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How Poland is
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into practice the
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of the international
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(CPT and SPT)**

**Thematic report of the
National Mechanism for the
Prevention of Torture and Other
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Thematic report of the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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I. Table of Contents

I. Introduction	5
II. Key conclusions	8
III. Methodology of the visits and structure of the report	10
IV. Introductory comments	13
V. Implementation status of the CPT and the SPT recommendations	16
A. Police detention facilities	16
B. Penitentiary establishments	42
C. Guarded Centres for Foreigners	59
D. Juvenile Correctional Facility in Białystok	66
E. National Centre for the Prevention of Dissocial Behaviour in Gostynin	71
VI. Summary and recommendations	79
Appendix I. List of places of detention visited by the NMPT	81

I. Introduction

Torture has accompanied mankind for centuries. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute and has been confirmed by a number of treaties and international agreements. Yet, such phenomena continue to persist worldwide, including in Poland. What makes a difference between countries in their approach to these phenomena is, however, the effectiveness in combating them.

The international community has learned a long time ago that the best method of eradicating torture and other forms of ill-treatment is their prevention i.e. measures aimed at eliminating any possible risk of their occurrence.

In the 1970s, Swiss lawyer and social activist Jean Jacques Gautier pioneered the idea of preventing torture through a system of regular visits to places of detention, carried out on ad hoc basis by independent experts. The idea was based on the conviction that torture and cruelty take place in places of detention if they are invisible to the world, closed and isolated. Thus, to ensure effective prevention of torture, it is essential for the places of detention to be controlled by the observers independent from the authorities of the units.

The idea initiated by Jean Jacques Gautier has been put into practice in two international Conventions: the *European Convention for the Prevention of Torture of 1987*¹ and the *Optional Protocol to the United Nations Convention Against Torture* (abbreviated as OPCAT)² of 2002. The two innovative international treaties established international monitoring bodies authorized to visit any place of detention in the territory of the States Parties in order to examine the treatment and the conditions of detention of persons deprived of their liberty and to make recommendations aimed at eliminating the potential risk of torture. The bodies operate in a systematic (not individual) manner and adopt a preventive approach. Rather than taking action ex post facto, in response to cases of torture, they act preventively, showing what can be changed and improved systematically before the violations take place. The activities of these bodies are based on confidentiality and dialogue with the authorities, and their role is to assist governments in effectively preventing the risk of torture.

¹ See: European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, drawn up in Strasbourg on 26 November 1987 (Dz. U. [Journal of Laws] of 1995, No. 46, item 238).

² See: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted by the United Nations General Assembly in New York on 18 December 2002 (Dz.U. [Journal of Laws] of 2007, No. 30, item 192).

The bodies are: the UN Subcommittee on Prevention of Torture (SPT)³ and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁴. Both institutions are composed of independent experts who act on their own behalf. Their observations and standards developed by them are of unquestionable authority at international level.

Unlike the European Convention for the Prevention of Torture, the OPCAT has complemented the system of preventive visits by providing for the establishment by each State Party, at the national level, of monitoring bodies, so-called National Preventive Mechanisms⁵. Knowing the culture of the countries in which they operate, local conditions, needs and limitations, these bodies are in the position to best adapt their methods of work to current challenges. In Poland, the function is performed by the Commissioner for Human Rights through the Team of the National Mechanism for the Prevention of Torture (NMPT), which operates within the structure of the Office of the Commissioner for Human Rights⁶.

The system of independent monitoring visits to places where people are deprived of their liberty has been a real revolution in the system of human rights protection. As former UN High Commissioner for Human Rights Louise Arbor put it, it constitutes *“a true innovation to strike at the structural or root causes of torture and cruel punishment and ill-treatment, thus bringing about the changes required to ensure that places of detention are free from such conduct”*⁷.

Both SPT⁸ and CPT⁹ have already visited Poland and presented their recommendations to the Polish government with a view to improving the situation in places of deprivation of liberty. However, following its last visit in 2019 the CPT expressed disappointment that no real action had been taken to implement its long-standing recommendations as regards the practical operation of fundamental legal safeguards for persons in police custody,¹⁰. Also, the Committee

³ Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). Information on the work of the SPT is available at: <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>

⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Information on the work of the CPT is available at: <https://www.coe.int/en/web/cpt/home>

⁵ The term *“national preventive mechanisms”* is used in the English version of the OPCAT; See: Articles 1 and 17-23 thereof.

⁶ See: Article 1(4) of the Act of 15 July 1987 on the Commissioner for Human Rights (Dz.U. [Journal of Laws] of 2020, item 627).

⁷ See: Press release of 1 March 2007, available at: <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2990&LangID=E>

⁸ SPT visited Poland once, in 2018. The reports on the visit, addressed both to the Polish government and the National Mechanism for the Prevention of Torture, together with the replies of the government and the CHR, are available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological

⁹ CPT visited Poland 7 times in the years: 1996, 2000, 2004, 2009, 2013, 2017 and 2019. The first six visits were periodic ones. The latest one was an *“ad hoc”* visit that focused on the treatment of persons detained by police officers. The CPT reports and the replies of the Polish authorities are available at: <https://www.coe.int/en/web/cpt/poland>

¹⁰ See: CPT report on the visit to Poland carried out on 9-16 September 2019, CPT/Inf (2020)31, points 7-9.

pointed out that, in its opinion, persons taken into police custody in Poland continue to risk being ill-treated, in particular at the time of apprehension¹¹. It also warned the Polish authorities that in case of further delay in implementing the recommendations the Committee may well be obliged to have recourse to Article 10 paragraph 2 of the Conventions to make a public statement on the matter¹².

This prompted the National Mechanism for the Prevention of Torture to take a closer look at the implementation of the CPT and SPT recommendations in Poland in order to understand the scale of the phenomenon and to propose specific remedial solutions. To this end, the NMPT decided to visit some places of detention that had been visited by the SPT and CPT delegations during their last periodic visits (in 2017 by the CPT and in 2018 by the SPT). The NMPT visits were thematic ones and focused on verifying the recommendations of the monitoring bodies.

As a result of the NMPT works, this thematic report has been drawn up. I believe that it will help the relevant authorities to take effective measures towards the implementation of the CPT and SPT recommendations (including those requiring legislative changes), will significantly contribute to the public discussion in the area of human rights protection in places of deprivation of liberty and will constitute valuable educational and training material. I am of the opinion that in the era of the threat of terrorism, the migration crisis and the COVID-19 pandemic, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is as relevant as never before in the post-war history of Poland.

Therefore, it is worth drawing on the experience of international experts in this field, because, as Prof. Nils Melzer, UN Special Rapporteur on Torture has emphasized, *“the worst cruelty is our indifference”*¹³. And people behind closed doors, in various places of detention, need our attention and protection.

I would like to thank all employees of the Office of the Commissioner for Human Rights who have contributed to the drafting of this report.

Marcin Wiącek
Commissioner for Human Rights

¹¹ Ibid., points 8 and 17.

¹² To date, the CPT has published public statement with regard to: Turkey, Russia, Greece, Bulgaria and Belgium. The statements are available at: <https://www.coe.int/en/web/cpt/public-statements>

¹³ See: Statement by the UN Special Rapporteur on Torture on the occasion of the Human Rights Day, 10 December 2018. Available at: <https://www.ohchr.org/en/issues/torture/srtorture/pages/srtortureindex.aspx>

II. Key conclusions

The NMPT observations made during the thematic visits show that most of the CPT and the SPT recommendations have not been implemented. Of greatest concern is the failure to take action with regard to fundamental safeguards against torture for persons in police custody and to the CPT long-standing recommendations aimed at e.g. ensuring minimum living space per prisoner in a cell or appropriate recording of injuries observed in prisoners. In this connection, persons deprived of their liberty continue to face a serious risk of ill-treatment (including acts of torture) and effective systemic action is needed to eliminate such a possibility. Additionally, the fact that torture is not explicitly recognized as a distinct crime makes it difficult to monitor the scale of the problem and may have an impact on the criminalization of torture, the size of the penalties and the legal awareness among state officials as well as the general public.

The implementation of certain CPT and SPT recommendations requires amending the applicable legislation or changing the practice (e.g. with regard to preventive use of handcuffs). This necessitates, first of all, a firm message from the heads of the individual services, followed by systemic action aimed at changing the mentality of officers and building an institutional culture whose members respect and protect human rights and limit the use of force to the necessary cases. In this regard, the CPT and the SPT reports and standards may constitute an important tool for educating officers and other staff members at places of detention.

As regards the implementation of the minimum standard of living space per prisoner in a cell in a penitentiary establishment, the issue requires changing the state's criminal policy, ensuring appropriate infrastructure in penitentiary establishments and amending the provisions of the Executive Penal Code.

In the opinion of the NMPT, effective prevention of torture means not only providing the monitoring bodies with the possibility to carry out visits to places of detention or with the necessary information. These elements are very important in the cooperation but are not sufficient for effective prevention. For the process to be effective, the will to implement the recommended solutions, as well as effective measures in this area are necessary. Also those that require changes in the law. Otherwise, it is difficult to speak of a coherent system aimed at eliminating the risk of torture or other cruel, inhuman or degrading treatment or punishment.

Therefore, the recommendations of the CPT and the SPT should be taken into account by the authorities to the fullest extent possible.

In view of the above, the NMPT recommends reviewing the recommendations of the CPT and the SPT in order to assess the possibility of changing the legislation applicable to the issues raised by these bodies. To this end, the government should establish a dialogue with the legislative authorities, professional association bodies and civil society in order to develop optimal solutions. Furthermore, the standards and recommendations of the CPT and the SPT should constitute a constant point of reference for state policy and should always be taken into account when drafting legislative acts, strategies, policies, guidelines and regulations.

It is also necessary to ensure financial support to the relevant institutions so as to enable them to practically implement the CPT and the SPT recommendations, and change the practice of operating of the head officers and other employees of places of detention. Therefore, the authorities of the individual types of facilities should send a strong message to the officers and employees and should provide regular training that take into account the standards and recommendations of the said bodies.

The NMPT also recommends the recognition of torture as a separate crime under the Criminal Code provisions so as to meet the standards provided for in the UN Convention Against Torture; the wide dissemination of the Istanbul Protocol among professional groups that may come into contact with persons deprived of their liberty or victims of violence, and the government's accession to the procedure of automatic publication of CPT reports and subsequent government responses to the reports.

The NMPT also expresses its concern that continued lack of decisive action towards implementing the CPT recommendations may result in issuing a public statement with regard to Poland, pursuant to the Committee's powers under Article 10(2) of the European Convention for the Prevention of Torture of 26 November 1987.

III. Methodology of the visits and structure of the report

1. Pursuant to its powers provided for in Articles 4, 19 and 20 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 (Dz. U. [Journal of Laws] of 2007, No. 30, item 192) [hereinafter: OPCAT], the National Mechanism for the Prevention of Torture (hereinafter: NMPT, the National Mechanism) carried out visits to places of detention¹⁴ of its choice from among those visited by the SPT and the CPT delegations during their last periodic visits to Poland (the CPT visit was held in 2017¹⁵, and the SPT visit in 2018¹⁶). The National Mechanism considered that the periodic visits most fully identify the problems of Polish places of detention and assess the progress made by the authorities. The CPT visit in 2019 was focused mainly on preventing torture by the police and did not take into account other types of facilities, e.g. Border Guard-operated facilities, mental care facilities or facilities for minors.

2. The NMPT visits were carried out between February 2020 and August 2021 and were thematic visits. In their course, the NMPT delegations examined whether, and to what extent, the CPT and/or the SPT recommendations were implemented in practice by the authorities of the individual places of detention. A separate report was drawn up after each visit and, together with the response of the relevant authority, was published in the CHR Public Information Bulletin¹⁷.

3. In the said period, the NMPT carried out a total of 11 thematic visits, including to: 4 rooms for detained persons or persons brought up for sobering-up within the organizational units of the Police (further: rooms for detained persons, RDP), 1 police emergency centre for children, 3 prisons, 2 guarded centres for foreigners and 1 juvenile detention centres. Additionally, in 2021

¹⁴ A legal definition of place of detention can be found in Article 4(1) OPCAT. According to it, a place of detention is any place under the jurisdiction and control of the State Party, where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. Deprivation of liberty, according to Article 4(2) of the OPCAT, means *“any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”*.

¹⁵ See: CPT report on the visit to Poland carried out on 11-22 May 2017, CPT/Inf (2018)39.

¹⁶ See: SPT report to the State Party on the visit to Poland carried out on 9-18 July 2018, CAT/OP/POL/ROSP/1.

¹⁷ NMPT reports on the visit and the replies of the relevant authorities are available at: <https://bip.brpo.gov.pl/content/wizytacje-krajowego-mechanizmu-prewencji>

the NMPT visited the National Centre for the Prevention of Dissocial Behaviour in Gostynin. That visit was not a thematic one. Yet, in its course the NMPT paid attention to the implementation of the CPT recommendations of the 2017 periodic visit, and decided to include its related findings in the thematic report. The list of places visited by the NMPT is included in Appendix I hereto.

4. During the visits, the NMPT members inspected the detention facility's rooms according to their choice, spoke in private with persons deprived of liberty and staff members, read documents and watched video surveillance recordings. In one of the penitentiary establishments, the NMPT delegation inspected a vehicle used to transport prisoners¹⁸. If it was needed in a given situation, the NMPT requested written information from relevant bodies. All persons interviewed by the NMPT representatives, including the staff of the visited establishments, were informed about the prohibition, provided for in Article 21(1) of the OPCAT, of reprisals and retaliation against persons who have communicated any information to the NMPT and about the possibility to report such situations to the Office of the Commissioner for Human Rights.

5. The NMPT delegations included from 2 to 4 persons. The number of the visiting team members depended on the type and capacity of the visited establishment. During one of the visits, the representatives of the NMPT were accompanied by Deputy Commissioner for Human Rights Hanna Machińska¹⁹. During the visit to the National Centre for the Prevention of Dissocial Behaviour in Gostynin the NMPT was supported by an external expert, a psychiatrist²⁰.

6. The visits were conducted in a good atmosphere and, in general, the visiting teams did not face any difficulties in fulfilling their mandate. Two disturbing situations occurred during the visits to the rooms for detained persons in Warsaw. The visiting team was not informed that the detainees had been released (despite an earlier request by the NMPT members to have the possibility to speak to them before their leaving). As a result, the NMPT representatives did not have the opportunity to learn those persons' opinions regarding their treatment and the observance of the minimum safeguards against torture, in practice. The situations have been described in detail in the reports on the respective visits²¹. The NMPT hopes for a better flow of information between police units, and trusts that such situations will not take place in the future. In order to achieve the preventive effect of the monitoring of a place of detention, the visiting team must be admitted to its premises immediately upon arrival.

¹⁸ See: Report on the visit to Warszawa-Białoleka Remand Prison, KMP.571.1.2020.RK, point 4.

¹⁹ See: Report on the visit to Warszawa-Białoleka Remand Prison, KMP.571.1.2020.RK.

²⁰ The visit to the National Centre for the Prevention of Dissocial Behaviour in Gostynin, carried out on 8-10 March 2021, KMP.574.1.2019.

²¹ See: Report on the visit to the room for persons deprived of liberty (RDP) at the District Police Station Warsaw VI, KMP.570.1.2020.AN, point 4 and to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK., point 2.

7. This thematic report, based on the results of the NMPT thematic visits, presents the degree of implementation of the CPT and the SPT recommendations. It also contains recommendations the implementation of which may help the state authorities to fulfil their international obligation to counteract torture. The NMPT is open to further discussion on the issue and to a constructive dialogue with the authorities, pursuant to the provisions of Article 22 of the OPCAT.

8. This thematic report is structured as follows: it is divided by types of detention places (part V, points a-e), and within them it presents the CPT and the SPT recommendations and the NMPT's opinion on their implementation. In part IV of the report, the NMPT has presented issues not related to a specific type of detention places.

IV. Introductory comments

9. After its visit to Poland in 2018, the SPT recommended that torture be made a distinct criminal offence, defined in accordance with Articles 1, 2 and 4 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²², and that acts of torture and ill-treatment be made punishable by penalties commensurate with their gravity²³.

The SPT recommendation has not been implemented. The Polish legislator has not yet made the decision to make torture a distinct criminal offence provided for in the Polish law, despite the recommendations of international institutions (not only the SPT but also the Committee Against Torture²⁴ and the Human Rights Committee²⁵), the intervention letters of the Commissioner for Human Rights²⁶ and the opinion of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)²⁷ pointing to this necessity.

It is worth noting that in June 2017, a Members' bill amending the Criminal Code was submitted to the Sejm. It provided for the amendment of Article 246 and the introduction of the crime of torture²⁸. The bill's first reading was to take place at the session of the Sejm on 4 July 2017. On 29 September 2017, after the first reading, the bill was rejected²⁹. This has been the only attempt by the Parliament until today to amend the applicable law.

²² See: *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), adopted by the United Nations General Assembly in New York on 10 December 1984 (Dz.U. [Journal of Laws] of 1989, No. 63, item 378).

²³ See: SPT report CAT/OP/POL/ROSP/1, para. 35.

²⁴ See: CAT Concluding observations on the seventh periodic report of Poland on the implementation of the UN Convention Against Torture, 29 August 2019, CAT/C/POL/CO/7, paras. 7-12.

²⁵ See: Comments made during the consideration of the seventh periodic report of Poland on the implementation of the International Covenant on Civil and Political Rights, CCPR/C/SR.3306 and 3308.

²⁶ The Commissioner for Human Rights informed the Minister of Justice about the need to introduce the crime of torture into the Polish Criminal Code already in 2015. On 19 March 2020, the Commissioner sent a general intervention letter (ref. no. KMP.570.3.2018) to the Prime Minister as well as to the Minister of Foreign Affairs, urging them to take a legislative initiative with regard to the issue. The problem has been highlighted for years which, however, has not led to any changes in the legislation.

²⁷ See: ODIHR opinion on the definition of torture and the absolute prohibition of torture in Polish legislation, 22 May 2018, opinion no. CRIM-POL/325/2018 [TO]. The opinion is available in Polish and English at: <https://bip.brpo.gov.pl/pl/content/opinia-odihhr-dotyczaca-definicji-tortur-i-bezwzglesnego-zakazu-ich-stosowania-w-polskim>

²⁸ See: Members' bill of 7 June 2017 amending the Criminal Code Act, form no. 1702.

²⁹ See: Course of the legislative process: <https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?nr=1702>

The Ministry of Justice does not see the need for legislative changes in this area either, as it was communicated to the Commissioner for Human Rights by the Secretary of State of the Ministry of Justice in a letter of 25 October 2021³⁰.

The non-recognition of a distinct crime of torture is not only contrary to Poland's international obligations in the field of criminalizing torture. The situation helps the perpetrators to avoid liability (or bear it to an extent that is inadequate to the act committed), may lead to divergences in the practices of law enforcement agencies (by charging perpetrators with different acts provided for in various provisions of the Criminal Code) and weakens the legal awareness of officers and the society. Moreover, it makes it difficult to monitor the phenomenon of torture in Poland and to respond to signals from law enforcement agencies, prosecutors and courts. The NMPT hopes for the resumption of legislative work in this area.

10. The National Mechanism notes with regret that the Polish government, despite the calls of the CHR³¹, decided not to authorize the procedure of automatic publication of CPT reports despite the fact that such a step has been taken by the authorities of Poland's neighbouring countries - the Czech Republic and Ukraine³². Consequently, pursuant to the provisions of the European Convention for the Prevention of Torture reports on the CPT visits remain confidential until the Polish government requests their publication³³. Until then, the public and the NMPT have no possibility to learn about the conclusions and recommendations of the visit, which prevents a substantive public debate on the issues raised by the CPT, as well as public oversight of the government's compliance with its obligation to prevent torture. It is worth emphasizing that the period between the CPT's approval of a report on its visit to Poland and the publication thereof is usually 7-8 months³⁴.

The procedure of automatic publication of future reports and government replies offers an opportunity to change the situation. The authorization of the procedure means that all future reports on CPT visits will be made public as soon as they are sent to the governments (without the need for them to separately request the publication of a specific report). The same applies

³⁰ See: Letter of Secretary of State Marcin Warchoń of 25 October 2021, ref. no. DLPK-I.053.8.2021.

³¹ See: CHR's general intervention letters to: the Minister of Justice, of 18 June 2018, ref. no. KMP.571.9.2017.RK and to the Prime Minister, of 29 May 2020, KMP.571.7.2020.RK. See also the replies of the Minister of Justice: of 28 June 2018, ref. no. DWMPK-III-853-61/17/10 and of 14 July 2020, ref. no. DWMPK-III.053.1.2020.

³² The automatic publication procedure has been approved by 12 countries: Albania, Austria, Bulgaria, Czech Republic, Denmark, Finland, Luxembourg, Moldova, Monaco, Norway, Sweden and Ukraine. See: Thirtieth General Report, CPT/Inf (2021)5, point 6, entitled "CPT visits, reports and publications (as at 31 December 2020)" (table) and information on the website: <https://www.coe.int/en/web/cpt/faqs#automatic-procedure>

³³ See: Article 11(1) and (2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Dz. U. [Journal of Laws] of 1995, No. 46, item 238).

³⁴ The report on the visit to Poland carried out in 2017 [CPT/Inf (2018)39] was approved by the CPT during its 94th plenary meeting on 6-10 November 2017. It was made public on 25 July 2018. As regards the report on the 2019 ad hoc visit [CPT/Inf (2020)31], it was approved by the CPT during its 101st plenary meeting on 2-6 March 2020, and was made public on 28 October 2020.

to the replies which are published immediately after their receipt by the Committee. However, each party to the dialogue (i.e. both the CPT and the government) may postpone the publication of the document for up to six months after its submission³⁵. Therefore if, in the opinion of the government, there is a justified reason to delay the publication of a given report or reply, the procedure provides for such a possibility.

The authorization of the automatic publication procedure is recommended to governments by the Committee of Ministers, the Parliamentary Assembly of the Council of Europe³⁶ and the Council of the European Union³⁷. The CPT has itself underlined that the timely publication of the visit reports can be seen as one of the most important means of cooperating with the Committee³⁸.

In the opinion of the NMPT, the authorization of the automatic publication procedure by the government would therefore have a prestige-related dimension showing the authorities' commitment to the cooperation with the CPT and effective and transparent activities in the field of torture prevention, as well as the practical dimension mentioned above.

³⁵ See: CPT's comments regarding the procedure, as contained in the CPT reports on the visits to Ukraine, CPT/Inf (2020)1, para. 1 and footnote 1; and to Bulgaria, CPT/Inf (2019)24, para. 1 and footnote 1. See also: Recommendation of the Parliamentary Assembly of the Council of Europe No. 1968 (2011)1, entitled "*Strengthening torture prevention mechanisms in Europe*", adopted on 14 April 2011 (17th meeting), point 1.1.2.

³⁶ See: Parliamentary Assembly resolution 2160 (2017) adopted on 26 April 2017, and the reply of the Committee of Ministers to Recommendation 2100 (2017) adopted on 29 November 2017. See also: Council of Europe Parliamentary Assembly Recommendation No. 1968 (2011) 1 entitled "*Strengthening torture prevention mechanisms in Europe*" and the Report of the Committee on Legal Affairs and Human Rights of 30 March 2017, doc. 14280, entitled "*25 years of the CPT: achievements and areas for improvement*".

³⁷ See: The 2019 revised guidelines for EU policy towards third countries on torture and other inhuman and degrading treatment, entitled "*Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - 2019 Revision of the Guidelines*".

³⁸ See: Twenty-First General Report, CPT/Inf (2011) 28, point 27; Twenty-Ninth General Report, CPT/Inf (2020) 17, point 29; Thirtieth General Report, CPT/Inf (2021) 5, para. 6, entitled "*CPT visits, reports and publications (as at 31 December 2020)*" (table).

V. Implementation status of the CPT and the SPT recommendations

A. Police detention facilities

11. The SPT was concerned about the staff shortage in the police. It noted that salaries were low which contributed to difficulties in the recruitment of new staff. Therefore, the SPT recommended that the State party conduct an evaluation of the number of staff required in the professional service, and that the State party ensure that salaries are commensurate with the qualifications required and responsibilities entrusted to these occupational groups, in order to ensure that they are properly motivated, as an overall preventive measure³⁹.

The police staffing situation in the Warsaw region has not improved significantly. As of 1 March 2020, the number of vacancies at the Warsaw Metropolitan Police Headquarters was 215 (with 2,298 officers employed)⁴⁰. As of 4 September 2020, 127 persons had been recruited into service since the beginning of the year and had been assigned according to the vacancies at the Warsaw Metropolitan Police Headquarters and individual organizational units⁴¹.

As regards the two rooms for detained persons, the NMPT concluded that their staffing might be insufficient, in particular when all places for detainees are occupied. The police RDP at the Warsaw Metropolitan Police Headquarters has a capacity of 21 places, and had 2 officers on duty⁴². The RDP in Piaseczno, with a capacity of 20 places, had only one officer on duty who was supervising the detainees⁴³.

In the RDP at the City Police Command in Opole⁴⁴ the NMPT provisionally concerned the staff number to be sufficient given the current material conditions (the RDP's capacity was 18 places). However, if the detention conditions change, it would be desirable to increase the number of staff in accordance with the recommendations of the NMPT. With all places occupied, even two

³⁹ See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, points 42-43.

⁴⁰ See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.8.

⁴¹ See: Letter of the Warsaw Metropolitan Police Headquarters Commander of 4 September 2020, PC-869/830/20, sent in reply to the report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.

⁴² See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.8.

⁴³ See: Report on the visit to RDP at the Poviast Police Station in Piaseczno, KMP.570.6.2020.JJ, point 4.7.

⁴⁴ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, points 4.7. and 4.8.

officers may be too few to simultaneously supervise the security of detainees and to ensure that their rights can be exercised.

The above data shows that the problem still exists and further systemic action is needed to improve the staffing situation in the police. A sufficient level of employment impacts security in places of detention, the staff's possibilities to organize their daily work and fully use their professional potential, the detention regime and the exercise of detainee's rights. Poor staffing situation may affect the quality of work of police officers and lead to their professional burnout.

12. The SPT recalled that any type of violence against persons deprived of liberty must be strictly prohibited as it constitutes a form of ill-treatment. Allegations should trigger prompt and impartial investigations by an independent national authority and, where there are sufficient grounds, the persons responsible should be prosecuted and adequately sanctioned⁴⁵.

The CPT called upon the Polish authorities to pursue rigorously their efforts to combat ill-treatment of persons detained by the police. It recommended 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,**
- **it should also be reiterated to the police officers that no more force than is strictly necessary is to be used when carrying out an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them⁴⁶.**

Most of the persons interviewed by the NMPT representatives positively assessed the way in which they were treated by police officers. However, the NMPT was informed of a detainee who had been beaten and humiliated in the RDP at the City Police Command in Opole⁴⁷.

In one of the prisons, a representative of the NMPT interviewed a man who, a few days before, was apprehended and held in the RDP at the City Police Command in Opole. The police, when checking his identity before, found that he had to serve a substitutive penalty of imprisonment due to an unpaid financial penalty. The man was thus apprehended and transported to the City Police Command in Opole. Reportedly, during the transportation the man was handcuffed with his hands in front. According to his account, upon arrival he was taken to an unmonitored room for a strip search. The officer told him to take his clothes off. According to the detainee's report, his requests, e.g. to make it possible for him to notify his closest persons about the detention, were ignored by the officer. When asked about the reason for the strip search, the officer reportedly started shouting at the man. Then, another officer entered the room and the officers

⁴⁵ See: SPT report CAT/OP/POL/ROSP/1, para. 46.

⁴⁶ See: CPT report CPT/Inf (2018) 39, para. 21.

⁴⁷ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.1.

started beating him. Reportedly, he was punched on the face, knocked to the ground and pressed down with a knee. His arms were twisted and his underpants were pulled down by the officers and then put back on. He was then lifted to the standing position and hit a few more times on the face and the chest. He told the officers that his rib was aching but they replied that *“soon, another one will be broken”*. The detainee also reported that one of the officers who had escorted him in the vehicle was passively watching the situation and did not react to the other officers beating him. After the interview with the representative of the NMPT, the man decided to file an official complaint with the Commissioner for Human Rights⁴⁸.

The detainee’s report has been made plausible by the RDP’s video surveillance recordings showing that after being brought to the cell, he was feeling pain and was touching his chest near the rib. The report seems credible also in view of the RDP’s documents according to which means of coercion have been applied to the detainee. There is also a photograph of the detainee’s face with his left eyebrow injured.

The NMPT delegation also found that in from 1 January 2020 to 16 August 2021, four reports of suspected commitment of offences by officers working at the RDP in Opole were filed⁴⁹. The notifications concerned the methods of apprehending the suspects and the use of violence against them, which included: strongly hitting a detainee with a truncheon many times, throwing a detainee to the ground, hitting him with an open hand in the ear, kicking a detainee on the chest until he fainted, and hitting him on the nose. In those cases, explanatory proceedings were instigated under the provisions of the Police Act⁵⁰ but no violations of the professional conduct rules by the officers were found. The cases were also examined by the District Prosecutor’s Office in Opole. In one of the cases the investigation is pending but in the remaining cases the investigations have been discontinued. Therefore, the SPT recommendation has not been implemented.

13. The NMPT raised objections as to the practice of conducting preventive search of detainees in the RDP at the City Police Command in Opole. In reality, the search had the form of strip search⁵¹. According to the Police Act, preventive search may (but does not have to) include visual checking of the body as well as searching the clothing and footwear. The intimate parts of the body may be checked only in particularly justified cases. If it is necessary to visually check the body, it should be conducted in stages. The detained person should also be informed about the possibility to file a complaint or request a report on the search to be drawn up⁵².

According to the CPT standards, persons placed in RDP’s should not be subject to a routine strip search connected with taking off the clothes. Strip search should only be carried out in

⁴⁸ The case is currently examined by the CHR Office under the case number II.519.1172.2021.

⁴⁹ See: Report on the visit to RDP in the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.1.

⁵⁰ See: Article 134i of the Police Act of 6 April 1990 (Dz. U. [Journal of Laws] of 2021, item 1882).

⁵¹ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.1.

⁵² The scope of preventive search is set out in detail in Article 15g of the Police Act.

specific cases, after risk assessment on individual basis. Moreover, if strip search is carried out, it should be done in two stages⁵³.

14. The CPT recommended that police officers be trained in preventing and minimising violence in the context of an apprehension. When the use of force becomes necessary, they need to be able to apply professional techniques which reduce any possible any risk of harm to the persons whom they are seeking to apprehend⁵⁴.

The assessment of the implementation of the recommendation shows that officers have not been trained in preventing and minimizing violence in the context of apprehension. The training of police officers was not coherent and in this regard there had been differences between the police units visited. For example:

- police officers from the Security Team and the Custody Team of the Service Organization Department of the District Police Headquarters no. IV in Warsaw took part in training on: methods and forms of performing duties in rooms for persons deprived of liberty; principles and legal grounds of apprehending persons suspected of a crime or offense, with particular emphasis on domestic violence perpetrators who are under the influence of alcohol⁵⁵;
- police officers from the Police Escort Unit of the Warsaw Metropolitan Police Headquarters, who serve at RDPs, took part in training on: methods and forms of performing duties in facilities where people are detained under the law; anger control; observance of human rights and freedoms; counteracting torture; and equal treatment, with focus on such phenomena as xenophobia, racism, stereotypes, discrimination and prejudice⁵⁶;
- police officers from the police emergency centre for children in Białystok took part in training on: stress management and professional burnout prevention; work-related stress and building personal psychological resources; standards of ethical conduct in the face of unforeseen situations; the UN Convention Against Torture; and human rights in the light of EU legislation. During the training, the system of work of the National Mechanism for the Prevention of Torture was also presented⁵⁷.

The NMPT delegation positively assessed the practice of reminding officers of the CPT recommendations during daily briefings and the requirement to enter the reminders in the duty log book. The initiative is a result of a letter of the Voivodeship [i.e. Provincial] Police

⁵³ See: CPT reports on the visits to: Kosovo in 2020, CPT/Inf (2021) 23, para. 38; The Czech Republic in 2018, CPT/Inf (2019) 23, para. 31 and Norway in 2018, para. 37.

⁵⁴ See: CPT report CPT/Inf (2018) 39, para. 21.

⁵⁵ See: Report on the visit to RDP at the District Police Station Warsaw VI, KMP.570.1.2020.AN, point 5.1.

⁵⁶ See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.1.

⁵⁷ See: Report on the visit to the Police Emergency Centre for Children in Białystok, KMP.573.12.2021.MZ, point 4.1.

Commander's Representative for Human Rights Protection of 13 January 2021 regarding the CPT recommendations after the ad hoc visit to Poland⁵⁸.

15. The police implements systematic measures in the field of educating officers about international standards regarding the protection of human rights and prevention of torture. Some of the training programmes are carried out as a result of cooperation between the Voivodship Police Commanders' Plenipotentiaries and the NMPT, as part of the social campaign "*State without torture*"⁵⁹.

In 2019, representatives of the NMPT conducted training sessions for over 500 police officers (15 groups of 25 to 40 persons). The training had the form of workshops and was aimed at triggering a discussion with officers, based on cases encountered by them in their professional work. The discussed subjects included: the definition of torture contained in the UN Convention Against Torture; the international standards of human rights protection; the jurisprudence of the European Court of Human Rights; and systemic problems identified by the NMPT during its visit. The training was attended by officers working in rooms for persons deprived of liberty, police emergency centres for children and in managerial positions in the police (heads of prevention departments, heads of police escort departments, Poviats and Municipal Police Commanders (i.e. county units' commanders).

Due to the COVID-19 pandemic, training programmes were significantly reduced. In 2020, representatives of the NMPT conducted one on-site training session for officers in Bydgoszcz (September 2020) and one in Rzeszów (September 2021). The latter meeting was a hybrid one: representatives of some police units participated in the training remotely using the police teleconference system.

16. The CPT recommends that particular attention be paid to reiterating to all police officers instructions regarding the proper conduct as concerns the use of electric discharge weapons (tasers) and to enforcing those rules. In the opinion of the CPT, such weapons may only be used when there is a real and immediate threat to life or risk of serious injury. Recourse to such weapons for the sole purpose of securing compliance with an order is inadmissible⁶⁰.

The CPT considers that the use of electric discharge weapons should be subject to the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution. Furthermore, recourse to such weapons should only be authorised when other less coercive methods (negotiation and persuasion, manual control techniques, etc.)

⁵⁸ Ibid, point 4.1.

⁵⁹ Information about the campaign is available on the website: <https://bip.brpo.gov.pl/content/panstwo-bez-tortur-kampania>

⁶⁰ See: CPT report CPT/Inf (2018) 39, para. 22.

have failed or are impracticable and where it is the only possible alternative to the use of a method presenting a greater risk of injury or death (e.g. firearms)⁶¹.

Officers who serve in RDP's had no electric discharge weapons. However, such weapons were held by officers serving in other organizational units of the police.

The NMPT was informed that the police conducted training for officers in the use of the devices. According to the letter of the Warsaw Metropolitan Police Commander of 27 March 2020, a total of 615 officers from the Warsaw Metropolitan Police Headquarters were authorized to use them. In 2019, the Headquarters' Training Department organized 8 training sessions in the use of tasers, which were attended by 88 officers. Subsequent eight training editions are planned for 2020. As of 27 March 2020, one training session had been held for 7 officers.

The training covered issues related to the construction, functions and method of use of tasers⁶².

17. The SPT recommended making mandatory the audio and video recording of interviews in relation to criminal investigations. Recordings should be kept in centralized secure facilities for a period sufficient for them to be used as evidence and should be made available to investigators, detainees and lawyers, upon request⁶³.

The SPT recommendation has not been implemented. Although Polish legislations provides for the possibility of audio and video recording during interrogations, it is not mandatory except for the situations specified in Polish law and relating to interviewing a witness, an expert or a victim⁶⁴. Therefore, in practice, situations in which police officers make audio or video recordings of interrogations (particularly of suspects) are rare as such recordings are made only if required by law. Given the fact that interrogations mostly take place in unmonitored rooms, often in the absence of other persons (e.g. lawyers), there is a high risk of torture.

The making of video and audio recordings during interrogations is an important safeguard against ill-treatment of those interviewed (including against physical and mental abuse; psychological pressure; asking suggestive questions in order to obtain confirmation of the expected version of events; ignoring explanations that do not match the version; disregarding the interrogated person's requests e.g. to contact their doctor or lawyer). The making of such recordings also protects officers against slander and may be useful for training purposes. It can also help identify officers who need support in their professional work, for example in the form of specialist training in interrogation techniques and tactics.

⁶¹ Ibid.

⁶² See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.7. See also: letters of the Warsaw Metropolitan Police Commander of 27 March 2020, PC-405/374/20 and of 23 April 2020, PC-459/443/20.

⁶³ See: SPT report CAT/OP/POL/ROSP/1, para. 47.

⁶⁴ See: Article 147(1), (2) and (2a) of the Act of 6 June 1997 - Code of Criminal Procedure (Dz. U. [Journal of Laws] of 2021, item 534).

The recording of police interviews also contributes to the fairness of criminal proceedings. It provides access not only to the content of testimonies/reports on events but also to their situational context: the conditions in which they were provided and the attitudes of the police and of interviewed persons, including their reactions to questions asked to them as well as to their emotions, doubts or moments of hesitation. This can help judges and prosecutors to properly assess the credibility of evidence and to ensure the effective exercise of people's right to defence.

The significance and benefits of making video and audio recordings during interrogations are emphasized by *the Principles of Effective Interviewing for Investigations and Information Gathering* (the so-called Mendez Principles)⁶⁵. The making of recordings is also recommended by the European Committee for the Prevention of Torture (CPT)⁶⁶, the Committee Against Torture (CAT)⁶⁷, the UN Special Rapporteur on Torture⁶⁸ and experts from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Fair Trials organization⁶⁹.

18. On 30 June 2021, the Commissioner for Human Rights sent a general intervention letter to the Police Commander in Chief. The CHR underlined, inter alia, the need to ensure funds for equipment and premises for officers to make audio and video recordings of police interviews. He also postulated the development, by the National, of specific guidelines on conducting interviews, which would precisely define the applicable standards in terms of duration, methods used, documenting and recording (including with the use of video and audio equipment) and procedural safeguards for the interviewed person. In the opinion of the Commissioner, the guidelines should take into account the international standards of police interrogations, set out e.g. in the Mendez Principles and in the CPT's Twenty-Eighth General Report of 2019⁷⁰.

⁶⁵ See: Principles on Effective Interviewing for Investigations and Information Gathering, paras. 99-100. The Mendez principles are available at: <https://www.apr.ch/en/resources/publications/new-principles-effective-interviewing-investigations-and-information> See also the website of the campaign promoting The Mendez Principles: <https://www.apr.ch/en/what-we-do/campaigns/principles-effective-interviewing>

⁶⁶ See: Twenty-Eighth General Report of the CPT of 2019, CPT/Inf (2019) 9, para. 81. See also: CPT reports on the visits to: North Macedonia in 2019, CPT/Inf (2021) 8, paras. 18 and 19; Armenia in 2019, CPT/Inf (2021) 10, para. 20; and Bosnia and Herzegovina in 2019, CPT/Inf (2021) 21, paras. 16 and 36.

⁶⁷ Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, para. 20 point d).

⁶⁸ Theo Van Boven pointed out that all interrogation sessions should be recorded, preferably using a video technology, and that evidence gathered during non-recorded interrogations should be excluded from court proceedings. See: Report of the Special Rapporteur on Torture of 17 December 2002, E/CN.4/2003/68, para. 26 point g). See also: Report of the Special Rapporteur on Torture of 5 August 2016, A/71/298, paras. 84-87.

⁶⁹ See: Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance, OSCE Office for Democratic Institutions and Human Rights (ODIHR) i Fair Trials 2020, pp. 21-26.

⁷⁰ General intervention letter of the Commissioner for Human Rights of 30 June 2021, KMP.570.9.2021.RK. See also: Twenty-Eighth General Report of the CPT of 2019, CPT/Inf (2019) 9, paras. 80-81.

The response of the Police Commander in Chief shows that the police do not see the need to develop the guidelines on interrogations. However, police officers are advised to use, whenever possible, the recording equipment available in their units, in accordance with the principles set out in the penal procedure. Police units will be progressively equipped with recording devices and officers will be trained in their use. Furthermore, the Police Headquarters Work Programme for 2021-2023 provides for a priority measure *“Development of video monitoring systems in police units e.g. through the provision of modern video monitoring systems to legal detention places”*⁷¹.

The NMPT’s assessment of the plans is positive. Nevertheless, the experience of the National Mechanism shows that a mere recommendation to use recording equipment, without a change of applicable legislation or the development of binding guidelines by the National Police Headquarters, is not going to improve the police practice as they are in line with the currently binding laws and regulations. Therefore, the implementation of the SPT recommendation requires the introduction, at the level of parliamentary act and/or in the form of guidelines of the Police Commander in Chief, of the obligation to make audio and video recording during every interview. The police should be allocated sufficient financial resources to provide officers with appropriate recording equipment and premises (preferably, special interrogation rooms with monitoring systems) and to train them in their use.

Also in line with the CPT standards, police officers who take part in interrogations should be provided with official detailed guidelines on how to conduct them. The guidelines can be included, for example, in commonly applicable legislation, in a regulation or a set of rules or procedures. Furthermore, it is necessary to establish a mechanism for continuous monitoring and reviewing of the observance of the interviewing standards, procedures or practices and to develop programmes of initial and continued training in interviewing techniques. This is crucial for the effective implementation of the investigative interviewing framework⁷². In its reports, the CPT also indicates elements to be included in such a *“code of police interrogations”*⁷³.

19. The SPT recommended the use of body cameras by police officers if possible⁷⁴.

The recommendation has not been implemented in full. Not all police officers have body cameras as part of their equipment. The officers at the visited rooms for persons deprived of liberty and the police emergency centre for children in Białystok did not have them.

⁷¹ See: Letter of the Police Commander in Chief of 20 September 2021, ref. no. KR-DŚ-3213/2573/2021.

⁷² See: Twenty-Eighth General Report of the CPT of 2019, CPT/Inf (2019) 9, paras. 80-81. See also the CPT reports on the visits to: North Macedonia in 2019, CPT/Inf (2021) 8, paras. 18 and 19; Armenia in 2019, CPT/Inf (2021) 10, para. 20; and Bosnia and Herzegovina in 2019, CPT/Inf (2021) 21, paras. 16 and 36.

⁷³ See: Twenty-Eighth General Report, CPT/Inf (2019) 9, para. 80; CPT report on the visit to North Macedonia, CPT/Inf (2021) 8, para. 19; CPT report on the visit to Bosnia and Herzegovina, CPT/Inf (2021) 21, para. 36.

⁷⁴ See: SPT report, CAT/OP/POL/ROSP/1, para. 47.

During the visit to the RDP at the City Police Command in Opole, the representatives of the NMPT were informed that the visited unit had about 75 wearable cameras in use by officers of the Road Traffic Department and the Prevention Department. The use of the devices had resulted in a reduction in the number of complaints against officers⁷⁵.

In the opinion of the NMPT, cameras worn on uniforms prevent inappropriate behaviour on the side of police officers as well as persons with regard to whom police action is taken. The awareness that a given situation is recorded and may be examined by a court may act as a deterrent to aggressive persons, which will improve the security of police officers, protect them against unfounded accusations and improve the quality of their work. In situations where the use of means of coercion raises doubts, the recording can help assess the situation, draw conclusions, discuss mistakes and impose sanctions for their unjustified and/or disproportionate use. Therefore, the recommended solution is to use wearable cameras whenever possible.

20. As recommended by CPT and SPT all persons deprived of their liberty must be able to inform a family member or other third party of their detention without delay, and receive feedback on whether this has been done. The exercise of this right must not be dependent upon the goodwill or decision-making of the detaining authorities, prosecutor or investigator or the administration of the detention facility. This right should be granted to the detained from the very beginning of deprivation of liberty (i.e. from the moment when such a person is obliged to remain under the supervision of the Police). The exercise of this right should always be recorded in writing, stating the exact time of the notification and the person who was notified. Detained persons should also receive feedback on the possibility of notifying the person selected by them about the fact of detention⁷⁶.

As a rule, such notifications were made by the detaining officers.

In the RDP in the City Police Command in Opole⁷⁷ a detainee interviewed by a representative of the NMPT alleged that his request to notify a person close to him about his detention had been ignored. The NMPT delegation also witnessed a situation in which a lower-rank officer working at the RDP commented on the right of the detainee. The officer said disparagingly that the detainee “*must have watched American movies and wanted to make one phone call.*” However, the report on the man’s apprehension contained no mention of whether (or not) he requested that a person close to him be notified of his detention.

The visited police unit followed a practice according to which if, for some reason, a detained person’s request to notify another person had not been met, it was forwarded to the officer in charge of the case. As a result, the notification was sometimes made with a significant delay lasting from several to several dozen hours since the detention time. The situation of persons against whom no proceedings were instituted (e.g. persons brought for sobering up) was also

⁷⁵ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.1.

⁷⁶ See: CPT Report, CPT/Inf (2018) 39, para. 24; SPT report, CAT/OP/POL/ROSP/1, para. 57.

⁷⁷ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.2.

of concern. During the visit, the officer present on the site did not know who should make the phone call to notify the person indicated by a detainee in question. He only pointed out that there had never been such a need.

In the RDP in the Poviát [i.e. county] Police Headquarters in Piaseczno, a detainee reported to the visiting team that he could not notify his employer about his absence from work. This was because the employer's telephone number was recorded on the detainee's mobile phone that had been taken to the police deposit. The officers in the detention facility, in turn, had no technical possibilities to make the phone call. This shows that, in a situation when an officer who detains a person is unable to notify a third party of this fact (e.g. because the party does not answer the phone), the detainee has to wait until the interrogation in order to request the officer in charge of the case to notify the third party. In such a situation, the time between the detention and the notification can be from several to several dozen hours⁷⁸.

In the opinion of the NMPT the situation described above is unacceptable. The officers from the RDP could contact the duty officer or another officer for him to notify the person indicated by the detainee. The telephone number of the detainee's employer could also be given to the detainee or the officers.

The NMPT has also taken note of a positive practice of the police emergency centre for children in Białystok, where there was a register of minors' requests for telephone contact with relatives, containing also an information on the way of exercising this right⁷⁹.

21. At the police emergency centre for children in Białystok, the minors had the possibility to contact their relatives by telephone. The conversations took place in the duty officer's room, with the use of a loudspeaker⁸⁰. In the opinion of the NMPT, the impossibility to have such conversations out of hearing of a police officer violated the minors' right to privacy and made it impossible for them to freely provide information to their relatives, including information on potential cases of ill-treatment.

22. The CPT recommended that Polish authorities take steps to ensure that all persons detained by the police are fully informed of their fundamental rights as from the outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear verbal information at the time of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon the first arrival at a police establishment) by the provision of written information on detained persons' rights. Persons detained should be asked to sign a statement attesting that they have been informed of their rights and always be given a copy of the abovementioned written form. Particular care should be taken to ensure that detained

⁷⁸ See: Report on the visit to RDP at the Poviát Police Station in Piaseczno, KMP.570.6.2020.JJ, point 4.2.

⁷⁹ See: Report on the visit to the police emergency centre for children in Białystok, KMP.573.12.2021.MZ, point 4.2.

⁸⁰ Ibid, point 4.2.

persons understand their rights; it is incumbent on police officers to ascertain that this is the case⁸¹.

The SPT recommended that the Polish authorities:

- **adopt the necessary legislative and administrative measures to ensure that all persons deprived of their liberty are informed of all their rights and of the reasons for their arrest at the outset of the deprivation of liberty and, as soon as possible thereafter, of the charges against them. Such information should be provided orally at first, in clear language and in a language that the person understands, with the assistance of an interpreter if necessary, and should then be provided in writing to the persons concerned⁸²;**
- **ensure that detained foreigners have the right to communicate with the diplomatic and consular representatives of the State to which they belong, as soon as possible after arrest⁸³;**
- **take measures to provide means of translation to all facilities and have all procedural issues translated for them⁸⁴.**

The recommendations of the CPT and the SPT have been fully implemented only two of the visited establishments⁸⁵.

In the RDP at the City Police Command in Opole⁸⁶ a detainee reported to the NMPT representative that he had received no information about his rights and that he had no possibility to exercise them despite his request.

The document files on persons deprived of their liberty did not include signed information forms (which also applied to foreign nationals). The detention reports were drawn up in Polish. In some of them, regarding detained foreigners, there was no information about the foreigner's language and the presence of an interpreter. The officers reported that interpreters were involved only in the procedural activities. None of the forms regarding the detention of a foreign national referred to providing them with information on the possibility to contact a consular office. In view of the cases of failure to inform the detainees about their rights, they may not have been effectively informed about such a possibility either.

⁸¹ See: CPT Report, CPT/Inf (2018) 39, para. 28.

⁸² SPT report, CAT/OP/POL/ROSP/1, para. 50.

⁸³ Ibid., para. 59.

⁸⁴ Ibid., para. 59.

⁸⁵ See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.3.; Report on the visit to the police emergency centre for children in Białystok, KMP.573.12.2021 MZ, point 4.5.

⁸⁶ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, points 4.3. and 4.4.

The visiting team also observed that the Internal Regulations of the RDP⁸⁷ displayed in the rooms for detained persons were difficult to read (they were stuck to a window, behind dense grating and the pages were partially faded).

During the visit to the RDP at the Poviát Police Headquarters in Piaseczno, the NMPT identified a problem with access to interpreters if detentions took place late at night or on weekends⁸⁸. During the monitoring visit there were two Vietnamese citizens at the RDP. They had no contact with any interpreter, and they did not speak Polish⁸⁹. After their detention, they were given the *information about the rights of people detained in connection with criminal proceedings* (in Vietnamese) for signing. The other documents they were given for signing (detention report, deposit-related information, etc.) were in Polish and were signed by them without the participation of an interpreter.

In one case, the NMPT found that the implementation of the recommendation could not be verified due to the fact that there were no detainees in the visited unit at the time of the visit⁹⁰. The documentation kept there contained detention reports in which there were detainees' signatures confirming that they had been informed about their rights. In the case of foreign detainees, they confirmed their knowledge of the Polish language or there were translators' stamps on translated documents. The RDP Regulations were displayed in each of the cells. The visited units also had foreign language versions of the document.

The NMPT positively assessed the practice of the police emergency centre for children in Białystok which provided the minors with an information brochure containing: the facility's internal regulations, daily schedule, a list of entities (together with their contact details) established to protect the rights of minor persons, as well as information on the procedure of filing complaints and applications⁹¹.

23. In line with the recommendations of the CPT and the SPT, access to a lawyer should be guaranteed to all persons in police custody as from the very outset of their deprivation of liberty. To this end, in co-operation with the Polish Bar Council – a fully-fledged and properly funded system should have been developed of legal aid for persons in police

⁸⁷ Annex 1 to the Regulation of the Minister of the Interior of 4 June 2012 on facilities for detained persons or persons brought to sober up, transition facilities, temporary transition facilities and police emergency centres for children, on their internal rules and the method of using video recordings made in those facilities (Dz. U. [Journal of Laws] of 2012, item 638, as amended).

⁸⁸ See: Report on the visit to RDP at the Poviát Police Headquarters in Piaseczno, KMP.570.6.2020.JJ.

⁸⁹ The persons were arrested on 3 August 2020 at 17.00 and until the end of the visit of the NMPT (4 August 2020, 2:00 p.m.), they had no contact with an interpreter.

⁹⁰ See: Report on the visit to RDP at the District Police Station Warsaw VI, KMP.570.1.2020.AN, point 5.6.

⁹¹ See: Report on the visit to the police emergency centre for children in Białystok, KMP.573.12.2021.MZ, point 4.5.

custody who are not in a position to pay for a lawyer, to be applicable from the very outset of police custody.⁹² Detained persons should have the right to consult a lawyer in private⁹³.

Despite the CPT's long-standing recommendation in this field and the criticism after the ad hoc visit in 2019⁹⁴ there has been no progress in this regard. There is no legal aid system in Poland that would ensure free aid of a lawyer prior to the first interview by the police. The letter of the Ministry of Justice of 25 October 2021 shows that the Ministry does not see any need for changes in this respect⁹⁵.

Detainees who cannot afford a lawyer of their choice are effectively deprived of professional independent legal assistance at the initial stage of criminal proceedings. Until the appointment of an ex officio lawyer and his first contact with the detainee, officers conducted the procedures (e.g. interrogations, inquiries) without a lawyer. Given the fact that those procedures are mostly not recorded and take place in unmonitored offices, there is a high risk of torture.

It should be emphasized that the right of access to a lawyer should be viewed not only from the point of ensuring the detainee's right to defence, but also in the context of the torture prevention system. The participation of a lawyer in interrogations may also contribute to improving officers' working standards, building an appropriate institutional culture, as well as protecting officers against slander by persons interviewed by them and against other allegations regarding their working standards or the observance of detained persons' rights.

24. Detainees who have their legal representatives have problems with contacting them from the RDPs. Only in one visited RDP, the NMPT delegation found no shortcomings in this respect. The lawyer could meet the detainee any time in the doctor's room that was not monitored, or in other rooms within the police station. In the other units, detainee's contact with a lawyer was subject to a prior consent of the detaining authority⁹⁶. In the other RDPs, meetings with lawyers could take place only outside the RDP (in the police station rooms), which caused practical problems.

In one RDP, contact with a lawyer was possible only upon consent of the detaining authority⁹⁷. In the other two RDPs personal contact with a lawyer could only take place through

⁹² See: CPT Report, CPT/Inf (2018) 39, para. 25; SPT report, CAT/OP/POL/ROSP/1, para. 52.

⁹³ See: CPT Report, CPT/Inf (2018) 39, para. 26; SPT report, CAT/OP/POL/ROSP/1, para. 52.

⁹⁴ At that time, the CPT assessed that the significant shortcomings in the implementation by the Polish authorities of the basic guarantees for the prevention of torture against persons detained by the police were of a permanent and systemic nature and that urgent and decisive action was required on the part of the highest-level authorities. See CPT report on the visit to Poland in 2019, CPT/Inf (2020) 31, paras. 8, 19, 21 and 22.

⁹⁵ See: Letter from the Secretary of State Marcin Warchol of 25 October 2021, ref. no. DLPK-I.053.8.2021.

⁹⁶ See: Report on the visit to RDP at the Powiat Police Station in Piaseczno, KMP.570.6.2020.JJ, point 4.5.

⁹⁷ See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.4.

the officer in charge of the case⁹⁸. In view of the fact that officers work at RDPs in a shift system, the lawyer's contact with the detained person could have been significantly delayed.

The NMPT heard a complaint from a detainee that the police had not observed his right to contact a lawyer. Allegedly, the officers told him that if he had no lawyer and did not know his telephone number, he could not use legal aid. Reportedly, the man received comprehensive information about possible legal aid only from the prison staff members⁹⁹.

At the police emergency centre for children in Białystok, a minor could meet with a lawyer in the association room, with the door closed and without the presence of an officer. However, the room was monitored (the camera recorded the image but not the sound), which, according to the NMPT, undermines the standards of confidentiality of contacts¹⁰⁰. Meetings with a lawyer should take place out of the sight and hearing of the officers. Only in such conditions the minors can tell the lawyer about how they were treated by the officers and, for example, show any bodily injuries. The awareness that the meeting is watched by police officers may prevent a child who has experienced violence from disclosing such information. During the visit, the NMPT recommended to the head of the centre to ensure conditions for the minors to be able to meet with a lawyer in an unmonitored room or with the video surveillance cameras turned off.

25. The SPT recommended that a list of legal counsellors be introduced to all police stations¹⁰¹.

Two of the visited RDPs had lists of attorneys and legal advisers who could be used by detained persons¹⁰². In one case, the list included only baristers, and the NMPT recommended its extension by attorneys-at-law who offer their services in Warsaw.¹⁰³ In two RDPs, there were no such lists at all¹⁰⁴.

A list of lawyers together with their contact details was available also at the police emergency centre for children in Białystok¹⁰⁵.

26. The SPT recommended ensuring that all persons who are arrested by the police are promptly examined free of charge by a medical specialist who is able to work

⁹⁸ See: Report on the visit to RDP at the District Police Station Warsaw VI, KMP.570.1.2020.AN, point 5.4.; Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.5.

⁹⁹ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.5.; Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, points 4.3. and 4.6.

¹⁰⁰ See: Report on the visit to the police emergency centre for children in Białystok, KMP.573.12.2021.MZ, point 4.3.

¹⁰¹ See: SPT report, CAT/OP/POL/ROSP/1, para. 52.

¹⁰² See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.4.; Report on the visit to RDP at the Poviatic Police Station in Piaseczno, KMP.570.6.2020.JJ, point 4.5.

¹⁰³ See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.4.

¹⁰⁴ See: Report on the visit to RDP at the District Police Station Warsaw VI, KMP.570.1.2020.AN, point 5.4.; Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.5.

¹⁰⁵ See: Report on the visit to the police emergency centre for children in Białystok, KMP.573.12.2021.MZ, point 4.3.

independently without a police officer presence. In line with the Istanbul Protocol¹⁰⁶, such medical specialists should be trained in how to examine people who may have been subjected to torture or ill-treatment and on how to document such cases¹⁰⁷.

At the police emergency centre for children in Białystok, all minors were examined by a doctor on admission to the facility¹⁰⁸. The standard was not followed by RDPs where not every person was examined. In the latter case, officers followed the Regulation on medical examinations for persons detained by the police¹⁰⁹, according to which medical examinations on admission to a room for persons deprived of liberty are not mandatory. Such examinations have to be conducted only for specific groups of people (pregnant women, breastfeeding women, people with mental disorders, people with infectious diseases, minors after drinking alcohol or taking a similarly acting substance, people who report diseases that require chronic or periodic treatment which, if interrupted, would pose a risk to their life or health, people with visible bodily injuries that do not seem to be emergency cases, and people who have requested a medical examination)¹¹⁰.

It should be emphasized that the NMPT has recommended to the police for years to introduce medical examinations on admission to a RDP as a standard. Also, despite the NMPT visit and the recommendation of the SPT, the practice of the police has not changed, which is far from the expectations and international standards.

On 2 October 2021, Deputy Commissioner for Human Rights Stanisław Trociuk sent a general intervention letter to the Police Commander in Chief, in which he raised a number of issues observed by the NMPT with regard to the police, including the issue of medical examinations of detained persons¹¹¹.

In response to the letter, Police Deputy Commander in Chief Paweł Dobrodziej pointed to the provisions of the applicable regulation of the Minister of the Interior and stated that, in every case, they ensure medical examinations for groups of people that require a special level of medical care¹¹².

In the opinion of the NMPT, the systematic implementation of the SPT recommendation would require an amendment of the legislation on medical examinations for detained persons.

¹⁰⁶ See Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; The Office of the United Nations Commissioner for Human Rights; Professional Training Series No. 8/Rev.1; New York and Geneva, 2004. The publication is available in Polish at the CHR Public Information Bulletin page: <https://bip.brpo.gov.pl/pl/content/protok%C3%B3%C5%82-stambulski-podr%C4%99cznik-skutecznego-badania-i-dokumentowania-tortur-oraz-innego-okrutnego>

¹⁰⁷ See: SPT report, CAT/OP/POL/ROSP/1, para. 55.

¹⁰⁸ See: Report on the visit to the police emergency centre for children in Białystok, KMP.573.12.2021.MZ, point 4.4.

¹⁰⁹ See: 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).

¹¹⁰ Ibid., Article 1(3).

¹¹¹ See: General intervention letter of 2 October 2021, ref. no. KMP.570.4.2020.MD.

¹¹² See: Letter of the Deputy Police Commander in Chief of 24 August 2021, ref. no. Kpp-11181/21.

The police would also have to be allocated sufficient financial resources for increased use of medical services.

27. In one of the visited units, the representatives of the NMPT found that the officers had used a taser three times during an action outside the police station, and only one of the detainees against whom a taser had been used had undergone a medical examination (in the other cases, the detainees refused to undergo a medical consultation).¹¹³ In all three cases, the use of a taser had been classified by the police as “causing no harm” i.e. no injury or signs of risk to the lives or health of the detainees.

According to the CPT standards, anyone against whom an electric discharge weapon (EDW) has been used should, in all cases, be seen by a doctor and, where necessary, taken to hospital. Doctors and accident/emergency services should be informed of the ways in which persons who have been the target of such weapons may be affected and of the relevant forms of treatment, from the standpoint of both physical and psychological health. Further, a medical certificate should be given to the persons concerned (and/or to their lawyer, upon request)¹¹⁴.

The Polish law does not provide for mandatory preventive medical examinations of persons against whom an electric discharge weapon has been used:

- The *Act on the use of means of coercion and firearms*¹¹⁵ requires a police officer to provide first aid or to call, “if necessary”, qualified first aid personnel or medical emergency service only if, as a result of the use of means of coercion (including the use of a taser¹¹⁶), “the person has been injured or is showing other visible signs of risk to their life or health”.
- The Regulation of the Minister of the Interior of 13 September 2012 on medical examinations for persons detained by the police¹¹⁷ does not provide for mandatory medical examinations upon detention by the police, even if a taser has been used against a person (unless the examination is mandatory under Article 1(3) of the Regulation). The regulation requires immediate provision of first aid or qualified medical aid only in the event that the person is showing signs of an emergency health condition as defined in the regulations on the national medical emergency service, or if a medical emergency service dispatcher has been informed of a detained person’s emergency health condition (Article 1(1) and (2)).

¹¹³ See: Report on the visit to RDP at the District Police Station Warsaw VI, KMP.570.1.2020.AN, point 5.2.

¹¹⁴ See: CPT Twentieth General Report, CPT/Inf (2010) 28, para. 81.

¹¹⁵ See: Article 36(1) of the *Act on the use of means of coercion and firearms* of 24 May 2013 (Dz. U. [Journal of Laws] No. of 2019, item 2418).

¹¹⁶ See: Article 12(1)(1) of the *Act on the use of means of coercion and firearms*.

¹¹⁷ See: 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).

- The Code of Criminal Procedure requires police officers only to inform detained persons on their right of access to first aid¹¹⁸.

The fact that medical examinations are not required for persons against whom a taser has been used poses a health risk for such persons, and the possibility that the State Treasury may be held liable in the case of negative effects of the use of the device. Potential health effects of the use of a taser may not be immediately visible. Police officers do not know the current health condition or past medical treatments of people against whom an electric discharge weapon is used. In the opinion of the NMPT, an EDW may, in some situations, be used in order to avoid the use of firearms. However, safeguards against negative health effects and possible abuse of tasers should be ensured to the greatest possible extent.

The problem of the lack of requirement to conduct preventive medical examinations of persons against whom a taser has been used was raised, among others, in the intervention letter to the Police Commander in Chief of 2 October 2020¹¹⁹. In his reply, Police Deputy Commander-in-Chief Paweł Dobrodziej pointed to the applicable provisions of the *Act on the use of means of coercion and firearms*.

In view of the lack of will to implement a practice consistent with the CPT standards, it seems necessary to legislative changes to require police officers to ensure a medical consultation. It should be noted that an electric discharge weapon can be used not only against a detained person, therefore the legislation should provide for such situations.

28. The SPT recommended that the State party put a system into place to ensure that persons in police custody who are in need of medical treatment, including mental health care services, have rapid access to such treatment free of charge¹²⁰.

As a rule persons in police custody were provided with medical aid and, if necessary, with mental health care services. The only exception to the rule was observed at the City Police Command in Opole¹²¹. The detained man reported to the visiting team that he had informed the officers that he was receiving psychiatric treatment. Such information was also included in the detainee's medical records kept at the prison to which he was later sent. Meanwhile, the officers noted in the detention protocol that the detainee stated that he was in good health, he was not undergoing treatment and he was not taking any medication on a permanent basis¹²². Therefore, he was not examined by a doctor before his placement in the RDP. Then, despite the use of means of coercion against him in the RDP (which, according to police officers, was the result of his active resistance and disobedience of orders) and the alleged hitting of his face against

¹¹⁸ See: Article 244(2) of the Act of 6 June 1997 - Code of Criminal Procedure (Dz. U. [Journal of Laws] of 2011, item 534).

¹¹⁹ See: General intervention letter of 2 October 2021, ref. no. KMP.570.4.2020.MD.

¹²⁰ See: SPT report, CAT/OP/POL/ROSP/1, para. 54.

¹²¹ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.6.

¹²² *Ibid.*, point 4.1.

the floor during the intervention, the man was not consulted by a psychiatrist. However, an ambulance was called to the RDP because of breathing problems and rib pain reported by him. After medical aid was provided, the man was not taken to hospital for inpatient treatment, and remained in police custody from where he was taken to prison.

It is worth pointing out here that the medical consultation by the emergency medical team took place more than 7 hours after the means of coercion were used. The surveillance recordings show that at 12:43 a.m. the detainee was taken out of the room where a strip search had been carried out, during which means of coercion were used, while the medical examination by the emergency medical team began at 8:29 a.m.

In the opinion of the NMPT, any detainee who displays irrational behaviour, which may be the result of a mental disorder, or inflicts self-harm should consult a doctor and, if necessary, a psychiatrist. During detainees' stay in the RDP it is the police that bears responsibility for their life and health. For this reason, the lack of psychiatric consultation (which may result in forced hospitalisation and observation under medical conditions) can be dangerous for both detainees and the police officers supervising them. Any disturbing behaviour indicative of detainee's mental disorder or poor health should also be noted in the records.

29. The SPT and the CPT noted that that examinations upon admission to a detention are cursory and superficial, conducted in the presence of officers and are not documented at all or are documented improperly¹²³. Therefore, the bodies issued a number of recommendations with the aim to improve the observed practices.

The SPT recommended that:

- **medical examinations be performed without the presence of a police officer;**
- **medical specialists be trained in the field of examining persons who could have been subjected to torture or ill-treatments and in registering such cases.**

The CPT recommended that:

- **all medical examinations be conducted out of the hearing and - unless the doctor requests otherwise in a particular case - out of the sight of police officers;**
- **information concerning detained persons' health be kept in a manner which ensures respect for medical confidentiality;**
- **police officers only have access to such medical information strictly on a need-to-know basis, with any information provided being limited to that necessary to prevent a serious risk for the detained person or other persons (in the opinion of the CPT, there is no justification for giving staff having no health-care duties access to information concerning the diagnoses made or statements concerning the cause of injuries);**

¹²³ See: SPT report, CAT/OP/POL/ROSP/1, para. 53-55; CPT report, CPT/Inf (2018) 39, para. 27.

- **the records drawn up following the medical examinations of persons detained by the police be appropriately documented – the CPT specified the elements to be contained in such records;**
- **the recording of the medical examination in cases of traumatic injuries be made on a special form provided for this purpose, with “body charts” for marking traumatic injuries that will be kept in the medical file of the detained person;**
- **photographs made (if any) be filed in the medical record of the person concerned;**
- **the recording of injuries be also made in the special trauma register;**
- **the results of every examination, including the above-mentioned statements and**
- **the health-care professional’s conclusions, be made available to the detained person and their lawyer;**
- **whenever injuries are recorded which are consistent with allegations of ill-treatment made by a detained person (or which, even in the absence of allegations, are indicative of ill-treatment), the record be systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned.**

The issues of confidentiality of medical examinations, their superficial character and inadequate documentation of injuries remain a concern.

In the RDP at the Poviatic Police Headquarters in Piaseczno, a detained man stated that his medical consultation had taken place in a police car, in front of a hospital. The doctor, according to the detainee, approached the police car, and spoke to the detainee through the open door of the car only for a few seconds, and then issued a certificate confirming that the detainee can be held in a RDP. The situation had been witnessed by police officers. In the detainee’s file the NMPT delegation found a medical certificate confirming his fitness for being admitted to the RDP and the fact that he had a clavicle fracture and had been given an orthosis¹²⁴.

In the RDP at the District Police Station Warsaw VI, the examination of the detainee by medical emergency team, called because of detainee’s self-aggressive behaviour, took place in a monitored room, with a camera filming. Throughout the stay of the medical emergency team, police officers stood in the corridor outside the room, with the door open. It also happened that one of the police officers went inside the room during the medical activities. The NMPT representatives did not manage to establish whether the temporary presence of the officer in the room in which the detainee was examined was at the request of the medical emergency team performing the examination of the detainee¹²⁵. According to the law, it is the medical personnel who decides on the presence of an officer during a medical examination¹²⁶.

¹²⁴ See: Report on the visit to RDP at the Poviatic Police Station in Piaseczno, KMP.570.6.2020.JJ, point 4.6.

¹²⁵ See: Report on the visit to RDP at the District Police Station Warsaw VI, KMP.570.1.2020.AN, point 5.5.

¹²⁶ See: 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 4(2).

In one prison, one of the inmates told an NMPT representative about comments made by a paramedic, called to the RDP because of detainee's pain and breathlessness after being beaten by police officers. He allegedly heard from the paramedic that he "apparently deserved" to be treated in such a way by the officers¹²⁷. The medical examination was conducted in a monitored room (without the presence of officers), despite the fact that there was an unmonitored room for carrying out strip search at the RDP. The inmate's injuries were not properly documented by the medical staff. In the medical emergency file traumatic pain on the right side of the chest was mentioned, while on the body chart included in the file, only a contusion on the chest was marked. No information about the injury to the left eyebrow arch was marked (although such fact was noted in the police records and medical records after admission to the prison).

The NMPT has no knowledge of how the injuries were recorded by the doctors during the medical examinations performed before the detention in the RDP, as no medical records of such an examination were found in the rooms for persons deprived of liberty.

30. Injuries of detainees were recorded by police officers in the detention protocols (they also included detainees' statements concerning their health condition and the causes of their injuries) and in official notes attached to the protocols. If the injuries were disclosed in the rooms for persons deprived of liberty, police officers documented them in the duty log books.

If a medical examination was carried out, the records contained standard forms issued by a doctor stating that there were no health contraindications to detention. These certificates also featured the medication that the detainee should take.

In the Police Establishment for Children in Białystok, the documentation of minors consisted of a medical certificate along with information about no contraindications to placing in the RDP, a description containing a general assessment of the minor's health condition, results of blood pressure and saturation measurements and information on the medication taken. In one case, the description included a note about a postoperative scar.

The entries on injuries made by police officers were quite general. They included a description of injuries and a possible statement from the detainee regarding their origin. The police officers did not take photographs of the injuries. They also did not use the so-called body charts containing a human silhouette for marking injuries. The police units did not keep the register of injuries either.

The above findings indicate that the way injuries are recorded by officers should be improved, both in terms of the quality of the entries and the type of documentation kept. The National Mechanism for the Prevention of Torture sees the need to train police officers in the way of recording injuries in order to improve the quality of entries in the documentation. Such training should be conducted by a doctor or other medical professional, so as to sensitise police

¹²⁷ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.6.

officers to all the nuances of a medical nature, taking into account the specific of their service. An important tool for education and professional development in this field is the Istanbul Protocol, which discusses in a comprehensive manner how to disclose and document cases of torture for the purposes of criminal proceedings.

The SPT underlined the that Istanbul Protocol should be integrated into the training curriculum, including in continuous training activities for police¹²⁸.

To register injuries of detainees, police officers should also use a form to mark such injuries, containing silhouettes of the human body, take photographs of any injuries and keep a special register at unit level in which all types of injuries to detainees should be recorded. In order to standardize the practice in particular police units, it is necessary, in the NMPT's opinion, to consider defining the method of keeping records at least at the level of Police Commander-in-Chief's guidelines or in a regulation.

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Such a practice will improve the standard of recording injuries of persons detained by police officers and increase the effectiveness of the work of law enforcement officers and prosecutors in the event of suspected torture and other forms of ill-treatment of detainees.

31. The SPT recommended the continuation of measures to ensure adequate lighting and ventilation in police detention facilities¹²⁹.

The CPT noted in its report that the cells at Zabrze Municipal Police Headquarters were in need of renovation and those at the District Police Station Warsaw VI were poorly ventilated¹³⁰. It also recommended that in-cell toilets in multi-occupancy cells be fully partitioned (preferably up to the ceiling)¹³¹.

In the case of the cells in the RDP at the District Police Station Warsaw VI, the conditions described by the CPT have not been improved. During the NMPT's visit, they were stuffy and smelt of dampness. In the cells just vacated by detainees, the smell of tobacco was perceptible. All rooms of the unit were equipped with tilt windows which, however, remained closed during the inspection of the unit. According to the information provided by the Head of the

¹²⁸ See: SPT report on the visit to the United Kingdom carried out from 1 to 10 May 2018, addressed to the State party, CAT/OP/GBR/ROSP/1, para. 71. See also: SPT report on the visit to Portugal carried out from 1 to 10 May 2018, addressed to the State party, CAT/OP/PRT/1, para. 34.

¹²⁹ See: SPT report, CAT/OP/POL/ROSP/1, para. 61.

¹³⁰ See: CPT report, CPT/Inf (2018) 39, para. 31.

¹³¹ Ibid., para. 32.

Service Organization Department, the building was equipped with a ventilation system. In the NMPT team's view, however, it was operating inefficiently and the possibility of improving its functioning should be examined¹³².

In the RDP at the City Police Command in Opole the conditions were very bad¹³³. There were in-cell toilets in the cells for detainees. Despite comments made about it by the CPT, they were still partly partitioned¹³⁴. The toilet bowl was located right next to the cell door and it was partitioned on one side by a small (approx. 1.2 m high and approx. 60 cm wide) screen of wood-like material. The front part was not shielded in any way. A table and two seats were fitted opposite the toilet. This resulted in a lack of intimacy – the persons sitting at the table could see the toilet directly, and the person using the toilet bowl could make eye contact with other persons staying in the room. The CCTV view was masked in the toilet area.

There was no additional ventilation in these rooms – it was only possible for an officer to open the window. Any odours associated with the toilet functioning could be smelt throughout the cell. A washbasin was also placed in the cell. It was located on the other side of the toilet screen. In addition to being used for hygiene activities, it was also a source of drinking water – detainees were given disposable cups by officers. During interviews with the visiting team, the officers emphasized that in-cell toilets had a significant influence on fewer tasks performed in the RDP.

Moreover, there was no shower for detainees in the RDP. Police officers on duty in the RDP were even surprised that there should be such a facility in the RDP.

In the NMPT's opinion, the solutions adopted in the unit were not in compliance with the law, they did not ensure a minimum of intimacy for detainees and could be considered as degrading treatment. It is therefore necessary to adapt the facility to the standards arising from the provisions of the law¹³⁵.

In the case of the RDP at the Warsaw Metropolitan Police Headquarters, the cells were adequately ventilated. However, the unit received on 29 November 2019 a complaint from a female detainee in the RDP in which she complained about the conditions there. The complainant highlighted that “the omnipresent odour from the sewage system makes it impossible to use the sanitary rooms normally (none of them are usable)” and that “when the

¹³² See: Report on the visit to RDP at the District Police Station Warsaw VI, KMP.570.1.2020.AN, point 5.7.

¹³³ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.8.

¹³⁴ See: CPT report, CPT/Inf (2018) 39, para. 32.

¹³⁵ The Regulation on RDPs lays down in detail the appearance and equipment of a facility for detained persons or persons brought to sober up. The Regulation, however, does not mention the possibility of installing in-cell sanitary facilities, including toilets or washbasins. Moreover, the RDP must have a sanitary room for maintaining personal hygiene, including a washbasin, shower and toilet. See: Article 4(1) and Article 11(1) to (3) of the Regulation of the Minister of the Interior of 4 June 2012 on rooms for detained persons or persons brought to sober up, transition facilities, temporary transition facilities and police emergency centres for children, on their internal regulations and the method of using video recordings made in those facilities (Dz. U. [Journal of Laws] of 2012, item 638, as amended)

ventilation is turned off at night, the odour is emitted directly to the cells". The police considered the complaint to be justified¹³⁶.

32. The CPT recommended that steps be taken to ensure that persons in police custody are always offered food at normal meal times and that they have unrestricted access to drinking water¹³⁷.

The SPT recommended that the State party ensure that detainees in police detention are offered dietary options, including one warm meal and unrestricted access to drinking water¹³⁸.

Detainees had access to meals (including hot meals and dietary options) and drinking water. As mentioned earlier – in the case of the RDP at the City Police Command in Opole, detainees had to drink water from the tap in the room for detainees¹³⁹.

In one of the RDPs detainees could also drink hot tea¹⁴⁰. In one case the NMPT had reservations about the quality of food offered to detainees. They received instant meals heated up by officers. In the opinion of the NMPT, the unit should take measures to organise a catering service which would provide wholesome meals¹⁴¹.

At the police emergency centre for children in Białystok minors were provided with a meal three times a day (including at least one hot meal) and drinks. The minor could receive a meal immediately after admission, regardless of the time. The meals were delivered by a catering company, but food and drinks purchased by officers were also available in the centre to the minors around the clock. This practice deserves a positive assessment¹⁴².

33. The CPT recommended that steps be taken to ensure that all persons detained at the above-mentioned establishment have ready access to a toilet at all times¹⁴³.

During the visit to the above-mentioned unit, the NMPT representatives did not observe that persons detained had any difficulties in access to the toilet¹⁴⁴. The situation was similar in other visited units, with the exception of the RDP at the Poviát Police Headquarters in Piaseczno, where the video surveillance recordings confirmed difficulties in that respect. The man detained on 3 August 2020 was not able to use the toilet at night. The officer allegedly instructed him, after using the toilet at 12:26 a.m., that "you can only go to the toilet once during the night" and that

¹³⁶ See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.9.

¹³⁷ See: CPT report, CPT/Inf (2018) 39, para. 31.

¹³⁸ See: SPT report, CAT/OP/POL/ROSP/1, para. 63.

¹³⁹ See: Report on the visit to RDP of the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.8.

¹⁴⁰ See: Report on the visit to RDP at the District Police Station Warsaw VI, KMP.570.1.2020.AN, point 5.7.

¹⁴¹ See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.9.

¹⁴² See: Report on the visit to the police emergency centre for children in Białystok, KMP.573.12.2021.MZ, point 4.6.

¹⁴³ See: CPT report, CPT/Inf (2018) 39, para. 32.

¹⁴⁴ See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.9.

he will not have another opportunity until morning. Therefore the detained man used a plastic bottle to satisfy the needs of nature¹⁴⁵.

34. The SPT was concerned that in some police stations there were facilities exclusively allocated for detainees with infectious conditions such as HIV/AIDS or hepatitis. The Subcommittee noted that the designation of separate toilets and showers was not medically necessary and constituted segregation as a form of discriminatory treatment. The SPT recommended measures to eliminate this and any other similar practices in its police stations¹⁴⁶.

During its thematic visits the NMPT did not detect the facilities referred to by the SPT in its report. Nor did it note any other behaviour on the part of officers or organisational arrangements that might constitute a form of discriminatory treatment of detainees.

35. The SPT and the CPT pointed out that police detention facilities had no exercise yards and detainees had no opportunity to spend time outdoors.

Therefore, the CPT recommended that all persons held for 24 hours or more in police custody be offered outdoor exercise every day¹⁴⁷.

The SPT recommended that all persons in police detention are afforded time outside their cells, including for exercise and to breathe fresh air, for a minimum of one hour daily¹⁴⁸.

The NMPT is disappointed to note that despite the CPT's longstanding recommendation in this regard, as well as the SPT's comments and recommendation, no progress was made in this matter. In none of the visited RDPs did detainees have a possibility to be outdoors and they spent most of their time in cells¹⁴⁹. In two units exercise yards were not used¹⁵⁰.

The situation was different in the police emergency centre for children in Białystok. There, the facility had an exercise yard and, in accordance with the rules and regulations of the centre, minors could take physical exercise outdoors for a minimum of one hour a day, if they stayed in the facility for more than 24 hours¹⁵¹.

The problem of persons in police detention not spending time outdoors has a systemic dimension. The legislation relating to RDP does not envisage an exercise yard, and detainees

¹⁴⁵ See: Report on the visit to RDP at the Poviát Police Station in Piaseczno, KMP.570.6.2020.JJ, point 4.1.

¹⁴⁶ See: SPT report, CAT/OP/POL/ROSP/1, para. 65.

¹⁴⁷ See: CPT report, CPT/Inf (2018) 39, para. 33.

¹⁴⁸ See: SPT report, CAT/OP/POL/ROSP/1, paras. 66 and 67.

¹⁴⁹ See: Report on the visit to RDP at the District Police Station Warsaw VI, KMP.570.1.2020.AN, point 5.7; See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 5.9; Report on the visit to RDP at the Poviát Police Station in Piaseczno, KMP.570.6.2020.JJ, point 4.8; Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.8.

¹⁵⁰ See: Report on the visit to RDP at the Poviát Police Station in Piaseczno, KMP.570.6.2020.JJ, point 4.8; Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.8.

¹⁵¹ See: Report on the visit to the police emergency centre for children in Białystok, KMP.573.12.2021.MZ, point 4.6.

have no right to a walk laid down in the law. The implementation of the CPT and SPT recommendations would therefore require an amendment to the law in these two areas and the provision of adequate infrastructure in all RDPs in Poland. In those facilities where it is not possible to arrange an exercise yard for technical reasons, RDPs should not be organized at all.

Exercise yards should also be adequately equipped. Ideally, they should have appropriate exercise equipment, benches, protection against bad weather conditions, and cater for the needs and limitations of people with disabilities and reduced physical fitness. They should also be equipped with a video surveillance system for security purposes, and officers supervising a detained person should be equipped with cameras worn on their uniforms.

36. Upon examining police vehicles at one police station, the delegation found them to be too hot for transportation, while observing that not all police vehicles were equipped with air-conditioning and seatbelts. Several detainees interviewed by the delegation complained that during transportation, they were handcuffed behind their backs or the cuffs were too tight. Upon examining the wrists of several detainees, the delegation observed red linear, parallel excoriations, consistent with their allegations. At one police station, the delegation observed that a detainee who was being prepared for a transfer was put in ankle cuffs. As a result, the SPT recommended that the State party ensure the safe transportation of arrested or detained persons, in accordance with traffic safety rules and regulations¹⁵².

During the visit to the RDP at the City Police Command in Opole¹⁵³ a detainee told an NMPT representative that during transport to the police headquarters he was handcuffed with his hands in front. He was not wearing a seatbelt. The NMPT was concerned about the detainee's waiting time in the car parked in front of the police station, which was 1.5 hours (except for a 3-minute break during which he was probably tested with a breathalyser)¹⁵⁴. From the information given to the man by the police officers it appeared that they were waiting for a decision on potential detention or the possibility of paying a fine. In the NMPT's opinion, the waiting time and activities with the detainee could have been carried out within the premises of the police headquarters. This is because it had a transition facility (with access to a toilet, a washbasin and a table where documentation could be filled in). In this situation, keeping the detainee for 1.5 hours in a small space handcuffed constituted an unjustified inconvenience.

¹⁵² See: SPT report, CAT/OP/POL/ROSP/1, para. 68-69.

¹⁵³ See: Report on the visit to RDP at the City Police Command in Opole, KMP.570.17.2021.JZ, point 4.9.

¹⁵⁴ Video surveillance recordings showed that at 10:56 p.m. the car transporting the detainee pulled up in front of the City Police Command building in Opole. The officer opened the rear door of the vehicle, allowing fresh air in, but leaving the additional bars securing the part of the vehicle where the detainee was staying closed most of the time. At 11:07 p.m., the man was taken out of the car for a moment and he returned at 11:10 p.m. From the conversation with him it emerged he may have been tested for alcohol presence in his body at that time. It was not until 12:34 a.m. that the man was taken out from the car and brought into the RDP.

Measures taken in cooperation with the local authorities aimed at modernization of the service cars of the City Police Command in Opole and subordinate units were positively assessed. According to the summary provided to the visiting team, three passenger cars manufactured in 2021 were recently delivered to the Headquarters.

During the visit to the RDP at the Warsaw Metropolitan Police Headquarters the NMPT representatives obtained information about the vehicles used by the officers of the Warsaw Metropolitan Police Headquarters to transport detainees. The vehicles used to convoy detainees had air conditioning but did not have seat belts for convoyed people (with the exception of unmarked passenger cars) and did not have monitoring systems that would enable supervision over the behaviour of the detained persons and the officers. Detainees, as a rule, were handcuffed during their conveying¹⁵⁵.

In the opinion of the NMPT, the abuse of a preventive use of handcuffs by police officers (also while transporting detained persons) is a frequent practice. This problem was mentioned to the Minister of the Interior and Administration in the past¹⁵⁶ and no progress was made in this respect.

The above findings indicate that systemic changes are necessary in Police activities in this area. Above all, a change of officers' mentality is needed, supported by actions on the part of the management of the Police, which would eliminate the practice of a routine use of handcuffs during transportation of detained persons. Such measures are excessive and dangerous, especially in a situation when a detainee is handcuffed during transport and he is not wearing a seatbelt while the driver is forced to brake suddenly or has an accident. This increases the risk of injury.

The police should also gradually replace worn-out service cars and take action to equip vehicles with safety belts for detainees and video surveillance for preventive and procedural purposes. It is good practice to cooperate with local authorities, which enables faster modernisation and which also improves safety in the region and the standard of officers' work.

According to the CPT standards, handcuffing during transport should only be used when clearly justified by the risk assessment in a given case. Handcuffs should only be used in situations and for as long as absolutely necessary. Handcuffs should also not be excessively tightened, as this can have serious medical consequences (e.g. serious and permanent damage to the hand). Given the potential discomfort and risk of injury in the event of an accident, the practice of handcuffing detainees behind their backs during transport should be avoided.

¹⁵⁵ See: Report on the visit to RDP at the Warsaw Metropolitan Police Headquarters, KMP.570.3.2020.KK, point 6.

¹⁵⁶ See: CHR's letter to the Ministry of the Interior of 20 January 2020, ref. no. KMP.570.29.2019.AN, available at: <https://bip.brpo.gov.pl/pl/content/kajdanki-nie-ulatwienie-dla-policji-o-ich-nadzywaniu-w-konwojach-i-na-komisariatach-rpo>

Rather, it is preferable that detainees are transported in secure vans, thereby avoiding the need to handcuff them during the journey¹⁵⁷.

Vehicles used for the transport of detained persons should be adequately ventilated and equipped with safety devices (such as seat belts)¹⁵⁸.

B. Penitentiary establishments

37. The minimum standard of living space per prisoner, recommended by the CPT, is 4 m² in single-occupancy cells and 6 m² in multi-occupancy cells (not counting the area taken up by any in-cell sanitary facility). Any cell used for prisoner accommodation should measure at least 2 metres between the walls of the cell and 2.5 metres between the floor and the ceiling¹⁵⁹.

The CPT recommended reducing the prison population so as to ensure the abovementioned minimum standard. The official capacities of all prisons should be reviewed accordingly. Cells which have less than 2 meters between the walls should be either enlarged, or withdrawn from service¹⁶⁰.

The SPT recommended raising the minimum standard of living space per prisoner to the size recommended by the CPT, and reviewing the official capacity of all correctional facilities accordingly¹⁶¹.

The above standard has still not been achieved in practice. Among the units visited by the NMPT, there were some cells that provided the prisoner with a living space of at least 4 m² and 6 m², but those were exceptions¹⁶². In addition, in one of the facilities the NMPT delegation found that the cells did not always measure at least 2 metres between the walls of the cell¹⁶³.

The abovementioned problem has a systemic dimension. Despite the CPT's long-standing recommendations in this respect, the legal minimum standard of living space per prisoner in a cell is still 3 m². Moreover, in certain situations, the head of the establishment may place a convicted person in a cell of less than this size (the prisoner must then be provided with no

¹⁵⁷ See: CPT standards entitled „*Transport of detainees*“, Factsheet, June 2018, CPT/Inf (2018) 24. See also: CPT observations and recommendations contained in the report on the visit to Poland in 2019, CPT/Inf (2020) 31, para. 17 and in the report on the CPT visit to Serbia in 2015, CPT/Inf (2016) 21, para. 53.

¹⁵⁸ See: Transport of detainees, Factsheet, June 2018, CPT/Inf (2018) 24 and the report on the CPT visit to Serbia in 2015, CPT/Inf (2016) 21, para. 53.

¹⁵⁹ See: Living space per prisoner in prison establishments: CPT standards, 15 December 2015, CPT/Inf (2015) 44; CPT Twenty-Sixth General Report, CPT/Inf (2017) 5, para. 56; CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 59.

¹⁶⁰ See: CPT report, CPT/Inf (2018) 39, paras. 59, 67 and 68.

¹⁶¹ See: SPT report, CAT/OP/POL/ROSP/1, paras. 80-81.

¹⁶² See: Reports on the visits to: Warszawa-Białoleka Remand Prison, KMP.571.1.2020.RK, point 5.1; Warszawa-Służewiec Remand Prison, KMP.571.27.2020.RK, point 5.1. and Prison no. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.1.

¹⁶³ See: Report on the visit to Warszawa-Białoleka Remand Prison, KMP.571.1.2020.RK, point 5.1.

less than 2 m²)¹⁶⁴. The capacity of penitentiary establishments is calculated on the basis of the minimum standard set out in national law.

Therefore heads of penitentiary establishments have limited options for action, depending on the current penal policy of the state, court decisions, capacity and population of the penitentiary unit. Thus, the implementation of the CPT standard would require a coordinated analysis of the problem and measures on the part of the judicial, legislative and executive authorities to reduce the prison population and guarantee adequate infrastructural conditions in the units. Only a change in the state's penal policy in favour of the use of alternative measures to detention or the construction of new penitentiary facilities will enable to achieve the CPT standard in practice, and thus the amendment of the provisions of the Executive Penal Code¹⁶⁵.

The problem is serious because the current legal state and practice create a systemic risk of violating the prohibition of torture and inhuman or degrading treatment or punishment, and thus of legal liability before the European Court of Human Rights in Strasbourg¹⁶⁶.

It is worthwhile to emphasize here that the standard of 4 and 6 m² is an absolute minimum and the state authorities should aim at reaching a higher standard as an ultimate goal.

38. The CPT invited managers of prisons to remind all the staff that they should treat inmates in a respectful manner¹⁶⁷.

The inmates interviewed by NMPT representatives during the visit mostly indicated that they were treated in an appropriate manner by the penitentiary staff. Nevertheless, the NMPT received two reports of inappropriate treatment of inmates:

- During the visit to the Warszawa-Białołęka Remand Prison the NMPT delegation was given a hint about an alleged beating of an inmate by security personnel on 20 December 2020. The incident was to have occurred in the afternoon in ward A4. An intervention team was to be called to one of the cells, following a suicide attempt by an inmate. The prisoner was to be handcuffed and taken to the outpatient clinic. Then, after seeing a doctor, he was taken to the bathhouse and beaten there. The Regional Inspectorate of the Prison Service in Warsaw and the District Police Station Warsaw Białołęka carried out checks in

¹⁶⁴ See: Article 110, points 2, 2a, 2b and 2c of the Act of 6 June 1997 - Code of Criminal Procedure (Dz. U. [Journal of Laws] of 2021, item 53, as amended).

¹⁶⁵ According to the SPT recommendations, recourse to detention should be the measure of last resort. Poland should consider further increasing the use of other, non-custodial, measures alternative to pretrial detention, and ensure that the mechanism for reviewing detention decisions is effective. SPT also recommended a change of practice with regard to of persons for the non-payment of fines. See: recommendations of the SPT visit in 2018, CAT/OP/POL/ROSP/1, paras. 41 and 79.

¹⁶⁶ See: judgments of the ECtHR in the cases of: *Muršić v. Croatia* of 20 October 2016 [Grand Chamber], application no. 7334/13; *Rasiński v. Poland* of 28 May 2020, application no. 42969/18; *Orchowski v. Poland* of 22 October 2009, application no. 17885/04; *Sikorski v. Poland* of 22 October 2009, application no. 17599/05; *Danilczuk v. Cyprus* of 3 April 2018, application no. 21318/12.

¹⁶⁷ See: CPT report, CPT/Inf (2018) 39, para. 60.

this case. Both institutions found no irregularities in the action taken by the Prison Service officers¹⁶⁸. The case is also examined by the complaint unit at the Office of the Commissioner for Human Rights¹⁶⁹.

- During the visit to the Warsaw-Służewiec Remand Prison, one of the inmates told a NMPT representative that one of the wardens had made fun of his disability, unclear speech and had hit him on the leg. The case was to be reported to the Prosecutor's Office¹⁷⁰.

During the visit to the Warsaw-Białoleka Remand Prison, the NMPT delegation also noted that some staff members praised violence against inmates (both the Police and Prison Service personnel, including officers serving in times of the Polish People's Republic). The visiting team also noted that some members of the medical staff used prison dialect (for example, by referring to detainees as "thieves")¹⁷¹.

39. The hints given during the visit of alleged ill-treatment of detainees by officers point out to the need for further determined efforts to eliminate and prevent inappropriate behaviour towards detainees. The Prison Service themselves should make an effort to build an appropriate institutional culture that condemns violence against detainees and encourages officers and civilian staff to actively prevent ill-treatment, and report such incidents against prisoners. Effective mechanisms for monitoring the work of officers should also be implemented and emphasis should be placed on training, focused on the protection of human rights and the use of means of coercion in a necessary and proportionate manner. Furthermore, in cases where the use of means of coercion is necessary, it should be audio and video recorded (e.g. by means of a mobile camera or a camera worn on the uniform), if the dynamics of the situation allow it¹⁷².

40. In this context, the NMPT assesses positively the fact that in two visited penitentiary units the commanders of the security department were equipped with cameras worn on their uniforms¹⁷³. In the opinion of the NMPT, such cameras should be provided to all officers who may have contact with inmates during their service, in particular wardens and members of intervention groups. It is also worth considering the introduction of formal guidelines on the use of such devices. This would allow for a uniform practice in all penitentiary units in the country.

¹⁶⁸ See: Report on the visit to Warszawa-Białoleka Remand Prison, KMP.571.1.2020.RK, point 6.

¹⁶⁹ Case file no. IX.517.3101.2019.

¹⁷⁰ See: Report on the visit to Warszawa-Służewiec Remand Prison, KMP.571.27.2020.RK, point 6.

¹⁷¹ See: Report on the visit to Warszawa-Białoleka Remand Prison, KMP.571.1.2020.RK, point 6.

¹⁷² The CPT recommended that the "frontline" staff of penitentiary establishments working in contact with prisoners wear, as part of their equipment, body cameras the use of which should be mandatory during every action. See: CPT reports on the visits to the UK, CPT/Inf (2019) 29, para. 40 and CPT/Inf (2020) 18, paras 58, 62 and 84; and the report on the visit to Lithuania, CPT/Inf (2019) 18, para. 21.

¹⁷³ See: Report on the visit to Warszawa-Białoleka Remand Prison, KMP.571.1.2020.RK, point 4; Report on the visit to Warszawa-Służewiec Remand Prison, KMP.571.27.2020.RK, point. 4.

41. During one of the visits, the NMPT delegation inspected the vehicle used for transporting detainees¹⁷⁴. The vehicle was acquired by the unit in the previous year. Its technical condition was very good and it met the CPT's standards for transporting persons deprived of liberty¹⁷⁵. It was fitted with CCTV (both inside and outside), ventilation, heating and seatbelts for detainees. There was a sticker in the vehicle informing that wearing seatbelts was compulsory. The vehicle also had a separate compartment to isolate the prisoner (also equipped with seat belts).

The NMPT hopes that the replacement of Prison Service's means of transport with vehicles complying with international standards for transport of detainees will be continued and will include as many vehicles as possible.

42. In one unit, the standard of strip search of detainees, set out in the Regulation of the Minister of Justice, which provides for doing it in stages, needed to be recalled¹⁷⁶. Prisoners claimed in interviews that there were situations when the strip search was done in one stage. Thus, they had to take off all their clothes and, standing naked in front of an officer, perform a squat in order to determine whether they had any prohibited objects in their body cavities. However, this practice was not a rule.

According to the CPT standards, a strip search is a very invasive and potentially degrading measure. Therefore, every reasonable effort should be made to minimize embarrassment of the person subjected to the procedure. Prisoners who are searched should not be required to take all their clothes off at the same time. For example, they should be allowed to remove clothing above the waist and to get dressed before removing further clothing¹⁷⁷.

43. The CPT recommended that the Polish authorities take steps to continue on-going and planned refurbishment work in the prisons visited and furnish association rooms at Warsaw-Białołęka Remand Prison adequately (during the visit the delegation found that the association rooms were almost bare as regards furnishing (in some cases lacking even chairs and/or a TV)¹⁷⁸.

During the visit to the Warsaw-Białołęka Remand Prison, the material condition of some of the residential cells and toilets was poor. The rooms were dilapidated, with cracked and dirty walls. The conditions were also bad in the premises for officers, used for handling transportation of prisoners (the so-called reception centre). On the day of the visit the room was crowded, with both Prison Service officers and Police officers present (there was no waiting room for officers).

¹⁷⁴ Report on the visit to Warszawa-Białołęka Remand Prison, KMP571.1.2020.RK, point 4.

¹⁷⁵ See: Transport of detainees, Factsheet, June 2018, CPT/Inf (2018) 24.

¹⁷⁶ See: Regulation of the Minister of Justice of 17 October 2016 on security measures at Prison Service organizational units (Dz. U. [Journal of Laws] of 2016, item 1804).

¹⁷⁷ See: CPT report on the visit to Poland in 2013, para. 106. See also: CPT observations regarding strip search conducted by Border Guard officers, as contained in the 2017 report on the visit to Poland, CPT/Inf (2018) 39, para. 53 i przypis nr 49.

¹⁷⁸ See: CPT report, CPT/Inf (2018) 39, paras. 62-63 and 67.

The officers stood crammed together and did not have adequate conditions to work in. This is because the room was used for performing necessary administrative tasks and as an association room as well. There was no refrigerator and adequate facilities to prepare a meal in decent conditions. There were also provisions for transported prisoners in the room and the officers were keeping current records. Due to the number of people in the room, it was difficult to move around. The officers also did not have their own toilet and had to use the one for inmates. In the corridor a large group of detainees was waiting to be transported. There was a sense of rush, nervousness and a tense atmosphere.

In view of the above, the NMPT notified its observations to the Regional Director of the Prison Service in Warsaw¹⁷⁹. In reply to the letter he wrote that 18 residential cells in pavilion A and the bathhouse were renovated by 31 August 2020. The reception centre (officer's duty station), waiting rooms for inmates were also renovated, and the association rooms for drivers underwent a major overhaul. Further modernization of the facility was planned, including, inter alia, the construction of a new building for handling transport of inmates, in which there was also to be a new visiting room. In addition, it was planned to construct the so-called transition house, i.e. a residential building for inmates whose imprisonment was coming to an end, aimed at helping them prepare to live a life in freedom¹⁸⁰.

In the case of the Warsaw-Służewiec Remand Prison¹⁸¹ the material condition and cleanliness of residential cells were assessed as generally positive. During the period of isolation due to the COVID-19 pandemic, the unit renovated 3 residential wards, which significantly improved the standard of serving imprisonment. However, further renovation work was necessary. Some of the visited cells were dilapidated, with cracked and scribbled walls. The delegation had the greatest reservations about the hygienic condition of two bathhouses, located in wards A-3 and B-1. They were in a very poor material condition, with traces of dampness on the walls, rusty radiators, dirty, torn curtains on the shower cubicles, and a dirty floor. Bathing in such conditions was an insult to human dignity and could be a danger to detainees' health. In the NMPT's opinion, urgent renovation works were therefore necessary.

The visiting team also found out that in transition cell no. 212, in ward B-2, there was a non-partitioned in-cell toilet, which violated the inmate's right to privacy while satisfying the needs of nature.

Non-partitioned in-cell toilets were also found in all single-person cells of Prison No. 2 in Strzelce Opolskie¹⁸².

With regard to the equipment of association rooms in the Warsaw-Białołęka Remand Prison, the CPT's recommendation was implemented. Association rooms in the residential wards were

¹⁷⁹ See: Letter of 7 September 2020, KMP.571.1.2020.

¹⁸⁰ See: Letter of 23 September 2020, ref. no. OI.R.0812.18.2020.RP.

¹⁸¹ See: Report on the visit to Warszawa-Służewiec Remand Prison, KMP.571.27.2020, point 6.

¹⁸² See: Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.1.

furnished with TV sets, chairs for inmates and a ping-pong table. The central association room was also furnished with a table football¹⁸³.

The NMPT looked into that aspect also at the other visited facilities. At the Warszawa-Służewiec Remand Prison¹⁸⁴ equipment differed strongly between the individual association rooms. For example, the association room in ward B-1 was poorly equipped and had only a TV set, a table and some chairs. In the association room in ward B-3 there were: a computer game station, a table tennis table, a mattress and a ladder for workout, a TV set and an exercise bicycle.

In Prison no. 2 in Strzelce Opolskie¹⁸⁵, in the main association room there were musical instruments, a TV and a table tennis table. The ward association rooms had a table tennis table and a TV.

44. The CPT recommended that opaque panes (referred to as “blinds”) installed on a number of cell windows be removed. In the opinion of the CPT such devices are in most cases unnecessary, prevent prisoners from having any view from their cells and restrict access to natural light and fresh air. The CPT recommended that they be removed and, wherever really necessary, replaced with other devices that allow sufficient natural light and fresh air into the cells¹⁸⁶.

The recommendation has not been implemented in the Warszawa-Służewiec Remand Prison¹⁸⁷. Some windows in the cells still had opaque panes. As the visiting team members were informed during the visit, the panes were replaced with new ones in 2019, which proves that modernization works have been carried out, yet not in the direction indicated in the CPT recommendations.

45. The CPT called upon the Polish authorities to take decisive steps to develop programmes of activities for remand prisoners. The aim should be to ensure that prisoners are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activities of a varied nature (work, education, sport, etc.)¹⁸⁸.

The situation of remand prisoners has not improved significantly since the CPT visit in 2017. The prisoners still spend most of their time in prison cells.

The Warszawa-Białołęka Remand Prison¹⁸⁹ ensured that prisoners had access to books and newspapers, the possibility of outdoor exercise (for one hour a day), of spending time in the association room (twice a week), and exercising and practising sport on a sports pitch (only outside the winter season). The prisoners also participated in cultural and educational activities

¹⁸³ See: Report on the visit to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.4.

¹⁸⁴ See: Report on the visit to Warszawa-Służewiec Remand Prison, KMP.571.27.2020, point 5.4.

¹⁸⁵ See: Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.2.

¹⁸⁶ See: Report on the visit to Poland, CPT/Inf (2018) 39, para. 69.

¹⁸⁷ See: Report on the visit to Warszawa-Służewiec Remand Prison, KMP.571.27.2020, point 5.2.

¹⁸⁸ See: CPT report, CPT/Inf (2018) 39, para. 73.

¹⁸⁹ See: Report on the visit to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.3.

aimed at building civic and patriotic attitudes (e.g. the action entitled *Saving the memory*), or an exhibition about the Auschwitz-Birkenau concentration camp.

The Warszawa-Służewiec Remand Prison¹⁹⁰ ensured that prisoners had access to books and newspapers, the possibility of outdoor exercise (for one hour a day), of spending time in the association room (once to four times a week, depending on the organizational possibilities). As part of cooperation with the Auschwitz-Birkenau state museum, the prisoners had the possibility to see the exhibition *Women in Auschwitz* and to take part in knowledge quizzes relating e.g. to the Battle of Warsaw of 1920, The Warsaw Uprising or the life of Marshal Józef Piłsudski.

In Prison No. 2 in Strzelce Opolskie¹⁹¹ remand prisoners had access to books, newspapers, the main association room and association rooms in the individual wards, and a volleyball and basketball pitch (used rarely, probably due to its location too close to the outer wall of the prison, across which prohibited objects could be thrown into the premises). The prisoners had the possibility to take part in sports club activities once a week (cardio trainings lasting 1 hour 45 minutes) and film club activities (watching movies for about 2 hours). The ward's association room was available for about 1.5 hours a day. The prison organized various concerts, meetings and other cultural and religious events (all of which were available also to remand prisoners) but at the time of the visit they were suspended due to the COVID-19 pandemic.

46. The CPT recommended that all inmates be allowed to undergo their daily outdoor exercise under conditions that allowed them to become physically exhausted. Additionally, all exercise yards should be provided with some kind of weather protection and preferably allow for a horizontal view¹⁹².

In the Warszawa-Białołęka Remand Prison¹⁹³ the exercise yards were in a very poor material condition (the surface was cracked, which made them difficult to be used by prisoners with reduced physical capacities). There were only few benches and makeshift pull up bars and no professional exercise equipment. There was no proper roofing either (only a small partial cover made of plastic panels). The yards were surrounded by a concrete wall over which a metal mesh was stretched, which made the area look like a cage. The overall impression was depressive. During the walks the prisoners did not perform any physical exercises or use the pull up bars.

There were two outdoor gym stations (so-called fit parks) but they were not available to prisoners on daily basis. Thus, the prisoners had to use the makeshift equipment of much lower standard.

The Warszawa-Służewiec Remand Prison¹⁹⁴ has implemented the recommendation only in part by installing partial roofing over the exercise yards. However, their overall impression was

¹⁹⁰ See: Report on the visit to Warszawa-Służewiec Remand Prison, KMP.571.27.2020, point 5.3.

¹⁹¹ See: Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.2.

¹⁹² See: CPT report, CPT/Inf (2018) 39, para. 74.

¹⁹³ See: Report on the visit to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.5.

¹⁹⁴ See: Report on the visit to Warszawa-Służewiec Remand Prison, KMP.571.27.2020, point 5.5.

very bad. The yards resembled cages and were very small (the smallest one had only 20.1 m² and, as the visiting team found, there had been situations where as many as 12 prisoners were taking a walk there). The yards were covered with a metal mesh on top. Their only piece of equipment was a small wooden bench. There was no exercise equipment at all. The interviewed detainees emphasized that they felt additionally humiliated by such conditions, as a result of which some of them used to give up walking outdoors. The establishment had no sports pitch either.

At prison No. 2 in Strzelce Opolskie¹⁹⁵ only one of the three exercise yards has been renovated and partially roofed (the renovation works were carried out in 2018). The other two yards still needed renovation. According to the information provided by the prison Director, the discontinuation of the works was caused, inter alia, by the COVID-19 pandemic and a significant increase in the prices of building services and materials. Those yards should be renovated in 2021 (ward B) and 2022 (ward A). The renovated yard was surrounded with two-layer fencing net. Only the walls separating the individual yards were made of concrete. Thanks to the net fencing, the exercise yards seemed to be more spacious and the prisoners could see the surrounding area which contributed to their well-being.

47. The CPT recommended¹⁹⁶ that steps be taken to increase health-care staffing levels in order to ensure that:

- **at Warsaw-Białołęka Remand Prison, there is the equivalent of five full-time general practitioners;**
- **at Warsaw-Służewiec Remand Prison, there is the equivalent of three full-time general practitioners and an increased complement of qualified nurses;**
- **at Prison No. 2 in Strzelce Opolskie, there is the equivalent of two full-time general practitioners and an increased complement of qualified nurses.**

Further, the CPT recommended that the Polish authorities take steps to ensure that a person competent to provide first aid (which should include being trained in the application of CPR and the use of a defibrillator) is always present in every prison establishment, including at night and on weekends; preferably, this person should be a qualified nurse¹⁹⁷.

In all visited establishments, the number of doctors and nurses was higher than in 2017 but still below the CPT standard. There were no nurses during the night.

¹⁹⁵ See: Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.4.

¹⁹⁶ See: CPT/Inf (2018) 39, para. 76.

¹⁹⁷ Ibid.

The Warszawa-Białoleka Remand Prison¹⁹⁸ employed in total five medical staff members: a general practitioner who was also a Prison Service officer, and 4 other general practitioners (civilians). Their working hours made up, in total, 3.5 full-time jobs¹⁹⁹.

Despite the increased employment of doctors, the availability of medical care for detainees had not improved. Inmates continued to report that the time of waiting for an appointment with a general practitioner was very long, sometimes several days. The findings of the NMPT delegation also made it clear that the head of the prison health service and his deputy (both doctors) were overwhelmed with administrative tasks and, apart from emergency situations, did not see patients in practice. The NMPT delegation also heard reports that doctors did not actually work as many hours as their contracts indicated. This was tolerated because otherwise there would be problems with recruiting doctors for the facility.

The facility employed 20 nurses who worked in 8-hour or 12-hour shifts (four nurses per shift). Nursing coverage was ensured on weekends but not during the night²⁰⁰.

However, the NMPT is concerned as to whether the number of nurses at the facility was sufficient. The visiting team was informed that there were 6 vacant “*junior nurse*” positions. In addition, there were situations when nurses participated in a convoy of inmates in order to supervise medical records. The many hours of conveying meant that the nurses were not providing medical at that time and the actual staff number was reduced. This was a problem, for example, when medications needed to be administered to patients.

The Remand Prison Warszawa-Służewiec²⁰¹ employed in total three general practitioners: two of them worked based on specific-task contracts, and one worked part-time. There was also a vacant position of a doctor (0.25 of a full-time job)²⁰². The increased number of staff had not contributed to better access to general practitioners. The NMPT members heard reports about difficulties in access to doctors.

The number of nurses²⁰³ was increased to 15 people (11 nurses actually worked and 4 were on maternity leave). The facility still has 3 nurse position vacancies. Nursing care was provided 7 days a week from 6:30 am to 6:30 pm. Nurses did not work at night²⁰⁴.

¹⁹⁸ See: Report on the visit to Warszawa-Białoleka Remand Prison, KMP.571.1.2020.RK, point 5.6.

¹⁹⁹ In 2017, healthcare was provided by 3 full-time general practitioners.

²⁰⁰ In 2017, the establishment employed 18 full-time nurses who were present on working days; nurses did not work during the night and at weekends. See: Report on the visit to Warszawa-Białoleka Remand Prison, KMP.571.1.2020.RK, point 5.7.

²⁰¹ See: Report on the visit to Warszawa-Służewiec Remand Prison, KMP.571.27.2020, point 5.6.

²⁰² In 2017, there was one full-time general practitioner at the facility.

²⁰³ See: Report on the visit to Warszawa-Służewiec Remand Prison, KMP.571.27.2020, point 5.7.

²⁰⁴ In 2017, the facility employed 7 full-time nurses and one part-time nurse (3 positions remained vacant). The nurses worked in a shift system both on weekdays and on weekends. Nurses worked at night only on weekdays.

Prison No. 2 in Strzelce Opolskie²⁰⁵ had 2.19 of full time doctor positions but only 1.89 of full-time positions was filled. This rate included doctors of all specializations who worked at the facility²⁰⁶. Therefore, the availability of general practitioners was significantly lower²⁰⁷.

The facility also employed 6 full-time nurses who worked from Monday to Saturday during the day but not at night.²⁰⁸

48. The CPT, in its report, presented the medical examinations standard to be followed, and recommended that:

- **every newly-arrived prisoner be physically examined no later than 24 hours after admission (by a doctor or by a fully-qualified nurse reporting to a doctor);**
- **medical examinations be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a particular case - out of the sight of prison officers²⁰⁹.**

The medical examinations standard recommended by the CPT has not been fully implemented. In two of the facilities, prisoners were examined within 24 hours after admission²¹⁰, and in one facility they were examined within 3 days²¹¹. In two of the facilities, prisoners transferred from other penitentiary establishments were not examined at the facility (their examination was conducted at the facility which they were leaving). This posed a risk of not detecting injuries that may have occurred during the time of their transport²¹².

The examinations were mostly conducted without the presence of a Prison Service officer unless he had been asked by the medical staff to provide assistance. In two facilities the NMPT heard of cases when a prisoner was examined at a hospital outside the prison, in the presence of officers, and was handcuffed during the examination²¹³. A case was also reported of a prisoner who was handcuffed to a hospital bed during the examination²¹⁴. This, in the opinion of the CPT, is an unacceptable practice. Medical examinations of prisoners who are handcuffed are a practice

²⁰⁵ See: Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.4.

²⁰⁶ The facility employed: a general practitioner, an ophthalmologist, an ENT specialist, a dentist, a dermatologist, a surgeon, a pulmonologist, a neurologist, a psychiatrist and an orthopedist.

²⁰⁷ In 2017, medical staff included 11 part-time general practitioners and 6 specialist doctors. The CPT was, however, concerned about non-availability of a full-time general practitioner.

²⁰⁸ In 2017, the facility employed 5 full-time nurses working on weekdays and on weekends. The nurses did not work at night. See: Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.5.

²⁰⁹ See: CPT report, CPT/Inf (2018) 39, para.78.

²¹⁰ Warszawa-Białołęka Remand Prison and Prison No. 2 in Strzelce Opolskie.

²¹¹ Warszawa-Służewiec Remand Prison.

²¹² Warszawa-Białołęka Remand Prison and Warszawa-Służewiec Remand Prison.

²¹³ Warszawa-Białołęka Remand Prison and Warszawa-Służewiec Remand Prison.

²¹⁴ Warszawa-Białołęka Remand Prison.

that violates the prisoner's dignity and hinders the relationship between the doctor and the patient, thus having negative impact on objective medical findings²¹⁵.

In all three visited establishments, the NMPT members heard of cases of medical examinations that had been very superficial and consisted, in practice, only of collecting the patient's medical history, without conducting a body inspection²¹⁶.

49. The CPT recommended²¹⁷ that the system of recording injuries identified in prisoners be improved e.g. by:

- **keeping a separate record of injuries;**
- **recording traumatic injuries on a special form provided for this purpose, with "body charts" for marking traumatic injuries;**
- **placing photographs of injuries (if any have been taken) in the prisoner's medical file.**

The CPT recommendations have not been implemented. None of the facilities kept a record of prisoners' injuries, and thus medical personnel found it difficult to determine their scale and frequency. Injuries of prisoners were described in their health registry books. One facility entered them in the National Database of Persons Deprived of Liberty²¹⁸. The „body maps" were not used and photographs of injuries were not taken²¹⁹.

In prison No. 2 in Strzelce Opolskie a register of self-injuries was kept which included only self-injuries and their general descriptions; no other injuries were recorded²²⁰.

At the Warszawa-Białołęka Remand Prison the NMPT delegation heard of a single case in which a doctor took photographs of a prisoner's injuries with his private telephone, and later made the photographs available to a prosecutor in connection with ongoing criminal proceedings. However, the photographic documentation was not included in the medical records of the prisoner but was only kept by the doctor in case any related proceedings are started²²¹.

²¹⁵ See: CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 79 regarding "N" status prisoners; and CPT report on the visit to the Czech Republic, CPT/Inf (2019) 23, para. 70.

²¹⁶ See: Reports on the visit to: Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.8; Warszawa-Służewiec Remand Prison, KMP.571.27.2020.RK, point. 5.8; and Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.5.

²¹⁷ See: CPT report, CPT/Inf (2018) 39, para. 80. See also: CPT comments and recommendation contained in the 2019 Ad Hoc Visit Report, CPT / Inf (2020) 31, para. 26.

²¹⁸ The entries were very general and constituted statements such as "bruise on the left leg", "tattoos all over the body", "reported injuries: an eyebrow scratched". See: Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.6.

²¹⁹ See: Reports on the visits to: Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.9; Warszawa-Służewiec Remand Prison, KMP.571.27.2020.RK, point. 5.9; and Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.6.

²²⁰ See: Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.6.

²²¹ The interviewed person did not indicate the date but it seemed from his information that the situation took place already after the CPT visit in 2017.

At the facility, minor injuries were, reportedly, not recorded at all (especially those caused by Prison Service officers or police officers) or were recorded only in prisoners' health registry books while law enforcement authorities were not notified of such cases. According to the persons interviewed by the National Mechanism members, the police and the Prison Service should cooperate and trust each other and follow an informal rule that *"no reports accusing each other should be made"*²²².

50. The medical staff of the visited penitentiary establishments had very little knowledge of the Istanbul Protocol (most of the doctors and nurses interviewed by the NMPT members did not know the document at all) and of how to apply it in practice. This has proven that extensive educational measures for this professional group are needed.

The NMPT noted with satisfaction that in 2019 a meeting focused on the Istanbul Protocol was organized by the Prison Service Regional Inspectorate in Warsaw. The meeting was held within the premises of the Warszawa-Białołęka Remand Prison and was attended by medical staff from establishments subordinate to the Prison Service Regional Inspectorate in Warsaw. The meeting had an educational purpose and multimedia presentations were given in it. In the opinion of the NMPT, such training events have a large preventive impact and, preferably, should be held on regular basis²²³.

It should be emphasized that the lack of knowledge on the Istanbul Protocol is common among the staff of places of detention visited by the NMPT (not only as part of the thematic monitoring). This poses a major challenge for the state authorities and professional associations. The Istanbul Protocol is a key element in appropriately detecting, documenting and prosecuting acts of torture and other forms of ill-treatment. For this reason, the document is of great importance for the prevention of these phenomena and the impunity of the perpetrators. In the opinion of the NMPT, the Protocol should be a constant element of training for all medical staff (not only at places of deprivation of liberty), judges, prosecutors, law enforcement officers, lawyers, legal counsellors, psychologists, therapists, educators at penitentiary establishments, and other professional groups that may come into contact with persons deprived of liberty or victims of violence.

²²² See: Report on the visit to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.9.

²²³ See: Report on the visit to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.9.

The application of the Istanbul Protocol is recommended by the SPT²²⁴, CAT²²⁵, CPT²²⁶, UN Special Rapporteur on Torture²²⁷ and the Board of Trustees of the *United Nations Voluntary Fund for Victims of Torture*²²⁸.

51. The CPT called upon the Polish authorities to develop and implement a comprehensive strategy for the provision of assistance to prisoners with drug-related problems (as part of a wider national drugs strategy), in the light of the remarks contained in their report²²⁹.

The CPT recommendation has not been implemented. At the establishments, methadone programmes were available. In two of the establishments, only few prisoners participated in them (13 persons in Warszawa-Białołęka Remand Centre²³⁰ and 1 person in Prison No. 2 in Strzelce Opolskie²³¹).

Penitentiary staff members reported to the visiting team that the methadone programmes were used by prisoners very rarely and this form of treatment was generally being phased out.

None of the visited penitentiary establishments had introduced the harm reduction measures recommended by the CPT, such as needle change programs, availability of condoms, provision of information on sterilization of needles and other items used for drug injection.

The staff of the visited penitentiary establishments (including medical personnel) were sceptical about the implementation of such solutions and stated, in the meetings with the NMPT representatives, that their introduction would suggest acceptance of the use of illegal substances at the establishment. It would also send a double message to the prisoners: (on the one hand, they would be subject to disciplinary liability for the use of psychoactive substances, but on the other hand, opposite actions would be taken with regard to them, e.g. the provision of clean needles or their sterilization). The staff of the establishments also argued that such activities

²²⁴ See: SPT reports on the visits to: Poland, CAT/OP/POL/ROSP/1, para. 55; Portugal, CAT/OP/PRT/1, paras. 34, 89 and 93; Spain, CAT/OP/ESP/1, paras. 46, 63-64 and 70; the United Kingdom, CAT/OP/GBR/ROSP/1, paras. 69 and 71; and Switzerland, CAT/OP/CHE/ROSP/1, para. 75.

²²⁵ See: CAT conclusions and recommendations for Poland, 29 August 2019, CAT/C/POL/CO/7, paras. 27-28.

²²⁶ See: CPT reports on the visits to: Moldova, CPT/Inf (2020) 27, para. 29; Northern Macedonia, CPT/Inf (2021) 8, para. 29; Portugal, CPT/Inf (2020) 33, paras. 71 and 72; Denmark, CPT/Inf (2019) 35, para. 20 and Georgia, CPT/Inf (2019) 16, para. 80.

²²⁷ See: Reports of the UN Special Rapporteur on Torture of: 16 July 2021, A/76/168, paras. 22, 25, 34 and 66 point g); 20 March 2020, A/HRC/43/49, paras. 13 and 21; and 20 July 2018, A/73/207, para. 77 point e).

²²⁸ See: Joint statement of the CAT, SPT, UN Special Rapporteur on Torture and the Board of Trustees of the *United Nations Voluntary Fund for Victims of Torture*, issued on 25 June 2019 on the occasion of the *International Day in Support of Victims of Torture on the role of the Istanbul Protocol* with regard both to perpetrators and victims: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24739&LangID=E>

²²⁹ See: CPT report, CPT/Inf (2018) 39, para. 81.

²³⁰ See: Report on the visit to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.10.

²³¹ See: Reports on the visits to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.10; and to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.9.

would be more appropriate out-of-prison where it is impossible to control such addicts and where aid possibilities are significantly limited.

At the Warszawa-Białołęka Remand Prison²³² the staff did not know the CPT recommendations in this area, were not aware of how many prisoners had drug problems, and were unable to indicate the key objectives of the drug policy of the establishment.

The prisoners were not covered by any professional therapy programme and there was no therapy ward for prisoners addicted to narcotic drugs or psychotropic substances. There was only a ward for prisoners addicted to alcohol. Prisoners addicted to narcotic drugs were referred to other establishments with appropriate therapeutic wards or, if serving a short-term sentence, were covered by psychologist support provided outside a therapy ward system. Such support was available only to sentenced prisoners and not to remand prisoners. Also, opioid-addicted inmates who were covered by a substitution programme prior to detention could continue the opioid substitution. Meetings of the Anonymous Drug Addicts Community were also held within the establishment, with the participation of the Community representatives from outside.

The Warszawa-Służewiec Remand Prison²³³ had a therapy ward for sentenced prisoners addicted to psychotropic substances. The ward had 36 places of which 27 were occupied at the time of the visit. The therapy was conducted for juvenile and adult prisoners placed for the first time in a closed or semi-closed penitentiary establishment. The ward was not intended for remand prisoners. If there was no possibility to admit a prisoner to the therapy ward (e.g. because of a short-term sentence and long-term waiting time) the prisoner diagnosed with addiction to psychotropic substances was covered by a psychologist's support within a system outside the ward.

The prisoners also attended individual meetings with a psychologist and an educator. They were covered by the following programmes: short-term intervention, social re-adaptation, addiction and alcoholism prevention, narcotic and substitute drug abuse prevention.

The observations of the CPT in this area remain valid. In the opinion of the NMPT, appropriate systemic solutions are necessary, in particular to increase the establishments' awareness of the types and purposes of harm reduction measures. It is also needed to develop relevant programmes and policies with the participation of medical personnel, and make them available at all penitentiary establishments. The programmes should be available also to remand prisoners.

52. The CPT recommended bringing, without unnecessary delay, the relevant legislation into conformity with the CPT standards regarding contact of remand prisoners with the outside world. In the opinion of the CPT, remand prisoners should be entitled to receive visits and make telephone calls, rather than these being subject to authorisation by another authority. In individual cases the authorization may be refused. Any refusal in

²³² See: Report on the visit to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.10.

²³³ See: Report on the visit to Warszawa-Służewiec Remand Prison, KMP.571.27.2020, point 5.10.

a given case to permit such contacts should, however, be specifically substantiated by the needs of the investigation, require the approval of a judicial authority and be applied for a specific period of time. If it is considered that there is an on-going risk of collusion, particular visits (or telephone calls) can be monitored.

The CPT recommendation has not been implemented. Contacts are maintained by remand prisoners in accordance with the provisions of Article 217 of the Executive Penal Code.²³⁴ The authorization of the detaining authority is still required. Therefore, the implementation of the CPT recommendations requires amendment of the Polish legislation.

During the visit to Prison No. 2 in Strzelce Opolskie the NMPT delegation revealed the practice of restricting prisoners' access to telephone calls: they had to choose whether to call a family member or a lawyer (an attorney or a legal counsellor). The duration of the telephone conversation with a lawyer was not limited but afterwards the prisoner had no possibility to contact the family. In the opinion of the NMPT, such a practice should not take place. It hinders prisoners' contacts with their relatives as well as access to a lawyer. The Minister of Justice has already been informed of such practices in the past²³⁵.

Notably, on 18 October 2021 the Commissioner for Human Rights joined the proceedings before the Constitutional Tribunal and applied for finding that the provisions of the Minister of Justice's regulation according to which a remand prisoner requires the detaining authority's consent to contact a lawyer, an attorney or a close person by telephone are unconstitutional²³⁶.

53. The CPT recommended that the current visiting entitlement for prisoners, both those on remand and those already sentenced, is increased. In the opinion of the CTP, all prisoners should benefit from the equivalent of at least one hour of visiting time per week²³⁷.

Contacts of prisoners are regulated by the provisions of Article 217 of the Executive Penal Code, according to which a visit may last 60 minutes. A prisoner may receive only one visit per day²³⁸. In closed-regime prisons, sentenced prisoners may receive two visits per month, and the establishment's director may consent to them being held jointly²³⁹. In semi-closed-regime prisons, sentenced prisoners may receive three visits per month, and the establishment's director may consent to them being held jointly²⁴⁰. In open-regime prisons, sentenced prisoners may

²³⁴ See: Article 217 of the Act of 6 June 1997 – Executive Penal Code (Dz. U. [Journal of Laws] of 2021, item 53).

²³⁵ See: CHR's letter of 6 July 2017, ref. no. IX.517.1268.2017.

²³⁶ See: CHR's letter of 18 October 2021, ref. no. IX.517.1858.2021.TRo regarding the Constitutional Tribunal proceedings, case file no. SK 48/21. The CHR's position is available at: <https://bip.brpo.gov.pl/pl/content/rpo-tk-przylaczenie-zasady-telefonowania-areszt-bliscy>

²³⁷ See: CPT report, CPT/Inf (2018) 39, para. 85.

²³⁸ See: Article 105a(1) of the Executive Penal Code.

²³⁹ See: Article 90 (6) of the Executive Penal Code.

²⁴⁰ See: Article 91(8) of the Executive Penal Code.

receive any number of visits²⁴¹. Remand prisoners may receive at least one visit per month by the closest person, unless the authorization has been refused²⁴².

Relevant internal regulations of the establishments are in line with the provisions of the Executive Penal Code²⁴³. The implementation of the CPT standard requires amendment of the Polish legislation. Therefore, the problem is a systemic one, independent of the authorities of the visited establishment.

54. The CPT recommended that prisoners be heard prior to the imposition of a disciplinary sanction and receive a copy of the disciplinary decision²⁴⁴.

The recommendation has not been implemented in two establishments²⁴⁵. Detainees reported that their meetings with the Prison Director consisted only in communicating to them the sanctions for their disciplinary offences. Some detainees reported, although not as a rule, that they had not been informed of the possibility to appeal against the decision. There were some detainees reporting that they had not received copies of the disciplinary decisions (one detainee reported that he had received it upon request).

55. The CPT recommended that the maximum period of placement of prisoners in disciplinary isolation is 14 days. Further, there should be a prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of 14 days. Any offences committed by a prisoner, which call for more severe sanctions, should be dealt with through the criminal justice system²⁴⁶.

The practice of placing a prisoner in an isolation cell for over 14 days was not overused. Two establishments reported that over a number of years, each of them had just a single case of a disciplinary sanction exceeding 14 days²⁴⁷.

The national legislation has not been adjusted to the CPT standard²⁴⁸. Therefore, there is a risk of placing a prisoner in solitary confinement for a period of more than 14 days (up to 28 days), depending on a decision of the establishment director. The regulations also allow for sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement lasting for

²⁴¹ See: Article 92(10) of the Executive Penal Code.

²⁴² See: Article 217(1a) of the Executive Penal Code.

²⁴³ In Prison No. 2 in Strzelce Opolskie, the standard for remand prisoners was higher than that indicated in the Executive Penal Code. The prisoners were permitted to have two visits per month. See: Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.10.

²⁴⁴ See: CPT report, CPT/Inf (2018) 39, para. 87.

²⁴⁵ See: Reports on the visits to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.13 and Warszawa-Służewiec Remand Prison, KMP.571.27.2020.RK, point 5.13.

²⁴⁶ See: CPT report, CPT/Inf (2018) 39, para. 88.

²⁴⁷ See: Reports on the visits to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.14 and Warszawa-Służewiec Remand Prison, KMP.571.27.2020.RK, point 5.14.

²⁴⁸ See: Article 143(1)(8) of the Executive Penal Code.

up to 28 days²⁴⁹. Importantly, according to Polish law, a disciplinary sanction of less than 14 days does not require consent of a penitentiary judge²⁵⁰. The decision-making process takes place outside the judicial system.

Therefore, the full implementation of the CPT recommendation requires an amendment of the Polish legislation. Only this step would eliminate the systemic risk of the use of solitary confinement beyond the minimum standard set out by the CPT.

56. The CPT expressed its concern about the fact that doctors were involved in the procedure of placing prisoners in isolation cells. According to the CPT, medical personnel should never participate in any part of the decision-making process resulting in any type of solitary confinement, except where the measure is applied for medical reasons. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote a positive doctor-patient relationship; moreover, it is unethical. Health-care staff should be informed immediately of every such placement and should visit the prisoner without delay after placement and thereafter at least once per day, not only upon the latter's request²⁵¹.

The CPT recommendations have not been implemented in full. At two visited establishments, a psychologist, not a doctor, certified that a given prisoner was fit to be placed in an isolation cell²⁵², and in one establishment this was done by a doctor²⁵³. The standard of daily medical check-ups during prisoners' solitary confinement has not been introduced. Health-care staff would only visit an inmate placed in a disciplinary cell upon the latter's request, or if medical assistance is required (e.g. the personnel suspect that the prisoner's health has deteriorated). The provisions of the Executive Penal Code permitting doctors to express their opinion on the application of a disciplinary sanction have not been changed²⁵⁴. The implementation of the recommendation requires an amendment of the Polish legislation and its adjustment to the CPT standards.

57. The CPT, in its report, pointed to the standards regarding the role of prison doctors in the context of restraint procedures including placement in a security cell and application of a body belt. The CPT recommended that any resort to mechanical restraint should be immediately brought to the attention of a medical doctor in order to assess whether the

²⁴⁹ See: Article 146(1) and (2) of the Executive Penal Code.

²⁵⁰ See: Article 145(3) of the Executive Penal Code.

²⁵¹ See: CPT report, CPT/Inf (2018) 39, paras. 89 and 90.

²⁵² See: Reports on the visits to: Warszawa-Służewiec Remand Prison, KMP.571.1.2020.RK, point 5.15; and Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.13.

²⁵³ See: Report on the visit to Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point. 5.15.

²⁵⁴ See: Article 145(3) of the Executive Penal Code.

mental state of the prisoner concerned requires hospitalisation or whether any other measure is required in the light of the prisoner's medical condition²⁵⁵.

In two establishments, restraint procedures were not applied by the personnel²⁵⁶. In one establishment, the CPT recommendation has not been implemented²⁵⁷.

In that establishment, the inmates were not examined by a doctor before being placed in a security cell (they were only interviewed by a psychologist). The examinations were conducted in cases when medical assistance was necessary, in most cases due to injuries that had occurred as a result of the application of a restraint procedure.

C. Guarded Centres for Foreigners

58. The CPT recommended that detained foreign nationals be treated in a respectful manner²⁵⁸.

The NMPT did not come across any reports of ill-treatment of foreign nationals by the Border Guard officers²⁵⁹.

59. The CPT, after the visit to the Guarded Centre for Foreigners in Białystok recommended that increased vigilance be exercised to prevent and combat violence among foreign nationals²⁶⁰.

During the visit to the Guarded Centre for Foreigners in Białystok²⁶¹ the NMPT delegation was informed of violent incidents between various groups of foreign nationals. The visiting team has found, however, that the personnel is effective in conflict management. Therefore, the NMPT has considered the recommendation implemented.

60. During the CPT visit, detained foreign nationals complained about the lack of access to fresh air as they were not allowed to open the windows in their rooms without staff authorisation. Further, because there were no curtains, foreign nationals covered the windows in their rooms with blankets, as a means of protection against the sun and the heat. The Committee recommends that the Polish authorities seek ways to remedy these deficiencies²⁶².

²⁵⁵ See: CPT report, CPT/Inf (2018) 39, para. 91.

²⁵⁶ See: Reports on the visits to: Warszawa-Białołęka Remand Prison, KMP.571.1.2020.RK, point 5.16 and Warszawa-Służewiec Remand Prison, KMP.571.27.2020.RK, point 5.16.

²⁵⁷ See: Report on the visit to Prison No. 2 in Strzelce Opolskie, KMP.571.5.2021.MD, point 4.14.

²⁵⁸ See: CPT report, CPT/Inf (2018) 39, para. 37.

²⁵⁹ See: Reports on the visits to: GCF in Lesznowola, KMP.572.2.2018.KK, point 4.1 and GDF in Białystok, KMP.572.4.2018.KK, point 4.1.

²⁶⁰ See: CPT report, CPT/Inf (2018) 39, para. 38.

²⁶¹ See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, point 4.1.

²⁶² See: CPT report, CPT/Inf (2018) 39, para. 39.

During the NMPT visit to the centre, there were blinds installed on windows. There were no handles on the windows, so they could be opened only by an officer. However, the NMPT heard of no cases when the personnel would disregard a request to open a window. Therefore, the NMPT has considered the recommendation implemented²⁶³.

61. The CPT recommended that steps be taken to review the quality and quantity of the food provided to detained foreign nationals at the Guarded Centres visited. Further, consideration should be given to allowing foreign nationals accommodated at the Guarded Centre in Białystok to prepare their own food²⁶⁴.

At the Guarded Centre in Lesznowola, foreign nationals received three meals a day, including one hot meal, and beverages. The NMPT did not hear any negative comments regarding the food and therefore has considered the CPT recommendation implemented²⁶⁵.

At the Guarded Centre in Białystok, the NMPT heard a large number of complaints regarding food. The foreign nationals complained that food at the centre was not tasty and was served in insufficient amounts. It was established that the men had no possibility to make meals themselves. The centre has failed to implement the CPT recommendations²⁶⁶.

62. The CPT pointed out in its report that the visited centres had indoor gyms and well-equipped spacious outdoor exercise areas, but due to personnel shortages, access to them was limited. The CPT recommended that efforts be made to enlarge the offer of activities at the visited Guarded Centres, in particular at the centre in Lesznowola which, after the refurbishment, has place and modern infrastructure for such activities²⁶⁷.

The Guarded Centre for Foreigners in Lesznowola²⁶⁸ has failed to implement the recommendation. The men were permitted to stay outdoors for only 1.5 hours a day, which, in the opinion of the NMPT, is not enough given the infrastructure of the facility, the possibilities for recreational activities and the location of the centre (in the forest). The foreign nationals themselves considered the time limit insufficient, too. Moreover, the NMPT found that the possibility to stay there depended on whether the number of Border Guard officers on duty on a given day allowed the shift manager to appoint an officer to supervise detainees staying outside the buildings. Therefore, the NMPT has considered the CPT recommendation not implemented.

²⁶³ Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.10.

²⁶⁴ See: CPT report, CPT/Inf (2018) 39, para. 41.

²⁶⁵ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.10.

²⁶⁶ See: Report on the visit to GDF in Białystok, KMP.572.4.2018.KK, point 4.10.

²⁶⁷ See: CPT report, CPT/Inf (2018) 39, para. 42.

²⁶⁸ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.9.

At the Guarded Centre for Foreigners in Białystok, the recommendation has been implemented²⁶⁹. The foreign nationals were permitted, in practice, to spend any time outdoors. They were only required to report that they wanted to leave the building.

There were four small gyms available at the centre (two on each floor). They were well equipped and open seven days a week from 7.00 to 22.00. The facility also had table tennis tables, a modern pitch for basketball, volleyball and football (with tartan surface reducing the risk of injuries, and with outdoor lamps for playing when it is dark outside), an outdoor gym and an outdoor chess table.

The foreign nationals had opportunities to participate in sports events (e.g. competitions in powerlifting, basketball, badminton, volleyball, football and table tennis). Moreover, the centre offered cool-down activities in various forms (e.g. hortitherapy or art therapy), multimedia presentations about European culture, and thematic workshops related to public holidays: Christmas, Easter, Nowruz (Iranian New Year), Ramadan and Vietnamese New Year.

63. The CPT recommended ensuring that a person competent to provide first aid (which should include being trained in the application of CPR and the use of a defibrillator) is present during every night shift; preferably, this person should be a qualified nurse. As regards the Guarded Centre for Foreigners (GCF) in Białystok, the CPT recommended that steps be taken to ensure nursing cover also on weekends²⁷⁰.

At the Guarded Centre for Foreigners in Lesznowola²⁷¹ nurses worked from 8.00 to 20.00 throughout the week. From Monday to Friday, the care was provided by nurses who were Border Guard officers. On weekends, the care was provided by nurses from an external company. All nurses were trained in first aid. Also, six Border Guard officers were qualified to provide first aid. However, taking into account the working hours of the nurses and the number of the trained officers, the efforts to ensure the presence of a person qualified in first aid at night-time were insufficient. Therefore, the NMPT has considered the CPT recommendation implemented in part.

At the Guarded Centre for Foreigners in Białystok²⁷² nurses worked throughout the week. From Monday to Friday from 7.45 to 15.45 care was provided by nurses who were Border Guard officers. From 15.45 to 21.00 and on weekends, the care was provided by nurses from an external company.

Most of the officers were trained in first aid. Of 133 staff members, including 125 officers, 83 employees were trained in first aid and 16 persons had a qualification (a course completion certificate) in first aid. Therefore, the NMPT has considered the CPT recommendation implemented.

²⁶⁹ See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, point 4.9.

²⁷⁰ See: CPT report, CPT/Inf (2018) 39, point 43.

²⁷¹ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.3.

²⁷² See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, point 4.3.

64. The CPT recommends that a full and thorough medical examination of foreign nationals be carried out upon admission at the Guarded Centres. In particular, newly-arrived detainees should be systematically screened for transmissible diseases (including tuberculosis). The screening should also aim at identifying possible victims of torture, with clear rules on the procedures to be followed whenever a medical practitioner reports on any detained person who may have been the victim of torture²⁷³.

The CPT recommendation has been implemented. The Covid-19 pandemic has required a new approach in the field of medical examinations on admission to the centres, to take account of a potential risk of SARS-CoV-2 infection. At the Guarded Centre for Foreigners in Lesznowola²⁷⁴ Before, the examinations were carried out immediately, at the time of admission. During the pandemic, examination by doctor was preceded by isolation and testing for SARS-CoV-2. Foreign migrants were admitted to the centre only after a negative coronavirus test. Then, they stayed in a separate ward for 7 days under observation. After that period, another test was performed. If the test was negative, the foreign national had a medical examination conducted and was placed in the regular ward.

Each foreign national had their blood tested for the presence of viruses (e.g. HIV, HCV), was examined for tuberculosis, had an ECG test, a glucose level test and a dental examination. If needed, consultations in orthopaedics, neurology and psychiatry were conducted within the centre. Other specialist consultations took place outside the facility. Each foreign national had also their weight and blood pressure checked once a month. If they stated during a medical interview upon admission (in a questionnaire in a language they understood) that they had been subjected to any violence or trauma, they were referred to a psychologist for a consultation.

All injuries were entered in the patient's medical records but a special form (body chart) was not used to document them. Medical records of foreigners did not contain photos of their injuries. The register of injuries, recommended by the CPT, was not kept. The nurses had a copy of the Istanbul Protocol in their duty room.

At the Guarded Centre for Foreigners in Białystok²⁷⁵ each foreign national, before admission, was tested for SARS-CoV-2 and was placed in the so-called transition ward. Upon admission, they were examined by a nurse and then by a doctor. If they stated during the medical interview that they had been subjected to any violence or trauma, they were referred to a psychologist for a consultation. Each foreign national had their blood tested for the presence of viruses (e.g. HIV, HCV), and if needed, they had a urine test, an X-ray examination, and had their body mass and blood pressure checked.

All injuries were entered in the patient's medical records but a special form (body chart) was not used to document them. The nurses had a copy of the Istanbul Protocol in their duty room.

²⁷³ See: CPT report, CPT/Inf (2018) 39, para. 44.

²⁷⁴ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.3.

²⁷⁵ See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, point 4.3.

65. The CPT recommended ensuring that in all Guarded Centres for Foreigners medical confidentiality is observed in the same way as in the outside community. In particular, all medical examinations should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of custodial Border Guard officers. Detained persons’ medical files and other medical documentation should not be accessible to non-medical staff²⁷⁶.

At the Guarded Centre for Foreigners in Lesznowola²⁷⁷ the NMPT representatives did not find any violations of the confidentiality of medical examinations, caused by the presence of officers. The non-medical staff did not have access to the medical documentation of the foreign nationals. The CPT recommendation should therefore be considered implemented.

At the Guarded Centre for Foreigners in Białystok²⁷⁸ a Border Guard officer was always present during the medical examination. The non-medical staff did not have access to the medical documentation. The CPT recommendation should therefore be considered implemented in part.

66. The CPT recommended that foreign nationals be assisted by interpreters during psychological and medical examinations. The CPT liked to be informed whether it had been possible to recruit a second psychologist at the Guarded Centre for Foreigners in Białystok²⁷⁹.

The CPT recommendation has been implemented in two visited centres. The NMPT members found no complaints by the foreign nationals regarding the availability or quality of interpretation.

The Guarded Centre in Lesznowola²⁸⁰ employed one psychologist who worked at the facility once a week for 3 hours and when urgently needed. In the opinion of the NMPT, the availability of psychologist services was insufficient. The interviews with the psychologist were carried out by telephone (with the use of a loudspeaker) which, according to the staff, had many advantages. It enabled faster access to interpretation services (especially in the case of less popular languages), reduced the costs of the interpreters and saved their travel time. Because of the pandemic, it was also safer.

The Guarded Centre in Białystok²⁸¹ employed 2 psychologists. One (on a full-time contract) worked 8 hours a day (from 7:45 to 15:45) on working days. If necessary, he also worked on other days of the week and at other hours. The other psychologist (an external one) worked 8 hours a week, in three sessions (held between Monday and Saturday, and between 8:00 and 20:00).

²⁷⁶ See: CPT report, CPT/Inf (2018) 39, para. 45.

²⁷⁷ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.3.

²⁷⁸ See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, point 4.3.

²⁷⁹ See: CPT report, CPT/Inf (2018) 39, para. 46.

²⁸⁰ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, points 4.3 and 4.4.

²⁸¹ See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, points 4.3 and 4.4.

His service contract provided for the possibility of increasing number of hours but not beyond 416 hours.

The centre provided foreigners with access to an interpreter during psychological consultations and medical examinations. The service was provided through the interpreter's personal participation, or online connection or telephone connection.

Because of the COVID-19 pandemic and the lack of complaints regarding interpretation, the NMPT considered the CPT recommendations implemented. The optimal solution, however, would be to ensure the interpreter's personal participation in all activities that require interpretation.

67. The CPT recommended that steps be taken to ensure that all foreign nationals detained under aliens legislation are effectively able to benefit from legal counselling and, if necessary, legal representation. For indigent foreign nationals, these services should be provided free of charge²⁸².

The CPT recommendation has not been implemented. The Polish legislator has not provided, in relevant regulations, for free of charge legal aid for such foreign nationals. However, it should be emphasized that at the visited centres legal assistance was provided by many non-governmental organizations. Information about such organizations was made available on information boards. The centres also had rooms where meetings with lawyers could be held²⁸³.

68. The CPT recommended that foreign nationals receive a written translation, in a language they understand, of the conclusions of decisions regarding their detention/expulsion, as well as written and oral information on the modalities and deadlines for appealing against such decisions²⁸⁴.

The CPT recommendation has been implemented in part. At the Guarded Centre for Foreigners in Lesznowola²⁸⁵ court decisions on placement in the centre were not always issued in a language understood by the foreigner concerned. A Turkish citizen received the regional court decision on his placement in the centre in Arabic. The man did not know the language and therefore he requested the court to re-translate the decision into Kurdish or Turkish.

The applications drawn up in Polish were interpreted verbally to the applicants using translation devices (portable translators). The NMPT was also informed that despite the use of the devices, interpretation was sometimes provided by other foreign nationals. In the NMPT's opinion, such situations are unacceptable as they violate the confidentiality of the interviews. Information regarding deportation was provided to foreign nationals in advance.

²⁸² See: CPT report, CPT/Inf (2018) 39, para. 47.

²⁸³ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.5 and report on the visits to GCF in Białystok, KMP.572.4.2018.KK, point 4.5.

²⁸⁴ See: CPT report, CPT/Inf (2018) 39, para. 47.

²⁸⁵ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.6.

At the Guarded Centre in Białystok²⁸⁶ court decisions on placement in the centre were not translated in full into a language that the foreign national would understand. The operative part of the decision and the information on the foreign national's rights were always translated. The statement of grounds was translated only if necessary. Translation and interpretation services were ensured according to the needs.

69. The CPT recommended that further efforts be made to improve language skills of the staff of Guarded Centres for Foreigners²⁸⁷.

At the Guarded Centre in Lesznowola²⁸⁸, managerial level officers: Head of the Security Team, acting Head of the Education Team, Deputy Commander of the Centre and Head of Administrative Procedures Unit took part in an English language course. The number of the trained officers was too low given the actual needs. The CPT recommendation has therefore not been implemented.

At the Guarded Centre in Białystok²⁸⁹, from 9 October 2019 to 22 May 2020 English courses (at levels from A2 to B2+) were conducted for a total of 32 persons. In the period from 18 January 2021 to 30 June 2021 English courses (at levels from A1 to B2) were conducted for a total of 29 persons. The CPT recommendation has therefore been implemented.

70. The CPT recommended that steps be taken to increase staffing levels at the visited establishments. Filling all the vacant posts should be the first priority. Staff shortages had an inevitable negative impact on the regime and the atmosphere in the Centres²⁹⁰.

The centre in Lesznowola had no vacancies²⁹¹. The CPT recommendation has therefore been implemented. The centre in Białystok²⁹² had jointly 19 vacancies including 18 for officers. The CPT recommendation has therefore not been implemented.

71. The CPT recommended that truncheons and tasers are not worn in full view of foreign nationals (in particular inside the accommodation areas)²⁹³.

By the time of the visit to the centre in Lesznowola²⁹⁴ the CPT recommendation had not been implemented. The officers carried truncheons at all times. Furthermore, officers had access to tasers. They were stored in the shift officer's room. They were handed out only to trained officers and, as a rule, were not carried into the accommodation part of the centre.

²⁸⁶ See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, point. 4.6.

²⁸⁷ See: CPT report, CPT/Inf (2018) 39, para. 49.

²⁸⁸ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point. 4.11.

²⁸⁹ See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, point 4.11.

²⁹⁰ See: CPT report, CPT/Inf (2018) 39, para. 49.

²⁹¹ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.11.

²⁹² See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, point 4.11.

²⁹³ See: CPT report, CPT/Inf (2018) 39, para. 51.

²⁹⁴ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.8.

At the centre in Białystok²⁹⁵ the CPT recommendation was implemented. The officers did not carry truncheons or tasers.

72. The CPT recommended that strip searches be carried out using a two-stage approach²⁹⁶.

Not all foreign nationals were subjected to strip search upon admission to the centre. Where strip search was carried out, the two-stage procedure was used. The CPT recommendation has therefore been implemented²⁹⁷.

73. The CPT recommended that the Polish authorities consider the possibility of allowing foreign nationals detained at the Guarded Centre in Lesznowola to use the VoIP technologies on a free-of-charge basis to communicate with the outside world and offering indigent foreign nationals at least one free-of-charge phone call per month²⁹⁸.

The CPT recommendation has been implemented. The foreign nationals at the guarded centre in Lesznowola²⁹⁹ had access to Skype for 60 minutes a day. Persons who did not have a private telephone had access to the centre's telephone (via the duty manager). The foreign nationals reported no objections regarding this area.

74. The CPT invited the authorities to review the operation of the complaints procedure at the Guarded Centre for Foreigners in Białystok so as to make sure that detained foreign nationals are effectively enabled to send complaints in a confidential manner (and are duly informed of this possibility)³⁰⁰.

The CPT recommendation has been implemented³⁰¹. During the interviews, the representatives of the NMPT did not hear any reports of foreign nationals being afraid to make complaints. No negative comments were raised regarding the possibility of filing complaints in the establishment. During the inspection of the premises, the visiting team saw special boxes into which written complaints could be put in confidence.

D. Juvenile Correctional Facility in Białystok

75. The CPT recommended that the management and staff of Juvenile Correctional Facility in Białystok exercise increased vigilance in preventing acts of inter-juvenile

²⁹⁵ See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, point 4.8.

²⁹⁶ See: CPT report, CPT/Inf (2018) 39, para. 53.

²⁹⁷ See: Reports on the visits to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.2 and GCF in Białystok, KMP.572.4.2018.KK, point 4.2.

²⁹⁸ See: CPT report, CPT/Inf (2018) 39, para. 54.

²⁹⁹ See: Report on the visit to GCF in Lesznowola, KMP.572.2.2018.KK, point 4.7.

³⁰⁰ See: CPT report, CPT/Inf (2018) 39, para. 55.

³⁰¹ See: Report on the visit to GCF in Białystok, KMP.572.4.2018.KK, point 4.7.

violence. Consideration should also be given to improving the training of staff in conflict resolution and verbal de-escalation techniques³⁰².

During the visit to the juvenile correctional facility in Białystok³⁰³ the NMPT delegation found that juveniles who had the leading position in the group had introduced an informal “code” according to which, for example, they did not shake hands with certain other juveniles (with a weaker position in the group), told them to beat others, prohibited selected juveniles to eat meals, forced them to perform foot massage for the „stronger” members of the group or to pay for items bought by such members, threatened weaker juveniles and called them names with sexual connotations.

The staff tried to monitor the situation on current basis. Twice a year, questionnaires were conducted among the juveniles on safety at school, during workshops and in the dormitories. The institution kept a Register of Incidents, according to which in 2019 there were eight such events (three related to the use of psychoactive substances, two suicide attempts, and single cases of self-mutilation, refusal to obey, and fight between juveniles). In 2020 there were two incidents (related to the use of psychoactive substances).

In 2018, one incident was reported by the facility director to the Public Prosecutor’s Office, and in 2019, a disciplinary sanction was applied in one case against the juvenile perpetrator.

In the opinion of the NMPT, the staff of the facility tried to monitor the behaviour of the juveniles and resolve conflicts on an ongoing basis but decisive steps were not always taken. For example, the visiting team found a record of a situation in which a juvenile reported that he had been beaten in the association room. An officer analysed the surveillance system recordings and wrote in the register of incidents that there had been an argument between the juveniles but nobody was beaten in the association room and then the juveniles walked into to the bathroom. However, there was no record of any attempt to establish what happened in the bathroom then. In the opinion of the NMPT, the scope, methods and intensity of reacting to situations at the facility should be regularly verified in order to prevent violence among the juveniles.

In the years 2017-2020, most of the staff took part in training in the following areas: implementation of rehabilitation and therapy programmes (supervision); assessment diagnosis of juveniles; corrective measures for juveniles; and conflict resolution. Individual persons took part in training courses e.g. on handling aggression and self-aggression in children and adolescents, conducting interventions in crisis situations, information and communication techniques, ART aggression replacement training and counteracting hate speech.

Given the above, the NMPT has considered the CPT recommendation implemented in part.

76. The CPT recommended that steps be taken to ensure that all juveniles in correctional facilities, irrespective of their regime, are offered the possibility of

³⁰² See: CPT report, CPT/Inf (2018) 39, para. 95.

³⁰³ See: Report on the visit to the juvenile correctional facility in Białystok, KMP.573.8.2020.JJ, point 4.1.

daily outdoor exercise of at least two hours. Further, the Committee trusted that the management of Juvenile Correctional Facility in Białystok would remedy the shortcomings of the outdoor exercise yard (the basketball pitch was not adequately equipped – in particular, it had no shelter against inclement weather)³⁰⁴.

The NMPT has considered the CPT recommendation implemented in part. The juveniles had a large area with greenery around the facility, two sports pitches and an outdoor gym. There was no roofing to protect against bad weather conditions. The director of the facility informed the visiting team that roofed stands were to be built next to one of the pitches.

According to the internal regulations of the facility, juveniles could stay outdoors for at least one hour a day, weather permitting. The juveniles reported that in practice they could stay outdoors for about two hours a day or even longer, as long as the educators did not object or this did not disrupt the work of the facility³⁰⁵.

77. The CPT recommended that regular visits of a general practitioner to the establishment be ensured³⁰⁶.

The CPT recommendation has not been implemented. There was no general practitioner at the facility³⁰⁷. If medical assistance was required, juveniles were registered to be seen by a local general practitioner (most often, in the case of a cold, a skin problem, etc.). It was not possible to have every newly arrived juvenile, without any symptoms of disease, examined by a local general practitioner, as this was not funded by the National Health Fund.

The director of the facility was making efforts to hire a general practitioner but to no avail. The reason was the general shortage of medical personnel, as well as the low salary offered by the director within the facility's budget.

78. The CPT recommended that all health care staff working in juvenile correctional facilities be reminded that every newly-arrived juvenile should be properly interviewed and physically examined as soon as possible and no later than 24 hours after admission by a doctor or by a fully-qualified nurse reporting to a general practitioner³⁰⁸.

The facility employed a full-time male nurse working from Monday to Friday from 7:30 to 15.30. He conducted the initial interview on admission, and an examination of the physical and mental state of every newly arrived juvenile. Their illnesses, previous hospitalization cases, medications, injuries, tattoos etc. were described. Routine skin examinations of the juveniles were also conducted. If any skin abrasions were found, they were reported to the facility director³⁰⁹. As already mentioned in the previous point, the facility had no general practitioner

³⁰⁴ See: CPT report, CPT/Inf (2018) 39, para. 98.

³⁰⁵ See: Report on the visit to the juvenile correctional facility in Białystok, KMP.573.8.2020.JJ, point 4.5.

³⁰⁶ See: CPT report, CPT/Inf (2018) 39, para. 99.

³⁰⁷ See: Report on the visit to the juvenile correctional facility in Białystok, KMP.573.8.2020.JJ, point 4.3.

³⁰⁸ See: CPT report, CPT/Inf (2018) 39, para. 101.

³⁰⁹ See: Report on the visit to the juvenile correctional facility in Białystok, KMP.573.8.2020.JJ, point 4.3.

to whom the nurse would report. Therefore, the CPT recommendation should be considered implemented in part.

79. The CPT delegation was concerned to learn about plans to reduce the number of pedagogical staff at Juvenile Correctional Facility in Białystok in the course of 2018. The CPT intended to receive further clarification of this point from the Polish authorities³¹⁰.

The number of staff at the facility increased as compared to 2017. The facility employed among others: 15 educators, 10 teachers, 6 pedagogy specialists, a psychologist and a nurse. In the opinion of the facility director, the number of employees was sufficient to fully meet the needs of the juveniles.

80. The CPT recommended that³¹¹:

- **an end be put to the use of fixation of violent and/or agitated juveniles;**
- **metal beds with handles for fixation be removed from security rooms;**
- **alternative methods of managing violent incidents and of restraint, including individual alternative measures to prevent agitation and to calm down juveniles, be introduced.**

The CPT also stressed that any form of isolation of juveniles, including the placement of a violent and/or agitated juvenile in a calming-down room, was a measure that could compromise their physical and/or mental well-being and should therefore be applied only as a means of last resort. Any such measure should not last for more than a few hours and should never be used as an informal punishment. Every placement of a juvenile in a calming-down room should be immediately brought to the attention of a doctor in order to allow them to look after the health-care needs of the juvenile concerned. In addition, every such placement should be recorded in a central register as well as in the juvenile's individual file. The CPT recommends that steps be taken at Juvenile Correctional Facility in Białystok (and, as appropriate, in other juvenile correctional facilities) to ensure that placement in a security room is applied in strict compliance with the requirements set out in this paragraph; the relevant legislation should be amended accordingly³¹².

The NMPT delegation did not find any cases of applying belts for fixing juveniles to metal beds. The number of cases of applying means of coercion also decreased as compared to the period analysed by the CPT³¹³. In 2017, there were 4 cases in which means of coercion were used. There were 13 cases in 2018, 4 in 2019 and 1 in 2020. The means of coercion used most frequently in that period were: placement in a security room (9 cases) and use of physical force

³¹⁰ See: CPT report, CPT/Inf (2018) 39, para. 102.

³¹¹ Ibid, para. 105.

³¹² Ibid, par. 105.

³¹³ See Report on the visit to the juvenile correctional facility in Białystok, KMP.573.8.2020.JJ, point 4.2.

(6 cases). In six other cases, two means of coercion were used simultaneously: physical force and placement in a security room. In one case, in addition to physical force and placement in a security room, a restraint belt was used.

According to the director of the facility, the overall lower number of cases of using means of coercion is a result of the current consciously different approach to aggressive behaviours of juveniles. The staff members try to solve such problems by other means of persuasion, and means of coercion are used as a last resort, which is a good practice.

The use of means of coercion was recorded in a special register (“Register of means of coercion used”). It included the names of persons with regard to whom such means had been used, and the type of the means applied. If a juvenile was placed in a security room, a chart of their stay in the room was filled in. The starting time and the ending time of the isolation were recorded. The cases were also reported to the Ministry of Justice (all such reports were kept in a separate folder). The staff members who applied the means of coercion had to fill in a special form in which the case was described in detail.

The security rooms had been fully refurbished and at the time of the NMPT visit they had a surveillance system and soundproof walls.

The NMPT representatives had, in general, no objections as to the method of applying means of coercion, except for the situation when two juveniles were placed in a security room (on 22 June 2019) without any pillows or blankets (or any other covering) for the night. They spent the whole night on empty beds, without T-shirts, only in shorts. In the other cases, the juveniles had pillows and covers for themselves in the security rooms. At the same time, the NMPT delegation found that at the facility there were still cases of placing juveniles in medical care rooms for reasons not related to health. On the day of the NMPT visit, two juveniles were placed in a medical care room because they did not attend school. They could not remain unsupervised within the school premises or within the dormitory. Due to the above, the NMPT has considered the CPT recommendations partially implemented.

81. The CPT was of the opinion that straitjackets should never be used in a place of detention, inter alia because of their humiliating and stigmatising impact on all parties. Straitjackets should be removed from the catalogue of “means of coercion” enumerated in Section 12 of the Act on the Means of Coercion³¹⁴.

The CPT recommendation has not been implemented. Pursuant to Article 95a(2) of the *Act on juvenile delinquency proceedings*, the staff of juvenile correctional facilities and shelters for juveniles may use a straitjacket against a juvenile who has been trying to commit a suicide or harm themselves or another person or kill another person, if the use of physical force is insufficient³¹⁵.

³¹⁴ See: CPT report, CPT/Inf (2018) 39, para. 105.

³¹⁵ See: Article 95a(2) of the Act of 26 October 1982 on juvenile delinquency proceedings (Dz. U. [Journal of Laws] of 2018, item 969) and Article 12(1)(3) of the of the *Act on the use of means of coercion and firearms* of 24 May 2013

82. In the CPT's view, all juveniles deprived of their liberty should have frequent access to a telephone and there should be a minimum entitlement to be able to call one's family without having to earn it as a reward. The Committee recommends that the Polish authorities take steps to introduce a minimum entitlement for calls at juvenile correctional facilities, taking into consideration the above remarks³¹⁶.

The CPT recommendation has been implemented³¹⁷. The juveniles did not report any complaints regarding access to the telephone. Telephone calls on weekdays were answered between 16.00 and 21.00 hrs. and on Sundays and public holidays, they were answered without any restrictions. Additionally, incoming telephone calls to juveniles staying in transit rooms for new arrivals and in medical care rooms were not subject to any restrictions. Juveniles could also make telephone calls themselves (at the cost of the facility) for 5 minutes a day (or longer if this was a reward which, according to the juveniles' reports, was not difficult to achieve). Telephone calls were made out of hearing of the staff.

Pursuant to the internal regulations of the facility, juveniles who had the right (as a privilege or a reward) to use a computer and the internet could contact their family members and relatives via Skype, which possibility was willingly used by them.

E. National Centre for the Prevention of Dissocial Behaviour in Gostynin

83. The CPT trusts that efforts will be made, in the context of the aforementioned extension of the National Centre, to offer more living space to all patients³¹⁸.

The CPT recommendation was not implemented. The living conditions in the centre deteriorated dramatically. At the time of the NMPT's visit, there were 91 patients in the facility, the capacity of which was for 60 people. Due to significant overcrowding, on 21 January 2021 the authorities of the facility had to make a decision to stop any new admissions³¹⁹. The deteriorating atmosphere, regime and poor living conditions were the cause of hunger protests which took place on 23 June 2020 and 1 February 2021³²⁰.

The overcrowding of the National Centre for the Prevention of Dissocial Behaviour was systemic and progressive. At the time of the NMPT's visit in 2019, there were 65 patients in the facility and since then the number of patients has steadily increased. At the time of the NMPT's

(Dz. U. [Journal of Laws] No. of 2019, item 2418).

³¹⁶ See: CPT report, CPT/Inf (2018) 39, paras. 108-109.

³¹⁷ See: Report on the visit to the juvenile correctional facility in Białystok, KMP.573.8.2020.JJ, point 4.4.

³¹⁸ See: CPT report, CPT/Inf (2018) 39, para. 118.

³¹⁹ See: Report on the visit to NCPDB, KMP.574.1.2019.JZ, point 4.1.

³²⁰ *Ibid.*, point 4.6. See also: Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2020, pp. 213-215. 4 patients were released from NCPDB but other persons were placed there by courts from all over Poland which considered the persons a threat to the society. As a result, there are still 92 patients in the establishment.

visit, two patients were transported to the Regional Centre for Forensic Psychiatry in Starogard Gdański³²¹. This action was meant to relieve overcrowding in the centre in the short term. It is worth emphasizing that the legislator and the Ministry of Health, to which the centre is subordinate, did not implement effective remedial measures to eliminate the overcrowding. The plans to build a new facility, about which the Polish government informed the CPT, were not put into effect³²².

As a result, the conditions the NMPT delegation observed during its visit in 2021 violated the prohibition of inhuman and degrading treatment of patients. In three of the four wards, patients lived in eight-bedded rooms fitted with bunk beds. The average living space per patient was approx. 3.4 m². Also in the ward, where previously the rooms were maximum two-bedded, the number of residents was increased to three.

The rooms and corridors were very crowded. There were about 50 people in each ward, including 5-9 security staff, orderlies, therapeutic staff, nurses and doctors. This high density caused a very tense atmosphere. Patients had no place to calm down, to “collect their thoughts”, or to control their emotions. Even a seemingly trivial matter could become a source of conflict. Verbal aggression, threats and provocations towards staff were commonplace. Physical aggression also occurred at times. The staff did not have their own association rooms and as a result, for example, they took meals in the patients’ canteens. Some meetings with psychologists were also held there. The conditions did not allow for effective therapeutic activities – the main purpose for which the centre was established.

In the NMPT’s view, effective and systemic remedial measures are necessary to eliminate overcrowding in the centre and enable proper therapeutic work. The non-decreasing overcrowding of the centre is the effect of the scope of application of the *Act of 22 November 2013 on proceedings with regard to persons with mental disorders posing a threat to life, health or sexual freedom of other people*, which includes persons with mental disability (placing in the centre also persons with intellectual disability). It is also the effect of the approach of directors of the penitentiary units from which convicts are sent to the National Centre for the Prevention of Dissocial Behaviour after serving their sentences. In order not to risk the safety of citizens by releasing sex offenders, they request their placement in the centre. Therefore,

³²¹ See: Regulation of the Minister of Health of 5 March 2021 amending the Regulation introducing the internal rules for the National Centre for the Prevention of Dissocial Behaviour (Dz. Urz. [Official Journal] of the Minister of Health of 2021, item 18). See: Report on the visit to NCPDB, KMP.574.1.2019.JZ, point 4.5.

³²² See: Report of the Polish authorities for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 19 June 2018 no. DWMPC-III-0825-18/16, p. 84. The legislator, however, has amended the *Act of 22 November 2013 on proceedings with regard to persons with mental disorders posing a threat to life, health or sexual freedom of other people* and has established a legal basis for rental of buildings from the Prison Service. The rented buildings will include the former Czersk External Ward of the Koronowo Prison; the building has already been allocated for use as a branch of NCPDB. Apart from this step, no other changes called for by the Commissioner for Human Rights since 2015 have been made.

it is important to comply with one of the CHR's requests to introduce at the central level the possibility to verify the justification for sending people to the National Centre for the Prevention of Dissocial Behaviour.

Without solving the problem of overcrowding, it is difficult to have positive staff-patient relations and to relieve tension in the institution, thereby avoiding an escalation of inappropriate behaviour. The observed living conditions also create a risk of legal liability of the state before the European Court of Human Rights in Strasbourg due to violation of Article 3 of the European Convention on Human Rights³²³.

84. The CPT invited the Polish authorities to remind all custodial staff at the National Centre in Gostynin that they should treat patients in a respectful manner³²⁴. The CPT also recommended that staff at the aforementioned establishments employ all means at their disposal to prevent inter-patient violence. In order to tackle this problem, staff should be alert to signs of trouble and both determined and properly trained to intervene when necessary³²⁵.

The CPT recommendations have been implemented in part³²⁶. During the visit, the NMPT delegation did not hear about cases of inappropriate treatment of patients by the centre's staff. The staff also abandoned a number of practices which raised the NMPT's concern during the previous visit, i.e. carrying out strip search of patients, applying immobilisation at the patient's request, preventive use of handcuffs in case of transport outside the centre. Handcuffs are applied only to patients under 75 years of age displaying aggressive behaviour and those who did not have a positive opinion of the centre. In the case of the latter group, they were applied in such a way that the patient's hand was clipped to the hand of the security officer as they got out of the vehicle, for the duration of their entry into the public building. In the case of patients who did not have a positive opinion from National Centre for the Prevention of Dissocial Behaviour, they were handcuffed with their hands in front and the cuffs were only fastened when the patient got out of the vehicle³²⁷.

³²³ See: Convention for the Protection of Human Rights and Fundamental Freedoms done in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and completed by Protocol No. 2 (Dz. U. [Journal of Laws] of 1993, no. 61, item 284). The data provided by the District Court in Gostynin also shows that in 2019-2020 the centre's patients filed a total of 33 lawsuits against the State Treasury seeking compensation for poor living conditions in the centre.

³²⁴ See: CPT report, CPT/Inf (2018) 39, para. 115.

³²⁵ Ibid, para. 116.

³²⁶ See: Report on the visit to NCPDB, KMP.574.1.2019.JZ, point 5 subpoints 1 to 6, 8 to 9 and 18.

³²⁷ One case was found by Deputy CHR Dr. Hanna Machińska during an interview with patients of the Regional Forensic Psychiatry Centre in Starogard Szczeciński. One of the patients reported that he had been handcuffed for the whole time while being convoyed to the centre. The patient was included in the list of 20 patients who, in the opinion of NCPDB, should be discharged from the centre. See: Report on the visit to NCPDB, KMP.574.1.2019.JZ, point 5(8).

Despite the overcrowding of the facility prevailing also at the time of the last NMPT's visit, the staff handled conflict situations well and avoided escalating dangerous situations. Mutual support, commitment to work and understanding were observed. Such attitudes were mentioned by patients themselves, emphasizing that staff members did not react to taunts and name-calling directed at them. However, the staff needed specialist support to maintain high standards of work and to prevent professional burnout (see also the NMPT's comments included in paras. 87 and 88 of the report)³²⁸.

The internal complaints mechanism also required improvement. This was because written patient complaints were kept in binders together with other patients' requests. Copies of the answers given or information on the handling of the case were attached to the documents. In some cases, patients' complaints and requests were also kept in their individual files. Thus, a large number of staff were able to read these records. This was not conducive to confidentiality and did not create a climate encouraging provision of information on irregularities.

The facility did not develop formal policies for dealing with information on sexual harassment and other forms of discrimination taking place against both patients and employees. There was one woman in the National Centre for the Prevention of Dissocial Behaviour, who in the past had mentioned inappropriate behaviour and taunts towards her by other patients to the facility authorities. Unfortunately, the situation did not change. The patient had her own room, but the verbal taunts from other patients caused her to be reluctant to go for walks. The NMPT's interviewees also said that one of the patients attempted to kiss the woman against her will, which was eventually thwarted by another patient. The patient's handwritten notes could be found in her medical records, in which she writes about, among other things, her mood depression caused by sexual harassment by one of the patients.

85. The CPT recommended that a serious reflection be undertaken into the concept and philosophy of treatment at the National Centre for the Prevention of Dissocial Behaviour in Gostynin, in the light of the above remarks. In addition, more should be done to provide therapeutic and rehabilitative activities such as anger management, life skills training, recreation and sports. This would help defuse ambient tension in the establishment³²⁹.

The CPT also recommended that all patients in the visited establishment benefit in fact from unrestricted access to outdoor exercise during the day unless treatment activities require them to be present on the ward³³⁰.

The CPT recommendations have not been implemented. As pointed out above, the facility's overcrowding made it impossible to ensure appropriate conditions for therapy and

³²⁸ A different picture was painted by complaints sent by NCPDB patients to the CHR Office's Penalties Enforcement Department. According to the Department Director Dr. Ewa Dawidziuk, the relations between the patients and the personnel should be described as tense.

³²⁹ See: CPT report, CPT/Inf (2018) 39, para. 121.

³³⁰ Ibid., para. 125.

had a negative effect on the atmosphere and mutual interactions among patients. Moreover, by the time of the NMPT visit only one patient had been released from the centre since its establishment (although for many patients, release approvals had been issued by the NCPDB therapeutic team)³³¹. Such practice reduced the patients' motivation for further therapy. They perceived their stay at the NCPDB as indefinite in time. They did not believe they would ever be dismissed from the centre even if they work hard towards changing themselves³³².

In the opinion of the NMPT, placement of people with moderate-level retardation in the facility is pointless as the therapy can bring no real change. The legislator should therefore consider amending the act of parliament applicable to the centre. Under the current legislation such persons are, in fact, admitted to the facility for indefinite time, which impacts the centre's overcrowding and security as well as other patients' perception of the role of the centre³³³.

The NMPT has considered that the range of therapies offered to patients should be broadened. Apart from therapeutic activities for individual patients it is necessary to introduce other forms of therapy, mainly based on a training system. The therapeutic process lacked such solutions as therapeutic community, group therapy or aggression replacement training³³⁴.

Other negative aspects of the social rehabilitation process at the facility were the non-existence of a temporary release scheme (despite the existence of such schemes for detainees in penitentiary establishments) and the frequent changes of therapists (in the case of one patient, since August 2016 there had been 11 changes of the therapist)³³⁵.

Patients had access to a gym for one hour a day, according to a special schedule. The room was equipped with treadmills, cross trainers and stationary bicycles. However, there was not much interest in the gym which was used mostly by the same group of patients³³⁶.

Compared to 2019, patients had the possibility to take part in outdoor activities which were more varied and could be practiced for a longer time. However, they were available only within specific hours. On workdays, patients could go for a walk for one hour a day and for an additional 30-minute walk between 8:00 p.m. and 8:30 p.m. On weekends and public holidays they were permitted to go for a walk for up to 2 hours. Going for a walk was a very popular activity because it provided an opportunity to speak on the telephone and the level of confidentiality of the calls was higher than in the building. The patients were permitted to walk around the building. There was also a volleyball and basketball pitch at the facility. There were plans to build an outdoor gym with two exercise stations, with the possibility of extension to four stations³³⁷.

³³¹ By the time this report was prepared, a total of 4 people were discharged from the centre, and 20 had opinions for exemption from National Centre for the Prevention of Dissocial Behaviour.

³³² See: Report on the visit to NCPDB, KMP.574.1.2019.JZ, point 4.1.

³³³ *Ibid.*, point 4.2.

³³⁴ *Ibid.*, point 5(19).

³³⁵ *Ibid.*, point 5(19).

³³⁶ *Ibid.*, point 5(27).

³³⁷ *Ibid.*, point 5(27).

86. The CPT was of the view that introducing the practice of signing „therapy contracts“ would help increase patients’ motivation to engage in therapeutic activities³³⁸.

The CPT recommendation has not been implemented. No therapy contracts were signed by patients. They did not know their rights and obligations within the patient-therapist relationship and their individual therapy programmes were not explained to them³³⁹. After its visit to the centre in 2019, the NMPT recommended that the practice be changed, yet no changes have been introduced.

At the NCPDB, individual therapy plans were developed for patients by the staff. They set out in detail the rules and aims of the therapy. Such plans could well serve as a starting point for concluding therapy contracts. This, however, would require explaining the individual plan to the patient and, together with them making adjustments prior to the contract conclusion. The contracts should be signed by the patients who would thereby confirm that they know its content. The practice would be in line with the recommendations of the CPT and the NMPT and could motivate patients better to engage in in therapeutic activities and work on themselves.

87. The CPT recommended that for the staff of the NCPDB, more outside support and supervision would be welcome as a means to prevent burnout³⁴⁰. Further, the CPT was of the opinion that guards at the National Centre would benefit from more training on how to deal with the kind of patients accommodated at the establishment, so as to be able to defuse conflict situations without resorting to special means³⁴¹.

The CPT recommendations have not been implemented. According to the studied documentation for 2019-2021, the NCPDB employees took part in the training courses in: diagnostic methods used in sexology (1 person); supervision (2 people); a workshop for clinical psychologists - practical skills and diagnostic tools (1 person), and first aid (100 persons). Three employees took part in the 5th International Congress of Forensic Psychiatry.

In 2019-2020, 160 staff members took part in a self-defence training session every month. In 2020, training courses were also held in: public procurement law, office administration, capital plans for employees, labour law and an emergency vehicle driving³⁴².

In 2021, a training course entitled “*Workplace stress management*” is planned to be conducted. The staff reported that the course would start in March 2021.

The NMPT advised the head of the NCPDB to conduct regular training for the staff in patient rights, contacts with difficult patients, conflict resolution, methods of coping with stress and aggression, professional burnout management and to introduce external supervision for all staff members.

³³⁸ See: CPT report, CPT/Inf (2018) 39, para. 124.

³³⁹ See: Report on the visit to NCPDB, KMP.574.1.2019.JZ, point 5(19).

³⁴⁰ See: CPT report, CPT/Inf (2018) 39, para. 126.

³⁴¹ Ibid., para. 128.

³⁴² See: Report on the visit to NCPDB, KMP.574.1.2019.JZ, point 5(3).

88. During the visit carried out in 2017 the CPT delegation observed that the guards at the NCPDB carried special means (long truncheons, handcuffs and pepper spray) at all times, including inside the accommodation areas and in full view of patients. This was an intimidating and unjustified practice; and the CPT recommended that it be ceased without delay³⁴³.

The CPT recommendation has not been implemented. During the NMPT visit the guards on duty were wearing special means in view of patients (handcuffs, pepper spray and multi-functional airsoft batons called tonfa batons³⁴⁴.

There were 5 to 9 guards on duty in the wards. Their presence was strongly visible due to the small area and overcrowding. In the opinion of the NMPT, such indiscreet presence of security staff in such a facility, in particular when staff members carry means of coercion in view of patients, may contribute to building therapeutic and social barriers in the centre.

In the opinion of the NMPT, it is also worth considering whether the NCPDB security staff should wear incapacitating gas spray. In case of a fight, a patient can relatively easily take the possession of the container. In such a densely populated space with relatively poor ventilation the health consequences for patients and staff could be serious.

According to international standards, chemical irritants should not be used in confined spaces without sufficient ventilation or number of exits (as their use entails a risk of death, serious injury caused by asphyxia, other injuries or unnecessary suffering). Such means should not be used either in the presence of elderly people or people with mobility problems for whom it would be difficult to avoid contact with the chemical substance³⁴⁵.

Taking into account the overcrowding of the centre and the fact that incapacitating gas should not be used in confined spaces, the NMPT recommended that incapacitating gas spray not be worn by the centre's security staff. In the opinion of the National Mechanism, the legislator should delete this measure of coercion from the list of measures that can be used in the NCPDB.

As regards the other means of coercion, due to the very difficult situation in the facility, caused by overcrowding and escalating tensions, it should be possible for the security staff to wear those special means. In the future, however, means of coercion should not be worn by security staff as regular equipment items at such establishments but should be available from specific rooms within the wards. It seems that until the introduction of another system of controlling patients (the applicable legislative act does not provide for any system of rewards and sanctions) the number of guards should not be reduced.

³⁴³ See: CPT report, CPT/Inf (2018) 39, para. 128.

³⁴⁴ See: Report on the visit to NCPDB, KMP.574.1.2019.JZ, point 5(7).

³⁴⁵ See: SPT report on the visit to Brazil, CAT/OP/BRA/1, para. 128. See also the following publications: Human Rights Handbook on Policing Assemblies, OSCE/ODIHR 2016, p. 79; United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, OHCHR 2020, point 7.2.7; Lowering the risk - Curtailing the use of chemical irritants during the COVID-19 pandemic, Omega Research Foundation 2020; the opinion is available in Polish at: <https://bjp.brpo.gov.pl/pl/content/zgromadzenia-uzycie-gazu-opinia-fundacja-omega-research-foundation>

89. The CPT had doubts as to the informal disciplinary sanctions e.g. confiscation of mobile phones, restricting access to the shop, etc. The CPT had misgivings about this practice, which would appear to have no place in a therapeutic establishment³⁴⁶.

The CPT standard has been implemented in part. During the NMPT visit to the centre, the system of rewards cancellation due to patient's misbehaviour was no longer used. The problem had been removed in practice but the centre's internal regulations still provided for such a system. The head of the NCPDB still had the powers to prohibit a patient to do shopping, to use a mobile phone (including the making of video and audio recordings, taking photographs, watching videos and using the internet), to make telephone calls and to use equipment which patients could normally hold: an MP3 player or MP4 player, a radio set, a game console and a pendrive (two items) with a capacity of up to 32 GB. The above-mentioned activities and the use of the said equipment were considered "rewards" granted before³⁴⁷.

The centre's internal regulations were inconsistent with the agreement concluded between the managers of the centre and the patients. The first point of the agreement provides that the patients may use their private smartphones and laptops with access to the internet if they pay for their use. Therefore, the NMPT has recommended that the regulations be adjusted to the rules adopted by the centre.

In the opinion of the NMPT, the relevant act of parliament should specify rewards and sanctions that may be applied in the centre. This would support the staff in adjusting their actions to the behaviour of the patients and to eliminate the risk of cruel or inhuman penalties that are contrary to the therapeutic aims of the centre.

³⁴⁶ See: CPT report, CPT/Inf (2018) 39, para. 136.

³⁴⁷ See: Report on the visit to NCPDB, KMP.574.1.2019.JZ, point 5(11).

VI. Summary and recommendations

90. The NMPT observations made during the thematic visits show that most of the CPT and the SPT recommendations have not been implemented, and that the lack of progress is systemic and long-lasting. The NMPT is concerned that the continued lack of decisive action towards implementing the CPT recommendations may result in issuing a public statement with regard to Poland, in accordance with the Committee's powers provided for in Article 10(2) of the European Convention for the Prevention of Torture of 26 November 1987. The possibility has already been emphasized by the CPT after its visits to Poland in 2013, 2017 and 2019.³⁴⁸

The issuing of a public statement with regard to Poland would be an official expression of the CPT's disapproval of the level of cooperation with the government in the field of preventing torture and all forms of ill-treatment of persons deprived of their liberty. The statement could also bring about legal effects e.g. during court proceedings, including before the European Court of Human Rights in Strasbourg whose judgments directly refer to the standards, observations and recommendations of the CPT³⁴⁹.

91. Recommendations of the NMPT:

- I. The Government, the Parliament and other state agencies should recognize that the CPT and the SPT standards and recommendations constitute an important legacy of civilization and a key element in the prevention of torture. For this reason, the solutions developed by these bodies should constitute a constant point of reference for state policy and should always be taken into account when drafting legislative acts, strategies, policies, guidelines and regulations.**
- II. It is necessary to review the recommendations of the CPT and the SPT in order to assess the possibility of changing the legislation applicable to the issues raised by these bodies. To this end, the government should establish a dialogue with the legislative authorities, professional association bodies and civil society in order to develop optimal solutions.**

³⁴⁸ See: CPT reports on the visits to Poland in: 2013 CPT/Inf (2014) 21, para. 8; 2017: CPT/Inf (2018) 39, para. 9; and 2019: CPT/Inf (2020) 31, para. 9.

³⁴⁹ See e.g.: ECtHR judgments in the cases of: *Kanciał v. Poland* of 23 May 2019, application no. 37023/13; *Kuchta and Mełtel v. Poland* of 2 September 2021, application no. 76813/16; *Muršić v. Croatia* of 20 October 2016 [Grand Chamber], application no. 7334/13; *Adzhigitova and others v. Russia* of 22 June 2021, applications no. 40165/07 and no. 2593/08; *Simeonovi v. Bulgaria* of 12 May 2017, application no. 21980/04.

- III. Relevant bodies should be allocated financial support making it possible for them to practically implement the CPT and the SPT recommendations.**
- IV. It is necessary to change the operating practices of uniformed service officers and other staff at places of detention. To this end, top managers of the individual types of facilities should send a strong message and should provide regular training taking into account the standards and recommendations of the CPT and the SPT.**
- V. Torture should be recognised as a separate crime under the Criminal Code provisions so as to meet the standards provided for in the UN Convention Against Torture. The legislative works should take into account the recommendations of international bodies (CAT, SPT and HRC) and the opinion of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) of 22 May 2018, no. CRIM-POL/325/ 2018 [TO].**
- VI. Effective and coordinated action is necessary to disseminate the knowledge of the Istanbul Protocol among professional groups that may come into contact with persons deprived of their liberty or victims of violence. All acts of torture and other forms of ill-treatment should be diagnosed, documented, reported and prosecuted in line with the protocol guidelines. The document should also constitute a constant element of training for the above mentioned professional groups.**
- VII. The Polish government should authorise the procedure of automatic publication of CPT reports and replies to the reports.**

Appendix I. List of places of detention visited by the NMPT

- 1) **Room for Detained Persons at the District Police Station Warsaw VI**, thematic visit carried out on 6 February 2020 with the aim to verify the degree of implementation of the CPT recommendations [report no. KMP.570.1.2020.AN];
- 2) **Room for Detained Persons at the Warsaw Metropolitan Police Headquarters**, thematic visit carried out on 4 March 2020 with the aim to verify the degree of implementation of the SPT and the CPT recommendations [report no. KMP.570.3.2020.KK];
- 3) **Room for Detained Persons at the Poviast Police Station in Piaseczno**, thematic visit carried out on 4 August 2020 with the aim to verify the degree of implementation of the SPT recommendations [report no. KMP.570.6.2020.JJ];
- 4) **Room for Detained Persons at the City Police Command in Opole**, thematic visit carried out on 16 and 19 August 2020 with the aim to verify the degree of implementation of the SPT recommendations [report no. KMP.570.17.2021.JZ];
- 5) **Police Emergency Centre for Children in Białystok**, thematic visit carried out on 14 July 2020 with the aim to verify the degree of implementation of the CPT recommendations [report no. KMP.573.12.2021];
- 6) **Warszawa-Białołęka Remand Prison**, thematic visit carried out on 3-5 February 2020 with the aim to verify the degree of implementation of the CPT recommendations [report no. KMP.571.1.2020.RK];
- 7) **Warszawa-Służewiec Remand Prison**, thematic visit carried out on 9-11 September 2020 with the aim to verify the degree of implementation of CPT recommendations [report no. KMP.571.27.2020.RK];
- 8) **Prison No. 2 in Strzelce Opolskie**, thematic visit carried out on 17-19 August 2020 with the aim to verify the degree of implementation of the CPT recommendations [report no. KMP.571.5.2021.MD];

- 9) **Guarded Centre for Foreigners in Lesznowola**, thematic visit carried out on 7-9 October 2020 with the aim to verify the degree of implementation of the CPT recommendations and recommendations of the NMPT following its visit to the facility in 2018 [report no. KMP.572.2.2018.KK];
- 10) **Guarded Centre for Foreigners in Białystok**, thematic visit carried out on 12-13 July 2021 with the aim to verify the degree of implementation of the CPT recommendations and recommendations of the NMPT following its visit to the facility in 2018 [report no. KMP.572.4.2018.KK];
- 11) **Juvenile correctional facility in Białystok**, thematic visit carried out on 23-25 September 2020 with the aim to verify the degree of implementation of the CPT recommendations [report no. KMP.573.8.2020.JJ];
- 12) **National Centre for the Prevention of Dissocial Behaviour in Gostynin**, the visit carried out on 8-10 March 2021 with the aim to verify the degree of implementation of the recommendations of the NMPT following its visit to the facility in 2019 [report no. KMP.574.1.2019.JZ].



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