then put it back on before removing further clothing⁸⁵.

At this point it's worth citing Article 15d(2) of the Police Act, which states:

A police officer should carry out a body search in a manner which least infringes the personal rights of the searched person and to the extent necessary in the given circumstances to achieve the objective of the search... the searched person should be partially dressed. The police officer shall first search part of the clothing, and before searching the next part shall allow the searched person to put on the clothing already checked.

In the context of body searches conducted in RDPs it should be noted that, pursuant to Article 5(2) of the Regulation on the stay of persons in rooms for detained persons or intoxicated

⁸³ Cf. Report on the CPT visit to the Czech Republic: CPT/Inf (2019) 23, paragraph 31 paragraph CPT/Inf (2015) 18, paragraph 22; Report on the CPT visit to Lithuania, CPT/Inf (2017) 16, and 37; Report on the CPT visit to Kosovo, CPT/Inf (2011) 26, paragraph 19.

⁸⁴ Cf. Report on the CPT visit to Lithuania, CPT/Inf (2017) 16, paragraph 37; Report on the CPT visit to the Czech Republic, CPT/Inf (2015) 18, paragraph 22; Report on the CPT visit to Kosovo, CPT/Inf (2011) 26, paragraph 19.

⁸⁵ Cf. Report on the CPT visit to Norway, CPT/Inf (2019) 1, paragraph 37.

persons brought to a sobriety restoration chamber⁸⁶, only a preventive search is obligatory for persons placed in the room. This search shall consist, *inter alia*, of a manual check of the person, the contents of their clothes and any objects on their body or in their possession⁸⁷. Only if the conditions referred to in Article 15(1)(5) of the Act exist in the case of detained persons or persons brought for sobering up shall a body search be carried out in accordance with the rules and in the manner laid down under Article 15(d) of the Act, including the option of searching the intimate body parts of a detained person in “particularly justified cases” (Article 15g(2) of the Act).

In view of the above, it appears necessary to review the practice of body searches, since in the past Polish courts have found that detained persons are mistreated by the police, *inter alia*, by forcing them to submit, without cause, to body searches that have included removal of underwear down to the ankles and holding apart their knees⁸⁸.

It should also be considered unacceptable to conduct body searches based on circumstances other than those specified in the Act. It must be emphasized that body searches may not, under any circumstances, constitute punishment for non-compliance with orders issued by police officers, or for refusing to sign the arrest report or other documents.

NMPT representatives are concerned to find that none of the people they interviewed were instructed about their right to lodge a complaint about the legitimacy, legality or correctness of the body searches they had been subjected to. These persons were also not informed about their right to request a report on their body search. It should be emphasized that these rights are laid down in Article 15d(9) of the Police Act.

The experience of the National Mechanism for the Prevention of Torture shows that the vast majority of police officers in the units it has visited so far were unaware of the above-mentioned provisions. Therefore, priority should be given to training police officers on legal changes insofar as they relate to their official duties.

The NMPT recommends:

⁸⁶ Annex no. 1 to Regulation of the Minister of the Interior of 4 June 2012 on rooms for detained persons or intoxicated persons brought for sobering up, transitional facilities and police emergency centres for children, as well as rules and regulations on the stay in such facilities and procedures for image recordings of these facilities and rooms (Journal of Laws [Dz. U.] of 2012, item 638).

⁸⁷ The full scope of preventive searches is laid down in Art. 15g(1) and (3) of the Police Act of 6 April 1990 (Journal of Laws [Dz.U.] of 2020, item 360).

⁸⁸ Cf. The CHR’s General Intervention to the Minister of Justice of 18 April 2017, KMP.570.3.2017.RK.

- **ceasing the practice of routine body searches of detainees. Body searches should be performed only in exceptional cases justified by specific circumstances and after an individual risk assessment;**
- **if a body search is necessary, it should be carried out in two stages (a detainee should be permitted to put on clothing removed in the first stage before removing further clothing);**
- **informing persons subject to body searches about their right to submit complaints about the legality, legitimacy and correctness of the search as well as their right to request a report on their body search.**

6.5. Transport of some detainees apprehended in Warsaw to police units outside Warsaw

The practice of transporting persons detained in Warsaw to police stations in other localities is a matter of great concern to the National Mechanism for the Prevention of Torture. Information obtained by the NMPT shows that some detainees were transported to perform post-arrest procedures or placed in RDPs in Legionowo, Grodzisk Mazowiecki, Piaseczno, Pułtusk or Ostrołęka, which is nearly 130 km away from the capital. The NMPT is aware that it is sometimes necessary to transport detainees to units outside Warsaw due to a lack of space in Warsaw RDPs. With this in mind, the Director of the NMPT sent a letter dated 23 November 2020, to District Police Commanders requesting that they provide daily statistics on the number of detained persons placed in RDPs under their supervision from 23 October to 22 November 2020. The Director of the National Mechanism requested information on the listed and actual number of places in RDPs in Warsaw (these numbers could differ due, for example, to temporary closures caused by renovations or disinfection) and the maximum number of detained persons inside these RDPs at the same time on selected days.

After receiving the answer, the NMPT analyzed the data in terms of availability of places in RDPs at the following police stations: Warsaw Police Headquarters (Nowolipie Street), Warsaw Ursynów Police Station (Janowskiego Street), District Police Station Warsaw IV (Żytnia Street), District Police Station Warsaw VI (Jagiellońska Street) and District Police Station Warsaw VII (Umińskiego Street) on 24, 25 and 30 October, and 19 November 2020 (persons detained on these days were transported to police stations outside

Warsaw). The information received shows that occupancy in rooms for detained persons on the premises of Warsaw police stations was as follows:

- 24 October – 59 occupied places out of 103 available (occupancy: 57%);
- 25 October – 83 occupied places out of 103 available (occupancy: 80%);
- 30 October – 26 occupied places out of 103 available (occupancy: 25%);
- 19 November – 30 occupied places out of 93 available (occupancy: 32%).

The information above indicates that on the dates in question it was objectively possible to hold persons detained at the Warsaw protests in RDPs in Warsaw. In connection with the above, the NMPT requests that the Commander-in-Chief of the Warsaw Police provide information on the reasons why detainees were transported outside Warsaw on those days.

It should be kept in mind that the unjustified transport of detained persons to police stations located far from the place of apprehension, and usually also from these persons' place of residence, may constitute a form of additional punishment. Detained persons interviewed by the NMPT repeatedly pointed out that their awareness of being taken outside the city together with the lack of information about where they were going caused them severe stress and a sense of danger. In some cases, people transported to police stations near Warsaw were released after post-arrest procedures were performed, not only during the day, but also in the evening and late at night. As a result, their ability to return home was significantly impeded.

The NMPT representatives also received information about difficulties experienced by lawyers and relatives determining the whereabouts of persons detained. In this context, it is relevant to recall the situation on 14 December 2020 when a NMPT representative visited the RDP at District Police Station Warsaw IV, where a man detained the previous day and initially transported to the Powiat Police Station in Pruszków was to be held. However, the officer on duty at District Police Station Warsaw IV informed the NMPT representative that the detainee had not arrived there. This officer had no information about the police station where the detained man had spent the night. He only mentioned that the attorney of the man in question had stopped by in search of him about 15 minutes before the NMPT representative's visit. The National Mechanism for the Prevention of Torture takes the view that situations such as this are absolutely unacceptable.

In this context, it is reasonable to quote the conclusions presented by the UN Committee Against Torture in 2019 in its concluding remarks on Poland's implementation of the UN Convention Against Torture – namely, that deficiencies in police record-keeping systems make it difficult for attorneys to locate detained clients prior to their initial questioning⁸⁹.

The CAT recommends that the fact of deprivation of liberty be recorded in an official register, and that the entry include all transfers between police stations, in such a way that lawyers and attorneys have access to this information. Lawyers and representatives of persons deprived of liberty should, in particular, have the right to contact their clients immediately in places of detention, under conditions ensuring the confidentiality of discussions⁹⁰.

The SPT emphasizes that keeping a complete and reliable register of persons deprived of liberty is one of the basic safeguards against torture or other forms of ill-treatment and is a necessary condition for the effective exercise of due process guarantees, such as the right to challenge the legality of deprivation of liberty and the right of detained persons to be promptly brought before a court. The SPT recommends the gradual establishment of a nationwide network of electronic registers and their harmonization. It emphasizes that persons deprived of liberty should be immediately registered in a standardized and unified system, police officers should be properly trained in keeping records, and this information should be entered after a detainee's arrival.⁹¹

The National Mechanism for the Prevention of Torture also points out that the observed trend of transporting detainees to police stations in other localities, combined with the failure to update information on where the detainees are being held, may lead to so-called enforced disappearances, which, according to the definition set out in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance⁹², is defined as:

arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the

⁸⁹ Committee against Torture, Concluding observations on the seventh periodic report on Poland, 29 August 2019, CAT/C/POL/CO/7, point 15 c)

⁹⁰ Ibid, point 16 c).

⁹¹ Report on the SPT visit to Ukraine, CAT/OP/UKR/1, point 2, paragraphs 49-52.

⁹² The Convention was adopted by the UN General Assembly on 20 December 2006, Resolution A/RES/61/177.

fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

In this context, it should also be noted with concern that although the aforementioned Convention was signed by the Polish government in 2013, it has not yet been ratified.

The NMPT recommends:

- **establishing an electronic register of persons detained by the police, which would operate at the national level and include, *inter alia*, information on the whereabouts of detained persons, including transfers between police units. This data should immediately be made available to representatives of detained persons;**
- **placing all detained persons in an RDP in the area of the town where the detention took place, provided there are vacancies in this room.**

7. Material conditions of detention

As already indicated in this report, the time between apprehension and performance of post-arrest procedures at the police station lasts as long as over five hours. One of the interviewed detainees said that after being transported to the police station he waited for preparation of the arrest report together with five other detainees in a cramped room. This situation should be assessed as dangerous, especially due to the ongoing COVID-19 pandemic and the lack of adequate distance between detainees.

Most interviewed detainees also reported they had no access to drinking water at police stations; they were only allowed to drink water from a faucet.

Detainees in some of the RDPs visited by NMPT representatives, despite being apprehended in the evening or at night and remaining in the RDP through the early morning hours, were not given breakfast because fewer than five hours had passed since they had arrived at the RDP. Although this is technically in compliance with RDP regulations, as meals are in fact served after a minimum of five hours from the moment a detained person is placed in the room⁹³, it bears noting that some police stations deviated from this rule due

⁹³ Article 10(1)(c) of the Regulations.

to the fact that detainees were brought to the RDP several hours after having been apprehended.

The majority of the detainees did not complain about their treatment by the police officers on duty in the RDP. Some noted their professionalism and even kindness.

The National Mechanism for the Prevention of Torture is aware that the duration of police detention is relatively short. Nevertheless, the conditions of detention should meet minimum living standards.

The NMPT recommends:

- **ensuring access to drinking water at police stations;**
- **providing breakfast in RDPs in cases where the arrest report indicates that the detained person has undergone post-arrest procedures all night.**

8. Coronavirus protection measures

All the detainees interviewed by NMPT representatives were wearing protective masks. Some of them said they had received them from the police officers who detained them, but in most cases they were not offered masks. Some detainees also indicated they were not given access to hand disinfectants or soap in the bathroom. Several detainees also said that police officers in the RDP in contact with detainees were not wearing protective face masks. In the case of detainees transported for a medical examination, as a rule, an epidemiological interview was conducted and body temperature was measured.

The National Mechanism for the Prevention of Torture reiterates the need to exercise caution in person-to-person contacts in RDPs due to the epidemic. Organized actions are required to ensure the safety of detained persons as well as police officers. A number of recommendations in the context of the epidemiological threat in prisons and jails have been issued, *inter alia*, by the United Nations Subcommittee on the Prevention of Torture (SPT).⁹⁴

In view of the above, the NMPT recommends that measures be taken by the Commander-in-Chief of the Warsaw Police to ensure that officers and detained persons

⁹⁴ <https://www.ohchr.org/Documents/HRBodies/QPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

have access to personal protective equipment such as: protective masks, disposable gloves and disinfectants.

9. Recommendations

Pursuant to Article 19 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, representatives of the National Mechanism for the Prevention of Torture recommend that:

I. the Minister of Internal Affairs and Administration:

- 1) establish an effective legal aid system ensuring access to a lawyer from the first moments a person is arrested;
- 2) introduce the obligation to conduct a medical examination of every person detained by police officers;
- 3) introduce the obligation to have psychiatrists examine persons reporting mental disorders;
- 4) establish an electronic register of persons detained by the police, which operates at the national level and includes information on the whereabouts of persons who have been detained, including transfers between police units. This information data should immediately be made available to the attorneys of the detainees.

II. the Minister of Health:

- 1) include in doctor training programs the subject of methods for detecting and documenting cases of torture and other cruel, inhuman and degrading treatment described in the Istanbul Protocol.

III. the Commander-in-Chief of the Warsaw Police – take measures that aim to:

- 1) ensure that meetings between detained persons and their defense counsel are held in confidentiality, out of earshot and sight of police officers;
- 2) draw up a list of lawyers and legal advisers authorized to act as legal defenders, within the jurisdiction of the relevant legal council, inform detained persons about its existence and make it available to them, in the event they wish to see it;

- 3) ensure genuine implementation of detainees' right to notify a third party (also from outside the family) that they have been detained, in accordance with the law;
- 4) enable detainees to notify, on their own, a selected person about their detention, implementing this right via a police officer only in special situations, justified by the specific circumstances of the given situation;
- 5) provide detained persons feedback concerning the fact that a police officer has informed a selected third person about their detention;
- 6) inform every detained person about their right to request a medical examination;
- 7) conduct a medical examination in absolutely every situation when doing so is obligatory under the applicable regulations;
- 8) carefully document any injuries sustained by detained persons;
- 9) conduct medical examinations out of sight and earshot of police officers, unless the doctor asks for their assistance;
- 10) instruct officers that they are required to show their police ID to persons they are detaining at the moment of apprehension;
- 11) ensure that all persons being detained are informed about the factual and legal grounds for their arrest at the moment of apprehension;
- 12) ensure that detained persons are informed about the place to which they are to be transported at the beginning of their detention;
- 13) place all detained persons in an RDP in the part of the town where they were apprehended, provided there are vacancies available;
- 14) ensure that all detained persons are informed about their rights from the very beginning of their deprivation of liberty. This notification should take the form of clear, spoken information at the time of the arrest, which should then be supplemented with written information. The police officer performing the arrest should make sure that the detainee understands their rights. The detainee should also have time to read the arrest report before signing it. If necessary, the police officer should provide the detainee with additional, spoken explanations and enable the detainee to read the regulations governing their stay in the RDP;
- 15) reliably keep documentation concerning detained persons;

- 16) ensure that police officers absolutely abide by their obligation to treat detained persons in a manner that respects their dignity;
- 17) establish training courses for police officers on the treatment of detained persons;
- 18) require commanders of subordinate units to familiarize the police officers serving under them about the Letter of the Director of the Office of the National Commander-in-Chief of Police dated 2 July 2019, regarding the NMPT's mandate and the rights resulting therefrom;
- 19) ensure that handcuffs are used only when clearly justified by a risk assessment conducted in each individual case;
- 20) ensure that handcuffs are not used during medical examinations of detainees;
- 21) stop the deployment of chemical irritants against peaceful protesters;
- 22) stop the deployment of tear gas and pepper spray against people confined within police cordons who thus have restricted ability to avoid contact with irritating substances;
- 23) cease the practice of routine body searches of detainees. Body searches should be used only in exceptional cases, justified by the specific circumstances and after an individual risk assessment has been performed;
- 24) in cases when a body search is necessary, it should be conducted in two stages (the detainee should be able to put a garment back on before removing the next one);
- 25) persons subjected to body searches should be informed about their right to submit a complaint about its legality, legitimacy or correctness, as well as to request a report on their body search;
- 26) provide detained persons in police stations access to drinking water;
- 27) make breakfast available to detainees in RDPs when their detention report shows that they have undergone post-arrest procedures all night;
- 28) provide officers and detained persons access to personal protective equipment such as: protective masks, disposable gloves, disinfectants.

The NMPT requests that the Commander-in-Chief of the Warsaw Police investigate the irregularities described in point 6.2.1. of this Report and present the conclusions of the inquiry.

The NMPT also requests that the Commander-in-Chief of the Warsaw Police provide information on the reasons why persons detained on, inter alia, 24, 25, 30 October and 19 November 2020, were transported to police stations located outside Warsaw, even though there were vacancies in Warsaw RDPs.

IV. the Director of the Warsaw Center for Intoxicated Persons:

- 1) instruct medical staff about the necessity of conducting a thorough examination of persons brought in to sober up;
- 2) ensure that the Center's employees inform law enforcement about every case of violence reported by persons brought in to sober up.

In view of the information provided in point 6.2.1. of this report, the National Mechanism for the Prevention of Torture requests that the Director of the Warsaw Center for Intoxicated Persons take steps to clarify whether, in the situation described, the use of a direct coercive measure in the form of immobilization was consistent with the provisions of applicable law.

Drawn up by: Michał Żłobecki

for the Team:

Przemysław Kazimirski
Team Director
(-signed electronically-)