



NATIONAL
MECHANISM
FOR THE PREVENTION
OF TORTURE



35 YEARS
COMMISSIONER
FOR HUMAN RIGHTS
1988 – 2023

REPORT

of the Commissioner for Human Rights
on the Activities of the National
Mechanism for the Prevention
of Torture and Inhuman
or Degrading
Treatment or Punishment
in Poland in 2022



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SOURCES



Report of the Commissioner for Human Rights on the Activities of the National Mechanism for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in Poland in 2022

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FOREWORD

In 2022, we celebrated a day of particular importance from the perspective of the protection of human rights. On 18 December last year, 20 years had passed since the adoption, by the UN General Assembly, of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)¹.



Thanks to the implementation of the OPCAT into the Polish legal system, the National Mechanism for the Prevention of Torture (NMPT) has been operating in Poland for nearly 15 years already as part of the Office of the Commissioner for Human Rights. Representatives of the NMPT carry out unannounced monitoring visits to all places of deprivation of liberty across the country: from penitentiary establishments and guarded centres for foreigners, through psychiatric hospitals, juvenile detention centres and sobering-up centres, to small private long-term care facilities and police detention facilities. It is behind the closed doors of such establishments, where contact with the outside world is limited, that the risk of mistreatment is particularly high.

Between 1 January and 31 December 2022, ten staff members of the National Mechanism for the Prevention of Torture conducted a total of 79 visits, including six carried out in the form of online monitoring at the time when direct contact was significantly difficult or impossible due to the epidemiological situation.

Reports of the NMPT not only describe cases of multiannual systemic negligence but also, in some situations, reveal likely gross violations of fundamental human rights. In particular, in the recent period, accounts of detainees disclosed possible cases of torture, including waterboarding² and foot whipping³, and of inhuman and degrading treatment⁴. Without the NMPT monitoring visits, many of those cases might not have seen the light of day. This is because the NMPT representatives reach out to people whose voices are not heard, for whom it is difficult to assert their rights and who remain in difficult conditions. The stories described in the post-visit reports are the best proof of the strong need for an independent body monitoring places of detention in Poland.

The role of the National Mechanism for the Prevention of Torture is not limited to conducting monitoring visits. Despite the low number of staff in 2022 the NMPT employees also draw up opinions on proposed amendments to laws and took part in parliamentary committee meetings at which they presented their comments and recommendations. They also took attempts to increase public awareness of the situation in places of detention and to applicable international standards.

It is worth emphasising that, in addition to drawing up reports and opinions, the NMPT attaches great importance to establishing a direct dialogue with officers and other staff members at places of detention. Training sessions, conferences and webinars for these professional groups were an excellent opportunity to present issues related to torture and ill-treatment prevention to them and to jointly seek solutions to ex-

¹ Journal of Laws of 2007, no. 30, item 192.

² See: Report of the National Mechanism for the Prevention of Torture on the visit to the prison in Barczewo, ref. no. KMP.571.13.2022.JJ.

³ See: Report of the National Mechanism for the Prevention of Torture on the visit to the National Centre for the Prevention of Dissocial Behaviours, the branch in Czersk, ref. no. KMP.574.2.2022.RK.

⁴ See: Report of the National Mechanism for the Prevention of Torture on the visit to the Voivodeship Independent Psychiatric Care Facilities in Warsaw, ref. no. KMP.574.3.2022.JZ; Report of the National Mechanism for the Prevention of Torture on the visit to „Etola” social care home in Ruda Pilczycka, ref. no. KMP.575.3.2022.AO; Report of the National Mechanism for the Prevention of Torture on the visit to „Czarnecky” private long-term care facility in Zielonka, ref. no. KMP.573.10.2022.MŻ.

isting systemic problems. In 2022, NMPT representatives trained over 130 police officers and conducted webinars for employees of social care homes, which were attended by over 420 persons.

The lifting of restrictions related to the Covid-19 pandemic translated directly into an increase in the number of training courses and other forms of on-the-job education conducted with the participation of NMPT employees. They take effort to constantly improve their working methods, broaden their knowledge and draw on international experience that can be applied in the Polish system of torture prevention. I believe that in the next year the interdisciplinary team of experts who, in their work, demonstrate extraordinary sensitivity to human suffering will be expanded thanks to obtaining additional funds for new jobs.

Thanks to the titanic work of the National Mechanism for the Prevention of Torture positive changes are taking place in many places of detention, thanks to which the risk of torture and other forms of ill-treatment is reduced. I know, however, that this is not possible without a serious approach to the recommendations of the NMPT, which, in many cases, requires the initiation of a constructive dialogue with managers of visited establishments and representatives of state and local authorities. In some cases, the intervention of the legislator is also necessary. It should be pointed out here that the prevention of torture and inhuman or degrading treatment requires a holistic, long-term and multidisciplinary approach.

I firmly believe that the problems identified in this report will become a reason for further discussion on the prevention of torture in Poland and for many institutions to work together, which, in turn, will contribute to better protection of the rights of persons deprived of their liberty.

Marcin Wiącek
Commissioner for Human Rights

Part I – Organization of work of the NMPT

COMPOSITION OF THE DEPARTMENT OF THE NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE

The National Mechanism for the Prevention of Torture constitutes one of the departments within the Office of the Commissioner for Human Rights. In 2022, the department's team consisted of 10 specialists and an employee working as a secretary. In the reporting year, direct supervision over the activities of the Department was exercised by Deputy Commissioner for Human Rights Hanna Machińska, Ph.D.⁵. NMPT staff members have education in the fields of law, sociology, political sciences, rehabilitation, psychology and criminology. In 2022, the NMPT team was supported by employees of the Commissioner for Human Rights' regional representative offices in Wrocław, Gdańsk and Katowice who, in addition to their work there, took part in the NMPT preventive visits to establishments within the area of responsibility of their respective offices. Moreover, because of the broad scope of responsibilities of the National Mechanism for the Prevention of Torture specialist support is provided to it by the NMPT Interdisciplinary Expert Committee.

■ Team Members of the National Mechanism for the Prevention of Torture:

- Przemysław Kazimirski – Director of the NMPT Department; lawyer;
- Marcin Kusy – Deputy Director; lawyer;
- Justyna Józwiak, Ph.D. – sociologist;
- Justyna Zarecka – political scientist, specialist in the field of internal security;
- Klaudia Kamińska – lawyer;
- Aleksandra Osińska – psychologist;
- Aleksandra Nowicka – criminologist, internal security specialist;
- Magdalena Dziedzic – lawyer;
- Rafał Kulas – lawyer;
- Michał Żłobecki – lawyer, specialist in international migrations;
- Grażyna Kalisiewicz – employee of the NMPT office, lawyer;

EXPERT COMMITTEE

Since 2016, the Expert Committee on the National Mechanism for the Prevention of Torture has been in operation with the aim to support the Commissioner for Human Rights. In 2022, the committee had the following members:

- Maria Ejchart-Dubois – co-chair;
- Justyna Józwiak, Ph.D. – co-chair;
- Klaudia Kamińska – secretary;
- Wojciech Brzozowski, Ph.D., professor of the University of Warsaw;
- Aleksandra Chrzanowska;
- Jerzy Foerster, M.D., Ph.D.;
- Witold Klaus, professor of the Institute of Law Studies, Polish Academy of Sciences;
- Paweł Knut, attorney;
- prof. Marek Konopczyński, Ph.D.;
- Marzena Ksel;

⁵ Since 1 January 2023 substantive supervision of the NMPT has been exercised by Deputy Commissioner for Human Rights Wojciech Brzozowski, Ph.D., professor of the University of Warsaw

- Maria Książak;
- Janina de Michelis;
- Maria Nietaczna, Ph.D.;
- Lt. Col. Lidia Olejnik;
- Mikołaj Pietrzak, attorney;
- Piotr Senddecki, attorney;
- Agnieszka Aleksandra Sikora;
- prof. Grażyna Barbara Szczygieł, Ph.D.;
- commander Bożena Szubińska;
- Katarzyna Wiśniewska, Ph.D.;
- Joanna Klara Żuchowska, M.D., Ph.D.

In 2022, the Expert Committee met once. The meeting was held online and was attended by: prof. Marcin Wiącek, Commissioner for Human Rights; Hanna Machińska, Ph.D., Deputy Commissioner for Human Rights; the NMPT Department directors and employees, and the experts of the Committee, including its newly appointed member prof. Wojciech Brzozowski, Ph. D. Hab., professor of the University of Warsaw.

The objective of the meeting was, first of all, to discuss the report on the NMPT activities in 2021 and to present and consult with the experts the Mechanism's work plan for 2022. A special guest of the meeting was Mykola Gnatovski, professor of international law at the *Taras Shevchenko National University*, who, in 2009-2021, was a member of the European Committee for the Prevention of Torture (CPT) and its president in 2015-2021.

On 8 December 2022, some members of the Committee resigned from further participation in its works.

FINANCING OF THE NMPT

Expenditures on the activities of the National Mechanism for the Prevention of Torture are covered from the state budget allocation to the CHR Office. According to the Annual Report on the Activity-Based Expenditures of the State Budget and of the European Funds Budget, in 2022 the CHR Office disbursed **4 036 773,16 PLN** for the activities of the National Mechanism for the Prevention of Torture.

The Polish authorities, despite the provisions of the OPCAT and the Paris Principles⁶, from the very beginning of the performance of the tasks of the national preventive mechanism by the Commissioner have not been allocating sufficient resources for this purpose. The insufficient budget allocated to the operation of the NMPT has been mentioned in the *Concluding observations of the Committee against Torture*⁷, in which CAT recommended as follows:



Poland should allocate the amount of funds requested by the Office of the Commissioner for Human Rights to enable it to discharge its mandate, and should increase significantly the resources provided to the National Preventive Mechanism in order to enable it to function effectively, hire the necessary specialized staff and to fully implement its mandate (...).

The issue of the Mechanism's financing has also been referred to by the UN Subcommittee on Prevention of Torture which, in the report on its visit to Poland carried out in 2018, recommended to the Polish authorities:



The Subcommittee recommends that the State party allocate, as a matter of priority, the financial resources needed by the mechanism, as required by Article 18 (3) of the Optional Protocol and the Subcommittee's guidelines on national preventive mechanisms (...)⁸.

⁶ Adopted by the UN General Assembly resolution no. 48/134 of 23 December 1993. The Paris Principles set out requirements to be met by human rights institutions. The main requirements to be met are independence and pluralism.

⁷ See: Committee Against Torture; Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, Article 24(a).

⁸ Report on the SPT visit to Poland, CAT/OP/POL/ROSP/1, Article 20.

PART II – How does the NMPT work?

The powers of the National Mechanism for the Prevention of Torture are laid down in Article 19 of the OPCAT. Although the primary method of work indicated by the OPCAT is the conducting of preventive visits to places of detention, such visits constitute only a part of the complex process aimed at improving the treatment of persons deprived of their liberty. In order to prevent torture and inhuman treatment it is also necessary to take other measures including education, training and activities increasing public awareness, as well as advisory activities such as the issuing of recommendations concerning changes in the legislation and law and of opinions on draft legislative acts.

METHODOLOGY OF THE VISITS

The National Mechanism for the Prevention of Torture may visit all places where people are deprived of liberty in Poland⁹. Such places include all establishments (public or private ones) 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 acquiescence¹⁰.

NMPT is not an investigative body. It does not consider complaints either¹¹. The aim of the NMPT visits is to identify factors increasing the risk of torture and ill-treatment of persons deprived of liberty and to propose solutions to eliminate the risk.



The National Mechanism for the Prevention of Torture carries out preventive visits which do not result from complaints. Such visits are unannounced.

During the visits, the Mechanism's representatives may record sound and image with the consent of individuals who are going to be recorded, as well as hold meetings with persons deprived of their liberty without the presence of other parties and meet individuals who, at their discretion, may provide significant information¹². The findings made by the NMPT during the visits are therefore based on various sources, including the Mechanism's own observations, conducted interviews, analysis of documents and video surveillance footage.

In all the visited establishments, the NMPT follows the same methodology. The first stage is to establish the composition of the visiting team¹³.

The visiting team consists of several persons, with one person performing the role of the coordinator who is responsible for drawing up a visit report. Two persons, including the team coordinator, inspect the premises and buildings of the establishment, while others have individual conversations with persons deprived of their liberty. External experts participating in visits draw up expert opinions which are incorporated in the visit report.

⁹ Article 19 OPCAT.

¹⁰ Article 4 OPCAT.

¹¹ See: Ninth Annual Report of the SPT of 22 March 2016, CAT/OP/C/57/4, Annex thereto, part II, point 6. See also the publication of the Office of the United Nations High Commissioner for Human Rights entitled „Preventing Torture. The Role of National Preventive Mechanisms. A Practical Guide”, Professional Training Series No. 21, United Nations High Commissioner for Human Rights, New York and Geneva 2018, p. 4-6.

¹² Article 13(1a) of the *Act on the Commissioner for Human Rights* of 15 July 1987 (Dz. U. [Journal of Laws] of 2020, item 627).

¹³ According to the OPCAT provisions, experts of national preventive mechanisms should have the required capabilities and professional knowledge.

The duration of a specific visit depends on the size of the visited establishment, and is between several hours and 5 days.

Every visit of the NMPT comprises the following stages:

- conversation with the establishment's managers,
- inspection of all rooms used by persons deprived of their liberty,
- individual and group conversations with detainees,
- conversations with the personnel,
- analysis of documents and video surveillance footage,
- formulation of preliminary post-visit recommendations,
- listening to the establishment managers' opinions on the presented recommendations.

If a person deprived of his/her liberty reports an unlawful event during the visit, and expresses the desire to have it investigated, he/she has the opportunity to lodge an official complaint. The complaint is then forwarded to the competent team within the Office of the Commissioner for Human Rights. If the content of the complaint reveals grounds for notifying the prosecutor's office about a suspected crime, the decision in this regard is taken by the Commissioner for Human Rights.

Yet, if the person does not consent to addressing the issue officially, the visiting team shall only use the information for the purposes of analysing the operation of mechanisms intended to protect persons deprived of their liberty against degrading or inhuman treatment or punishment as well as from torture at a given establishment, and for the purpose of presenting relevant recommendations.

Due to the epidemiological situation some of the visits had the form of remote monitoring. They consisted in interviews, held remotely via an internet communicator, with persons deprived of liberty and the staff of the facility in question. In each of the visited establishments, a special closed room with a computer station and access to the internet was allocated to ensure holding the interviews without the presence of third persons. As in the case of physical on-site visits, the establishment directors, officers and persons deprived of liberty were informed of the prohibition of reprisals, provided for in Article 21(1) of the OPCAT.



According to Article 21 (1) OPCAT no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

When the visit is completed, a report is drawn up which describes all the findings and conclusions, as well as recommendations for the body managing the visited establishment and for its supervisory authorities. When formulating its conclusions and recommendations, the NMPT takes into account international human rights standards, in particular those set out by the UN¹⁴, and recommendations of international bodies. If the establishment's managers do not agree with the recommendations, the NMPT representatives request the supervisory body to issue their opinion and position on the matter. Such a dialogue is conducted to explain the merits of the NMPT's recommendations whose implementation will strengthen the protection of the rights of persons deprived of their liberty at the visited place.

During on-site visits conducted in person, NMPT employees use measuring and recording devices: multimeters, laser rangefinders and cameras.

NMPT VISITS

In 2022, representatives of the NMPT carried out a total of 79 preventive visits, 6 of which were held remotely due to the epidemic. Some of the visits were carried out ad hoc, with the aim to assess the conditions of detention and treatment of persons deprived of their liberty at Border Guard-operated

¹⁴ Article 19(b) OPCAT.

facilities. The visits were carried out in connection with the visible increase in the number of foreigners crossing the border between the Republic of Belarus and the Republic of Poland, in some cases in an irregular manner. Moreover, due to the outbreak of the war in Ukraine, the NMPT carried out ad hoc visits to Border Guard posts located along Poland's border with Ukraine. Their aim was to assess the situation and detention conditions of persons of non-Ukrainian citizenship who did not have valid identity documents or had documents raising doubts on the part of Border Guard officers, and whose identity, therefore, required additional verification.

In 2022, the National Mechanism for the Prevention of Torture carried out monitoring visits to:

- 9 prisons;
- 3 remand prisons;
- 11 rooms for detained persons within police organizational units;
- 3 youth care centres;
- 2 district youth care centres;
- 4 juvenile detention centres;
- 2 juvenile shelters;
- 1 juvenile detention centre with a juvenile shelter;
- 10 private long-term care facilities;
- 7 social care homes;
- 1 residential medical care facility;
- 9 Border Guard posts;
- 6 guarded centres for foreigners;
- 4 rooms for detained persons within Border Guard posts;
- 2 sobering-up centres;
- 4 psychiatric hospitals;
- 1 post-penal detention facility¹⁵.

The conclusions on the visits held in 2022 are presented in part IV hereof.

EDUCATIONAL ACTIVITIES

■ Training for professionals

The lifting of restrictions related to the Covid-19 pandemic directly translated into an increase in the number of training courses which NMPT representatives could attend. Particular attention was paid to the use of coercive measures. At the Police Training Centre in Legionowo, NMPT members took part in training carried out by police officers on the use of stun guns¹⁶. During the meeting, the officers presented, among others, tactical and technical aspects of the use of electroshock devices used to physically incapacitate people during police interventions. The legal regulations regarding the use of such devices were also discussed. In addition, representatives of the NMPT took part in a training on the application of coercive measures in penitentiary establishments in light of the case law of the European Court of Human Rights and the standards and recommendations of the European Committee for the Prevention of Torture. The training was conducted by a former plenipotentiary of the Minister of Foreign Affairs for proceedings conducted before the European Court of Human Rights.

In 2022, international-level training was also held, which enabled the exchange of experience with representatives of national preventive mechanisms from other countries. Deputy Director of NMPT Marcin Kusy took part in a training for representatives of monitoring bodies and ombudsman institutions from

¹⁵ National Centre for the Prevention of Dissocial Behaviours in Gostynin.

¹⁶ <https://bip.brpo.gov.pl/pl/content/RPO-prawne-i-praktyczne-aspekty-stosowania-paralizatorow-przez-funkcjonariuszy-policji-wizyta-Legionowo>

European and Asian countries¹⁷. During the training, he presented the activities of the NMPT on the Polish-Belarusian border, at refugee detention facilities and at police-operated detention centres. All employees of the NMPT participated in international training on monitoring sexual and gender-based violence in places of deprivation of liberty. The training was organized in Warsaw by the OSCE Office for Democratic Institutions and Human Rights (ODIHR)¹⁸. The experts discussed with the participants the methodology of the visits, taking into account the issue of sexual and gender-based violence and the assessment of the risk of such violence, and presented examples from various countries of the OSCE region.

Attention was also paid to improving the soft skills of NMPT employees. The team members participated in training on interviewing so-called difficult clients, conducted by the former president of the Polish Association of Forensic Psychologists. The training entitled "Understanding emotions - how to consciously manage emotions and personal energy in order to meet challenges and maintain energy at all times" was very beneficial for the participants. The clinical psychologist who conducted it focused primarily on conducting interviews at places where people are deprived of their liberty, including on the effective identification of possible risks posed by interviewed persons. It should be noted as well that in 2022, similarly as in the previous years, every team member of the NMPT had the possibility to attend an individual consultation with a psychologist. Some members took part in regular monthly supervision meetings in which they could discuss, on current basis, difficult situations faced by them during the conducted visits.

Moreover, similarly as other employees of the CHR Office, NMPT attended first aid training that was organized by a company operating on behalf of the "Great Orchestra of Christmas Charity" foundation.

■ Social campaign "state without torture"

In 2022, representatives of the NMPT continued training activities within the campaign "State without Torture". The aim of the campaign is to increase, among officers and other staff members of establishments where persons are deprived of their liberty, the awareness of the need to prevent torture and other forms of ill-treatment and to build a culture of non-acceptance of torture.

Special attention was paid to training for police officers, which, after the Covid-19 pandemic, was conducted in the on-site form again. The training was attended by officers from the voivodeship police units of the Podkarpackie voivodeship¹⁹ and Dolnośląskie voivodeship²⁰. The participants included, among others: police units' commanders, heads of prevention units, heads of patrol and intervention units, and officers serving in such units. In November, a training session was also conducted for human rights leaders from the Central Investigation Bureau of the Police²¹.

■ Over 130 police officers were trained by the NMPT

During the meetings with police officers, NMPT representatives presented the methodology of work of the National Mechanism for the Prevention of Torture. They spoke about the minimum anti-torture safeguards, the effective implementation of which contributes to reducing the risk of ill-treatment of people detained by the police. A lot of attention was also paid to discussing conclusions drawn from the visits to police detention facilities and to the systemic problems diagnosed by the NMPT. During the training, the participants learned about the so-called Mendez Principles that constitute an exemplary model of conducting police interrogations and interviews based on the principle of respect for fundamental rights of apprehended persons and on the principles of presumption of innocence and objective truth. Particular

¹⁷ <https://bip.brpo.gov.pl/pl/content/szkolenie-mechanizmy-prewencji-ombudsmani-odih>

¹⁸ <https://bip.brpo.gov.pl/pl/content/tortury-szkolenie-osce-odih-rpo>

¹⁹ The training was held on 14 June 2022 in Rzeszów. It was attended by about 50 officers. See: <https://bip.brpo.gov.pl/pl/content/rpo-interwencje-policji-osoby-zaburzenia-psychiczne-szkolenie-kmpt>

²⁰ The training was held on 15-16 December 2022 in Wrocław. The two training groups comprised about 60 officers. See: <https://bip.brpo.gov.pl/pl/content/kmpt-szkolenie-policja-dolny-slask>

²¹ The training was held on 15 November 2022 in Warsaw. It was attended by about 20 officers. See: <https://bip.brpo.gov.pl/pl/content/panstwo-bez-tortur-szkolenie-kmpt-dla-cbsp>

attention was also paid to the conclusions from the study “Interventions regarding persons with mental disorders”, carried out for the NMPT by the national consultant in psychiatry, forensic medicine specialists and experts in medical law²². The meetings with police officers were carried out based on dialogue and exchange of experience. They made it possible, on the one hand, to present the responsibilities of the NMPT and the specific nature of its visits and, on the other hand, to better understand the problems faced by police officers on a daily basis. The meetings were held thanks to the engagement of representatives of the commanders of the regional police units and the commander of the Police Central Bureau of Investigation for human rights protection.



Over 420 employees of social care homes attended NMPT training sessions

In 2022, cooperation with the TZMO foundation *Razem Zmieniamy Świat* (Together We Change the World) was continued. As part of the series of free-of-charge webinars for long-term care institutions, the NMPT representatives conducted two training sessions on the rights of residents of social care homes. They presented the NMPT’s work methodology and the main problems observed during visits to such establishments. They also answered questions from employees of social care homes. Each of the webinars was attended by over 200 participants.

Online training was also carried out for employees of youth care centres and youth social therapy centres. The training was organized in cooperation with the Centre for Education Development in Sulejówek. A representative of the NMPT conducted a training for the University of Warsaw’s students who, in their future professional work, may come in contact with persons deprived of their liberty.

■ Conferences and debates

In 2022, NMPT representatives took part in a number of conferences both at the national and international levels.

Particular attention during the events was paid to changes brought about by the adoption of the *Act on support and social rehabilitation of juvenile delinquents*, on which the NMPT presented a number of comments. They were set out in detail, for example, by NMPT representative Magdalena Dziejdz during the conference entitled “Support and social rehabilitation, or detention and penalties for juvenile delinquents?²³”, held in the Sejm. Psychological care and psychotherapy in youth care centres was, in turn, the subject of a presentation by Aleksandra Osińska who, on behalf of the NMPT, took part in the First Psychological and Pedagogical Congress of youth care centres/youth sociotherapy centres, held in Goniądz²⁴. During the meeting of representatives of national preventive mechanisms from EU member states, which took place in Strasbourg, NMPT Director Przemysław Kazimirski discussed the situation of underage mothers placed in social rehabilitation establishments²⁵. Such meetings are held periodically, and in the reporting year the main focus was on monitoring the observance of the rights of people deprived of their liberty who belong to so-called vulnerable groups (juveniles, elderly people, women, migrants, LGBTQI people). The NMPT director described the efforts undertaken by the National Mechanism for the Prevention of Torture with the aim to establish, in facilities for juveniles, special units for underage mothers and their children.

In 2022, the 5th international meeting of representatives of national preventive mechanisms and non-governmental organizations from member states of the Organization for Security and Co-operation in Europe (OSCE) was held in Warsaw²⁶. The key subject was the application of coercive measures against

²² <https://bip.brpo.gov.pl/pl/content/broszura-kmpt-interwencje-policji-zaburzenia-psychiczne>

²³ <https://bip.brpo.gov.pl/pl/content/brpo-sejm-konferencja-ustawa-nieletni-resocjalizacja>

²⁴ <https://bip.brpo.gov.pl/pl/content/kongres-psychologiczno-pedagogiczny-mow-mos-udzial-przedstawielek-brpo>

²⁵ <https://bip.brpo.gov.pl/pl/content/kmpt-konferencja-ue-prawa-osob-z-grup-wrazliwych-pozbawionych-wolnosci>

²⁶ <https://bip.brpo.gov.pl/pl/content/kmpt-spotkanie-krajowe-mechanizmy-prewencji-srodk-przymusu>

persons deprived of their liberty. NMPT Director Przemysław Kazimirski presented the Mechanism's method of communication with general public by way of NMPT statements issued in connection with published recordings of police interventions. The statements analyse the recordings taking into account e.g. relevant international standards regarding the use of coercive measures, or anti-torture guarantees. Thanks to this form of communication every citizen can increase their awareness of the rights of detained persons.

For several years, the NMPT has also paid close attention to the situation at the National Centre for the Prevention of Dissocial Behaviours in Gostynin. In 2022, a conference entitled "Cases before the Court in Strasbourg regarding the National Centre for the Prevention of Dissocial Behaviours²⁷" was held at the CHR Office. In its course Rafał Kulas presented the conclusions from the visit carried out by the NMPT at the Centre's branch in Czersk in the context of a possible violation of Article 3 of the European Convention on Human Rights.

■ NMPT statements

Since 2017, the National Mechanism for the Prevention of Torture has been using a communication tool in the form of NMPT statements²⁸. The statements present the NMPT's position on events significant from the point of view of torture prevention.

In 2022, the NMPT issued statements with regard to:

- International Day in Support of Victims of Torture;
- International Prisoners Justice Day;
- The 20th anniversary of the adoption of the Optional Protocol to the Convention against Torture.

ADVISORY ACTIVITIES

■ CHR's general intervention letters drawn up at the initiative of the nmpt and other important letters

1. The need to regulate the admission to private long-term care facilities of persons not capable of expressing their will²⁹

During the visits to private long-term care facilities, the NMPT identified the problem of the lack of legal regulations on admission to such facilities of persons who are not officially incapacitated but are not capable of clearly perceiving realities, consciously expressing their will or making decisions, and have no legal representatives to do this for them. Another problem is related to cases in which a resident, upon admission, is fully aware of realities and is able to complete all formalities independently and voluntarily, but over time and with the development of the disease the resident loses the ability to clearly perceive their situation. In such cases, there are no tools for verifying whether the resident still intends to remain in the facility. In order to prevent such situations and the abuse of persons who are not formally incapacitated but, due to their health condition, are not capable of consciously expressing their will, a mechanism of judicial control should be introduced, in the opinion of the NMPT, in order to assess their placement and further stay in the facility. At present, the admission of legally incapacitated persons to private long-term care facilities is regulated in detail. According to Article 68c of the *Act on Social Assistance*³⁰, a fully incapacitated person may be placed in a facility providing long-term care to disabled, chronically ill or elderly persons with a written consent of their legal representative. The representative's consent is granted after the consent of a guardianship court with jurisdiction over the place of residence of the fully incapacitated person. There are also regulations regarding the admission to social care homes of persons with mental illness or mental

²⁷ <https://bip.brpo.gov.pl/pl/content/rpo-sprawy-przed-etpc-kozzd-konferencja-relacja>

²⁸ <https://bip.brpo.gov.pl/tagi/o%C5%9Bwiadzczenia-krajowego-mechanizmu-prewencji-tortur>.

²⁹ General intervention letter of the CHR to the Minister of Family and Social Policy of 25 January 2022, ref. no. KMP.573.1.2022.

³⁰ Journal of Laws of 2023, item 901, as amended.

retardation, despite the lack of their consent. Namely, according to Article 39(3) of the *Act on Mental Health Protection*³¹, if a person needs to be placed in a social care home because of his/her mental condition but is not capable of granting his/her consent, the decision on the person's placement in such a home is taken by the guardianship court. In this view, the situation of such persons should also be regulated by law. In the opinion of the NMPT, it would therefore be desirable to regulate it in generally applicable legislation, e.g. by way of solutions similar to the guardianship court's consent to the provision of health care services, which is granted pursuant to the provisions of the *Act on the professions of physician and dentist*, or the guardianship court's consent to placement in a psychiatric hospital. The consent of a guardianship court would significantly strengthen the protection of persons placed in private long-term care facilities who are often left there without any influence over their future. The solutions should also regulate the powers of family members or other persons to apply to a court for a consent to the placement of their close persons in an institution. With this in mind, the Commissioner requested the Minister of Family and Social Policy to take a position on the issue and to consider taking action to regulate it at the level of a parliamentary act.

2. Access of a detained person to a defence counsel from the outset of detention and the need to introduce a separate crime of torture into the Criminal Code³²

In 2022, the Commissioner for Human Rights continued his correspondence with the Minister of Justice regarding the need to ensure to detained persons contact with a defence counsel from the outset of detention and the need to introduce a separate crime of torture into the Criminal Code³³.

The absence of such an offence is not only contrary to Poland's international obligations regarding the criminalisation of torture but is also conducive to evading responsibility by the perpetrators. This has been confirmed in practice. Court judgments in cases regarding acts provided for in Article 246 of the Criminal Code show that penalties imposed on perpetrators are within the lower range of severity and that courts and prosecutors do not define the committed acts as "torture". This negatively impacts the building of legal awareness among officers and other persons responsible for combating the phenomenon, and among general public. Also, the application of different provisions of the Criminal Code by law enforcement agencies with regard to acts that have features of torture (Articles 246, 247 or 231 of the Criminal Code) may also lead to discrepancies in the practice of law enforcement bodies, and makes it difficult to monitor torture and to react to signals from relevant institutions. The need for the criminalisation of torture and full implementation of the UN Convention into the Polish legislation has been highlighted by many international institutions: the Committee Against Torture (CAT), the Subcommittee on Prevention of Torture (SPT), the UN Human Rights Committee and the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

The CHR does not share the Minister's argumentation regarding detained persons' access to a defence counsel from the onset of detention. A number of examples show that the protection of the citizens, guaranteed by the current legislation, is only illusory. Apprehended persons are in fact deprived of legal assistance during procedural actions and being questioned by the police. This, combined with the lack of other procedural safeguards (e.g. the lack of audio and video recording of procedural actions) creates a high risk of torture and ill treatment. Access to a defence counsel at the early stages of detention could be a deterrent to officers thinking about the use of violence against a person to be interrogated or questioned, and where such situations have taken place, it enables a rapid response and the collection of evidence of the crime. Real access of a detained person to a defence counsel is therefore a fundamental safeguard indicated by numerous international bodies. The presence of a defence counsel during interrogation may also contribute to improving the standards of police officers' work (and thus to building an appropriate institutional culture) and to protecting officers against slander by interrogated persons or against other

³¹ Journal of Laws of 2022, item 2123.

³² General intervention letter of the CHR to the Minister of Justice of 25 January 2022, ref. no. KMP.570.3.2017.

³³ See: CHR's report on the activities of the NMPT in Poland in 2021.

allegations concerning the standards of work of the police and the respect for the rights of detainees. In view of the above, the Commissioner has requested the Minister of Justice again to analyse the issue and to provide information about his position on it and on activities taken.

3. Lack of food products for people with special dietary requirements in prison canteens³⁴

During a preventive visit to one of the prisons, the NMPT identified a problem that can significantly impact the conditions of imprisonment and can potentially lead to violations of the prohibition of inhuman or degrading treatment, set out in Article 3 of the European Convention on Human Rights. In the visited prison, the canteen offer was very poor and food products for people with special dietary needs, e.g. with certain types of food intolerance (e.g. of lactose and gluten), were not available. After the introduction of the so-called food e-parcels, prisoners and their relatives can only order products that are available from the entity running the prison canteen. It is, therefore, not possible to receive food products from outside the prison to meet special dietary needs of some inmates.

Because of the limited canteen offer and the existing provisions of the Executive Penal Code, persons on specific diets who suffer from food intolerances are „dependent” only on the products available at the prison. For obvious reasons, such as the performance of physical work, the presence of illness, old age, dietary habits or different energy needs, in some cases prison meals may be insufficient. The requirement for inmates to buy food parcels only from the prison (at the canteen) was introduced by an amendment to the Executive Penal Code, which entered into force on 1 July 2015.

The solution raised doubts of the Commissioner for Human Rights e.g. with regard to the fact that parcels may be received by prisoners only from their closest persons. In the Commissioner's opinion, restricting the group to the closest persons has features of discrimination, especially as regards prisoners who have no relatives or maintain no contact with them. The CHR Office received complaints from prisoners concerning the possibility to practically exercise the right to receiving e-parcels, in particular the delays in their delivery or the lack of possibility to order, for example, fresh fruit or vegetables. In the Commissioner's view, every person deprived of liberty should be guaranteed equal access to the possibility to buy products at the prison and to receive food parcels purchased by persons close to them. At present, due to the limited range of products available from entities that sell e-parcels, detainees with food intolerance or those on other diets cannot buy products they need. This undermines the right to serve a prison sentence in a humane way. In view of the above, the Commissioner requested the Director General of the Prison Service to take a position on the issue and to provide information on activities taken by him.

4. Progress in the implementation of the *Principles on effective interviewing for investigations and information gathering* – the Mendez Principles³⁵

Practical implementation of the so-called Mendez Principles (Principles on Effective Interviewing for Investigations and Information Gathering), combined with the provision of specialised training for officers in modern interrogation methods and professional interrogation conditions (in special rooms with equipment ensuring audio and video recording of such procedures) will significantly reduce the risk of torture, improve the efficiency of pre-trial proceedings and allow officers to use their professional potential. The Mendez Principles have recently been positively assessed by the Committee against Torture (CAT), the Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and have been considered an important tool for obtaining accurate and reliable information while fully respecting the human rights and procedural safeguards of interrogated persons. Therefore, the issue of their practical implementation in individual countries will be subject to analysis by international institutions.

³⁴ General intervention letter of the CHR to the Director General of the Prison Service of 09 February 2022, ref. no. KMP071.1.2022.

³⁵ General intervention letter of the CHR to the Police Commander-in-Chief of 16 February 2022, ref. no. KMP.570.9.2021.

The Commissioner, therefore, welcomed the information about their planned implementation e.g. in the forms of: disseminating the document in an electronic version among officers and civilian employees for training purposes; gradual provision to relevant units of equipment for sound and image recording during interrogations, as well as the planned allocation of funds for the installation of video surveillance systems in places where people remain in legal isolation. Furthermore, the Minister of the Interior and Administration informed that the Principles would be analysed in detail in order to possibly be included in the training programmes of police officers.

After analysing the received information, the Commissioner identified the need to extend the training programmes to cover the Principles. The implementation of the Mendez Principles is a comprehensive step that requires coordinated action, including the provision of appropriate training and equipment to officers, the revision of educational materials and procedures, and a systematic review of working methods. In view of the above, the Commissioner requested the Police Commander-in-Chief to provide information on the progress of the implementation of the Mendez Principles.

5. Monitoring by the Commissioner for Human Rights of deportations of foreigners³⁶

The Commissioner for Human Rights wrote to the Minister of the Interior and Administration already in 2020 about the need to amend Article 333 of the *Act on Foreigners*³⁷, which regulated the participation of independent observers in enforcing decisions that impose on foreigners the obligation to return to their country of origin. The Commissioner argued, inter alia, that non-inclusion of the CHR in the list of entities authorised to observe deportation operations resulted, in practice, in the limitation of the CHR mandate. He also pointed out that, in the light of the small number of operations with the participation of observers in the preceding years, the national system of deportation monitoring did not meet the requirement of effectiveness, set out in Article 8(6) of the so-called return directive. From the reply of the ministry it appeared that the minister agreed with the need to amend the above-mentioned article. Subsequently, the Commissioner received a draft amendment of the *Act on Foreigners* and certain other acts, relating to the issue and dated 8 June 2021, and was requested to express his opinion on it. The Commissioner's comments on the draft, contained in his opinion of 16 July 2021, were initially taken into account during the works on the draft amendment of the *Act on Foreigners*. Finally, however, the draft was not submitted to the parliament for consideration. The next draft amendment, submitted to the Speaker of the Sejm, did not take into account the subject of the Commissioner's monitoring of deportation operations.

In view of the above, the Commissioner upheld the position expressed in his intervention letters in 2020, in particular in light of the dynamic increase, since mid-2021, of the number of foreigners crossing the Polish-Belarusian border in an irregular manner. The migration situation at that time led to a significant increase in the number of forced return operations carried out by the Border Guard. Therefore, it was of special importance to ensure the conduct of such operations in line with the international standards of protection of the rights of people deprived of their liberty and the applicable European Union law provisions. The Commissioner requested the Minister of the Interior and Administration to provide information on the reasons for which the previously considered draft amendment to the *Act on Foreigners* and certain other acts of 8 June 2021 was not proceeded further. At the same time, he called again for taking urgent legislative action to make it possible for the Commissioner for Human Rights to fully exercise his mandate within the scope of monitoring deportation operations.

³⁶ General intervention letter of the CHR to the Minister of the Interior and Administration of 19 April 2022, ref. no. KMP.572.5.2018

³⁷ Journal of Laws of 2023, item 519.

6. Regulation, by way of a parliamentary act, of non-standard forms of mechanical restraint applied to residents of nursing facilities and long-term care and treatment facilities³⁸

During the visits to nursing facilities and long-term care and treatment facilities, the NMPT noticed the practice of applying non-standard procedures in taking care for residents. They included e.g. the use of hand straps; putting socks on residents' hands to prevent them from scratching parts of the skin changed by a disease; tying a resident to the bed with a strap on the hand in order to prevent them from falling down off the bed or from accidental removal of percutaneous endoscopic gastrostomy (PEG), securing residents who are unable to remain in the proper sitting position in an armchair, chair or wheelchair, by using bed-sheets, towels, back support belts or even tights. In the opinion of the Commissioner for Human Rights, such cases reflect a systemic problem of the use by facilities' staff of methods that are formally not considered coercive measures and are thus not regulated in the *Act on Mental Health Protection* but, in practice, limit the freedom of residents and pose a potential risk of excessive use of such methods and uncontrolled interference with the freedom of individuals.

The existing legislative system does not contain regulations or guidelines setting out situations justifying the application of non-standard security measures with regard to residents of residential care institutions, or the procedures and equipment that may be used in their application. The NMPT visits have shown that in using non-standard security measures the staff apply everyday items, although, in the opinion of the Commissioner, specialized and certified products should be used to guarantee the safety of use in elderly or disabled persons. Moreover, the use of such non-standard security measures is very rarely recorded in residents' medical documentation because there is no requirement to register it. In most cases identified by representatives of the National Mechanism, non-standard security measures were not applied by staff with specialist knowledge, such as doctors, psychiatrists or physiotherapists but by other staff members. Detailed regulation, in the form of a parliamentary act, of the use of such elements would enable the unification of practices used in residential care facilities and the avoidance of possible discrepancies in the interpretation of the applicable regulations, in particular in determining whether a given method constitutes a coercive measure or not.

The objective of the new regulation should also be to guarantee that the said practices are performed in a professional manner with the use of appropriate equipment in order to ensure the safety of residents. According to Article 31(3) of the Constitution, restrictions on the exercise of constitutional freedoms and rights may be established only by a parliamentary act and only when they are necessary in the democratic state for its security or public order or for the protection of the environment, public health or morals or the freedoms and rights of other persons. Such restrictions may not undermine the essential nature of freedoms and rights. In view of the discrepancies in the application of the said practice in various residential care institutions as well as the need to protect the lives and health of people placed there and to minimize the risk of torture and inhuman or degrading treatment, the Commissioner requested the Minister of Health to express an opinion on the matter and to consider taking action to regulate it at the level of a parliamentary act.

7. Lack of effective mechanisms to minimise the risk of torture³⁹

The large amount of work to still be done in Poland in the area of torture prevention has been confirmed by the recommendations of international bodies: the UN Subcommittee on the Prevention of Torture (SPT) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Representatives of the two bodies visited places of deprivation of liberty in Poland in 2018-

³⁸ General intervention letter of the CHR to the Minister of Health of 13 June 2022, ref. no. KMP.573.9.2022.

³⁹ General intervention letter of the CHR to the Chairman of the Committee on Human Rights, Rule of Law and Petitions of the Senate of the Republic of Poland of 14 September 2022, ref. no. KMP.071.4.2021.

2019. In the thematic report published in January 2022, the NMPT concluded that most of the bodies' recommendations, including those regarding the work of the police, had not been implemented.

The Commissioner for Human Rights also drew attention to a number of issues which are caused by incorrect operation of law in various social areas and which should lead to undertaking legislative work by the Senate Committee on Human Rights, Rule of Law and Petitions. The issues, although reported to the competent authorities, still remain unresolved. The CHR pointed e.g. to the need to implement Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, within the scope of: assistance of a lawyer, right to information, recording of hearings conducted by the police or a prosecutor, a child's stay in custody or a police emergency facility for juveniles, the participation of the parents and the child in a court trial, special qualifications of judges, prosecutors and employees of law enforcement agencies and detention facilities. Furthermore, according to the Commissioner it is necessary to increase the secrecy of information provided to representatives of professions of public trust so that it is not possible for law enforcement authorities to circumvent the secrecy requirement. The CHR again pointed to the inconsistency regarding the institution of "minor crown witness" that exists in four significantly different forms (see: Article 60(3) of the Criminal Code; Article 60(4) of the Criminal Code, Article 259b of the Criminal Code, Article 277c of the Criminal Code, Article 277d of the Criminal Code and Article 36(3) of the Criminal Fiscal Code). The forms should thus be unified. It is also needed to introduce the requirement to record hearings with the participation of a "minor crown witness" and, *de lege ferenda*, remove their right to refuse to testify. The Commissioner also drew attention to the need to amend the *Act on recognizing as invalid judgments imposing penalties on persons repressed for their activities supporting the independent Polish State*, by extending the period of applicability of Article 8a of the Act that it can be applied to all persons politically repressed in the form of being required to serve in the army. The CHR also raised the following issues: *ex lege* entry of data of minor perpetrators of offences classified as sexual offenses into the Register of Sexual Offense Perpetrators; power of attorney to deliver court documents; and the impossibility to take up employment by persons entitled to caretaker benefits (care allowance, special care allowance, caretaker benefit).

The Commissioner described the above-mentioned issues and requested the Chairman of the Committee on Human Rights, Rule of Law and Petitions of the Senate of the Republic of Poland to undertake related legislative works.

8. The need to amend regulations applicable to uniformed police officers⁴⁰

Because of the lack of response from the Ministry of the Interior and Administration to the Commissioner's general intervention letter of 11 December 2020, the Commissioner wrote an intervention letter to the Prime Minister in which he recommended an amendment of *Article 28 of the Regulation of 20 May 2009 on police officer uniforms* in order to ensure that all uniformed police officers have individual identification signs that are clearly visible to everyone and enable the officer's identification by the relevant authorities. He also recommended the introduction of provisions requiring appropriate identification signs to be worn by non-uniformed officers who may, in some situations, disclose the fact that they are police officers in the course of an intervention operation. In the Commissioner's opinion, such signs are necessary to ensure the transparency of police actions, the easy identification of officers in case of doubt as to their role in action, and the safety of such officers. The impossibility to identify such police officers in action, in particular during public gatherings, may pose a risk to them. Demonstrators may be convinced that they have been attacked by an illegal group and may use the necessary self-defence to repel the attack. Such a situation may lead to an escalation of tension rather than its decrease. The ability to properly identify police officers is therefore an important preventive measure, promotes the responsibility and professionalism among officers and can significantly reduce the risk of excessive use of coercive measures. Given the lack of interest in the issue on the side of the authorities the Commissioner requested the Prime Minister to take interest in it and provide information on his opinion and the actions taken.

⁴⁰ General intervention letter of the CHR to the Prime Minister of 15 December 2022, ref. no. KMP.570.12.2020.

9. Letter to the presidents of 22 regional courts competent to apply detention in guarded centres for foreigners

In connection with the difficult situation in guarded centres for foreigners, the Commissioner for Human Rights wrote a letter to presidents of 22 regional courts competent to apply detention and sensitized their judges to the possibility of ordering the application of measures alternative to detention. The difficult conditions in these facilities may have the features of inhuman and degrading treatment. In the letter, the Commissioner also set out his recommendations based on the case law of the European Court of Human Rights⁴¹.

■ Issuing opinions on legislative acts

Issuing opinions on existing and proposed legislative acts is a form of preventing torture and other cruel, inhuman or degrading treatment or punishment. The power of national preventive mechanisms to present their opinions and comments on legislative solutions to the authorities is provided for in Article 19(c) of the OPCAT.

In 2022, the National Mechanism for the Prevention of Torture submitted detailed comments on the following draft legislative acts:

1. Draft regulation of the Minister of Justice on the detailed method of conducting body search in convicts and remand prisoners as well as inspections of places and objects, and on template reports on such search and inspections

In the opinion of the NMPT, the presence of at least three officers during a body search, provided for in the draft, is not justified. A large number of officers is not always advisable because it increases stress related to the check; it may also cause undesired behaviour of officers and can be used as a form of intimidating prisoners. Also, a limited-scope search should, if possible, be carried out under video supervision. In the event of a conflict situation or a complaint by a prisoner, there would be an objective possibility to assess the correctness of the behaviour of the officers and the prisoner based on the audio/video recording. The NMPT recommends that during the limited-scope search the officer should visually check the prisoner's face and other uncovered parts of the body. The practice is important for detecting possible injuries in prisoners and for their proper and quick documentation, which provides a safeguard against torture and impunity of perpetrators. The NMPT has also doubts regarding the lack of appropriate regulation on checking intimate body parts by Prison Service officers⁴².

2. Draft regulation of the Minister of the Interior and Administration amending the regulation on rooms for detained persons or intoxicated persons brought to sober up, on transitional facilities and police establishments for children as well as rules and regulations on the stay in such facilities and procedures for image recording there

The draft regulation of the Ministry of the Interior and Administration addresses the need for gradual adaptation of rooms for detained persons and police establishments for children to the needs of persons with disabilities. The NMPT assesses the draft's provisions positively. The introduction of minimum requirements in this area will minimize differences between individual establishments. However, the draft does not take account of disabilities other than motor disabilities, as e.g. sensory disabilities, and should thus be supplemented to cover them⁴³.

⁴¹ Letter of the Commissioner for Human Rights to presidents of regional courts of 25 January 2022, ref. no. KMP.572.1.2022. <https://bip.brpo.gov.pl/pl/content/rpo-sady-migranci-strzezona-osrodki-rodziny-dzieci>

⁴² <https://bip.brpo.gov.pl/pl/content/rpo-sluzba-wiezienna-zasady-kontroli-skazanych-ms>

⁴³ <https://bip.brpo.gov.pl/pl/content/rpo-izby-zatrzyman-osoby-z-niepelnosprawnosciami-dostosowanie-mswia>

3. Draft regulation of the Minister of Justice on the methods and procedure of conducting medical examinations of persons arrested by officers of the Prison Service Internal Inspectorate

According to the draft, the examination is carried out either at the request of the arrested person or because of a potential risk to their life or health. Yet, every arrested person should undergo a medical examination because appropriate documentation of all identified injuries is a basic and minimum safeguard against torture and violence. According to the NMPT, the regulation should also set out the method of documenting medical examinations and any injuries found in arrested persons. According to international standards relating to medical examinations of persons held in police detention, their medical examinations and registration of injuries should be documented in detail. The requirement for such an examination could be provided for in the regulation⁴⁴.

4. Draft regulation of the Minister of Justice amending the regulation on the methods of conducting prisoner support activities in prisons and remand prisons

The legislator decided to delete, from the programme of therapy for prisoners, short term out-of-prison therapy for prisoners who are addicts. The only support activity left for such prisoners is called short-term intervention. The justification for the deletion stated that “has been caused by the fact that the said therapy is not currently used in prisons or remand prisons”. In the opinion of the NMPT, the draft developers should thoroughly examine the reason for not using the therapy, which be e.g. the lack of specialists or of sufficient funds. According to the NMPT, the solution to the short-term therapy problem should be an increase in the number of prison psychologists. Abolishment of the therapy would mean the impossibility to provide this additional form of support to prisoners⁴⁵.

5. Draft regulation of the Minister of Justice on administrative activities related to pre-trial detention, on penalties and coercive measures resulting in deprivation of liberty and on documenting them

The draft regulation of the Minister of Justice sets out e.g. the method of proceeding in cases where a person with bodily injuries is admitted to a prison or remand prison. In the opinion of the NMPT, it would be important to adopt a single form to be filled in by doctors for the purpose of describing injuries. The solution provided for in the draft creates a risk that doctors from different medical entities will document injuries of people deprived of their liberty in different ways. Therefore, the National Mechanism suggests to introduce the requirement to use a medical form containing an outline of a human body (the so-called body map) to mark the examined person’s injuries. The NMPT also proposes to introduce the requirement to take photographs of injuries present in the examined persons and to attach such photographs to the prisoner’s medical records⁴⁶.

Also, the NMPT, within the scope of its mandate, drafted relevant parts of the Commissioner for Human Rights’ opinions on⁴⁷:

The Act amending: the Act on dealing with persons with mental disorders who pose a threat to life, health or sexual freedom of other people; the Act on health care services financed from public funds; and the Act on healthcare operations;

Regulations of the Minister of Justice accompanying the Act on support and social rehabilitation of juvenile delinquents.

⁴⁴ <https://bip.brpo.gov.pl/pl/content/rpo-zatrzymani-inspektorat-sw-zasady-badan-lekarskich-ms-odpowiedz>

⁴⁵ <https://bip.brpo.gov.pl/pl/content/kmpt-terapia-krotkoterminowa-skazani-oddzialywania-penitencjarne>

⁴⁶ <https://bip.brpo.gov.pl/pl/content/rpo-doprowadzani-areszty-obrazenia-kmpt-opinia-ms>

⁴⁷ Opinions drawn up by other specialist departments of the CHR Office.

■ Thematic reports and publications

In 2022, apart from the NMPT annual report on its activities in the preceding year⁴⁸, the Mechanism published three thematic reports⁴⁹.

The report “Human rights in places of isolation. How Poland implements the recommendations of international bodies for the prevention of torture (CPT and SPT)” presented the degree of implementation of the CPT and SPT recommendations, assessed during the thematic visits carried out by the NMPT. The report also contains recommendations aimed at supporting Polish state authorities in the fulfilment of their international obligations to counteract torture. The report has attached a photograph book “Human rights in places of isolation”, containing photographs taken in places visited by the NMPT Department employees.

The report “Situation of foreigners in guarded centres at the time of the crisis on the border between Poland and Belarus” summarizes 15 visits carried out by the National Mechanism for the Prevention of Torture at all such centres in the country. Particular emphasis was placed on the impact of the crisis on the Polish-Belarusian border on the functioning of such detention facilities and on the treatment of people held there.

In the report “The crime of torture in Poland” the NMPT analyses judgments regarding acts that had features of torture, inhuman and degrading treatment or punishment, that were issued with regard to police officers and became final in 2020. The report describes, among others, examples of torture used by the police officers against people, as well as recommendations and a short guide for citizens.

The National Mechanism for the Prevention of Torture also issued an information brochure addressed to Police officers. It describes the main rules of intervention operations regarding people who, due to their limited consciousness, require special methods of action by police officers. The brochure was drawn up based on an expert opinion drafted for the National Mechanism for the Prevention of Torture by specialists in the field of psychiatry and forensic medicine⁵⁰.

⁴⁸ <https://bip.brpo.gov.pl/pl/content/rpo-raport-dzialalnosc-kmpt-2021>.

⁴⁹ <https://bip.brpo.gov.pl/kategoria-prawna-i-organizacyjna/krajowy-mechanizm-prewencji-raporty-rpo>.

⁵⁰ <https://bip.brpo.gov.pl/pl/content/broszura-kmpt-interwencje-policji-zaburzenia-psyiczne>.

PART III – Difficulties in the implementation of the NMPT mandate

Last year, we recorded some cases of violation of the OPCAT and of the NMPT mandate and a situation that was dangerous for an NMPT employee. The situations were identified during visits to: a private long-term care facility, a guarded centre for foreigners, a room for detained persons within a police unit, and a prison.

PRIVATE LONG-TERM CARE FACILITY

On 20 May 2022, representatives of the NMPT visited the “Czarnecky” private long-term care facility (hereinafter referred to as the facility) in Zielonka (in Kujawsko-Pomorskie voivodeship). After arriving at the facility, the visiting team asked a staff member to inform the facility manager about the visit of the National Mechanism. They also expressed their intention to have an initial conversation with the owners regarding the operation of the facility. This is a standard point of visits conducted by NMPT representatives. When a co-owner of the facility arrived, the team informed her about the mandate of the National Mechanism and about the planned activities. They also showed their official ID cards and letters of authorization to carry out the visit, issued by the Commissioner for Human Rights.

The co-owner questioned the mandate of the NMPT to conduct the visit. She stated that the facility was her property and thus she did not know any basis for the visiting team to inspect the premises, analyse documentation or talk to the residents. In view of the above, a representative of the National Mechanism explained that running a private entity that provides long-term care to people required a permit issued by a public authority and was subject to a number of regulations⁵¹. The NMPT mandate was, in turn, related to the fact that among the residents there could be legally incapacitated people or persons who, due to their health condition (confirmed by a medical certificate) were unable to independently leave the facility.

Finally, the NMPT representatives managed to carry out the planned activities. However, during the conversation, the co-owner of the facility made negative and sometimes even offensive comments concerning the visiting team members and the authority they represented.

Because of the attitude of the co-owner and the irregularities found during the visit (which, in the opinion of the National Mechanism, could pose a risk to the health or safety of people placed there), on 26 May 2022, the NMPT Director sent a letter with preliminary conclusions on the visit to the Director of the Social Policy Department of Kujawsko-Pomorskie Voivodeship Office in Bydgoszcz⁵² as a body supervising the facility. He also suggested, based on Article 14(3) of the Act of 15 July 1987 on the Commissioner for Human Rights, that an inspection be carried out at the facility and requested the information on its results. The response received on 25 October 2022⁵³ stated that an ad hoc inspection was carried out at the facility. Its work was assessed negatively and a number of recommendations were issued. The letter also informed that on 6 October 2022, the owners of the facility suspended its operations until 31 December 2023.

THE POLICE

On 7 November 2022, representatives of the NMPT visited a room for detained persons and persons brought to sober up, located within the Poviast Police Command in Krotoszyn (hereinafter referred to as the

⁵¹ The requirements for receiving a permit of the head of voivodeship government to run a facility providing long-term care for disabled, chronically ill or elderly people are laid down in Chapter 3, point II of the Act of 12 March 2004 on social welfare.

⁵² Letter of the NMPT of 26 May 2022, ref. no. KMP573.10.2022.

⁵³ Letter of the Director of the Social Welfare Policy Department of the Kujawsko-Pomorskie Voivodeship Office in Bydgoszcz, ref. no. WPS.ni.9421.3.13.2022.MG.

room). After the visit, the National Mechanism requested Poviát Police Commander from Krotoszyn⁵⁴ to provide, among others, copies of audio and video recordings of two cases of use of Taser X-2 electroshock weapon by police officers.

Krotoszyn Poviát Police Commander provided to NMPT two CDs with recordings of the use of the weapon but the video footage was anonymized⁵⁵. This made it impossible for the NMPT representatives to assess whether the person against whom the gun had been used had, for example, any injuries on the face. The Commander explained in his letter that the anonymization was based on a legal opinion of the Legal Department of the Voivodeship Police Headquarters in Poznań, and attached a copy thereof⁵⁶.

In the opinion, the attorney drew attention to the provisions of the Act on the Commissioner for Human Rights (Articles 1, 8, 13 and 17). She pointed out that, in light of the responsibilities of the CHR as a visiting body for the prevention of torture, which regularly monitors the treatment of persons deprived of their liberty, the CHR's request for the documents and files regarding the case was justified. However, according to the opinion, the files and documents may not disclose personal data of persons shown in audio-visual materials. The Commissioner has the right to record sound or image in places where people are deprived of their liberty only with the consent of the recorded persons. Therefore, in the absence of such consent, recording is not permitted. There are thus no grounds for providing to the CHR any recordings in which people are shown if those people have not consented to the provision of the recordings. According to the attorney, the recordings should thus be anonymized.

The NMPT did not share the conclusions contained in the legal opinion and requested the Voivodeship Police Commander from Poznań to provide to the NMPT copies of the original audio-video recordings (without anonymizing the image) and to inform police organizational units subordinate to him about the NMPT's powers and the principles of providing access to video materials, so that similar situations are avoided in the future⁵⁷. In the letter the NMPT pointed out that the opinion restricted the powers of NMPT representatives to those provided for in the Act on the Commissioner for Human Rights (disregarding the powers under the OPCAT), and that it referred only to selected provisions of the Act. It fully disregarded Article 17c of the Act on the Commissioner for Human Rights and the powers to process personal data as the national preventive mechanism. It also referred, in an incorrect manner, to Article 13 (1a)(1) which relates to the possibility to record sound or image, in places where people are deprived of their liberty, with the consent of persons to be recorded. The provision applies to situations in which the recording is made by the Commissioner or persons acting on his or her behalf. Article 13(1a)(1) of the Act on the Commissioner for Human Rights does not, however, apply to situations in which image/image and sound recording is made by police officers and, afterwards, an NMPT representative wants to analyse its content in order to perform the Mechanism's statutory tasks. Such an interpretation would be contrary to the Commissioner's powers under the OPCAT and under the Act on the Commissioner for Human Rights, and, in practice, would prevent the Commissioner from effectively performing his or her duties.

A similar view was expressed by the Human Resources, Training and Legal Service Department of the National Police Headquarters in its letter of 2 July 2019⁵⁸, drawn up in connection with the Commissioner's letter regarding difficulties in the implementation of the NMPT mandate⁵⁹. The opinion reads: "the right of NMPT representatives to access all information concerning the number of persons deprived of their liberty and the number and location of such places, to access all information concerning the treatment of such persons and the conditions of their detention and to process all information and personal data necessary

⁵⁴ Letter of 28 November 2022, ref. no. KMP.570.14.2022.RK.

⁵⁵ Letter of 15 December 2022, ref. no. E.075.64.2022.t.S.

⁵⁶ Legal opinion of 17 November 2022, ref. no. Pr 026.24.2022.GT.

⁵⁷ Letter of 28 December 2022, ref. no. KMP.570.14.2022.RK.

⁵⁸ Letter from the Director of the Human Resources, Training and Legal Service Department of the National Police Headquarters to the Police Commander in Chief's Office Director of 2 July 2019, ref. no. Kpp-5054/4583/2019.

⁵⁹ General intervention letter of the CHR to the Police Commander-in-Chief of 31 May 2019, ref. no. KMP.570.14.2019.RK.

to carry out the NMPT duties in the field of monitoring the treatment of persons deprived of their liberty in places of detention should be understood as the empowerment and right to access and process such information (personal data), regardless of the form and method of its recording and processing. It may be information contained in paper or electronic documentation or in audio, video or audio-visual materials, including information coming from video surveillance of rooms within police units⁶⁰.

The legal opinion of 17 November 2022, drawn up for the needs of the Voivodeship Police Command in Poznań should therefore be considered incomplete and its conclusions should be considered erroneous and internally inconsistent. On its basis, the NMPT was not provided with copies of the original version of the audio-visual recording of the use of coercive measures by police officers, which was against the provisions of the Act on the Commissioner for Human Rights and of the OPCAT.

In response to the letter, the Voivodeship Police Commander from Poznań provided the NMPT with the original recordings of the police activities, in which the image was not anonymized. He also informed the National Mechanism that, due to legal doubts and divergent opinions on the subject, he had requested the Human Resources, Training and Legal Service Department of the National Police Headquarters to express its position on the subject to have a basis for issuing recommendations to his subordinate units⁶⁰.

BORDER GUARD

On 1-2 December 2022, representatives of the NMPT and the Equal Treatment Department of the Office of the Commissioner for Human Rights, together with the Deputy Commissioner for Human Rights Dr Hanna Machińska, conducted visits to the Guarded Centre for Foreigners and to the Remand Prison for Foreigners in Przemyśl.

During individual interviews with foreigners in the Centre, the CHR Office employees came into contact with a Border Guard officer on duty whose behaviour hindered the course of the visit and significantly extended it in time.

The visiting team, in accordance with their powers, interviewed the migrants without the presence of officers in two monitored rooms located opposite the guard room. The two rooms were locked from the outside, with no possibility to open them from the inside, of which the delegation was initially not informed. After every interview the officer had to be called to open the door. After the interviews the visiting team members kept calling the officer by knocking on the door. Because of the fact that nobody reacted for a long time, they waded to the video surveillance cameras. Each time, they had to wait for several minutes. It was particularly worrying as the interviews were held in the immediate vicinity of the guard room in which normally officers should be present. The duty officer also had a monitor with the image from the surveillance cameras, which he should have been watching all the time.

After the situation, the Commissioner for Human Rights wrote a letter to the Commander of the Bieszczady Border Guard Unit, requesting him to provide an explanation of the situation and to take action to prevent similar situations in the future⁶¹.

PENITENTIARY ESTABLISHMENT

During individual interviews conducted by an NMPT employee with inmates at the Barczewo Prison, there happened a situation that posed a risk to the employee and undermined his reputation.

After the interviews, conducted in the ward for so-called dangerous prisoners, the employee wanted to leave the monitored room in which he had interviewed the prisoners. He had to wait for over 15 minutes for Prison Service officers to let him out. The NMPT employee used the call system and waived at the camera, but nobody reacted. The officers opened the door only after 15 minutes since the first call, as shown in the surveillance camera recording.

⁶⁰ Letter of 12 January 2023, ref. no. Pr.026.4.2023.GT.

⁶¹ Letter of 15 December 2022, ref. no. KMP.572.2.2022.MŻ.

Because the officers had not reacted for such a long time, the NMPT employee was forced to urinate in the room. Total time for which he had stayed inside interviewing the prisoners was approximately 100 minutes.

The day before, the same employee of the NMPT received a complaint from one of the prisoners about the use of torture by officers in the Barczewo prison, in the form of waterboarding. On the day of the incident, the employee watched the CCTV footage to find a confirmation of the prisoner's report. The collected evidence confirmed the possibility of the use of torture in the establishment. On 7 November 2022, the Public Prosecutor's Office was notified of the suspicion of the use of torture.

Since the first interview with the prisoner, the officers had knowledge about the prisoner's report to the NMPT representatives about officers responsible for violating human rights, and were aware that the visiting employees would examine the allegations. Therefore, it cannot be ruled out that the Prison Service officers' long reaction time was aimed at questioning the prisoner's report by discrediting the NMPT employee. The Prison Service also notified the Public Prosecutor's Office about the incident, and demanded penal proceedings to be initiated against the NMPT employee. This was done after the CHR Office reported the case of the suspected torture of the prisoner.

In connection with the above, CHR Marcin Wiącek requested the Minister of Justice to investigate the case⁶².

⁶² Letter of 1 February 2023.

PART IV – Situation in places of detention

BORDER GUARD UNITS

Due to the rapid increase in the number of foreign citizens detained after crossing the Polish-Belarusian border in violation of the law (such foreigners began to come to Poland in mid-2021), in 2022 the National Mechanism for the Prevention of Torture continued ad hoc visits to Border Guard posts and Border Guard-operated detention facilities. After the war in Ukraine started, which resulted in the arrival of millions of refugees to the territory of the Republic of Poland, the NMPT carried out visits to monitor detention conditions in selected Border Guard units along the Polish-Ukrainian border. In 2022, The National Mechanism conducted the following visits:

- 4 visits to Border Guard facilities for detained persons,
- 9 visits to Border Guard posts,
- 6 visits to guarded centres for foreigners (GCF),
- 1 visit to a remand prison for foreigners.

GUARDED CENTRES FOR FOREIGNERS

In 2022, the NMPT conducted 6 visits to guarded centres for foreigners (GCFs) and a remand prison for foreigners⁶³. The visits were a continuation of those conducted in the second half of 2021. Their aim was to assess the functioning of such facilities at the time of a sudden dynamic increase in the number of foreigners placed in administrative detention as a result of the crisis on the Polish-Belarusian border.

■ Success of the NMPT

Since the first visit to the temporary guarded centre for foreigners in Wędrzyn, established within an active military training area, the NMPT employees had been emphasizing the very poor and inhuman conditions there⁶⁴. The NMPT recommended that the foreigners held there be relocated to other facilities and that the centre be closed down⁶⁵. The Border Guard Commander-in-Chief decided to close down the temporary guarded centre for foreigners in Wędrzyn at the end of July 2022.

■ Systemic problems

1. Reduction of the minimum standard of floor area per person in a guarded centre

One of the regulations still in force⁶⁶ permits the placement of foreigners in rooms with less than 2 m² of floor area per person. A situation of such a limitation⁶⁷ of living space per person should not last longer than 12 months.

⁶³ GCF in Biała Podlaska: 19 January 2022; temporary guarded centre for foreigners (TGCF) in Wędrzyn: 20-21 January 2022; GCF and remand prison for foreigners in Przemyśl: 31 January-3 February 2022; GCF in Lesznowola: 16 February and 29 April 2022, revisit to the GCF and remand prison in Przemyśl: 1-2 December 2022.

⁶⁴ <https://bip.brpo.gov.pl/pl/content/rpo-sg-cudzoziemcy-osrodki-krosno-wedrzyn-warunki>; <https://bip.brpo.gov.pl/pl/content/rpo-kmpt-wizytacja-cudzoziemcy-osrodki-krosno-wedrzyn>; <https://bip.brpo.gov.pl/pl/kmpt/wizytacja-kmpt-w-strzezonym-osrodku-dla-cudzoziemcow-w-wedrzymie>.

⁶⁵ See: Situation of foreigners in guarded centres for foreigners at the time of crisis on the Polish-Belarusian border. Report on the visit of the National Mechanism for the Prevention of Torture, 2022, pp. 71-73.

⁶⁶ Article 11(1a) of the Regulation of the Minister of the Interior and Administration of 13 August 2021 amending the Regulation on guarded centres and detention centres for foreigners (Dz. U. [Journal of Laws] of 2021, item 1482).

⁶⁷ In standard conditions, it is, respectively, 3 m² per man and 4 m² per woman or child.

The NMPT pointed out already in the past⁶⁸ that the above standard flagrantly violates the right to dignity of persons placed in the guarded centres, and placement of foreigners based on the amended regulation may be considered a sign of inhuman or cruel treatment⁶⁹.

In this context, it should be emphasized that even at penitentiary establishments the minimum living space per prisoner may not be less than 6 m² in single-person cells and 4 m² in multi-person cells⁷⁰.

During the visits, the NMPT found that due to the amendment of the regulations, the maximum capacity of the visited establishments was increased. At one of the centres⁷¹ operating temporarily due then-existing migration situation, the visitors found that the living space per person was even less than 2 m².



It should be remembered that the right to respect for human dignity, and the related prohibition of torture and inhuman, cruel or degrading treatment or punishment, are absolute. This means that the factual circumstances (in this case, the sudden increase in the number of foreigners crossing the border of the Republic of Poland illegally) may not result in the abandonment, temporary suspension or limitation of the application of such standards.

2. Systemic preference for the use of detention for foreigners with irregular residence status

In view of the dynamic increase in the number of foreigners crossing the Polish-Belarusian border in violation of the law, which had been observed since mid-2021, the Polish authorities decided to significantly increase the number of places in guarded centres for foreigners, also by the establishment of temporary facilities⁷². The capacity of the detention centres significantly exceeded the number of beds available in open-type centres⁷³. This, in the NMPT's opinion, clearly demonstrates a systemic preference for placing foreigners in detention instead of placing them in non-detention facilities⁷⁴. During the visits conducted in 2022, representatives of the NMPT noted a decrease in the number of migrants at GCFs compared to the preceding year. However, it seemed to result from a general decrease in the number of persons attempting to illegally cross the border of the Republic of Poland, from releasing some foreigners from the guarded centres and from the deportation of some of them.

It has to be underlined, however, that the process of increasing the capacity of detention facilities has not taken into account the need to proportionately increase access to e.g. healthcare or mental health support⁷⁵.

Bearing in mind that the assessment of each individual case and a final decision on detention at a GCF belongs to courts, the Commissioner for Human Rights requested presidents of 22 regional courts to sensitise judges to adjudicating measures which are alternative to detention, especially in case of families with minor children and unattended minors, as well as in case of adults with a history of tortures undergone in their countries of origin⁷⁶.

⁶⁸ See: Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in 2021, p. 40.

⁶⁹ See: ECtHR judgment of 13 July 2019 in the case *Sh.D. and Others v Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, application No 14165/1613.

⁷⁰ See: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015) 44.

⁷¹ Temporary guarded centre for foreigners (TGCF) in Wędrzyn.

⁷² According to statistics provided by the Border Guard, between 30 June and 31 December 2021 the accommodation capacity available in detention facilities more than quadrupled from 513 to 2103 beds.

⁷³ The letter of the Head of the Office for Foreigners' Office Director of 7 February 2022 states that only 315 additional beds were provided in non-detention centres, and the total number of beds increased to 1534; letter ref. no. BSZ.WKSI.0731.1.2022/RW.

⁷⁴ See: Situation of foreigners in guarded centres at the time of crisis on the border between Poland and Belarus. Report on the visits of the National Mechanism for the Prevention of Torture, 2022, chapter 3.

⁷⁵ *Ibid*, chapters 4-5.

⁷⁶ <https://bip.brpo.gov.pl/pl/content/rpo-sady-migranci-strzezony-osrodki-rodziny-dzieci>

3. Failure to effectively identify victims of torture

The National Mechanism for the Prevention of Torture has pointed out for many years that the existing system of identifying foreigners who are victims of torture and violence in Poland cannot be considered effective⁷⁷.

In practice, there is no mechanism under which people with experience of violence are identified after their detention but before their placement in a guarded centre for foreigners. All activities aimed at identifying victims of torture take place after foreigners' placement in a centre. In this context, it should be remembered that in the light of the law, no decision on a foreigner's arrest or placement in a guarded centre should be taken if his/her psychological or physical condition suggests the use of violence against him/her⁷⁸.

The guarded centres for foreigners still apply the *Border Guard Rules for dealing with foreigners in need of special treatment*. Despite its revision, in the opinion of the NMPT they are still contradictory to Polish law, the standards set out in the Istanbul Protocol, and other international standards⁷⁹. The rules permit placement of potential victims of violence in detention centres and do not require their "immediate release" from a guarded centre. The treatment and therapy available at the centres for identified victims of torture can even exacerbate their trauma.

During the visits conducted in 2022, the NMPT representatives heard reports by foreigners staying in the guarded centres about the violence they had experienced in their countries of origin or during their trips to Europe. Also, in the course of their visits, representatives of the NMPT had contact with foreign migrants, including families with minor children, whose physical and mental condition and other circumstances justified the opinion that these persons should not have been held in detention.

4. Detention of children

Detention of minor-age foreigners, as a measure negatively impacting their psychological and physical condition, should be used as a last resort. The permissibility of placing foreigners under the age of 18 at the guarded centres has been questioned many times by non-governmental organizations⁸⁰, international institutions⁸¹, the Ombudsman for Children⁸² and the Commissioner for Human Rights⁸³.



The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) The CPT considers that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor. Following the principle of the "best interests of the child", as formulated in Article 3 of the United Nations Convention on the Rights of the Child, detention of children, including unaccompanied and separated children, is rarely justified and, in the Committee's view, can certainly not be motivated solely by the absence of residence status.

When, exceptionally, a child is detained, the deprivation of liberty should be for the shortest possible period of time; all efforts should be made to allow the immediate release of unaccompanied or separated children from a detention facility and their placement in more appropriate care.

⁷⁷ See: Reports of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland for 2018 and 2021. Also see: NPMT report *Foreigners in administrative detention - results of monitoring visits to Polish guarded centres for foreigners*, carried out by the National Mechanism for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, operating within the CHR Office, 2021.

⁷⁸ See: Article 400(2) of the Act on Foreigners of 12 December 2013.

⁷⁹ See: Situation of foreigners in guarded centres at the time of crisis on the border between Poland and Belarus. Report on the visits of the National Mechanism for the Prevention of Torture, 2022, pp. 27-31.

⁸⁰ See: Position statement of the Association for Legal Intervention of 30 March 2015: <http://interwencjaprawna.pl/stanowisko-sip-w-sprawie-detencja-dzieci-cudziemijskich/>.

⁸¹ Committee on the Rights of the Child, Report of the 2012: Day of general discussion on the rights of all children in the context of international migration, p. 78-79.

⁸² See: General intervention letter of the Ombudsman for Children to the Prime Minister of 3 December 2018 (GA8.422.10.2018.BS).

⁸³ See: CHR's report Observance of the rights of foreign migrants in Poland, Warsaw, 2012, pp. 53-61.

Further, owing to the vulnerable nature of a child, additional safeguards should apply whenever a child is detained, particularly in those cases where the children are separated from their parents or other carers, or are unaccompanied, without parents, carers or relatives⁸⁴.

5. Living conditions in the remand prison for foreigners

During the visit to the only remand prison for foreigners in the country, the representatives of the NMPT pointed out that the living conditions there did not meet the international standards of the protection of the rights of persons held in administrative detention, despite the fact that they complied with the applicable national law⁸⁵. One of the main problems was the lack of toilets adjacent to bedrooms. As a result, detainees (held there usually for several months) had to call the duty officer every time they need to use the toilet. With the large number of people in the facility, the time of waiting to be taken to the toilet would be long. Attention was also paid to the fact that the bedrooms were under constant surveillance and some furniture items were fixed to the floor. Even in penitentiary establishments such solutions are used only in the case of particularly dangerous prisoners.



In the light of international standards, the conditions in which foreigners with unregulated status are detained should reflect the nature of their detention, in particular in terms of restrictions imposed on them and access to various forms of activity⁸⁶.

Importantly, foreigners in administrative detention should have 24-hour access to toilets⁸⁷ and to bathrooms with hot water⁸⁸. It is also necessary to ensure access to drinking water⁸⁹ and meals adjusted to the requirements of a given religion and to individual health needs⁹⁰.

The National Mechanism also paid attention to the problem of foreigners placed in the remand prison for foreigners immediately after their detention. According to the applicable legislation, they may be placed there only on the grounds of a risk of that they will not follow the regulations in force in the guarded centres for foreigners⁹¹.

An analysis of court decisions to place foreigners in detention, conducted during the visits showed that in some cases the placement in detention was ordered e.g. because of: crossing the border against the law, lack of ID documents, or the expectation that Poland was only a transit country for the foreigner in question. There was no information entered in the documentation that the foreigner actively resisted the officers during apprehension or in any way showed that they would not comply with the regulations of a guarded centre⁹².

In view of the stricter regime in remand prisons for foreigners, the material conditions that do not meet applicable international standards and the vaguely formulated conditions to be met when placing a person covered by administrative proceedings, in the NMPT's opinion the current legislation needs to be amended.

⁸⁴ See: CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2011, para. 97.

⁸⁵ See: Regulation of the Minister of the Interior and Administration of 24 April 2015 on guarded centres and remand prisons for foreigners (Journal of Laws of 2018, item 1576).

⁸⁶ See: Nineteenth General Report of the CPT, [CPT/Inf (2009) 27], para. 79.

⁸⁷ See: CPT report on the visit to Greece in 2011, [CPT/Inf (2012) 1], para. 38.

⁸⁸ See CPT report on the visit to Greece in 2013, [CPT/Inf (2014) 26], para. 51.

⁸⁹ See CPT report on the visit to Hungary in 2005, [CPT/Inf (2006) 20], para. 53.

⁹⁰ See CPT report on the visit to the former Yugoslav Republic of Macedonia in 2014, [CPT/Inf (2016) 8], para. 120.

⁹¹ See: Article 399 of the Act on Foreigners of 12 December 2013; Article 88a(2) of the Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland (Journal of Laws of 2022, item 1264).

⁹² See: Situation of foreigners in guarded centres at the time of crisis on the border between Poland and Belarus. Report on the visits of the National Mechanism for the Prevention of Torture, 2022, pp. 14–16.

6. Bars in room windows

The National Mechanism for the Prevention of Torture has repeatedly emphasized the need to refrain from installing window bars, in particular in centres where children may be placed.



Conditions in places of detention of foreign migrants should reflect their legal status. Given that foreign migrants placed in guarded centres for foreigners are not prisoners, any analogies to penitentiary establishments should be avoided⁹³.

The representatives of the NMPT welcomed the information that, as a result of renovation works in one of the guarded centres, window bars were removed and other technical solutions were introduced to ensure the safety of foreigners⁹⁴. The head of one of the visited centres also informed that funds had been secured for the dismantling of bars in bedroom windows in the building⁹⁵.

NMPT ACTIVITIES ON THE POLISH-BELARUSIAN BORDER

Despite the decreasing number of foreigners detained in connection with having illegally crossed the border of the Republic of Poland, representatives of the NMPT continued to monitor the situation of persons deprived of their liberty in the centres operated by the Podlaskie Voivodeship Border Guard Unit⁹⁶. The visiting team members were particularly interested in issues such as the legality of detention, the observance of foreigners' right to information, the possibility to file an application for international protection and the access to an interpreter, health care and legal aid.

The representatives of the National Mechanism spoke e.g. to migrants who spent several months in warehouse buildings located on the Belarusian side of the border. The group included a woman with a one-month-old baby. Some of the persons informed that they had experienced violence in Belarus. Despite the reported circumstances, due to which they should not be placed in detention facilities, all the migrants were waiting to be placed in guarded centres for foreigners⁹⁷. A representative of the NMPT was also informed about problems related to food quality at the facility. Border Guard officers pointed out that due to the low daily food allowance they were unable to provide additional meals immediately after admission to the facility.

In response to the information received by the CHR Office about placing foreigners, apprehended by the Border Guard, in conditions that do not meet the international standards of detention, the NMPT carried out an ad hoc visit which confirmed the allegations. It revealed that some foreigners were required to remain in a garage but, according to the commander of the unit, only for the time of waiting for coronavirus test results (which did not exceed 15 minutes)⁹⁸.

Given that on the day of the visit there were no migrants at the Border Guard facility for detained persons, the NMPT was unable to verify the commander's information. During the visit it was found out that in the garage there were old and dirty mattresses on the concrete floor, a table, several chairs and a water bowl. Outside, near the entrance there were two portable toilets. The equipment suggested that the garage was used also in other situations, for longer than about ten minutes. It should also be mentioned that during previous visits to the Border Guard facility NMPT representatives many times witnessed for-

⁹³ See: CPT Report on the visit to Malta in 2008, CPT/Inf (2011)5, para. 51.

⁹⁴ Guarded Centre for Foreigners in Biała Podlaska.

⁹⁵ See: Formal note on the visit of the NMPT to the Guarded Centre and the Remand Prison for Foreigners in Przemyśl, ref. no. KMP.572.2.2022.MŻ, point 4.

⁹⁶ The NMPT carried out 5 ad hoc visits: on 5 January 2022 to the Border Guard posts in Narewka, Krynki and Bobrowniki; on 25 March 2022 to the Border Guard unit in Narewka and the room for detained persons there; and on 18 May 2022 to the Border Guard unit in Białowieża.

⁹⁷ <https://bip.brpo.gov.pl/pl/kmpt/wizytacja-ad-hoc-kmpt-w-placowce-strazy-granicznej-w-narewce>.

⁹⁸ <https://bip.brpo.gov.pl/pl/content/niezapowiedziana-wizytacja-przedstawicieli-brpo-na-granicy-polsko-bialoruskiej>.

eigners being tested for the SARS-CoV2 virus. They waited for the results in the hall of the main building of the Border Guard unit or, if the weather was good, outside the building. The waiting time indeed did not exceed over minutes.

In the opinion of the visiting team it would be unacceptable to place foreigners in such conditions for longer than the waiting time for the test results, and even in such cases the standard of the place should be significantly improved by removing the old mattresses and placing more chairs (benches). Moreover, it may not be required under any circumstances to wait for the test results in the garage. Foreigners should be allowed to wait outdoors, with restricted possibility to move within the facility. In low temperatures, people should not be required at all to wait the garage because it has no heating system.

NMPT ACTIVITIES ON THE POLISH-UKRAINIAN BORDER

Immediately after the outbreak of the war in Ukraine, representatives of the National Mechanism for the Prevention of Torture carried out ad hoc visits to selected border crossing points, Border Guard posts, Border Guard facilities for detained persons as well as reception points located in the area of the Bug River and Bieszczady Border Guard Unit. The aim was to check the conditions in places where foreigners coming to Poland from Ukraine were placed⁹⁹.

The NMPT expressed its high appreciation for the professionalism and commitment of officers of the Border Guard and other uniformed services who, since the outbreak of the war in Ukraine and related mass-scale border crossing of the Polish-Ukrainian border by refugees, had worked for many hours more. The NMPT also took note of the fact that the Border Guard units with territorial competence over border crossing points on the Polish-Ukrainian border received staffing support provided by other BG units from across the country.

The visiting team members paid attention to the fact that the level of medical assistance provision varied among the individual border crossings. In the opinion of the NMPT, the provision of permanent medical assistance at the border crossings was necessary because of injuries (mainly feet injuries) that occurred in foreigners who travel on foot to cross the border. There were also frequent cases of fainting and of blood circulation problems. Therefore, it was necessary for medical assistance to be available in all necessary cases without delay.

Foreigners fleeing the war in Ukraine and coming to Poland as a rule underwent border check at the border crossing points. In some cases, however, when they were not in the possession of documents or if there were doubts as to their authenticity, additional verification was necessary to confirm such persons' identity. According to the information obtained by the visiting team, the second line of border control was used, in most cases, with regard to foreigners of nationality other than Ukrainian. When verifying their identity, Border Guard officers used the assistance of diplomatic representations of the countries of origin of those persons.

All the visited border crossings had second-line border control points. The observations made by the team members proved that verification process was running smoothly and took several hours. During the waiting time, the foreigners had access to food and beverages provided by the Border Guard. As a rule, the foreigners covered by the additional control were aware of the reasons for which they were undergoing it. They were not aware, however, that their waiting time was dependent not only on the work of Border Guard officers, but also on the work of diplomatic representatives of their countries of origin. The refugees' situation was even more difficult because of the impossibility to contact their relatives.

It should be pointed out that at one of the border crossings the additional verification of foreigners was organized in a different manner¹⁰⁰. Because of the high intensity of the border traffic, persons with regard

⁹⁹ Visits conducted between 28 February and 4 March 2022 to: border crossings in Krościenko, Korczowa, Budomierz and Hrebennie; Border Guard posts in Sanok and Przemyśl; Border guard facility for detained persons in Sanok, Krościenko and Budomierz; reception points for foreigners in Łodynia, Równia, Korczowa and at the railway station in Przemyśl, <https://bip.brpo.gov.pl/pl/content/rpo-sg-podkarpackie-lubelskie-ukraina-uchodzcy-pomoc>.

¹⁰⁰ Border crossing in Medyka.

to whom additional verification of identity was required were taken by the Border Guard to one of two other Border Guard posts¹⁰¹. In this regard, the visiting team members found out that the foreigners had to wait for their identification for three days at a special point established within a guarded centre for foreigners. During the subsequent visits the NMPT noticed that the identification time was shorter¹⁰².



Representatives of the NMPT consider it necessary to create a register of persons undergoing additional verification by second-line border control points, which register will contain, in addition to personal data and nationality, also the date and time of admission to the point, and the date and time of leaving the point. The creation of the proposed register would serve the purpose of full transparency of actions taken by Border Guard officers with regard to such persons, as well as control of the duration of the procedure.

As regards access of non-Ukrainian citizens to the refugee procedure, the visiting team observed that confirmations of acceptance of declaration of intent to seek international protection, and applications for international protection in the territory of the Republic of Poland were not translated into languages understood by the applicants.

The problem with translation was also identified during the visits to the Border Guard facilities for detained persons. The analysis of detention reports showed that a translator was available only in one Border Guard facility. In the other facilities, most detention reports were drawn up without the participation of a translator. The foreigners were also required to sign a list of all their belongings left in the deposit (e.g. jewellery, money or telephones) without the presence of a translator. The forms were filled out in Polish¹⁰³.



It is important that newly arrived migrants are informed of their rights in a language they understand. They should also be systematically provided with a document explaining the procedure applicable to them and setting out their rights in clear and simple terms. This document should be available in the languages most commonly spoken by those deprived of their liberty and, where necessary, a translator should be requested.¹⁰⁴

As regards living conditions, the NMPT noticed that in one of the facilities¹⁰⁵ the rooms for foreigners waiting for their identity verification had metal bunk beds which had no mattresses but only sleeping pads. The rooms were in disorder, and there was litter on the floor, including pieces of food. The officers told the visiting team members that litter removal took place several times a day. The foreigners complained about food and lack of access to fresh air due to the prohibition to leave the building. Also, women who were staying in a separate wing of the facility mentioned problems with access to intimate hygiene products. The visiting team members, therefore, checked the availability of such products and found that all the necessary products were in the facility's storage room. This showed that there was a problem with insufficient communication between the foreigners and the staff.

¹⁰¹ The foreigners were taken to the verification points established in the Border Guard post in Sanok and in the Guarded Centre for Foreigners in Przemyśl.

¹⁰² <https://bip.brpo.gov.pl/pl/kmpt/wizytacja-kmpt-w-placowkach-strazy-granicznej-w-kroszienku-korczowej-medyce-i-zosinie>.

¹⁰³ See: Report of the National Torture Prevention Mechanism on the visit to Border Guard facility for detained persons in the Bieszczady Border Guard Unit, ref. no. KMP.572.1.2022.JJ.

¹⁰⁴ See: Extract from the Nineteenth CPT General Report, CPT/Inf (2009) 27, p. 84.

¹⁰⁵ The point was established in the Guarded Centre for Foreigners in Przemyśl.

POLICE DETENTION FACILITIES

In 2022, the NMPT visited 11 rooms for detained persons (hereinafter: RDPs) and persons brought to sober up, located within police organisational units¹⁰⁶.

■ Systemic problems

1. Insufficient number of staff at RDPs

Under the current regulations, the unit commander is required to organize work in such a way so as to make sure that there is at least one police officer on duty in the RDP¹⁰⁷. In the visited police units, supervision over detained persons was exercised by one officer, irrespective of the number of persons detained there¹⁰⁸.

In the opinion of the NMPT, however, one person is not able to carry out procedural duties (completing documentation) and control tasks and at the same time make sure that detainees can exercise their rights (e.g. use a toilet). Under such circumstances, it may also be particularly difficult to respond to extraordinary incidents (e.g. suicide attempts). This system of service can also be dangerous for the officers. They have no possibility to provide support to each other and to efficiently react in the event of physical aggression by detainees.



The CPT points out that there would be many advantages to establishing a special group of officers responsible for supervising persons placed in police detention facilities. This, among others, would lead to greater specialization, professionalism and efficiency of officers and would increase the sense of responsibility for persons in police custody. The practice could also contribute to preventing the misunderstood solidarity among police officers in cases of ill-treatment of detainees, and would strengthen the procedural safeguards against it. An officer could, for example, check on a person's admission to the RDP whether they have been informed about all their rights and whether it has been done in a manner understandable to them. The presence of such officers would also provide an opportunity for a detained person to file a formal complaint regarding the detaining officers, for example if excessive force was used during the detention¹⁰⁹.

2. Placement of drunk people to sober up at RDPs

A large group of people are brought to police rooms for detained persons (RDPs) for the purpose of sobering up¹¹⁰. This is caused by the lack of sobering-up centres in municipalities, or too small capacity of such stations to meet the need. As a result, intoxicated persons are brought to police RDPs where they remain under supervision by police officers who have to bear the related risks.

¹⁰⁶ RDP at the Municipal Police Headquarters in Suwałki (KMP.570.2.2022.MŻ), RDP at the Municipal Police Headquarters in Kielce (KMP.570.4.2022.MŻ), RDP at the Poviát Police Headquarters in Grodzisk Wielkopolski (KMP.570.6.2022.MD), RDP at the Poviát Police Headquarters in Świebodzin (KMP.570.7.2022.MŻ), RDP at the Municipal Police Headquarters in Piotrków Trybunalski (KMP.570.12.2022.AN), RDP at the Poviát Police Headquarters in Głogów (KMP.570.10.2022.KK), RDP at the Poviát Police Headquarters in Płońsk (KMP.570.11.2022.JJ), RDP at the Municipal Police Headquarters in Toruń (KMP.570.17.2022.MD), RDP at the Voivodeship Police Headquarters in Radom (KMP.570.13.2022.AN), RDP at the Poviát Police Headquarters in Krotoszyn (KMP.570.14.2022.RK), RDP at the Voivodeship Police Headquarters in Kraków (KMP.570.8.2022.AN).

¹⁰⁷ See: Regulation No. 130 of Police Commander-in-Chief of 7 August 2012 on methods and forms of performing duties in rooms for detained persons or persons brought to sober up (Journal of Regulations of the National Police Headquarters of 2012, item 42 as amended), point 2(2).

¹⁰⁸ See: RDP at the Poviát Police Headquarters in Głogów (KMP.570.10.2022.KK), RDP at the Municipal Police Headquarters in Piotrków Trybunalski (KMP.570.12.2022.AN).

¹⁰⁹ See: Twenty-Eighth General Report of the CPT, CPT/Inf (2019)9, paras. 83-85.

¹¹⁰ See: RDP at the Municipal Police Headquarters in Kielce (KMP.570.4.2022.MŻ), RDP at the Poviát Police Headquarters in Płońsk (KMP.570.11.2022.JJ).

However, RDPs do not provide adequate conditions and security to persons detained to sober up. Apart from a medical examination upon admission, there is no requirement at present to ensure permanent medical care for such persons. There are no doctors to supervise people brought to police stations for sobering up. The responsibility for the safety of such persons, therefore, falls on police officers who are not prepared for this role and, in situations of suspected deterioration of health, can only provide first aid and call a medical rescue team, hoping that their intervention will be quick and effective.

The situation of intoxicated persons with mental disorders, with regard to whom police undertakes interventions, is also problematic. There are cases where psychiatric wards refuse to hospitalise such persons due to their intoxication and they have to remain in an RDP until they have sobered up¹¹¹. Yet, police RDPs are not medical facilities and have no human resources and conditions to provide optimal care, including psychiatric care, to such persons. The stay of such persons in RDPs entails a risk related to their behaviour both to detainees and officers.



In the opinion of the NMPT, the current systemic solution for care provision to intoxicated persons does not provide them with adequate health protection and needs to be changed. According to the recommendation of the SPT, Poland should introduce a system of quick access to free-of-charge medical treatment(including psychiatric care) to people detained in RDPs¹¹².

3. Failure to conduct medical examinations of all detainees

Detainees are subjected to medical examinations prior to being detained in an RDP, in accordance with the principles set out in the applicable regulation of the Minister of the Interior¹¹³. It does not provide for the examination of all detainees. For this reason, some persons placed in RDP do not undergo such an examination.

In the opinion of the NMPT, all persons detained by the Police should undergo a medical examination. This is because such an examination constitutes a basic guarantee for the prevention of torture and protects officers from allegations concerning the treatment of persons in their custody. Also, the awareness that any injuries will be found and documented by medical personnel is a deterrent and may prevent ungrounded or disproportionate application of coercive measures. The Commissioner for Human Rights has drawn attention on a number of occasions to the need to introduce the requirement to carry out a medical examination of every person detained by police officers¹¹⁴. The SPT has also recommended to Poland the introduction of preventive medical examinations for all persons detained by the police¹¹⁵.



The SPT, CAT and the Board of Trustees of the UN Voluntary Fund for Victims of Torture emphasise that healthcare professionals have a critical role to play in preventing and holding states accountable for torture and rehabilitating torture survivors. Healthcare professionals are often the first to detect signs of torture through their daily contact with patients or when certifying deaths. As they can closely inspect and observe the physical and mental conditions of people deprived of liberty, they are in an important position to prevent and report any form of torture and to provide health care to the victims. Documenting

¹¹¹ See: RDP at the District Police Headquarters in Głogów (KMP.570.10.2022.KK) and RDP at the District Police Headquarters in Krotoszyn (KMP.570.14.2022.RK).

¹¹² See: SPT report on the visit to Poland in 2018, CAT/OP/POL/ROSP/1, para. 54.

¹¹³ See: Regulation of the Minister of the Interior of 13 September 2012 on medical examinations of persons detained by the police (Journal of Laws of 2012, item 1102, as amended).

¹¹⁴ See e.g. annual reports on the activities of the National Mechanism for the Prevention of Torture in Poland in 2019, 2020 and 2021, published by the CHR.

¹¹⁵ See: SPT report on the 2018 visit to Poland, CAT/OP/POL/ROSP/1, paras. 53 and 55.

torture is often a prerequisite for obtaining justice, asylum, rehabilitation and care and can be therapeutic in acknowledging victims' experiences. States must ensure that all detainees have medical examinations immediately after arrest¹¹⁶.

4. Access to legal aid from the outset of detention

Poland does not have a system of legal aid that would enable any detainee to contact an attorney or a lawyer from the outset of detention. Yet, in the period immediately following detention the risk of torture and ill-treatment is the greatest.

Under Polish law, an application for appointment of a public defender may only be filed after the first interrogation as a suspect. Until the appointment of a public defender and their first contact with the client, officers carry out official procedures regarding the detainee (questioning, interrogation or other procedures). The lack of other safeguards (such as a mandatory medical examination upon detention or video and audio recording of questioning/interrogation) may be conducive to the use of torture. The situation of less well-off persons who cannot afford an attorney of their choice is particularly difficult. Such persons are in fact deprived of legal assistance during the initial stage of criminal proceedings.

Contact with an independent professional attorney is an essential safeguard against the use of torture; it also facilitates access to complaint mechanisms and the possibility to exercise other rights of detainees, promotes fairness and quality of criminal proceedings and protects officers against slander regarding their working methods.



The problem was identified by international institutions and was the subject of recommendations issued to Poland by the CAT¹¹⁷, SPT¹¹⁸ and CPT¹¹⁹.

Also, according to Directives of the European Parliament and the Council, Poland is required to provide free ex officio legal aid to European Union citizens residing in its territory, prior to their first interrogation by the police or another authority and prior to the performance of investigation or evidence-taking procedures¹²⁰.

The problem was also raised before the Minister of Justice by the Commissioner for Human Rights, as described in the chapter *Advisory activities*.

5. No walking areas in RDPs

The NMPT has mentioned in its reports for several years that RDPs usually have no walking yards, and even if they exist, they are not in use¹²¹. This is related to the legal regulations on RDPs which do not refer to walking yards or detainees' right to a walk.

¹¹⁶ See: Joint Statement of the UN Committee Against Torture (CAT), the Subcommittee on Prevention of Torture (SPT) and the Board of Trustees of the UN Voluntary Fund for Victims of Torture of 26 June 2022, issued on the occasion of the International Day in Support of Victims of Torture, available at: <https://www.ohchr.org/en/statements/2022/06/un-experts-healthcare-professionals-are-essential-torture-prevention>

¹¹⁷ See: Concluding observations of the Committee against Torture on the seventh periodic report of Poland, CAT/C/POL/CO/7, paras. 15(a) and 16 (a).

¹¹⁸ See: SPT report on the visit to Poland in 2018, CAT/OP/POL/ROSP/1, paras. 51-52.

¹¹⁹ See: CPT reports on the visit to Poland in 2017, CPT/Inf (2018) 39, para. 25 and in 2019, CPT/Inf (2020) 31, paras. 19 and 21-22.

¹²⁰ See: Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ EU 2016 No. 297, p. 1 as amended) and Directive (EU) 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ EU. L.2013 No. 294, p. 1).

¹²¹ See e.g. NMPT annual report for 2019, p. 71 and Report on the visit of the NMPT to the RDP at the Municipal Police Headquarters in Włocławek conducted on 22 November 2018, ref. no. KMP.570.29.2018.RK.



The problem has been highlighted for many years by the CPT which has recommended that Poland ensure that all persons detained in police custody for a period of 24 hours or more are given the opportunity to take daily outdoor exercise¹²².

Also, the SPT recommended to Poland that all persons detained by the police are given the opportunity to spend time outside their cells, including exercise and access to fresh air, for at least one hour a day¹²³.

It is therefore necessary to amend the regulations on RDPs and to bring the infrastructure of police organisational units in line with international standards. Moreover, the number of officers at RDPs should be increased so that in practice it is possible for detainees to take a walk while ensuring security and carrying out other day-to-day tasks without compromising the rights of detainees.

Walking yards should be adequately equipped. It would be best if they had appropriate exercise equipment, benches and a roofed part to be used in bad weather and if they took into account the needs of persons with disabilities and with limited physical abilities. They should also be equipped with a video surveillance system to ensure security and officers supervising detainees should have body-worn cameras¹²⁴.

6. Lack of legal measures to protect whistleblowers

Effective prevention of torture requires the establishment of an appropriate legal framework and institutional culture which would enable police officers to report cases of misconduct of their colleagues without the risk of retaliation or imputation of disloyalty towards their professional group.

The law still lacks appropriate procedures that would make it possible for officers to report cases of ill-treatment of detainees by other officers, in a confidential and safe manner. Theoretically, an officer may notify his/her supervisor about the incident, or draw up a memo. However, that reporting method makes officers fear that their actions would be viewed as a sign of disloyalty and that they may face possible further consequences. As a result, many cases of mistreatment of detainees may go unreported. This leads to the feeling of impunity and to human rights violations.



CPT recommended that Poland adopt measures to protect whistleblowers in the police¹²⁵. The need for whistleblowers protection has also been emphasized by the Committee of Ministers of the Council of Europe¹²⁶, the European Parliament¹²⁷ and non-governmental organisations.

The Commissioner for Human Rights notified the Prime Minister about the lack of adequate legal solutions regarding whistleblowers in the uniformed services and special services¹²⁸ and submitted relevant information also to the Speaker of the Senate with regard to police officers¹²⁹.

In response to the Commissioner's letter Mariusz Kamiński, Minister of the Interior and Administration informed the Commissioner that the possibility to extend the whistleblower status to officers of the services would be analysed during the works on the draft act implementing, into the Polish legal system,

¹²² See: CPT report on the visit to Poland in 2017, CPT/Inf (2018) 39, para. 33.

¹²³ See: SPT report on the visit to Poland in 2018, CAT/OP/POL/ROSP/1, paras. 66-67.

¹²⁴ See: NMPT thematic report entitled "Human rights in places of isolation. How the recommendations of the international bodies for the prevention of torture (CPT and SPT) are implemented in Poland", published in 2022, para. 35.

¹²⁵ See: CPT report on the visit to Poland in 2013, CPT/Inf (2014) 21, para. 24. See: also Twenty-eighth CPT General Report, CPT/Inf (2019) 9, para. 71.

¹²⁶ See: Protection of whistleblowers: recommendation CM/Rec (2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 and explanatory memorandum.

¹²⁷ See: European Parliament resolution of 24 October 2017 on legitimate measures to protect whistleblowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)).

¹²⁸ See: CHR's general intervention letter of 16 April 2018, ref. no. KMP570.1.2018.RK.

¹²⁹ See: CHR's general intervention letter of 29 June 2021, ref. no. KMP071.4.2021.

Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Of key importance for the matter would be actions and proposals of the minister responsible for labour issues rather than the provisions on whistleblower status, included in the draft *Act on openness in public life*¹³⁰.

The draft act submitted by the Minister of Family and Social Policy is currently at the stage of legislative works. According to the latest version of the draft of 5 January 2023, it will apply also to police officers (Article 4(1)(11) thereof)¹³¹.

PENITENTIARY ESTABLISHMENTS

In 2022, the National Mechanism for the Prevention of Torture conducted monitoring visits to twelve penitentiary establishments¹³²: nine prisons and three remand prisons.

Eight of the visits¹³³ were on-site ones and four¹³⁴ were held remotely via an internet communicator.

■ Systemic problems

1. Small living space in prison cells

For years¹³⁵, the National Mechanism for the Prevention of Torture has been calling on the authorities to introduce relevant legislative changes with the aim to increase living space per prisoner in a cell.

According to the regulations applicable in Poland, a prisoner is guaranteed a minimum of 3 m² of living space. The legislation also provides for the possibility to reduce the 3 m² standard in specific circumstances¹³⁶. The Polish standard, however, is contrary to international standards and practices of most of the European countries¹³⁷.



The minimum living space recommended by the CPT for the Council of Europe member states is 6 m² in a multiple-occupancy cell and 4 m² in a single-occupancy cell, excluding the toilet area. Also, every cell should have at least 2 m between the walls and 2.5 m between the floor and the ceiling¹³⁸. The SPT, in the report on the visit to Poland in 2018, recommended that the State party increase the minimum standard of living space per prisoner to at least four square meters in a multi-person cell (excluding sanitary facilities) and six square meters in a single cell, and then recalculate the formally existing number of places in cells in penitentiary establishments¹³⁹.

According to the CAT, Poland should take measures, also by increasing the capacity of prisons, in order

¹³⁰ See: Letter of 21 September 2021, ref. no. DBN.WP.3581.5.4.2020.GG(25).

¹³¹ See: Draft Act on the protection of persons reporting violations of the law of 5 January 2013, item no. UC101 on the list.

¹³² Prison in Dubliny (KMP:571.2.2022), prison in Przemyśl (KMP:571.4.2022), prison in Pińczów (KMP:571.1.2022), prison in Wojkowice (KMP:571.5.2022), prison in Gębarzewo (KMP:571.8.2022), prison in Wołów (BPW:571.1.2022), prison in Czarne (BPG:571.1.2022), prison in Siedlce (KMP:571.9.2022), prison in Barczewo (KMP:571.13.2022), remand prison in Opole (KMP:571.3.2022), remand prison in Łódź (KMP:571.7.2022), remand prison in Bydgoszcz (KMP:571.12.2022).

¹³³ Prison in Wojkowice (KMP:571.5.2022), prison in Gębarzewo (KMP:571.8.2022), prison in Wołów (BPW:571.1.2022), prison in Czarne (BPG:571.1.2022), prison in Siedlce (KMP:571.9.2022), remand prison in Łódź (KMP:571.7.2022), remand prison in Bydgoszcz (KMP:571.12.2022).

¹³⁴ Prison in Dubliny (KMP:571.2.2022), prison in Przemyśl (KMP:571.4.2022), prison in Pińczów (KMP:571.1.2022), remand prison in Opole (KMP:571.3.2022).

¹³⁵ See: annual reports on the activities of the National Mechanism for the Prevention of Torture in Poland in 2018, 2019, 2020 and 2021.

¹³⁶ According to Article 110 (2), (2a), (2b) and (2c) of the Act of 6 June 1997: Executive Penal Code (Dz. U. [Journal of Laws] of 2023, item 127).

¹³⁷ See: European Union Agency for Fundamental Rights, Criminal detention conditions in the European Union: rules and reality; December 2019, point 1.2 National standards; pp. 17-19.

¹³⁸ See: Living space per prisoner in prison establishments: CPT standards, 15 December 2015, CPT/Inf (2015) 44; Twenty-Sixth General Report of the CPT, CPT/Inf (2017) 5, para. 56; CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 59.

¹³⁹ See: SPT report on the visit to Poland in 2018, CAT/OP/POL/ROSP/1, paras. 80-81.

to ensure compliance with the European standard of at least four square meters of living space per prisoner¹⁴⁰.

The problem of the so-called multiple-occupancy cells has not yet been solved. There still exist cells for over ten inmates. At one of the visited prisons¹⁴¹ there were mostly multi-occupancy cells: one 8-person cell, eleven 11-person cells and eighteen 12-person cells. There were only two cells for less than 7 persons. Another visited establishment¹⁴² had twenty two 16-person cells and one 15-person cell.



In the opinion of the CPT, large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives. Moreover, the risk of intimidation and violence is high. Such accommodation arrangements are prone to Foster the development of offender subcultures. They can also render proper staff control extremely difficult, if not impossible. Further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions¹⁴³.

2. No possibility to appeal to a court against a decision to conduct body search

Until 31 December 2022, decisions on conducting body search of prisoners were not subject to assessment by courts, which posed a problem¹⁴⁴. Directors of penitentiary establishments were not required to issue a written decision to conduct body search of a prisoner, which decision could be appealed to a court under Article 7 of the Executive Penal Code. This opened the door to overusing the body search procedure due to the lack of external (judicial) verification.



The European Court of Human Rights (ECHR) in Strasbourg pointed, in its numerous judgments regarding Poland, to repetitive abuses in the form of conducting invasive body search of prisoners. The Court pointed out that the domestic legislation applied in practice did not ensure an effective measure for inmates to appeal against decisions to carry out body search¹⁴⁵.

3. Medical examination of persons placed in penitentiary establishments and the absence of procedures to be followed in cases of reported torture in order to document injuries

Not every person placed in a penitentiary establishment undergoes a medical examination. Only „newly detained” people are examined; inmates who are moved between penitentiary establishments are not. Although they are initially interviewed by a nurse who refers them to a doctor if necessary, there is no provision for obligatory physical examination of all first-time detainees, including body examination. The practice causes a large gap in the system of preventing torture and ill-treatment. Even if a prisoner has undergone a medical examination before being moved to another establishment, the lack of such an exam-

¹⁴⁰ Committee Against Torture, Concluding observations on the combined fifth and sixth periodic reports of Poland, 23 December 2013, CAT/C/POL/CO/5-6, para. 19.

¹⁴¹ Prison in Dubliny.

¹⁴² Prison in Barczewo.

¹⁴³ See: The Eleventh General Report on the CPT's Activities, a summary, CPT/Inf (2001) 16, para. 21.

¹⁴⁴ On 1 January 2023, a relevant amendment of the Executive Penal Code came into effect, i.e. Article 223 point h, which reads as follows: „A person who has been subjected to a body search may file a complaint with a competent penitentiary court, within 7 days of the date of the body search, requesting the court to examine the grounds for the search, its legality and correctness of its performance”.

¹⁴⁵ Judgments of the ECtHR in the cases of: Świdorski v. Poland of 16 February 2016 (application no. 5532/10), Filas v. Poland of 15 April 2021 (application no. 31806/17), Leńczuk v. Poland of 15 April 2021 (application no. 47800/17), and Bechta v. Poland of 20 May 2021 (application no. 39496/17).

ination upon arrival to the place makes it impossible to discover signs of any potential violence used against the prisoner during his/her conveying.

Moreover, the experience of the NMPT shows that the examination by a doctor is often superficial and is limited to interviewing the patient, without checking his/her body (conducting a physical examination). The fact that medical personnel limit themselves to interviewing the patient, without examining his/her body, makes it impossible to discover signs of violence and, consequently, makes this minimum anti-torture safeguard ineffective.

The NMPT has called in its subsequent annual reports, since 2016, for the adoption by the Prison Service of procedures to be followed when a prisoner has reported that he/she has been a victim of torture or violence or when the use of torture or violence against a prisoner is suspected, and the NMPT's call is still valid¹⁴⁶. The method of documenting injuries also needs to be improved. Injuries of prisoners are, in most cases, described in their health record books or in prison officer notes. Penitentiary establishments' personnel do not take photographs of prisoners' injuries and do not mark them on a special form (body chart) with an outline of a human body, recommended by the CPT for registering prisoner injuries¹⁴⁷.

The analysis of medical documentation kept by one of the visited establishments showed that in the month preceding the NMPT visit, two persons were admitted to the remand prison with visible injuries that were described, upon the prisoners' admission, in their medical records.

In the first case, after a physical examination upon admission, the following information was entered: "skin scratch next to the left ear; a cut on the face." However, the description of the examination as such (medical interview) by the physician included no information about the injuries.

In the second case, the documentation of a prisoner admitted to a prison hospital from the Emergency Department of an external hospital included the following record: "The prisoner reports that he was beaten two days ago and that he had a chest injury – his ribs were broken (...) He has pneumothorax (...)". However, the letter of discharge from the Emergency Department stated: "In the interview, the patient reported that two days ago he was kicked by police officers". The injuries were not documented by means of photographs or body maps. The visited establishment did not keep a register of prisoner injuries detected¹⁴⁸.



In the opinion of the SPT, initial physical examination of all the inmates should be carried out with the use of a standard questionnaire which, apart from general questions regarding health, should include descriptions of all recent acts of violence experienced by the inmate concerned. A doctor should carry out a full physical examination, including inspection of the whole body. If the doctor has reasons to suspect the prisoner has been subjected to torture or other forms of abuse, he should inform relevant authorities immediately. The same should apply to any injuries suffered in the penitentiary establishment. Moreover, the Sub-Committee reminds of the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to adopt procedures to ensure that any injuries reflecting the inmate's report about ill-treatment (or suggesting ill-treatment even if it has not been reported by the inmate), are reported to competent authorities regardless of whether the inmate has requested to report them or not. The results of the inmate's physical examination should be available to the inmate concerned, and to his/her lawyer¹⁴⁹.

¹⁴⁶ See: Report of the Commissioner of Human Rights on the activities of the National Mechanism for the Prevention of Torture in 2018.

¹⁴⁷ See: CPT report on the visit to Poland in 2017, CPT/Inf (2018) 39, para. 80. See also CPT comments and recommendations contained in the report on the ad hoc visit in 2019, CPT/Inf (2020) 31, para. 26.

¹⁴⁸ See: Report on the NMPT visit to the remand prison in Bydgoszcz; (KMP571.12.2022).

¹⁴⁹ The SPT report on the visit to Poland in 2018, CAT/OP/POL/ROSP/1, points 106 and 107.

4. Standard applicable to the number of penitentiary psychologists

The need to increase the number of psychologists employed in penitentiary establishments has been raised by the CHR in his general intervention letters to the Director General of the Prison Service¹⁵⁰ and has been mentioned in the NMPT annual reports¹⁵¹. In the opinion of the National Mechanism, psychological support in prisons is insufficient and the existing standard (one psychologist per 200 inmates) does not ensure the effectiveness of the support¹⁵².



The Report of the Supreme Audit Office has emphasised that „The very large number of prisoners per psychologist results in a limited possibility of conducting examinations, even on urgent basis, of persons who have suicidal thoughts. It also causes problems relating to the provision of psychological support and drawing up recommendations for prisoners with registered suicidal attempts. Doubts are also raised with regard to the possibility to provide actual assistance to prisoners who require it, even within the system of crisis intervention”¹⁵³.

In 2022, the Ministry of Justice drew up an amendment to the regulation on the methods of conducting social rehabilitation activities in prisons and remand prisons. The legislator decided to delete from the regulation the provision on short-term therapy for convicted addicts, conducted within a therapy system and left only the possibility of using short intervention. The NMPT’s opinion on this project is presented in a chapter of this Report „Assessment of legislative acts”.

5. Situation of inmates with reduced physical abilities, chronic somatic diseases or old age

Within the Polish penitentiary system there is only one prison hospital ward for inmates with chronic somatic diseases, i.e. the Ward for Chronically Ill Prisoners in the prison in Czarne. As a result of a limited number of places in the facility, in some cases inmates have to wait for admission for more than a year.

At one of the establishments there was an inmate who was about 70 years old and required permanent care. As a result of a road accident he suffered a disruption of the spinal cord and a fracture of the femur. He was bedridden, had spastic paresis of the legs, sphincter paralysis, and had been diagnosed with degenerative joint disease. He also had a urinary catheter. The prison provided him with an anti-decubitus mattress and a rehabilitation bed with a trapeze. He underwent periodic medical check-ups in the ward. According to the establishment’s medical staff, the inmate required 24-hour care by other people as well as treatment in a hospital for chronically ill patients. On the day of the visit, he had 24-hour assistance provided by other inmates who had undergone training in care provision to elderly and disabled people. The inmates assisted him in daily activities such as changing clothes, washing, changing bed linen and changing diapers. His cell (cell for sick prisoners) was located close to the infirmary so the doctor and nurses could monitor the patient. The inmate did not seek conditional release or a leave from prison. In September 2021, the director of the establishment filed an application for the prisoner’s placement in the Ward for Chronically Ill Prisoners at the Prison in Czarne. The admission date was set for November 2022¹⁵⁴.

¹⁵⁰ See: General intervention letters of the CHR to the Director General of the Prison Service of 17 May 2016, 19 February 2019 and 10 November 2020 (ref. no. KMP.571.8.2016).

¹⁵¹ See: Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2021, p. 53-54.

¹⁵² See: Order No. 19/16 of the Director General of the Prison Service of 14 April 2016 on the detailed rules of conduct and organization of penitentiary work and on the scopes of activities of officers and employees of penitentiary and therapeutic units and penitentiary wards, point 3(2).

¹⁵³ Supreme Audit Office, Information on inspection results: safety of prisoners, KPB.430.002.2020, ref. no. 52/2020/P/19/040/KPB, p. 58.

¹⁵⁴ See: Report on the visit to the prison in Pińców, KMP.571.1.2022.

The issue of imprisonment of persons with reduced physical abilities or chronic somatic diseases is connected, in particular, with the shifting of the duty to provide daily assistance to such prisoners to other inmates in the prison. The solution is based on their good will as they may not be forced to provide such assistance.



Detaining persons suffering from a serious physical disability in conditions inappropriate to their state of health, or leaving such persons in the hands of their cellmates for help with bathing and getting dressed or undressed is unacceptable as it amounts to degrading treatment¹⁵⁵.

6. Activities for remand prisoners

The problem of a poor offer of cultural and educational activities for detainees in remand prisons was identified by the NMPT already in 2014 and was referred to in the thematic report on the situation of detainees in remand prisons and therapy wards¹⁵⁶. The visits conducted in 2022 demonstrated that the situation had not improved.

Remand prisoners spend most of their time (on average, 23 hours a day) in their cells. They may go for a one-hour walk a day and spend some time in the association room (on average, about one hour once or twice a week). They may also borrow books from the library. Yet, physical activities for prisoners not only improve their well-being but are also an important factor in relieving tension and counteracting aggression. Of particular importance are outdoor activities that allow to intensify physical effort.



In the opinion of the CPT, all remand prisoners should be able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). The longer the period of remand detention, the more varied the regime should be¹⁵⁷.

7. Transgender persons in penitentiary establishments

A transwoman prisoner whom the NMPT team interviewed in one of the prisons had been placed, throughout the period of her imprisonment, in prisons for men (the visited establishment was the thirteenth prison in which she was held). The reason was that despite the hormonal therapy and visible physical changes, officially she was still a man (according to the personal ID card and other documents). Since the beginning of the gender transition process, the inmate had been held in isolation from other prisoners for the purpose of ensuring her safety. During the visit, the inmate was held in a ward for dangerous prisoners despite the fact that she had not been considered a dangerous prisoner. All her activities, such as the daily walk, were required to take place without the participation of other prisoners. An exception was the prison from which she had been transported, in order to take part in the procedural activities, to the prison visited by the NMPT (in the previous prison she could go for a walk with five other carefully selected inmates). During her imprisonment she had not been referred to any addiction prevention therapy although, according to prison psychologists, she required it. She was held in permanent isolation which negatively impacted her mental condition and well-being (she repeatedly self-harmed and attempted suicide due to the feeling of helplessness and loneliness). When the inmate was subjected to a body check, which often required taking off underwear, it was conducted by male officers (as it was not possible for her to select the gender of the person to carry out the body check).

¹⁵⁵ Judgment of the ECHR of 12 February 2013 in the case of D. G. v. Poland, application no. 45705/07.

¹⁵⁶ See: Visits of the National Mechanism for the Prevention of Torture to prisons' therapy wards for inmates with non-psychotic mental disorders or mental retardation, and wards for remand prisoners – a report available at: <https://bip.brpo.gov.pl/pl/content/wizytacje-krajowego-mechanizmu-prewencji-oddzialow-terapeutycznych>.

¹⁵⁷ See: CPT report on the visit to Poland in 2017, CPT/Inf (2018) 39, para. 73.

After her transition process began the prison officers, according to her report, used male pronouns and offensive words when speaking to her. She also reported that she had not received reliable and scientifically confirmed information about gender transition. For a long time she had not been permitted to have women's accessories such as a bra, hairband or cosmetics. She said she had not received psychological support and, for a long time, medical support either. In one of the prisons, a doctor allegedly stopped her hormonal therapy which was one of the main allegations examined by the Commissioner for Human Rights as a result of a complaint filed by the inmate¹⁵⁸.

Given that Prison Service officers are not prepared to take into account the needs of LGBT+ persons held Polish penitentiary establishments and that there is a need for systemic solutions for dealing with LGBT+ persons, the NMPT has identified the following areas that require changes in line with applicable international standards:

- **Registers of prisoners should contain information on their gender identity** – according to the United Nations Standard *Minimum Rules for the Treatment of Prisoners* (the so-called Mandela Rules), the information entered in the prisoner file management system upon admission of every prisoner should contain e.g. precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender (rule 7). Correct identification of prisoners allows for individual and adequate interventions, in particular with regard to the so-called vulnerable groups, which include LGBT+ prisoners;
- **Conditions and regime of imprisonment** - separation from other prisoners for safety reasons often means that a sentence is served in a stricter regime. This may involve the lack of access to certain services or facilities available to other inmates. In practice, this means that LGBT+ prisoners may have no possibility to undergo vocational training, participate in workshops, continue their education or sports activities, or even go for a walk. They may also be excluded from participation in therapy groups or counter-addiction programs. Such exclusion deprives them of interpersonal contacts and increases their isolation. Decisions to place prisoners in such conditions should, where possible, be discussed with them and should not be irreversible and taken for long term, and LGBT+ prisoners should have the possibility to challenge such a decision¹⁵⁹. The Mandela Rules prohibit practices such as indefinite solitary confinement and prolonged solitary confinement (rule 43.1), which may lead to negative psychological effects. Protection measures should not result in detention conditions of LGBT+ prisoners being more restrictive than of other prisoners¹⁶⁰;
- **Body search** – according to applicable international standards body search should be carried out by staff of the same gender as the searched prisoner. The situation of intersex and transgender people is particularly delicate in this respect, in particular if their gender is not recognized by prison authorities or if the prisoner is in the period of gender transition or reassignment. There is a risk that such prisoners will not be recognized according to their gender identity. In such cases, transgender women may be searched by male staff. The risk applies also to transgender men. Moreover, body search can be used to humiliate transgender prisoners. To reduce and prevent such risks, transgender persons should, on a case-by-case basis, have the possibility to select the gender of prison staff to conduct body search. Where possible, authorities should ensure that alternative means such as metal detectors or body scanners are used first. Furthermore, body search should never be performed in order to determine a prisoner's gender based on anatomical

¹⁵⁸ See: Report on the visit to the prison in Barczewo; KMP.571.13.2022. The case is also examined individually by the Penalties Enforcement Department (IX.517.1386.2020).

¹⁵⁹ See: Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide. Published in December 2018 by the Association for the Prevention of Torture.

¹⁶⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 24 February 2016, para. 70.

features. Prison staff should be trained in conducting search both in terms of practical methods and non-discrimination, with particular emphasis on searching LGBT+ prisoners¹⁶¹;

- **Medical treatment and therapy** – transgender prisoners have special health care needs that are often neglected by prison authorities. The first medical examination upon admission to prison is important as in its course, the needs of transgender people should be identified and determined. As stated by the UN Subcommittee on the Prevention of Torture, “obtaining precise individual information as to gender identity is vital to determining proper treatment, including hormone and other treatment associated with gender transition. In the absence of mechanisms to obtain such information, grave health consequences ensue”¹⁶². It is important not to discontinue hormone therapy (e.g. upon admission to a prison or transfer to another prison). Transgender people should be constantly monitored by appropriately trained medical personnel able to manage potential medical side effects of hormone therapy. Prisoners who have undergone surgical gender reassignment also should have access to appropriate care as discontinuation of treatment and therapy often has devastating consequences. People who have been refused treatment may self-harm or use medication without medical supervision. The support and treatment provided to prisoners should be similar as that available to them outside prison. Prisoners who wish to begin the transition process while in prison should not be discouraged or held back by the prison service. Specialized care for transgender people should also include psychological support and mental health counselling¹⁶³. Access to adequate health care and counselling, appropriate to the needs of persons deprived of their liberty, taking into account their specific needs related to their sexual orientation or gender identity, including reproductive health, and access to information and treatment for HIV/AIDS, to hormonal or other therapy and, if necessary, to gender reassignment therapy¹⁶⁴ is a fundamental right not a form of special privileged treatment of transgender people in prison;
- **Use of pronouns** – in contacts with transgender people their declared gender identity should be taken into account and their preferred names and gender pronouns consistent with their self-identification should be used¹⁶⁵;
- **Image** – prisoners should not be punished or discriminated against for manifesting their sexual orientation or gender identity, or for displaying affection towards a person of the same gender. Allowing trans detainees to wear their own clothes, and allowing gender-oriented items (including garments, accessories, and make-up) is essential to ensuring that they are able to live in the gender with which they identify. Access to such items should not be dependent on medical certification¹⁶⁶;
- **Staff training** – according to the document entitled Yogyakarta Principles, programmes of training and awareness-raising should be undertaken for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orienta-

¹⁶¹ See: Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide. Published in December 2018 by the Association for the Prevention of Torture, p. 76.

¹⁶² See: Ninth Annual Report of the SPT, CAT/C/57/4, 22 March 2016, para. 65.

¹⁶³ See: Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide. Published in December 2018 by the Association for the Prevention of Torture, pp. 87-89.

¹⁶⁴ The Yogyakarta Principles plus 10 (YP plus 10), principles 9 and 17. The Yogyakarta Principles are a document drawn up by academics, lawyers and human rights experts in cooperation with non-governmental organizations. It relates to human rights from the point of view of sexual orientation and gender identity. It was published following an international meeting of representatives of human rights organizations, held in Yogyakarta in November 2006. In 2017, the Yogyakarta Principles were extended by additional guidelines reflecting the developments in international human rights law and practice - the Yogyakarta Principles plus 10.

¹⁶⁵ The Istanbul Protocol, para. 280 and para. 600.

¹⁶⁶ See: Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide. Published in December 2018 by the Association for the Prevention of Torture, p. 82.

tion and gender identity. In the preparation of such training, non-governmental organizations with specialist knowledge of the issues should be engaged. Staff should be trained in specific practical aspects such as: conducting searches, classification of prisoners and their placement within the establishment, and identification of specific forms of violence, in particular used by other prisoners. Medical staff should also be trained. Such training can help avoid discriminatory attitudes and approaches based on stereotypes and false beliefs about the needs of transgender people.

8. Transport of prisoners who require specialist medical care

In 2022, the NMPT visited a prison in which there is a prison hospital with the only general surgery department in prison in the country. According to the information received during the visit, the waiting time for admission to the department was approximately 5 months¹⁶⁷.

The NMPT representatives were informed that despite the existing list of surgical procedures performed in the department, there were cases of prisoners with moderate to severe health conditions, who were brought to the prison hospital in Bydgoszcz from other prisons, sometimes very distant ones, without prior arrangement. Such people often required urgent treatment in specialist non-prison health care facilities and were thus referred to hospitals in Bydgoszcz.

According to Article 115(4) of the Executive Penal Code, health care services are provided to convicted prisoners mainly by medical facilities assigned for persons deprived of their liberty. However, taking into account, in the first place, the good of prisoner patients and the need to provide them with adequate medical care as soon as possible, in the opinion of the NMPT medical treatment of prisoners in emergency cases should be provided by medical facilities located closest to the penitentiary establishment where the prisoner is held. It should also be noted that convoys, especially from distant prisons and remand prisons, generate significant costs covered from public funds and constitute an additional task burden for prison service staff.

9. Preventive recommendation cards

During one of the visits¹⁶⁸ the visiting team paid attention to preventive recommendation cards issued with regard to three prisoners. The recommendations contained therein related, among others, to:

- „the requirement for any activities of the prisoner to be performed in the presence of at least two officers; handcuffing the prisoner with their hands behind when outside the cell;
- the requirement for all visits to be received in the room assigned to visits to dangerous prisoners;
- going for a walk alone only;
- the prisoner's isolation from other prisoners, without the possibility to contact other inmates under any circumstances;
- limiting the presence of other prisoners to the possible extent when the prisoner is walked across the prison;
- personal hygiene activities carried out under supervision of prison service officers”.

Also, the preventive recommendation cards for two of the prisoners stated that their behaviour was unpredictable and entailed the risk of self-aggression or aggression against the officers.

All the above recommendations were of preventive nature. It should be mentioned, however, that a decision stating that a given prisoner poses a significant threat to people or to safety in the prison should be taken by the penitentiary commission of the establishment¹⁶⁹. Such a decision, pursuant to Article 88b(3)

¹⁶⁷ 168 prisoners from different penitentiary establishments across the country were on the waiting list to undergo surgery procedures in the prison hospital of the remand prison in Bydgoszcz.

¹⁶⁸ Prison in Czarne.

¹⁶⁹ Article 88a of the Executive Penal Code.

of the Executive Penal Code, is subject to verification at the request of the prisoner or their attorney. It should also be emphasized that according to Article 88d(1) of the Executive Penal Code, the prison director may order special protection of a prisoner in the form of their increased isolation and security. The special protection is granted, extended in time or discontinued in the form of the prison director's decision that is delivered to the prisoner¹⁷⁰. The director's decision regarding the matter may be appealed against by the prisoner before the penitentiary court pursuant to Article 7 of the Executive Penal Code.

The preventive recommendation cards did not indicate, however, the period for which the recommendations were given; it was not possible to verify whether the recommendations had to be continued in the future; the cards had not been delivered to the prisoners, and because of the legal form of the recommendations they could not be appealed against.

To sum up, the application by a prison director of special protection procedures and special security measures with regard to specific persons should (if specific circumstances justifying their application exist) take the form of a decision that can be appealed against and verified. The application of such procedures should not take the form of recommendations contained in a preventive recommendations card because they cannot be appealed against, are not limited in time and are not subject to periodic verification. It should also be emphasized that the prisoners in question were not informed of the content of the cards. The recommendations included therein constituted, however, individual-related acts imposing specific restrictions on given individuals, and therefore should have been communicated to the prisoners.

It is unacceptable to apply, with regard to prisoners, any measures that have no legal basis or that are disproportionately severe and going beyond the actual level of threat posed by the prisoner to the safety of prison service officers or other persons deprived of liberty. This opinion has already been expressed by the Commissioner for Human Rights in 2020¹⁷¹. Moreover, already in 2013 Prof. Irena Lipowicz, then-Commissioner for Human Rights, pointed out that there existed no legal grounds for the application, with regard to other prisoners, of measures intended for prisoners who pose a serious threat to other people or the security in the prison¹⁷².



The NMPT does not question protective recommendations issued in penitentiary establishments. They reflect the principle of individualized approach to prisoners and often serve the purpose of ensuring their safety. However, such measures must have a legal basis and must be consistent with the principles arising from Polish and international law as well as the case law of the ECtHR.

■ Areas which require improvement

1. Treatment of prisoners

At the prison in Barczewo, the NMPT visiting team were informed, during the interviews with prisoners, of acts of violence by certain officers against prisoners, that allegedly took place there. The alleged acts were said to include torture and inhuman and degrading treatment. It was reported by the prisoners that they were taken from their cells to unmonitored rooms where, according to their information, they were beaten, insulted, intimidated, choked and even waterboarded. There were cases, allegedly, in which officers put a black bag or a wet towel on prisoners' heads.

The prison is characterized by strict regime and discipline. According to the NMPT visiting team, it is maintained with the use of informal methods. Since 2021, there have been no cases of applying coercive

¹⁷⁰ Article 88d(5) of the Executive Penal Code

¹⁷¹ Letter of the Commissioner for Human Rights of 5 August 2020 to the Minister of Justice, ref. no. IX.517.632.2019.PM/JN.

¹⁷² Letter of the Commissioner for Human Rights of 27 November 2013 to the Director General of the Prison Service, ref. no. RPO-718633-II-706.7/12.

measures, which is an exception in such prisons. At the time of the visit, the atmosphere in the prison was bad and the prisoners were intimidated. After the individual interviews conducted by the NMPT representatives, the prisoners were taken from their cells by Prison Service officers, officially to the infirmary. In fact, they were taken to the security staff room where they were questioned about the course of the interviews and the information they provided. The Prison Service officers entered untrue information in the prisoner movement register by stating that the prisoners were taken to the infirmary. In fact, they were taken to another room as the NMPT team discovered in the establishment.

The NMPT delegation was also informed by the prisoners about a case of an inmate who had been beaten by Prison Service officers as a result of which he suffered a cardiac arrest. The prisoners reported that no ambulance was called and the inmate was resuscitated by the officers who restored his vital functions.

According to the materials collected by the NMPT representatives, during the alleged torture that took place a few days before the NMPT visit a paramedic was also present. One of the prisoners from the ward for so-called dangerous prisoners decided to file an official complaint via the NMPT representative. The prisoner alleged that he had been taken to an unmonitored medical room where he was tortured by waterboarding. He had been forced to lie down on the floor, his face was covered with a towel and water was poured on it. The video surveillance recordings showed the man being brought to his cell after that and taking off his wet jacket, t-shirt and underwear¹⁷³.

During the visit to another detention facility, a representative of the NMPT was also informed, in a confidential interview with a former inmate of the Barczewo prison, of the use of torture in that establishment. The interviewed prisoner filed an official complaint via the representative of the NMPT. The man said that he had been tortured in June 2022. As he described, he was first pushed towards a wall and had to stand facing it. His arms were then twisted behind his back. Two officers pulled him by the legs, as a result of which he fell to the floor. He was dragged along and his arms were twisted behind his back again. When he was lying down with his face to the floor, one of the officers pressed his neck with his knee and hit him several times on the head. The prisoner said that later the officers poured water into a black garbage bag and put his head into it as a result of which he choked and lost his consciousness. When he regained consciousness, the officers turned his head to the side and started pouring water on it.

According to the information obtained by the NMPT team, the prison security department officers intimidated the prisoners and used repressions as well as physical and verbal violence against them. Representatives of the National Mechanism were informed of a situation in which the security department officers brought a prisoner to his cell and the man had signs of being beaten (his legs and feet were bruised and he was so weak that he “could not stand on his feet”). He said that he had been beaten by the security department officers. After a few days, the officers blamed his cell inmates of beating the man. The prisoners reported that “there is a room in the prison where prisoners are taken and beaten, and before they are told that they are taken to the doctor. There are no cameras in the room”. The officers intimidated the inmates and told them “we will do to you what the prison director from Sztum did to the prisoners there”.

The prisoners also reported that correctional officers forced them to sign statements that they were non-smokers although they smoked cigarettes. Then, such prisoners were placed cells for non-smokers, which caused conflicts. The inmates were also forced to sign a declaration of giving up the possibility to serve the sentence in the semi-open regime (quote: „the correctional officers have a ready-made form to sign”; the form was seen by the NMPT representatives in the prisoners’ documentation).

¹⁷³ With regard to the case, on 7 November 2022 the CHR notified the public prosecutor from the district public prosecutor’s office Olsztyn – Północ [Olsztyn-North] about a suspected crime consisting in the abuse of power by the officers from the prison’s security department.

Informal penalties were also applied against the prisoners. For example, TV sets were taken away from them, or telephone conversations were not permitted. It was also mentioned that so-called “mixed cells” were created in which a prisoner unable to use the prison slang was placed together with the slang user, as a result of which he was to be “softened” if he was considered an “inconvenient prisoner”. Such prisoners were intimidated and their ill treatment was permitted (quote: „prisoners who represent the prison subculture abuse other inmates by making them wash their clothes and do the cleaning for them and by taking their food. It is accepted that non-users of the prison slang get smaller food portions so that larger amounts of food are given to the slang users”).



The prison staff should be given a strong signal by the superiors that all forms of ill treatment of prisoners (both physical and mental) are illegal and are subject to severe penalty. Such cases affect the image of the whole establishment and its staff and are conducive to stress and aggression, which in the long term affects all personal interactions and the effectiveness of therapeutic activities. The establishment managers should undertake systematic work to build an appropriate institutional culture in which violence against prisoners is perceived as unacceptable lack of professionalism and should encourage staff members to report ill-treatment cases. If cases of violence against prisoners are found, they should be reported as a suspected offence to the prosecutor’s office (in accordance with the requirement set out in Article 304(2) of the Code of Criminal Procedure). Cases of misbehaviour of Prison Service officers should be reported to the Director General of the Prison Service in order to take relevant disciplinary action. Mechanisms should also be implemented for monitoring the staff’s work and emphasis should be placed on their training to provide them with effective tools for managing conflicts without the need to use force.

During the other visits carried out in 2022, the NMPT representatives received also other information from prisoners regarding their mistreatment and concerning e.g.:

- threats of being hit with a baton, or scaring prisoners by hitting batons against objects in the room, pretending to slam a prisoner on the face, shouting at prisoners and verbally humiliating them¹⁷⁴;
- racist comments by a Prison Service officer¹⁷⁵;
- the use of vulgar expressions as well as language demonstrating the superiority of officers over the prisoners¹⁷⁶;
- single cases of use of physical or psychological violence (slamming a prisoner on the face, or beating a prisoner in an unmonitored part of the hall by three officers), ridiculing prisoners or making vulgar comments about their appearance¹⁷⁷;
- the necessity for a prisoner to urinate on the floor in a security cell (for about an hour the prisoner repeatedly used the call system to call an officer but nobody came to take him to the toilet)¹⁷⁸.



In the opinion of the CPT, the cornerstone of a humane prison system will always be properly recruited and trained prison staff who know how to adopt the appropriate attitude in their relations with prisoners and see their work more as a vocation than as a mere job. Building positive relations with prisoners should be recognised as a key feature of that vocation. The development of constructive and positive relations between prison staff and prisoners will not only reduce the risk of ill-treatment but also enhance control and security. In turn, it will render the work of prison staff far more rewarding¹⁷⁹.

¹⁷⁴ Prison in Wojkowice.

¹⁷⁵ Prison in Gębarzewo.

¹⁷⁶ Prison in Przemyśl.

¹⁷⁷ Remand prison in Opole.

¹⁷⁸ Remand prison in Łódź.

¹⁷⁹ See: Extract from the Eleventh General Report of the CPT, CPT/Inf (2001) 16, para. 26.

■ The impact of the “modern prison” programme on the realization of the basic rights of prisoners

In 2022, a significant amendment of the Executive Penal Code was adopted¹⁸⁰ as part of the “Modern Prisons” programme implemented by the Ministry of Justice. According to the authors of the programme, its solutions will make the greatest change in the Polish prison system in 25 years. They concern e.g.: changing the terms of use of health care services by prisoners, increasing security in prisons, improved training and effectiveness of Prison Service officers, and increased possibilities of work for prisoners¹⁸¹. Already at the stage of the legislative works, the CHR submitted a number of comments regarding the proposed changes, concerning e.g.: the possibility for persons deprived of their liberty to exercise their right to file complaints and applications, the conduct of body search of prisoners and the possibility to exercise their rights to defence and to contact with the outside world¹⁸².

According to the information received by the NMPT representatives, prisoners found the change regarding the use of payphones in prison wards to be most problematic for them. Before the amendment of the provisions, prisoners and remand prisoners had the right to make telephone calls several times a week (although remand prisoners required consent of the detaining authority/authorities). The duration of telephone calls was not limited and the only existing limit was one call per day.

According to the newly adopted provisions of the Executive Penal Code (Article 105b(1): “a prisoner may use a payphone at least once a week at their own expense or at the expense of the call receiver, in a manner and on dates and times indicated in the internal regulation of the prison.” The rationale of the amendment pointed out that “the above standard provides a guarantee of a minimum number of telephone calls made by prisoners and remand prisoners. The limit may, however, be increased by the director of the prison or remand prison in its internal regulation, taking into account the human and technical resources available at a given penitentiary establishment”¹⁸³. Yet, the analysis of penitentiary establishments’ internal regulations, carried out at the CHR Office, has shown that many directors of the establishments use the narrowing interpretation of the above-quoted provision, according to which a prisoner may use a payphone only once a week.

It should be noted that the changes introduced at the level of prison establishments in the system of use of payphones confirmed the concerns expressed by the Commissioner for Human Rights, before the adoption of the amendment, in his intervention letter to the Minister of Justice, referred to above. The CHR pointed out that the minimum standard of one telephone call per week would be adopted as binding by vast majority of penitentiary establishments in order to reduce the workload on officers.

In this context it seems justified to quote the opinion of the Association for the Prevention of Torture (APT), according to which torture and other cruel, inhuman or degrading treatment or punishment takes place, in most cases, in secrecy. Prisoners’ access to lawyers and doctors and the possibility to contact friends or family members promote greater transparency at places of detention, which helps prevent torture and ill-treatment. The possibility for prisoners to maintain contact with their families through visits, telephone calls and correspondence is their fundamental right and can, in addition, be an important source of support for them and help them reintegrate after release¹⁸⁴.

Following the said change, prisoners’ protests or riots were expected in many penitentiary establishments. Therefore, intensive action was taken to systematically monitor the atmosphere among inmates. In September 2022, several dozen prisoners were classified as posing a serious threat to people or to the

¹⁸⁰ See: Act of 5 August 2022 amending the Act - Executive Penal Code and certain other acts (Journal of Laws of 2023, item 127).

¹⁸¹ See: <https://www.gov.pl/web/sprawiedliwosc/wchodzi-w-zycie-program-nowoczesne-wiezniennictwo>.

¹⁸² See: General intervention letter of the CHR to the Minister of Justice of 24 November 2021, ref. no. IX.022.1.2021, <https://bip.brpo.gov.pl/content/rpo-zmiany-kkw-kk-kpk-kontakty-rodzina-opinia-ms>.

¹⁸³ Rationale of the government bill amending the Act - Executive Penal Code and certain other acts, Sejm paper no. 2376.

¹⁸⁴ See: Association for the Prevention of Torture - Legal Safeguards to Prevent Torture The Right of Access to Lawyers for Persons Deprived of Liberty; March 2010; APT

safety in the prison, and were placed in a closed ward or cell to ensure increased protection of people and the establishment¹⁸⁵ because of the fact that those prisoners called for a riot¹⁸⁶. In one of the visited prisons¹⁸⁷ on the day of the NMPT visit there were 12 inmates in the ward for dangerous prisoners, 3 of whom had been classified as dangerous and placed there because of incitement to a riot in other prisons following the amendment of the Executive Penal Code. As a result, they were moved to the prison that had a regime adequate to their status.

The NMPT representatives also took note of additional restrictions imposed on prisoners based on the decision of the Director General of the Prison Service¹⁸⁸. The change in the practice of dealing with prisoners and remand prisoners did not arise directly from the amended provisions of the Executive Penal Code but rather seemed to implement one of the goals of the “Modern Prisons” programme, which is increased security in penitentiary establishments. The content of the decision suggested that all the guidelines regarding the functioning of the Prison Service, contained in the document, had been previously agreed with the managers of the Ministry of Justice.

During the visits, the visiting team members noticed, in particular, changes related to the preventive use of handcuffs applied, as a rule, outside the cell. Also, separate zones for officers and for prisoners were designated in the rooms of correctional officers, head officers of wards, therapists and psychologists. The entrance doors to such rooms had a glass window with an opening. On the floor, there was a line marked with tape, which prisoners may not cross. During the meetings, persons deprived of their liberty have either to sit on a foldable plastic seat the size of which is 32 cm x 23 cm and which is fixed to the walls, or to stand. Additional alert-and-call systems for staff members were also installed.

The need to ensure the safety of the staff of penitentiary establishments is not questioned, but the above described conditions in which contacts with prisoners take place suggest (regardless of individual circumstances relating to specific prisoners) that such a contact always constitutes a potential threat. As a result, prison staff are prevented from establishing a trust-based relationship with prisoners.

The NMPT would like to point out that the numerous newly introduced measures may hinder appropriate communication between inmates and correctional officers or psychologists. All decisions that increase the severity of the penalty of imprisonment should be preceded by a thorough risk analysis regarding a specific case, and the resulting measures should meet the requirement of proportionality to the actual threat. In the opinion of the NMPT, the visits carried out last year revealed prisoners’ decreased interest in contacts with correctional officers and psychologists as a result of the introduction of the security zones. In the opinion of the Mechanism, this poses a real risk to the possibility to correctly supervise the process of serving the penalty of imprisonment. A prisoner who has experienced some negative behaviour by his or her inmates, or has received some information regarding his or her relatives and negatively impacting his or her mental condition may feel discouraged to contact the Prison Service officers to report such problems. As a result, in practice, problems that could be solved or reduced by way of such meetings may remain unreported and lead to the escalation of tensions. This, in turn, can lead to more serious consequences related to the health of the prisoner or the safety in a given establishment.

NATIONAL CENTRE FOR THE PREVENTION OF DISSOCIAL BEHAVIOURS

On 9-11 May 2022, the National Mechanism for the Prevention of Torture carried out a visit to the branch facility of the National Centre for the Prevention of Dissocial Behaviours (Polish: Krajowy Ośrodek

¹⁸⁵ Article 88a of the Executive Panel Code.

¹⁸⁶ According to the statistics, the number of dangerous prisoners increased from 145 in August 2022 to 186 in September 2022 and remained at a similar level until November 2022 (<https://www.sw.gov.pl/strona/statystyka-miesieczna>).

¹⁸⁷ Prison in Barczewo.

¹⁸⁸ See: Letter of the Director General of the Prison Service of 6 April 2022, ref. no. BDG.070.40.2022.KS.

Zapobiegania Zachwaniom Dyssojalnym, hereinafter: KOZZD) in Czersk¹⁸⁹. The main part of the facility is located in Gostynin¹⁹⁰. The Centre has been established under the *Act of 22 November 2013 on the procedures for dealing with persons with mental disorders, who pose a threat to the lives, health or sexual freedom of other individuals*¹⁹¹ (hereinafter: the Act on KOZZD). The Centre is neither a penitentiary establishment nor a psychiatric hospital. It is a special entity established to carry out the therapy process. Patients are placed in the Centre pursuant to a court decision. The Centre is subordinate to the Minister of Health.

The branch facility in Czersk is currently the only branch of KOZZD in Poland. It has been established by way of a regulation of the Minister of Health¹⁹². It operates on the site of a former penitentiary unit. In addition to medical and therapeutic staff, delegated Prison Service officers were present on the premises, assisted by civilian security personnel. As a rule, patients who had previously stayed in the facility in Gostynin, did not manifest somatic conditions and did not pose security problems, were sent to the Czersk branch.

■ Systemic problems

1. The need to amend the Act on KOZZD

The need for comprehensive legislation on the operation of KOZZD was reported to the Minister of Health by the National Mechanism for the Prevention of Torture already after its visit to the Gostynin Centre in 2019¹⁹³. The need for urgent change of the related legislation was also raised after the visit to the facility in 2021¹⁹⁴.



According to the NMPT, the Act on KOZZD should contain, *inter alia*, provisions requiring central-level verification of the need to refer a person to the facility as well as provisions regulating: the rights and obligations of its patients; the rules of body check of the patients; mandatory video and audio recording by the CCTV system of the application of coercive measures in the form of isolation and restraint; template forms to be filled out in cases of the application of coercive measures; the number of staff required by the Centre.

However, the legislator did not amend the act in line with the expectations and recommendations of the NMPT. In April 2022, the Commissioner for Human Rights submitted an opinion to the Minister of Health on the proposed amendments to the act¹⁹⁵. The opinion had been drawn up with the participation of the NMPT. The document pointed out that a number of issues of importance for the rights and freedoms of the patients had been disregarded in the bill. The course of the legislative works is still monitored by the NMPT.

¹⁸⁹ KMP.574.2.2022.RK.

¹⁹⁰ The Gostynin facility was visited by the NMPT in 2019 and 2021. [ref. no. KMP.574.1.2019.JZ].

¹⁹¹ Journal of Laws of 2022, item 1689.

¹⁹² See: Regulation of the Minister of Health of 5 March 2021 amending the regulation establishing the statutes of the National Centre for the Prevention of Dissocial Behaviours (Official Gazette of the Minister of Health of 5 March 2021, item 18).

¹⁹³ See: NMPT report on the visit to KOZZD in Gostynin on 18-20 February 2019 [ref. no. KMP.574.1.2019.JZ], points 4 and 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 2019, pp. 105-109.

¹⁹⁴ See: NMPT report on the visit to KOZZD in Gostynin on 8-10 March 2021 [ref. no. KMP.574.1.2019.JZ], point 4.

¹⁹⁵ Opinion of the CHR of 29 April 2022 (ref. no. IX.022.3.2022.TRo) on the bill amending the Act on the procedures for dealing with persons with mental disorders, who pose a threat to the lives, health or sexual freedom of other individuals, the Act on health care services financed from public funds and the Act on health care provision, which bill was entered in the list of legislative works of the Ministry of Health under the number UD 350. Available at: <https://bip.brpo.gov.pl/content/rpo-kozzd-projekt-nowelizacji-opinia>

2. Window blinds

All rooms in the branch facility had non-transparent external window screens called window blinds. This type of protective solution was not used at the main facility in Gostynin but only in the branch facility¹⁹⁶. The blinds are a solution that is used in penitentiary establishments.



The blinds should be removed and, if such protection is really necessary, they should be replaced with one that allow access of natural light and fresh air to the cells in sufficient amount¹⁹⁷.

DETENTION OF JUVENILES

In 2022, the National Mechanism for the Prevention of Torture carried out visits to nine facilities for juveniles: four juvenile detention centres¹⁹⁸, one juvenile detention centre with a juvenile shelter¹⁹⁹, two juvenile shelters²⁰⁰, two district youth care centres²⁰¹ and three youth care centres²⁰². Two of the visits, due to the COVID-19 epidemic, had the form of online monitoring carried out via an internet communicator²⁰³.

On 1 September 2022, the new *Act on support and social rehabilitation of juvenile delinquents* came into force²⁰⁴, replacing the *Act on juvenile delinquency proceedings* that had been in force since 1982²⁰⁵. The new act introduced e.g. a new type of facility for juveniles, called “district youth care centre”.

The district youth care centres have been established as a result of transformation of ten institutions for juveniles, of which some had the status of juvenile detention centres and the others of juvenile shelters. Two of the establishments were visited by the National Mechanism in 2022: the juvenile detention facility with a juvenile shelter in Warszawa-Falenica (now a district youth care centre for girls) and the juvenile shelter in Szczecin (now a district youth care centre for boys)²⁰⁶.

■ Act on support and social rehabilitation of juvenile delinquents: a new act and the same problems

The need to amend the *Act on juvenile delinquency proceedings* had been raised for many years in successive reports of the National Mechanism for the Prevention of Torture and in general intervention letters of the Commissioner for Human Rights and his deputies²⁰⁷. The bill on the support and social rehabilitation of juveniles was received by the CHR Office already in 2021 for expressing an opinion in it and such an opinion was drawn up by the Commissioner²⁰⁸. Related legislative work started at the end of April 2022 and ended on 20 July 2022 with the act’s signature by the President of Poland.

¹⁹⁶ See: Regulation of the Minister of Health of 24 January 2022 amending the Regulation on the National Centre for the Prevention of Dissocial Behaviours (Journal of Laws of 2022, item 192).

¹⁹⁷ See: CPT report on the visit to Poland in 2017, CPT/Inf (2018) 39, para. 69.

¹⁹⁸ Juvenile detention facilities in Trzemeszno (ref. no. KMP.573.4.2022), juvenile detention facility MOAS in Koszalin (ref. no. KMP.573.11.2022), juvenile detention facility in Grodzisk Wielkopolski (ref. no. KMP.573.13.2022) and juvenile detention facility in Nowe nad Wisłą (ref. no. KMP.573.16.2022).

¹⁹⁹ Juvenile detention facility with a juvenile shelter in Warszawa-Falenica (ref. no. KMP.573.6.2022).

²⁰⁰ Juvenile shelters in Dominów (ref. no. KMP.573.12.2022) and in Szczecin (ref. no. KMP.573.19.2022).

²⁰¹ Youth care centres in Gacki (ref. no. KMP.573.22.2022) and in Jerzmanice Zdrój (ref. no. BPW.573.2.2022).

²⁰² Youth care centres in: Kalety (ref. no. KMP.573.2.2022), Lubaczów (ref. no. KMP.573.3.2022) and Lwówek Śląski (ref. no. KMP.573.24.2022).

²⁰³ Visits to the youth care centres in Kalety and Lubaczów.

²⁰⁴ Act of 9 June 2022 on support and social rehabilitation of juveniles (Journal of Laws of 2022, item 1700).

²⁰⁵ Act of 26 October 1982 on juvenile delinquency proceedings (Journal of Laws of 2018, item 969, as amended).

²⁰⁶ Regulation of the Minister of Justice of 22 August 2022 on the transformation of juvenile detention centres and juvenile shelters into district youth care centres (Official Gazette of the Ministry of Justice of 2022, item 167).

²⁰⁷ See: annual reports on the activities of the National Mechanism for the Prevention of Torture in Poland for the years 2012 - 2021.

²⁰⁸ See: Opinion of the Commissioner for Human Rights on the bill on support and social rehabilitation of juveniles, ref. no. KMP.022.1.2021.RK.

The fast pace of work on this comprehensive legislative instrument and its adoption in the summer season, shortly before the beginning of a new school year in juvenile institutions caused an organisational chaos. Representatives of the National Mechanism for the Prevention of Torture, during their visits, heard opinions of the staff and management of the institutions regarding fears about the future of the facilities and possible loss of jobs due to the reorganisation of the social rehabilitation system for juveniles in Poland.

The new act has solved some systemic problems that had been reported for years by the National Mechanism for the Prevention of Torture, such as:

- the lack of regulations on testing juveniles for the presence of alcohol and psychoactive substances in their bodies,
- conducting body search as well as CCTV monitoring in juvenile institutions,
- lack of a lower age limit for juveniles placed in juvenile institutions,
- lack of special centres for underage mothers with children or pregnant juveniles.

Despite the new regulation on the organisation of the system of support and social rehabilitation of juveniles, the following problems still remain²⁰⁹:

- lack of specialist juvenile institutions providing adequate care and assistance to juveniles with mental disorders or addictions (in particular to psychoactive substances);
- placement of juveniles in correctional institutions at an age that is too old and thus leaves no time for carrying out effective rehabilitation and therapy activities;
- lack of sufficient psychological therapy for juveniles in care and correctional institutions;
- lack of a system of work with the juvenile's family in the period when the juvenile lives in a care and correctional institution;
- lack of regulations on granting an authorisation to consent to medical procedures for the period when the juvenile lives in a care or correctional institution.

A significant problem concerning juvenile facilities in 2022 was the lack of implementing regulations for the *Act on support and social rehabilitation of juvenile delinquents*, as the former implementing regulations in ceased to be effective together with the former *Act on juvenile delinquency proceedings*.

In view of the lack of the implementing regulations and, consequently, also detailed guidelines on the operation of juvenile facilities, the Deputy Commissioner for Human Rights wrote a letter of intervention to the Minister of Justice²¹⁰. The first implementing regulations were published in the Journal of Acts on 7-8 September 2022.

On 20 November 2022, the Deputy Commissioner for Human Rights again requested the Ministry to explain the delay in issuing the regulations that had not been issued on time despite the requirement to do so, included in the *Act on support and social rehabilitation of juvenile delinquents*. The delay concerned, among others, a regulation on body checks. The response of the Ministry pointed out that the delay in issuing the regulations had no real impact on the organisation of work and the safety of juveniles in the institutions because the Department for Families and Juveniles carried out, as part of supervision exercised by the Minister of Justice, regular supervision over district youth care centres, juvenile detention facilities and juvenile shelters.

In view of this, it should be emphasised that the supervision by the Ministry of Justice should not replace the relevant legislative acts. According to the principle set out in Article 7 of the Constitution of the Republic of Poland²¹¹, public authorities act on the basis and within the limits of the law. Any action taken by the authorities must therefore be based on relevant legal regulations.

²⁰⁹ The systemic problems are described in detail in the annual report on the activities of the National Mechanism for the Prevention of Torture in Poland in 2021.

²¹⁰ See: correspondence concerning the implementing regulations for the Act on support and social rehabilitation of juvenile delinquents (ref. no. KMP022.1.2021.MD).

²¹¹ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, no. 78, item 483, as amended).

NURSING FACILITIES AND LONG-TERM CARE AND TREATMENT FACILITIES

In 2022, the National Mechanism for the Prevention of Torture carried out visits to:

- 10 private long-term care facilities²¹²;
- 7 social care homes²¹³;
- 1 long-term care and treatment facility²¹⁴.

During one of the preventive visit to a private long-term care facility, there was a situation of violation of the NMPT mandate. This issue is described in detail in this report in the chapter “Difficulties in the implementation of the NMPT mandate”.

■ Systemic problems

1. Legality of stay of residents who are not legally incapacitated but whose health status makes it impossible for them to conclude a service agreement.

Persons acting on behalf of a resident who is not legally incapacitated are not in any way authorized, in the light of the regulations in force, to make decisions to place the resident in a 24-hour care facility, even if the person's psychological and physical condition is bad and he/she is not able to place a signature under the service provision agreement or a declaration of the will to live in the facility.

The issue of the legality of the residence of persons who are not incapacitated and whose state of health does not allow them to conclude an agreement to stay in a care institution was the subject of a general intervention letter by the Commissioner for Human Rights to the Minister for Family and Social Policy²¹⁵. The issue is described in detail in this report in the chapter “General intervention letters and other important letters”.

2. CCTV monitoring

Installing cameras in long-term care and treatment facilities may constitute intrusion into the privacy of residents, employees and other persons on the premises of the monitored facility. To ensure that the application of this type of supervision is legal, it is vital for it to meet the criteria specified in Article 31(3) of the Constitution, including the required statutory restrictions. At present, the issue of video monitoring in private care facilities has not yet been regulated in any way although in some facilities there are cameras in corridors or common rooms.

3. Use of non-standard forms of protecting residents from falling down in nursing facilities and other long-term care facilities

The use of non-standard forms of protecting residents from falling down, such as not-attested stabilization belts, thera-bands or other items that are intended to protect a resident from falling off a bed or wheelchair is not, formally, a coercive measure but there is a risk that it may interfere with the individual's freedom.

The issue of the use, in care institutions, of non-standard forms of protecting for residents from falling down was the subject of a general intervention letter of the Commissioner for Human Rights to the Minis-

²¹² Private long-term care facilities: „Czarnecky” in Zielonka (ref. no. KMP.573.10.2022), „Zielona Kraina” in Warsaw (ref. no. KMP.573.17.2022), „Mirabelka”, run by Agnieszka Kwiatkowska, in Warsaw (ref. no. KMP.573.20.2022), „Stokrotka” in Stobin (KMP.575.4.2022), „Beatus” in Kraków (ref. no. KMP.573.14.2022), „Familia” in Łódź (ref. no. KMP.573.21.2022), facility in Kaleń (ref. no. KMP.573.23.2022), „Senior” in Kraków (ref. no. BPK.573.1.2022), „Radosny” in Łódź (ref. no. KMP.573.26.2022) and „Akacja” in Łódź (ref. no. KMP.573.25.2022).

²¹³ Social care homes: in Nakło nad Notecią (ref. no. KMP.573.8.2022), „Etola” in Ruda Piłczycka (ref. no. KMP.575.3.2022), in Kalisz (ref. no. KMP.575.2.2022); „Zdrowa Jesień” in Bogurzyn (ref. no. KMP.575.1.2022), „Magnolia” in Głogów (ref. no. BPW.575.1.2022), in Łętownia, branch facility in Jordanów (ref. no. KMP.575.6.2022), in Zduny (ref. no. KMP.575.7.2022).

²¹⁴ Long-term care and treatment facility in Zielona Góra (ref. no. KMP.573.15.2022).

²¹⁵ General intervention letter of the CHR to the Minister of Family and Social Policy of 25.01.2022, ref. no. KMP.573.1.2022.

ter of Health²¹⁶, as described in this report in the chapter “General intervention letters and other important letters”.

4. Differentiation of salary levels between nurses employed in medical entities and those employed in social care homes

The status of a nurse employed by a social care home is different than the status of a nurse employed by a health care facility. The main aspect is the different level of salaries of nurses employed by health care facilities (financed by the National Health Fund), which are significantly higher than salaries of nurses employed in social care homes.

Social care homes operate within the social welfare system and the remuneration of nurses employed there is paid from the budget of the relevant local government. The difference between the remuneration of nurses employed by social care homes (which includes no additional benefits, salary increase with time, etc.) and the remuneration of those working within the health care system translates, in practice, into problems with finding nurses for social care homes, and their frequent resignation from employment there and transfer to health care entities.

In the opinion of the NMPT, the situation leads to lowering the standards of care provision to residents of social care homes. It is therefore necessary to amend the current legislation so as to make salaries of nurses employed in social welfare homes equal to those of nurses employed in medical entities. The issue was the subject of the CHR’s intervention letter the Minister of Family and Social Policy and the Minister of Health, sent in June 2021²¹⁷

5. Cooperation of social care homes with psychologists

The regulations in force do not require social care homes to employ a psychologist but only to provide access to a psychologist to their residents. In the opinion of the NMPT, a condition of appropriate care provision to social care homes’ residents is regular and unrestricted access to a psychologist²¹⁸.

The impact of the coronavirus pandemic and the related isolation from other persons should also be taken into account in this context.



The World Health Organisation (WHO), in its updated guidelines on the prevention and control of COVID-19 in places of detention, highlighted that the demand for psychological services in places of detention is likely to increase following the pandemic and the restrictive measures that have been imposed²¹⁹.

6. The staff of social care homes acting as legal guardians of legally incapacitated persons

A legal guardian should monitor whether the person under his/her guardianship receives appropriate care and whether their dignity is not violated. Personnel of care homes may have difficulties in maintaining objective approach when performing the role of legal guardians of the home’s residents²²⁰.



The CPT underlines that one aspect of the guardian’s role is to safeguard, if necessary, the rights of persons with disabilities against the receiving institution. Entrusting guardianship to staff of the very

²¹⁶ General intervention letter of the CHR to the Minister of Health of 13.06.2022, ref. no. KMP.573.9.2022.

²¹⁷ See: CHR report on the activities of the National Mechanism for the Prevention of Torture in 2021.

²¹⁸ The issue is discussed in more detail e.g. in the Commissioner for Human Rights’ report on the activities of the National Mechanism for the Prevention of Torture in 2018.

²¹⁹ See: World Health Organization Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention, Interim guidance, 8 February 2021, p. 36.

²²⁰ The issue is discussed in more detail e.g. in the Commissioner for Human Rights’ report on the activities of the National Mechanism for the Prevention of Torture in 2018.

same establishment in which an incapacitated person is placed, as this may easily lead to a conflict of interest and compromise the independence and impartiality of the guardian. Alternative solutions should be found which better guarantee the independence and impartiality of guardians²²¹.

7. Overuse of alcohol by some residents and insufficient number of care homes for residents with the alcoholism problem

Persons who overuse alcohol often disorganise the work of facilities, cause disturbances in interpersonal relations, escalate conflicts and tensions, and in some cases pose a threat to other residents and staff members. Residents with the alcoholism problem live in a majority of social care homes for the elderly or for physically ill persons (where they make up about 10% of the overall number of residents). At those institutions they have no access to appropriate therapy and they disturb the normal operation of such facilities.

Despite the change in legislation allowing the establishment of residential homes for alcohol addicts, there are still too few facilities of this type in the country²²².

8. Insufficient supervision by courts of the stay in social care homes of persons who are legally incapacitated or have been placed in a home based on a court decision

According to Article 43(1) of the *Act on Mental Health*, the obligation of judicial control of the legality of the admission to and stay in a social care home of persons with mental disorders, of the observance of their rights and the conditions in the facility applies only to social care homes for persons with mental illness or intellectual disabilities. However, such persons may also be placed in other types of homes that are not subject to such control although the residents may include persons with mental disorders or intellectual disabilities²²³. This solution in the area of supervision is disadvantageous for such residents of social care homes. It may lead to uncontrolled and indefinite-in-time deprivation of liberty of mentally ill persons in homes not covered by the regulation. The solution disregards the need to protect the freedom of every person and the possibility to verify by a judge of a persons' placement in a home.

The issue, given its importance and the lack of systemic solutions, remains within the scope of interest of the National Mechanism for the Prevention of Torture.

PSYCHIATRIC HOSPITALS

In 2022, the National Mechanism for the Prevention of Torture conducted visits to 4 psychiatric hospitals²²⁴.

■ Systemic problems

1. Court experts

In one of the hospitals, the staff raised the problem of delays in proceedings regarding compulsory placement of patients in the psychiatric ward. Court decisions are sometimes issued even after the patient

²²¹ See: CPT standards set out in the document entitled "Persons deprived of their liberty in social care establishments", a Factsheet, 21 December 2020, CPT/Inf (2020) 41, para. 32. See also CPT reports on the visits: in Poland in 2009 [CPT/Inf (2011) 20], para. 167; in Bulgaria in 2020 [CPT/Inf (2020) 39], para. 81; in Ukraine in 2019 [CPT/Inf (2020) 1], para. 44; and in Latvia in 2016 [CPT/Inf (2017) 16], para. 157.

²²² The issue is discussed in more detail e.g. in the Commissioner for Human Rights' report on the activities of the National Mechanism for the Prevention of Torture in 2018.

²²³ See: CHR report on the activities of the National Mechanism for the Prevention of Torture in 2018.

²²⁴ Voivodeship Psychiatric Hospitals - Samodzielny Wojewódzki Zespół Publicznych Zakładów Psychiatrycznej Opieki Zdrowotnej in Warsaw (ref. no. KMP.574.3.2022.JZ); Voivodeship Psychiatric Hospital - Wojewódzki Szpital Psychiatryczny im. prof. Tadeusza Bilikiewicza in Gdańsk (ref. no. KMP.574.4.2022.KK); Mazowsze Voivodeship Psychiatric Hospital „Drewnica” in Ząbki (ref. no. KMP.574.6.2022.MŻ), the psychiatric ward of the Independent Public Health Care Institution in Działdowo (ref. no. BPG.574.2.2022.MD).

has already been discharged from the hospital. This is caused mainly by difficulties with receiving court expert opinions soon. The crisis in psychiatry has led to a reduction in the number of court experts. This, in turn, has extended the time of waiting for court expert opinions.

An opinion of a psychiatrist in cases where a patient is placed in a psychiatric hospital without his or her consent is mandatory. Such cases should be proceeded quickly but, in reality, the waiting time for the opinion is sometimes many months. The staff members also raised doubts regarding the way in which expert opinions were drawn up, including those issued without the presence of the patient.

In the last years, the Commissioner for Human Rights informed the Minister of Justice many times of the urgent need for a comprehensive legal act regulating the subject of court expert opinions²²⁵. In this regard, the intention of the Commissioner has been to ensure that all citizens have a proper safeguard of the right to a court, which arises from Article 45(1) of the Polish Constitution. Already six years ago, the Ministry of Justice informed that legislative works on the bill on court experts had been started but until now no results of the works have been presented.

2. Lack of legal basis for patient's body check and for searching patient's belongings

The NMPT delegations found out that in some hospitals the subject of conducting body checks and searching patient belongings was regulated in hospital's internal procedures and regulations, although no parliamentary act authorised such institutions to carry out such activities.

The NMPT is aware of the need to ensure safety in facilities. However, activities such as body check, which strongly interfere with patients' freedom and the right to privacy, should be based on a relevant act of parliament and should be appropriately justified.

3. Differences between voivodeships in psychiatric care funding

Staff members from one of the hospitals drew attention to the significantly different funding of psychiatric care procedures in individual voivodeships (differences in point values of psychiatric procedures between voivodeships). They informed that particularly low prices existed in the Warmińsko-Mazurskie voivodeship. This had a real impact on the quality of care provided.

Already in 2015, there existed significant differences in access to psychiatric care between individual voivodeships of the country. The situation was related to the number of hospitals and outpatient clinics in a given voivodeship and the expenditure on psychiatric care per inhabitant, incurred by individual voivodeship divisions of the National Health Fund. The Warmińsko-Mazurskie voivodeship had the lowest amount, calculated by dividing the total value of contracts for outpatient psychiatric care for adults by the number of inhabitants of the voivodeship. A significant factor limiting patients' access to psychiatric care is the shortage of psychiatrists. Already in 2015, the lowest numbers of doctors – specialists in psychiatry worked in the Opolskie, Lubuskie and Warmińsko-Mazurskie voivodeships²²⁶. In 2018, the lowest per capita amount allocated to outpatient psychiatric care existed in the Warmińsko-Mazurskie voivodeship while in the Wielkopolskie voivodeship the amount was twice as high²²⁷.

In view of the above, systemic solutions should be introduced to ensure equal access to psychiatric care in different parts of the country.

4. Use of handcuffs during patient's transport

There are cases in which psychiatric patients brought to a hospital by the police are handcuffed. Usually, if a doctor so requests, the handcuffs are taken off in an emergency room. In such cases, handcuffs are used by police officers in accordance with the *Act of 24 May 2013 on coercive measures and firearms*²²⁸.

²²⁵ CHR's letters of: 24 November 2015, 26 January 2016, 19 July 2016, 30 January 2018, 7 May 2018 and 20 April 2020 (ref. no. VII.510.20.2015).

²²⁶ See: Report "The National Programme for Mental Health Protection in 2016-2020. Recommendations", Warsaw, 1 October 2015, <https://ippez.pl/raporty/>

²²⁷ See: Psychiatric care model focused on the health value, Institute of Healthcare Management, Warsaw, 2019.

²²⁸ Journal of Laws of 2023, item 202.

The practice of using handcuffs in psychiatric patients raises many doubts. CPT standards prohibit the use of handcuffs when restraining psychiatric patients²²⁹.



The use of handcuffs in every patient escorted to or from a hospital (only because of the fact that the person is a psychiatric patient) is an excessive solution not provided for in the law. The Act on coercive measures sets out the main principle according to which such measures should be used to the extent necessary to achieve the purpose, in proportion to the degree of the risk caused by the patient, and in a manner that is least severe (Article 6 of the Act).

The issue of the use of handcuffs in psychiatric patients by the police was mentioned by the Commissioner for Human Rights in his general intervention letters to the Minister of the Interior and Administration in April 2022.²³⁰

5. Emergency call systems

Since 2017, the Commissioner for Human Rights has repeatedly informed the Minister of Health of the need to install emergency call systems in psychiatric wards and psychiatric hospitals²³¹. Such systems would make it possible for medical personnel to immediately provide assistance to patients who need it. Patient safety should be a priority. The CPT, in its reports on visits to psychiatric hospitals, has repeatedly recommended the installation and maintenance of emergency call systems.

In the opinion of the NMPT, emergency call buttons should be available in all rooms used by patients (bathrooms, bedrooms, safety rooms for patient isolation as a direct coercion measure, etc.). The problem, however, remains unsolved in the Polish legislation and practice.

6. Limited access of patients to Patient Ombudsman for Psychiatric Hospitals

As regards access to external complaint bodies the NMPT identified the problem of limited access to the Patient Ombudsman for Psychiatric Hospitals.

The situation is caused by a decrease (from about 50 to less than 20) in the number of such ombudsmen in recent years. For example, in the Mazowieckie voivodeship there are only 4 ombudsmen²³² although there are 13 psychiatric facilities. In practice, the number of patients per ombudsman is too high and access to the ombudsmen is limited, which may reduce the effectiveness of monitoring the observance of patients' rights.

7. Patients leaving psychiatric wards

The NMPT has drawn attention to the problem of patients whose hospitalisation period has ended but who have no support from family members and are unable to function independently. In such situations, depending on the patient's condition, the hospital director may apply to the court for a consent to the patient's placement in a social care home. In some cases, however, the formalities take too long (e.g. when the patient does not agree to the placement in a care home) and the patient stays in the hospital although there is no longer a medical reason for it.



The CPT pointed out that in a number of countries, that patients whose mental state no longer required them to be detained in a psychiatric establishment nevertheless remained in such establishments, due to a lack of adequate care/accommodation in the outside community²³³. In this context, the Commit-

²²⁹ See: Coercive measures in psychiatric institutions for adults. CPT Standards, CPT/Inf(2017)6, para. 3.3.

²³⁰ General intervention letter of the CHR to the Minister of the Interior and Administration of 11 April 2022 (ref. no. II.574.1.2022. PZ).

²³¹ General intervention letter of the CHR to the Minister of Health of 22 May 2017 (ref. no. KMP.574.4.2017.DK).

²³² See: <https://www.gov.pl/web/rpp/wojewodztwo-mazowieckie2>.

²³³ See: Eighth General Report of the CPT, CPT/Inf (98), para. 57.

tee concluded that for persons to remain deprived of their liberty as a result of the absence of appropriate external facilities is a highly questionable state of affairs.

In the opinion of the NMPT, a psychiatric ward or hospital should not play the double role i.e. that of a diagnostic and therapeutic facility for persons who require in-patient psychiatric treatment and that of a living place for persons who no longer require in-patient treatment but need institutional care. Long-term residents of psychiatric wards should be placed in social care homes or other facilities, e.g. sheltered housing or specialist facility. The NMPT is of the opinion that the problem is a systemic one and should be solved with the participation of hospital managers and local authorities, including municipal bodies.

SOBERING-UP CENTRES

In 2022, the National Mechanism for the Prevention of Torture carried out visits to two sobering-up centres at the Emergency Unit for Intoxicated Persons in Suwałki²³⁴ and the Early Intervention Centre for People with Alcohol Addiction and their Families in Lublin²³⁵.

²³⁴ See: Report on the visit to a sobering-up centre at the Emergency Unit for Intoxicated Persons in Suwałki (ref. no. KMP.574.1.2022.AN).

²³⁵ See: Report on the visit to a sobering-up centre at the Early Intervention Centre for People with Alcohol Addiction and their Families in Lublin (ref. no. KMP.574.5.2022.AO).

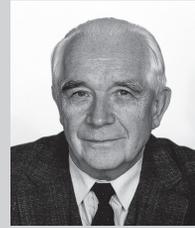
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since 2021



From 11 April to 20 July 2010 and from 16 July to 22 July 2021 the Office of the Commissioner for Human Rights was managed by Deputy Commissioner **Stanisław Trociuk**

On 15 July 1987 Sejm passed the Act on the Commissioner for Human Rights

On 1 January 1988 the Commissioner for Human Rights was established

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