

Foreigners in Administrative Detention

RESULTS OF NMPT MONITORING
IN GUARDED CENTRES
FOR FOREIGNERS
IN POLAND



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Results of monitoring in Guarded Centres for Foreigners in Poland by the National Mechanism for the Prevention of Torture, Inhuman, Degrading Treatment or Punishment of the Office of the Commissioner for Human Rights



RZECZNIK PRAW OBYWATELSKICH

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Table of contents:

Preface.....	6
1. Prevention of Torture	9
1.1 International and European system of protection against torture and other inhuman or degrading treatment or punishment.....	9
1.2 Role of the Commissioner of Human Rights in the Prevention of Torture	14
2. Guarded Centres for Foreigners	18
3. Effects of human being’s stay in isolation	23
3.2 What is trauma?	24
3.3 What is the manifestation of post-traumatic stress disorder (PTSD)?	25
3.4 Extent of post-traumatic stress	29
3.5 Can a human being cope with traumatic stress in confinement?	30
3.6 Centres for foreigners – what may be changed?.....	33
4. Selected international standards.....	35
4.1 Lawfulness of foreigners' stay in guarded centres	35
4.2 Rights of foreigners in administrative detention	36
a) Right to information and complaint mechanism	37
b) Right to legal aid	37
c) Right to medical care	38
d) Right to contact with the outside world.....	40
e) Personal search.....	41
f) Material conditions.....	42
g) Recreational and sport activities	43
4.3 Detention of children.....	43
5. Results of the visit of the National Mechanism for the Prevention of Torture to the guarded centres for foreigners in Poland	48
5.1 Introduction	48
5.2 Strengths of the facilities visited	48
5.2 Systemic problems.....	55
5.3.1 Identification of torture victims in the guarded centres for foreigners	55
5.3.1.1 Examples of ineffective identification of torture victims, identified by the NMPT.....	60
5.3.2 Detention of children	79
5.3.3 VoIP (<i>Voice over Internet Protocol</i>) Technology	80
5.3.4 Bars in room windows	81
5.4 Areas which require improvement	82
5.4.1 Treatment	82
5.4.2 Legality of placement at the guarded centre for foreigners	83

5.4.3	The right to healthcare service	84
5.4.4	Psychological services	86
a)	Availability.....	86
5.4.5	Access to lawyers	94
5.4.6	The right to information	94
5.4.7	Contact with the outer world	95
5.4.8	Direct coercion.....	96
5.4.9	Cultural and educational activities	99
5.4.10	Living conditions	99
5.4.11	Personnel	101
5.5	Recommendations	102
5.5.1	Recommendations concerning preparation of staff for work at a guarded centre for foreigners.....	103
5.5.2	Recommendations concerning the algorithm and actions to be taken towards victims of torture and inhuman treatment before their being placed at a guarded centre for foreigners.....	103
5.5.3	Recommendations concerning the algorithm and actions to be taken towards victims of torture and inhuman treatment after their being placed at a guarded centre	104
5.5.4	Recommendations concerning psychological services.....	104
5.5.5	Recommendations concerning the execution of rights by the detainees.....	106
5.5.6	Recommendations concerning technical conditions to be fulfilled by guarded centres for foreigners	106
6.	Actions taken by the Commissioner for Human Rights for the protection of the detained foreigners' rights	108
6.1	General interventions.....	108
6.2	Committee of Experts on Migrants	111
6.3	Conferences.....	112
Annexes.	Selected national legislation	113
I.	Rights of detainees at guarded centres for foreigners.....	113
II.	Obligations of a detainee at the guarded centre for foreigners ...	118
III.	Disciplinary liability of foreigners	120
IV.	Supervision of the guarded/detention centres.....	120

Preface

The treatment of foreigners is an important measure of our legal culture and human solidarity. And if it concerns foreigners detained in closed centres and places of detention on the territory of our country, it is often also a test of our sensitivity to human suffering, torture and trauma.

We present to you the subsequent report of the National Mechanism for the Prevention of Torture (NMPT) – a group of specialists, employees of the Office of the Commissioner for Human Rights, who monitor the situation in places of detention. Since 2008, they have been implementing in this way the provisions of the Optional Protocol to the UN Convention against Torture (OPCAT) signed by Poland.

The NMPT has always paid special attention to the situation of foreigners deprived of their liberty. It checked the observance of their rights and freedoms during their stay in both Polish penal institutions and remand prisons or upon their apprehension by the police, as well as after their placement in guarded centres for foreigners. It is the latter group which is particularly vulnerable. They grapple not only with cultural differences or the language barrier but, above all, with the extremely difficult burden of their own experiences. In many cases these are people who experienced wars, political repression, religious or racial persecution in their homelands, and are seeking shelter for themselves and their families in Poland.

As the results of NMPT's visits to the guarded centres for foreigners show, victims of torture, inhuman and degrading treatment, rape and other types of violence often stay there. These are people who, due to the trauma they have gone through, should never be placed in this type of institutions, which resemble prisons in their regime. Placing them in closed centres only deepens their trauma, and in extreme cases is a threat to their life and health. Unfortunately, such situations are still encountered in Poland.

Why is this happening in a civilised country in the middle of Europe? One of the reasons is the lack of an effective mechanism to identify victims of torture among foreigners. Although a few years ago an algorithm was introduced for the Border Guard with respect to foreigners requiring special treatment, in the opinion of the NMPT, this document is contrary to the provisions of the Polish law and the principles of the Istanbul Protocol and other international standards developed. In addition, it often happens that even if the identification of victims of torture is carried out, it usually takes too long, sometimes even several months. In consequence, the foreigners who go through a mental crisis are not provided with support adequate to their needs and they wait for months to be released from the centre. This also applies to families with small children who

are thus forced to function in prison-like conditions.

In this study shocking stories of persons who have suffered from torture are presented. Mothers whose children's feet have been shot through; men who have seen their friends dead; persons who have repeatedly made a suicide attempt. These are just a few situations revealed during nine visits and re-controls conducted by the NMPT in six guarded centres for foreigners between 2016 and 2018.

The aim of this publication is to present the conclusions drawn from these visits, to diagnose key systemic problems and to identify irregularities that in many cases directly lead to the victims of torture being retraumatised.

The organisation of psychological care in such facilities occupies a special place. Ms Ala Elczewska, an international expert, psychologist and psycho-traumatologist, presented her experience of working with persons subjected to torture. Using examples from her professional work, she has described the effects of a human being's stay in isolation, explained what trauma is and what persons suffering from post-traumatic stress disorder have to grapple with. The report also quotes expert opinions of psychologists who work with foreigners and victims of violence on a daily basis and who have participated in the NMPT visits as external experts. They have assessed, inter alia, the qualifications of people providing psychological support to foreigners in the centres, the quality of assistance provided, its availability and even the conditions in which it has been possible to benefit from it. They based their findings on talks with foreigners, personnel of the centres, but also on a thorough analysis of documentation. Based on many cases discussed in detail in this publication, it can be said that real assistance has been provided too late.

The study also presents a number of international standards that Poland should strive to meet in order to minimise the risk of violating the rights of foreigners deprived of their liberty. Attention has also been drawn to the specific aspects of work in the guarded centres where the staff, including Border Guard officers, physicians and psychologists, are required to adopt an appropriate approach taking into account, among others, cultural issues or the way of communication. Professional development of this group of people should be an important pillar of the whole system of detention of foreigners. The report also presents good practices observed in some facilities which improve the situation of detainees and could serve as an example for other units of that type.

Moreover, the publication lays down a number of NMPT's recommendations which aim at improving the situation of foreigners in guarded centres and introducing an effective mechanism of identifying victims of torture as well as providing them with adequate support. The Border Guard should play

a key role in implementing these recommendations. However, one cannot forget how much depends on the approach of the legislator himself. In some cases, it is necessary to make a systemic change and to amend the existing legislation. Without this, even with the greatest commitment on the part of Border Guard officers, it will not be possible to solve most of the problems identified.

I sincerely hope that our publication will stimulate concrete action and dialogue with all institutions dealing with the issues of foreigners in our country. I am also convinced that by acting together we will manage to ensure better protection of the rights of persons who, for various reasons, seek shelter in Poland.

Dr Adam Bodnar
Commissioner for Human Rights

1. Prevention of Torture

1.1 International and European system of protection against torture and other inhuman or degrading treatment or punishment

The prohibition of torture and inhuman or degrading treatment or punishment has been embodied in numerous acts of international law. They comprise: **International Covenant on Civil and Political Rights**¹ (Article 7, first sentence: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*),

Universal Declaration of Human Rights² (Article 5: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*),

Convention for the Protection of Human Rights and Fundamental Freedoms³ (Article 3: *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*).

The definition of torture was introduced for the first time into international law in the **Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** of 9 December 1975⁴.

However, a particularly important role in the protection against torture played the **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**⁵, adopted nearly a decade later.

According to Article 1.1 of this act:

¹ International Covenant on Civil and Political Rights opened for signature in New York on 19 December 1966 (Dz. U. (Journal of Laws) of 1977 No 38, item 167).

² Universal Declaration of Human Rights (adopted and proclaimed by resolution 217 A (III) of the General Assembly of the United Nations on 10 December 1948).

³ Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950 as amended by Protocols Nos. 3, 5 and 8 supplemented by Protocols No 12 (Dz. U. of 1993 No 61, item 284).

⁴ Resolution 3452 (XXX) of the UN General Assembly. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984 (Dz. U. of 1989 No 63, item 378).

The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

This Convention is of such crucial importance because it does not only lay down the definition of torture but it also establishes the **Committee against Torture**.

The Committee's task is, inter alia, to investigate all reports of torture. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee invites that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned. CAT may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently. If an inquiry is made, CAT seeks the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory (Article 20)⁶.

In 2020, 171 States⁷ were parties to the Convention against Torture. Poland ratified the Convention in 1989. So far CAT has examined seven times Poland's periodic reports on the implementation of the Convention provisions – last time on 22-24 July 2019 in Geneva. The report covered the period from 15 October 2011 to 15 September 2017. A report alternative to that of the Government was also drawn up by the Commissioner for Human Rights⁸.

An important role in ensuring an effective mechanism of torture

⁶ Moreover, pursuant to Article 19 of the Convention, the States Parties submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request. Each report is considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

⁷ In September 2020, 171st State acceded to the Convention – cf.

https://treaties.un.org/Pages/ViewDetails.aspx?src=TRE-ATY&mtdsg_no=IV-9&chapter=4&lang=en

⁸ <https://www.rpo.gov.pl/sites/default/files/Raport%20Alternatywny%20RPO%20CAT%2012.06.pdf>

prevention plays the **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**⁹ adopted on 18 December 2002. Based on this document, a system of regular visits has been established, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. They are undertaken by independent international and national bodies to all places where people deprived of their liberty are or may be¹⁰.

Pursuant to the Protocol, the **Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)** has been established. As distinct from CAT, the Subcommittee's activity has a strictly preventive character. It should be emphasised that SPT has a very broad mandate, as it has the right to undertake visits in the territory of State Parties to any place 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 acquiescence¹¹. To enable SPT to comply with its mandate, the States Parties undertake, in particular, to receive the Subcommittee in their territory and grant it access to all the places of detention, to provide all relevant information, to encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms, to examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures¹².

So far SPT has visited Polish places of detention once – in 2018¹³. In its post-visit Report the SPT¹⁴ did not only lay down the recommendations for the detention centres visited, but also pointed out to the desired direction of the development of the Polish National Mechanism for the Prevention of Torture as well as measures to be taken by the national authorities to enable it to fully implement its mandate.

Outside the UN system, the prohibition of torture has been firmly embedded in the European system of human rights protection. In this context the **European Convention for the Protection of Human Rights and**

⁹ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly in New York on 18 December 2002 (Dz. U. of 2007 No. 30, item 192)

¹⁰ Article 1 of OPCAT.

¹¹ Article 11 of OPCAT.

¹² Article 12 of OPCAT.

¹³ Report on Visit to Poland CAT/OP/POL/ROSP/1

¹⁴ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fPOL%2fRO-SP%2fi&Lang=en

Fundamental Freedoms¹⁵, signed in Rome in 1950, is of key importance. Currently, forty seven states (except Belarus and Vatican) are parties to the Convention. In its Article 3, the Convention stipulates that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Thus, the prohibition is absolute – no circumstances may constitute justification for the use of torture against any person.

The guardian of the rights and freedoms enshrined in the Convention is the **European Court of Human Rights (ECHR)** which investigates complaints and obliges states to improve their legal systems. It is worth noting that while the definition of torture appears in the already quoted UN Convention against Torture, the terms inhuman and degrading treatment have only been described in the ECHR case-law. It is only an analysis of the judgments which reveals the differences between the above mentioned concepts. Thus:

*“The Court has considered treatment to be “inhuman” because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. On the other hand, the Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment”*¹⁶.

Torture, in turn, is defined by ECHR as *“deliberate inhuman treatment causing very serious and cruel suffering”*¹⁷.

On a European level, an important document from the perspective of torture prevention is the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**¹⁸, which entered into

¹⁵Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950 as amended by Protocols Nos. 3, 5 and 8 supplemented by Protocols No 12 (Dz. U. of 1993 No 61, item 284).

¹⁶ ECHR judgement of 26 October 2000, case Kudła v. Poland, Application no. 30210/96, Article 92.

¹⁷ ECHR judgement of 24 July 2014, case Al Nashiri v. Poland, Application no. 28761/11, Article 504.

¹⁸ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment drawn up in Strasbourg on 26 November 1987 (Dz. U. of 1995 No. 46, item 238).

force in Poland in 1995. The **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)** has been established on its basis. Like SPT it undertakes regular visits to places of detention. These visits serve to examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment¹⁹. Each state that is a party to this Convention is required to permit visits to any place within its jurisdiction where persons are deprived of their liberty by a public authority²⁰.

Moreover, the state visited by the Committee must ensure:

- a) access to its territory and the right to travel without restriction;
- b) full information on the places where persons deprived of their liberty are being held;
- c) unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction;
- d) other information available to the state which is necessary for the Committee to carry out its task²¹.

The Committee undertook visits to Poland six times in the following years: 1996²², 2000²³, 2004²⁴, 2009²⁵, 2013²⁶ and 2017²⁷. In 2019²⁸, in turn, the first ad hoc visit was conducted, its goal was to review multiannual CPT recommendations on the treatment of persons in police detention.

Referring to the issues related to the definition of torture, it is worthwhile to note that the very prohibition of torture is also enshrined in the Polish legal order, in Article 40 of the **Constitution**²⁹ (*No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. The application of corporal punishment shall be prohibited*). Despite that, the Polish penal code does not provide for the definition of torture, which is a significant problem in case victims of torture seek justice. The Commissioner for Human Rights has repeatedly addressed the Minister of Justice, stressing the necessity to

¹⁹ Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

²⁰ Ibidem Article 2.

²¹ Ibidem Article 8.2

²² <https://rm.coe.int/1680697913>

²³ <https://rm.coe.int/1680697916>

²⁴ <https://rm.coe.int/1680697919>

²⁵ <https://rm.coe.int/168069791c>

²⁶ <https://rm.coe.int/1680697928>

²⁷ <https://rm.coe.int/16808c7a91>

²⁸ <https://rm.coe.int/1680a024c5>

²⁹ Constitution of the Republic of Poland of 2 April 1997 (Dz. U. z 1997 No 78, item 483)

introduce such a definition, as well as to fully implement in the Polish legislation the solutions set out in the UN Convention³⁰. At this point, it should be mentioned that the OSCE Office for Democratic Institutions and Human Rights, at the request of the Deputy Commissioner for Human Rights, Dr Hanna Machińska, has evaluated the Polish legislation with the view to the definition of torture and the absolute prohibition of its use³¹. The opinion has focussed on the fact that besides defining torture and other ill-treatment as serious crimes in the national legislation, the State is obliged to conduct an investigation into any act of torture or other ill-treatment (Article 12 of the UN Convention) and to persecute and punish it, to ensure victims enforceable redress, including fair and adequate compensation (Article 14 of the UN Convention) as well as to fully implement the non-refoulement principle (Article 3 of the UN Convention) and the principle of exclusion of evidence referred to under Article 15 of the UN Convention.

1.2 Role of the Commissioner of Human Rights in the Prevention of Torture

In addition to establishing the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) imposes on the States the obligation to set up **national preventive mechanisms**.

*Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment*³².

The national preventive mechanisms are granted at a minimum the power³³:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of

³⁰ For the first time in the CHR's general intervention to the Minister of Justice of 24 October 2018 (KMP.570.3.2018).

³¹ The opinion is available on website <https://www.rpo.gov.pl/pl/content/opinia-odihr-dotyczaca-definicji-tortur-i-bezwzgladnego-zakazu-ich-stosowania-w-polskim>

³² Article 3 of OPCAT.

³³ Article 19 of OPCAT.

their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

- (c) To submit proposals and observations concerning existing or draft legislation.

Moreover, in order to enable the national preventive mechanisms to fulfil their mandate, the States should grant them³⁴:

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Poland ratified OPCAT in 2005³⁵ and in 2008 the function of the national preventive mechanism was entrusted to the Commissioner for Human Rights.

The Commissioner shall perform the function of a visiting authority in any case against tortures and another inhuman or degrading treatment or punishment (National Preventive Mechanism) as defined by the facultative Protocol to the Convention against torture and another cruel, inhuman or degrading treatment or punishment, adopted by the United Nations General Assembly in New York on 18 December 2002.³⁶

³⁴ Article 20 of OPCAT.

³⁵ Dz. U. of 2007 No. 30, item 192

³⁶ Article 1.4 of the Act of 15 July 1987 on the Commissioner for Human Rights (consolidated text: Dz. U. of 2020, item 627).

Therefore, a team was formed in the Office of the Commissioner for Human Rights, “National Mechanism for the Prevention of Torture” (NMPT, National Mechanism), which performs tasks arising out of OPCAT.

It should be noted that the NMPT may visit any place where there are persons deprived of liberty in the territory of the country.

According to OPCAT provisions, **deprivation of liberty** means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority (art. 4.2 of OPCAT)

A **place of detention** is any place under State jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (Article 4.1 of OPCAT).

Taking into account the above mentioned definitions, NMPT visits, among others, police stations, police-operated detention facilities for minors, sobering up facilities, nursing homes, penal institutions and remand prisons. The guarded centres for foreigners also fall within the definition of a place of detention and therefore they are covered by the NMPT mandate.

The NMPT follows the same methodology in all the visited facilities. The first step is to determine the composition of the visiting group. It usually consists of several persons, one of whom is the coordinator responsible for preparing the post-visit report. Two people, including the coordinator, inspect the area and facilities, while the others conduct interviews with persons deprived of their liberty. In addition, external experts (e.g. doctors, including psychiatrists, psychologists) can take part in the visit. Their task is to draw up expert opinions on specific issues relating to the functioning of the place visited. The content of these expert opinions is included in the post-visit report. The visits take, depending on the size of the unit, from one to three days.

Each NMPT visit is composed of the following stages³⁷:

- talk to the management of the place of deprivation of liberty,
- inspection of all premises used by persons deprived of liberty,
- individual and group conversations with persons placed in a facility,
- talk to the personnel,
- analysis of the documentation and records from the video surveillance system,

³⁷ However, sometimes some of the stages are omitted, e.g. there is no summarising talk during which initial post-visit recommendations are given.

-
- putting forward initial post-visit recommendations,
 - listening to the opinion of the management of the visited place on the recommendations given.

After the visit, a report is drawn up with the observations and conclusions as well as recommendations for the management of the visited facility and for the superior bodies. The management of the facility sends a reply with his position and information on how the recommendations have been implemented or when they will be implemented. If the management of the facility does not agree with the recommendations, the NMPT will ask the superior authority to comment on them and take a position.

The dialogue held in this way is aimed at working out solutions the implementation of which will serve to strengthen the protection of the rights of persons deprived of their liberty.

2. Guarded Centres for Foreigners

According to the definition laid down in Polish law, a foreigner is **any person who does not have Polish citizenship**³⁸. Foreigners deprived of liberty on the basis of **Act on foreigners**³⁹ or the **Act on granting protection to aliens within the territory of the Republic of Poland**⁴⁰ stay in the guarded centres for foreigners (GCF).

Each of the above mentioned acts is characterised by a different scope of application.

The first one lays down the principles and conditions governing entry into, transit through, residence on and departure from the territory of the Republic of Poland, as well as the procedure and the authorities competent in these matters⁴¹.



Distribution of GCF in Poland

The second of the above mentioned acts lays down the principles, conditions and procedure for granting protection to aliens within the territory of the Republic of Poland as well as the authorities competent in these

³⁸ See. Article 3.2 of the Act of 12 December 2013 on foreigners (consolidated text: Dz. U. of 2020, item 35).

³⁹ Act of 12 December 2013 on foreigners (consolidated text: Dz. U. of 2020, item.35; hereinafter the Act on foreigners).

⁴⁰ Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland (consolidated text: Dz.U. of 2019, item 1666; hereinafter the Act on granting protection to aliens).

⁴¹ See Article 1 of the Act on foreigners.

matters⁴².

Depending on the actual situation in which a foreigner finds himself, he will be subject to the regime set out in one of the aforementioned acts. It should be noted that both legal acts set out different prerequisites for placing a foreigner in a GCF and different periods of his detention.

Irrespective of the legal basis, a foreigner is placed in detention pursuant to the court's decision on placing a foreigner in a guarded centre, which is issued at the request of the Border Guard. The decision may be appealed against to the regional court within 7 days from the date of its delivery. The court examines the complaint within 7 days.

According to the Act on foreigners⁴³, a foreigner may be placed in the guarded centre in the following situations: if there is a probability that a decision on imposing the return obligation on a foreigner will be issued without a specified period for voluntary return, or a decision on imposing the return obligation on a foreigner has been issued without a specified period for voluntary return and it is necessary to secure the execution thereof, or it is necessary to secure the transfer of a foreigner to a third country under the international agreement on transfer and reception of persons and his immediate transfer to that country is not possible. Moreover, a foreigner can be placed in the centre if at least one of the cases referred to in art. 398.1⁴⁴ has occurred, and:

- a) the application of measures other than foreigner's placement in the guarded centre or in detention centre for foreigners⁴⁵ is not possible,

⁴² See Article 1 of the Act on granting protection to aliens.

⁴³ Article 398a

⁴⁴ By way of a decision, measures other than foreigner's placement in the guarded centre or detention centre for foreigners may be applied to him, if:

- 1) there is a probability that a decision on imposing the return obligation on a foreigner will be issued without a specified period for voluntary return and this results from the circumstances referred to under Article 315.2(1), or
- 2) a decision on imposing the return obligation on a foreigner has been issued without a specified period for voluntary return and it is necessary to secure the execution thereof, and the decision has been issued resulting from the circumstances referred to under Article 315.2(1), or
- 3) a foreigner has not voluntarily left the territory of the Republic of Poland within the period specified in the decision on imposing the return obligation, and the immediate execution of the decision is not possible, or
- 4) it is necessary to transfer a foreigner pursuant to Article 28 of Regulation 604/2013, if there is a high probability of him absconding, whereas immediate transfer to another Member State is not possible, or
- 5) it is necessary to secure the transfer of a foreigner to another Member State of the European Union, Member State of the European Free Trade Agreement (EFTA) – party to the agreement on the European Economic Area or Swiss Confederation under the international agreement on transfer and reception of persons and his immediate transfer to that country is not possible.

⁴⁵ In specific cases a foreigner – instead of being placed in the guarded centre – may be obliged to report at specified intervals to the Polish Border Guard authority, to lodge a security deposit, to surrender his travel document for custody or to reside at the specified place. The introduction of this type of measures alternative to detention was one of the CHR's specific requests. See Sośniak M., Łakoma K., Działania Rzecznika Praw Obywatelskich na rzecz ochrony praw migrantów w latach 2010-2015 - wyzwania i osiągnięcia [Activities of the Commissioner for Human Rights for the Protection of Migrants' Rights in 2010-2015 – Challenges and Achievements] [in:] <https://www.rpo.gov.pl/pl/content/rpo-na-rzecz-ochrony-praw-migrantow>

- b) a foreigner fails to meet the obligations set out in the decision on the application of measures to him (other than his placement in the guarded centre or detention centre for foreigners).

Despite the existence of prerequisites for placing a foreigner in the guarded centre, such decision is not issued, if this could pose threat to the life or health of a foreigner or if the foreigner's physical and psychological condition could justify a presumption that a foreigner has been subjected to violence⁴⁶.

Moreover, the Act permits to place in a GCF **a minor** (whether unaccompanied or with a guardian). It should be noted that within the meaning of Polish law an unaccompanied minor is a person who arrives in the territory of the Republic of Poland without adults taking care of him, who are responsible for him in accordance with the law binding in the Republic of Poland⁴⁷. An unaccompanied minor may be placed in such centre, if he has completed 15 years of age⁴⁸. When examining the request to place such a person in a guarded centre, a court of law takes into account in particular the degree of physical and mental development of a minor foreigner, his personality traits, the circumstances of his detention and personal conditions that weigh in favour of his placement in a guarded centre⁴⁹.

The Act on granting protection to aliens⁵⁰, in turn, stipulates that If the application of non-detention measures is not possible, the applicant or the person on whose behalf the applicant acts, is placed in a guarded centre or detention centre for foreigners. The Act also provides that an applicant or a person on whose behalf the applicant acts is placed in a detention centre for foreigners when he has failed to comply with the rules of stay in a guarded centre or there is a risk that he will fail to comply with these rules.

However, as opposed to the arrangements provided for in the Act on foreigners, the Act on granting protection to aliens contains not two, but three **prerequisites which make it impossible to place foreigners in a guarded centre or under arrest**. This happens, when:

- 1) it may cause danger to their life or health;
- 2) their mental and physical state may justify the presumption that they have been subjected to violence;
- 3) they are unaccompanied minors or persons with disabilities.

There are **six** guarded centres for foreigners in Poland in the following

⁴⁶ Article 400 of the Act on foreigners.

⁴⁷ Article 2.9(a) of the Act on granting protection to aliens.

⁴⁸ Article 397.3 of the Act on foreigners.

⁴⁹ Article 397.2 of the Act on foreigners.

⁵⁰ Article 88a of the Act on granting protection to aliens within the territory of the Republic of Poland.

towns: Kętrzyn⁵¹, Przemyśl⁵², Białystok⁵³, Lesznowola⁵⁴, Krosno Odrzańskie⁵⁵ and Biała Podlaska⁵⁶. In addition, facilities for the detention of foreigners were designated in two units – in Przemyśl and in Białystok⁵⁷.

According to the information obtained from the Border Guard⁵⁸, in 2013 a decision was taken on profiling guarded centres with the view to the categories of persons placed there (single men, single women, unaccompanied minors, families, including families with children). There are the following categories of guarded centres:

- three centres exclusively for single men – in Białystok, Lesznowola and Krosno Odrzańskie,
- three centres for families and single women – in Przemyśl, Biała Podlaska and Kętrzyn (including places for unaccompanied minors).

The duration of stay in the guarded centre depends on the legal basis on which the foreigner has been placed there. Pursuant to the Act on foreigners⁵⁹, the period should not be longer than 3 months. However, the duration of stay may be extended for a fixed period if any of the circumstances listed in art. 403 of the Act⁶⁰ arises before the expiry of the 3-month period.

⁵¹ Regulation of the Minister of the Interior of 11 February 2015 on the guarded centre for foreigners in Kętrzyn (Dz. U. of 2015, item 287).

⁵² Regulation of the Minister of the Interior of 11 February 2015 on the guarded centre for foreigners in Przemyśl (Dz. U. of 2015, item 289).

⁵³ Regulation of the Minister of the Interior of 11 February 2015 on the guarded centre for foreigners in Białystok (Dz. U. of 2015, item 286).

⁵⁴ Regulation of the Minister of the Interior of 20 March 2015 on the guarded centre for foreigners in Lesznowola (Dz. U. of 2015, item 495).

⁵⁵ Regulation of the Minister of the Interior of 11 February 2015 on the guarded centre for foreigners in Krosno Odrzańskie (Dz. U. of 2015, item 288)

⁵⁶ Regulation of the Minister of the Interior of 11 February 2015 on the guarded centre for foreigners in Biała Podlaska (Dz. U. of 2015, item 285).

⁵⁷ Order no. 23 of the Minister of the Interior of 1 July 2014 on detention centres for foreigners (Dz. Urz. (Journal of Laws of the Ministry of the Interior and Administration) of 2014 r., item 44.

⁵⁸ Based on the information obtained from the Border Guard in the letter of 18 September 2019 (ref. KG-CU-IV-1.4222.34.2019)

⁵⁹ See Article 403.

⁶⁰ The period of stay in a guarded centre or in a detention centre for foreigners may be extended for a fixed period of time where before the expiry of the period referred to in paragraph 1:

- 1) the proceedings in the following cases have not been completed:
 - a) foreigner's obligation to return, or
 - b) transfer of a foreigner to the Member State responsible on the basis of Regulation 604/2013, or
 - c) transfer of a foreigner to another Member State of the European Union, Member State of the European Free Trade Agreement (EFTA) – party to the agreement on the European Economic Area or Swiss Confederation under the international agreement on transfer and reception of persons, or
- 2) activities are underway which are aimed at enabling:
 - a) forced execution of the decision on imposing the return obligation on a foreigner, or
 - b) transfer of a foreigner pursuant to Article 28 of Regulation 604/2013, or
 - c) transfer of a foreigner to another Member State of the European Union, Member State of the European Free Trade Agreement (EFTA) – party to the agreement on the European Economic Area or Swiss Confederation under the international agreement on transfer and reception of persons
 - if simultaneously one of the circumstances referred to under Article 398a occurs.

According to the Act on granting protection to aliens, the court issues a decision on placement in a GCF or detention centre for the period of up to 60 days. There exist, however, specific prerequisites⁶¹ which allow for the extension of that period.

In this context it should be noted that the period of foreigner's stay in a guarded centre or in a detention centre for foreigners does not include the period of foreigner's stay in these facilities in connection with his application for international protection⁶².

According to the information obtained from the Border Guard, from 2016 to 30 June 2020, 3060 adults and 433 minors were detained in guarded centres under the Act on foreigners. Based on the Act on granting protection to aliens within the territory of the Republic of Poland, 1,010 adults and 664 minors were detained in the same period⁶³.

The Border Guard does not collect data on the number of persons who were not placed in guarded centres for foreigners pursuant to Article 400 of the Act of 12 December 2013 on foreigners and Article 88a of the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland. Neither does it collect information on the number of persons who were released from particular guarded centres for foreigners on the basis of the document entitled "Principles of Border Guard's Conduct towards Foreigners Requiring Special Treatment"⁶⁴.

2a) The period of stay in a guarded centre or in a detention centre for foreigners may be extended for a fixed period of time necessary to issue and execute a decision on imposing the return obligation on a foreigner, where the foreigner staying in that guarded centre or in detention centre has been issued a final decision on:

- 1) refusal to grant him refugee status or subsidiary protection;
- 2) inadmissibility of the application for international protection;
- 3) termination of the proceedings with regard to granting him international protection.

3) The period of stay in a guarded centre or in a detention centre for foreigners may not be longer than 6 months, whereby each subsequent court decision on the case is issued for a period of no more than 3 months.

3a) After a lapse of a 6-month period of stay in a guarded centre or in a detention centre for foreigners, this stay may be extended for a fixed period of time, of no more than 12 months, if there is a well-founded presumption that the period for the execution of the decision on imposing the return obligation on a foreigner will be extended and where:

- 1) the foreigner who has been issued the decision on imposing the return obligation on a foreigner does not cooperate with the Border Guard body with regard to the decision execution, or
- 2) the execution of the decision on imposing the return obligation on a foreigner is temporarily impossible due to delays in obtaining from third countries the documents necessary for the purpose.

3b) Each subsequent decision on the extension of the period of stay in a guarded centre or in a detention centre for foreigners, referred to under paragraph 3a, is issued for a period of no more than 3 months.

⁶¹See Article 89 of Act on granting protection to aliens within the territory of the Republic of Poland.

⁶² Article 403.4 of the Act on foreigners

⁶³ Based on the information obtained from the Border Guard in the letter of 28 July 2020 (KG-CU-II-2.072.4.2020).

⁶⁴ The document in question specifies the conditions necessary for the identification of the aforementioned category of foreigners during their stay in the guarded centre for foreigners, introducing, inter alia, the definition of a "foreigner that requires special treatment" and the procedure after identification. The above mentioned category of foreigners includes, inter alia, victims of violence, torture or other inhuman treatment.

3. Effects of human being's stay in isolation

*Ala Goldblum Elczewska*⁶⁵

Nobody leaves their country without a reason. And the reasons may be different. There are individuals and entire families who leave “for bread”. We call them emigrants from their own country and immigrants in the country they arrive in. They have a special status as immigrants and most of them have to support themselves through their own work, income and earnings.

There is also another category of people who leave their own country. These are individuals or entire families who flee their country of birth because of dictatorships, wars, racial or political persecution or because of their sexual orientation. They flee because they have been imprisoned and systematically tortured by the regime's authorities. For many of them it is a matter of life or death. Such individuals and groups are called refugees. Individuals and groups should be subject to specific protection in the country they arrive in and should be formally protected by national and international law.

Decisions to flee (to go into exile) are not taken easily and are often not given preference in planning or due to financial possibilities. Fleeing (exile) means wandering for many months or even years, putting at risk health and life. It always involves involuntary family breakdown, loss of family members, starvation, sexual abuse of women, men and children. The decision to flee one's own country is a challenge for everyone. For those who flee and those who remain in the country.

Most refugees display symptoms of post-traumatic stress disorder (PTSD) – flashbacks, intrusive thoughts, insomnia, nightmares, depression, anxiety and uncontrollable anger. Many are grieving and struggling (often in vain) with feelings of loss, bereavement of the loved ones, loss of freedom, dignity and self-determination. In addition, some refugees experience the feeling of being retraumatized in the country where they expected to find a haven, new opportunities for reparation and rebuilding their lives.

Centres for foreigners are the right places for fulfilling these dreams and they do not create protective conditions because they often represent an unfriendly political climate for foreigners, institutional racism and restrictive social (welfare) law. Above all, it should be noted that they represent authorities. And it is the representatives of the authorities who have been the aggressors (perpetrators) and executors of torture and other types of violence

⁶⁵ The author of the chapter is a psychologist, psycho-traumatologist and a family psychologist. She obtained her diploma in 1980 at Copenhagen University. Since 1969 she has lived in Denmark.

in the foreigners' country of origin. Physical separation from their own (ethnic, religious, linguistic) milieus causes many refugees to develop depressive states and a sense of hopelessness. This complicated bereavement can lead to a suicidal state and ultimately to successful suicide attempts.

Fleeing involves hiding and secrets, caution and risk. After prisons, persecution and threats to life, there remains the issue of distrust in other people, which makes escape a challenge, because no one can survive without at least minimum help from others. Fleeing is also a risky undertaking. Often the people who promise transport and assistance are either assailants or work directly with the police or military authorities in the country of flight. Frequently the fugitives end up back in prison.

This is what happened to one of my patients. His father paid a guide to take him out of one of the countries in the Middle East. The guide turned out to be an agent of the regime and the whole family ended up in prison. The patient and his sisters were minors. As a child he witnessed prison violence, the rape of his mother and violence towards his sisters. The family managed to leave prison after months and go to Denmark. More than 30 years have passed and the patient still suffers from insomnia, anxiety and self-medication with alcohol⁶⁶.

The attitude towards foreigners (refugees) is not only a matter of government policy. Ordinary people employed by the systems of the authorities in centres for foreigners have an important contribution to the culture of applying the rules.

One of my patients, an elderly gentleman, a respected judge in Iran under the Shah of Persia, was imprisoned after the 1979 Iranian revolution. There he was isolated from other prisoners and also tortured. After years of living in Denmark, he found himself in the Dignity rehabilitation centre. During one of the sessions he said something that has stuck in my mind to this day: "I was not the only one in prison. Those who guarded and tortured me were also in prison". This example is a powerful testimony of a man who wanted to show in this way his understanding for people who, in a perfidious and brutal way, represented the apparatus of violence.

3.2 What is trauma?

⁶⁶ A situation when a person tries to treat symptoms by using alcohol in order to, among other things, reduce anxiety and tension, or as a "cure" for the unpleasant social, occupational or interpersonal effects of the disease.

The concept of trauma has its origin in medical science and the word itself comes from the Greek language and means “wound”. Originally, trauma was defined as a physical wound. Over time, the terminology has been extended to include psychological wounds (injuries).

“Nowadays, the concept of trauma is understood as a mental or physical state caused by external factors (nature, people) that pose a real threat to health and life, often leading to deep and long-lasting changes in human functioning that are expressed in somatic and mental disorders. The source factor causing post-traumatic mental disorders is the degree of threat to life and health caused by a given event and strong negative emotions accompanying it, such as extreme fear, terror, and the feeling of helplessness, as well as - sometimes - dissociative experiences (e.g. the feeling of unreality of an event or absence during a cataclysm). A direct consequence of such experiences may be an acute stress disorder (ASD), which develops within a few days after the event and lasts up to about a month⁶⁷”.

Trauma can also be caused by witnessing events that are not registered in our consciousness. Our subsequent reactions are also dependent on our individual preparation, age and maturity level. For example, children react differently from adults because they perceive and explain what they witness differently. Their perception of the world is linked to their developmental, mental and emotional age.

As many foreigners are traumatised due to torture they experienced in their country of origin, it should be defined what this torture is. “The term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”⁶⁸.

3.3 What is the manifestation of post-traumatic stress disorder (PTSD)?

According to the International Statistical Classification of Diseases and

⁶⁷ B. Zawadzki, J. Strelau, Zaburzenia pourazowe jako następstwo kataklizmu [Post-traumatic Disorders as the Consequence of Cataclysm], Nauka 2/2008, p. 47.

⁶⁸ Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984 (Dz. U. of 1989 No 63, item 378).

Related Health Problems, post-traumatic stress disorder (F43.1) is defined as “a delayed or protracted response to a stressful event or situation (of either brief or long duration) of an exceptionally threatening or catastrophic nature, which is likely to cause pervasive distress in almost anyone. Predisposing factors, such as personality traits (e.g. anankastic, asthenic⁶⁹) or previous history of neurotic illness, may lower the threshold for the development of the syndrome or aggravate its course, but they are neither necessary nor sufficient to explain its occurrence. Typical features include episodes of repeated reliving of the trauma in intrusive memories (“flashbacks”), dreams or nightmares, occurring against the persisting background of a sense of “numbness” and emotional blunting, detachment from other people, unresponsiveness to surroundings, anhedonia⁷⁰, and avoidance of activities and situations reminiscent of the trauma. There is usually a state of autonomic hyperarousal with hypervigilance, an enhanced startle reaction, and insomnia. Anxiety and depression are commonly associated with the above symptoms and signs, and suicidal ideation is not infrequent. The onset follows the trauma with a latency period that may range from a few weeks to months. The course is fluctuating but recovery can be expected in the majority of cases. In a small proportion of cases the condition may follow a chronic course over many years, with eventual transition to an enduring personality change (F62.0⁷¹)”.

A “traumatic stressor” also includes torture. Both physical and psychological. While physical torture leaves visible traces on the body and psychological symptoms, psychological torture does not leave traces on the body, but leaves deep traces in mental and cognitive structures. It may also lead to physical self-harm or suicide attempts.

The symptoms of post-traumatic stress disorder (PTSD), from which suffer many refugees who have been tortured, are accompanied on a daily basis

⁶⁹ According to the International Statistical Classification of Diseases and Related Health Problems, Tenth Revision, Volume 1, 2008:

Anankastic personality F.60.5 – personality disorder characterized by feelings of doubt, perfectionism, excessive conscientiousness, checking and preoccupation with details, stubbornness, caution, and rigidity. There may be insistent and unwelcome thoughts or impulses that do not attain the severity of an obsessive-compulsive disorder (p. 239).

Asthenic personality F60.7 – personality disorder characterized by pervasive passive reliance on other people to make one’s major and minor life decisions, great fear of abandonment, feelings of helplessness and incompetence, passive compliance with the wishes of elders and others, and a weak response to the demands of daily life. Lack of vigour may show itself in the intellectual or emotional spheres; there is often a tendency to transfer responsibility to others (p. 240).

⁷⁰ “In terms of modern psychopathology, anhedonia most often means a decrease in interest or ability to experience pleasure and/or joy in response to stimuli that usually evoked such a positive reaction in a given person”. – M. Siwek, Anhedonia in depressive disorders, *Psychiatry and Clinical Psychology*. (“*Journal of Psychiatry and Clinical Psychology*”) - *Psychiatr Psychol Klin* 2017, 17 (3) p. 217.

⁷¹ International Statistical Classification of Diseases and Related Health Problems, Tenth Revision, Volume 1, 2008, p. 228.

by the following:

- **Lack of trust in others** - this is caused by the fact that it was the representatives of the authorities who inflicted pain on individuals and their families. As a result of these actions the innate and acquired through socialisation trust in another human being disappears. People become distrustful of others because they expect the other person to do them harm and to use his power against them. Lack of trust is generalised and can be transferred to strangers as well as family members. Rebuilding trust can turn out to be arduous work.
- **Flashbacks** - brief perceptual disturbances, the feeling of watching a film re-enacting the traumatic experiences of a former prisoner or refugee. Sudden and clear memory of former dramatic events. Throughout its duration, the individual loses contact with the surrounding reality and is “transferred” to the incriminating scene.
- **Intrusive thoughts** - in colloquial language, a race of thoughts and the inability to stop them.
- **Sleeplessness** – otherwise known as “insomnia”. Difficulties with falling asleep initially and secondarily – e.g. after a sudden awakening due to a nightmare. The consequences of insomnia can be both psychological and somatic disorders.
- **Nightmares** – bad dreams. The dreamer dreams that he is in danger or his relatives are in danger. He wakes up in sweats and with a sense of panic and paralysing fear. He has difficulties with distinguishing between dreams and reality. He often screams in his sleep, which in turn affects the sleep of other family members.

One of my patients, a man from the Balkans, after being tortured in a Serbian concentration camp, tried during a nightmare to strangle his wife with whom he shared a bed. During the therapeutic process, for the sake of their mutual safety, we advised the spouses to sleep separately.

- **Anxiety** – fear of everything and everyone. Anxiety can be specific or generalised.
- **Avoidance of specific situations** – avoidance of anything that may evoke the memory of traumatic events. We also encounter violent anxiety – heartbeat, muscle tension. Many patients are afraid of heart disease because they do not understand their reactions.

- **Negative emotions** – outbursts of anger, physical violence, loss of a self-control impulse due to strong negative emotions. Violence caused by unhealed trauma.
- **Cognitive disorders** – problems with concentration and short-term memory. Trauma causes changes in the cerebral hemispheres. Those who have not received treatment complain of memory disorders, inability to remember and learn new tasks (learning a language, memorising instructions). These persons have difficulty concentrating, which can be dangerous while exercising specific occupations.
- **Self-mutilation** – deliberate infliction of physical pain on oneself in order to feel relief from intrusive thoughts, or in the case of insomnia. The physical pain is in such cases a release from psychological pain and intrusive thoughts which may lead to suicide or aggression.
- **Self-medication** – medication, alcohol, stimulants and narcotics. They put the user in a state of “ease” where he does not have to deal with traumatic memories. Each return to reality is a burden that requires new doses of anaesthesia.
- **Physical pain** – caused by the body's reaction to torture. Most people with active post-traumatic syndrome suffer from headaches, pain in the back and limbs. Many struggle with muscular pains, which, besides previous torture, is aggravated by insomnia.
- **The latency of the onset of PTSD** - a post-traumatic condition that can stay dormant for years. However, it erupts when the victim is exposed to a situation reminiscent of the pressures and violence of incarceration, concentration camp or escape.
- **Dissociation** – divided consciousness. It occurs most often as a defence mechanism against violence inflicted (e.g. rape) and allows for “leaving the body” (e.g. fainting).

The most serious consequence of post-traumatic stress is personality change.

Both my patients and their families bear witness to changes in moods and behaviour before and after the trauma. Personality change is difficult to predict and can be triggered by a traumatic event many years after the original trauma.

In a new country one of my patients became an outstanding professional in his field. Slowly his superiors gave him more and more tasks. As a result of torture in his home country, he was afraid to refuse. In prison, refusal could mean torture or even death. When this 55-year-old man was left alone at work with

the tasks of three employees, he broke down. He sank so deep that his friendly personality disappeared. He became aggressive and tearful at the same time. Eventually, the man took early retirement with a sense of humiliation and defeat.

3.4 Extent of post-traumatic stress

In psychological circles we talk about the transmission of trauma, that trauma is “contagious”. Post-traumatic stress affects everyone in the family. A family in which one or more people suffer from post-traumatic stress is marked in many ways. Parents often do not realise that their behaviour affects their children – early adulthood, care for siblings, poor school results or a desire to excel at school so as not to worry the parents, bed-wetting, insomnia, psychosomatic illnesses.

Many parents do not have the emotional surplus to hug their children (after torture and tension the touch is often painful), to talk to them and to play with them. Noise, which is natural for children's play, is frequently a stress activator. This is why some parents retreat to another room to protect themselves and their children from their reaction.

One of my patients often isolated herself in a separate room. In her opinion, the children coped without her. When I asked her how long she stayed alone, she admitted that sometimes many hours. The children were then between 3 and 6 years old and had to cope on their own, also with fear and possible unforeseen catastrophes.

Another patient, having been repeatedly raped during the war in Rwanda, reacted emotionally to her teenage daughter's natural interest in the other sex. For the mother, sex was abhorrent and should be avoided at all costs. During our work, she received assistance which helped her to change her post-traumatic views and influenced her support for her daughter's natural development.

It also happens that children are brought up in the shadow of their parents' stress.

A little girl went to pre-school every day. The teacher noticed that the girl quenched her thirst by drinking water from the toilet bowl. Quietly and silently.

Interested, but also alarmed, she contacted the child's mother. It turned out that the girl's father reacted through a flashback when he heard the sound of water coming from the tap. The man had been subjected to “Chinese torture”

in his home country – a situation in which drop after drop falls on the head without warning, and the prisoner remains constantly in a state of alarm, which affects his nervous system and increases excitability. In fact, thanks to his wife, the girl’s father was able to cope with the trauma, but both parents introduced into their daily life an inadequate adaptation of the child to this situation. They wanted to protect the girl’s father as much as possible, but they did not understand the consequences of this adaptation for their little daughter. As a result of the intervention, the whole family was able to receive the necessary assistance. The father received therapeutic support, the girl’s mother psycho-educational support, and the whole family a possibility of change in their daily life and intervention aimed to prevent the transmission of the trauma to the next generation.

Not everyone is aware of the effects of living under the same roof as the people who suffer from post-traumatic stress disorder. For employees in many workplaces, preschools, day-care centres and schools it is important to have a knowledge of this issue for a number of reasons. First of all, it is crucial to provide help to those who need it. Ideally, this should be interdisciplinary assistance, so that it would cover social, physical and mental spheres, as well as pharmacological support. Next, help is needed for immediate family members to make them aware of normal reactions after abnormal (extraordinary) experiences. This type of help is also important because of the interdependence and expectations within the family. Then it is crucial to work with parents and children, both together and separately, in line with the knowledge gained during the family interview. It is also important to provide preventive help, in order to reduce the transmission of trauma to the next generations.

3.5 Can a human being cope with traumatic stress in confinement?

“Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”⁷².

It may be a penitentiary unit, a hospital ward, a social welfare home or, as in the case of most foreigners, a guarded centre for foreigners which brings together people from different countries who have left their country for a

⁷² Article 4.1 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations in New York on 10 December 2002 (Dz.U. of 2007, no. 30 item 192).

variety of reasons. At the same time, foreigners do not have the right to stay in the country where, more or less accidentally, they found themselves during their wandering.

As far as I know, there is no definitive response to dealing with trauma in confinement. This is in every way an extremely complex situation and the solution depends on the individual and his relationship with the people he is surrounded by.

What affects foreigners at the very beginning is separation from family, language, culture, rituals and everything that is familiar to them. There are many theories about survival in confinement. However, because I am a practitioner, I would like to write about my patients' accounts and draw on their experiences.

During many years of working with people who have experienced torture, imprisonment, exile and life in exile, a certain picture of coping with problems has emerged. What is repeated in the testimonies of people in confinement is the feeling of loss of dignity. Situations where one has to depend on others, both day and night. The others are most often representatives of the authorities – border guards, military officers, prison guards, but also randomly encountered people – co-locked behind the wire.

In the context of the experience of torture, humiliation and the danger of losing oneself, it is important to have a look at the direct, everyday treatment of another person in confinement. If border guards or prison guards raise their voices, touch a person without warning (push, touch with violence), treat a person without respect, they risk at the same time reactivating that person's post-traumatic stress disorder. They also signal that the place is not safe and one should be careful and vigilant. Such behaviour excludes dialogue and peace. Instead, it reinforces anxiety and dormant aggression – directly accumulated as a result of torture and trauma.

One of my patients was in a refugee camp alone. He did not know the fate of his wife and children, because he had fled alone after many years of cruel conditions prevailing in prison. He was treated badly in the refugee camp not only by the staff but also by foreigners of other faiths who were also waiting for asylum. During our meetings we worked on stopping aggression in him. He explained to me that he had built a "safe space" within himself. This strategy helped him to control his thoughts and emotions. It was easy for him to achieve this, because he had practiced yoga in the past. On the day he was granted asylum, he came to the social assistant and asked her to find information about his family. His wife and children were in a refugee camp in one of Asian countries and with our help we managed to reunite the family.

Another patient fled alone with her two children from Bosnia. Her husband was murdered when Serbian neighbours broke into their house with guns. She, together with her children, was given half an hour to disappear. She ended up in Denmark with her daughter, who was a medical student, and her high-school-age son. They were waiting for asylum in a refugee centre. The daughter went to university quite quickly and was able to live outside the centre. The mother was then left alone with her son. Because she feared for his safety in the camp, she started to study philosophy with him. The people working at the centre enabled her to acquire philosophy books, as she believed that these would give her son the basis for the European humanist tradition. Together they read the works of Socrates, Plato and discussed their theories in the context of grief and flight. When I met them, the daughter and son were living together with their mother. Because they were studying, their mother could finally devote time to herself and mourn her husband. Since she was able to act according to her plan in the camp and was not separated from her under-age son, she retained her parental dignity and authority.

Maintaining control in one's personal and family life is one of the most important factors in coping with deprivation of liberty, regardless of whether this deprivation takes place in a prison or a centre for foreigners. Many foreigners have serious problems with sleeping, the very stage of falling asleep, sleeping through the night and having nightmares. It is necessary to take care of their sleep because insomnia leads to changes in the nervous system and in the work of the brain. They often have hallucinations, which are not part of reality, but disturb the perception of the present moment. For those in guarded centres, sleep plays an important role. Proper nutrition and a lifestyle that permits to calm down but not to give up is also important. If necessary, foreigners should be provided with pharmacological support.

Many of my patients told me that they starved in detention units. This was also mentioned by survivors of the Second World War. They often dreamt about food. Such dreams and the interest in food helped many people to push the fear of survival into the background. The focus on food shifted other acute aspects of trauma and did not overburden the nervous system. This seems paradoxical, but many times it proves to be an effective defence against a deep collapse. Hunger can also become an obsession after coming out of confinement.

I met a woman who, after surviving a death camp, padlocked the family fridge. This meant that her son had limited opportunities to eat freely at home.

Another patient always had a slice of bread with him. Fear of hunger becomes an uncontrollable force.

Among the foreigners there are also those who remember school poems and recite them in their minds or out loud. This seemingly monotonous activity helps them to focus attention on something positive, familiar and related to family life. Even those who did not like their school told me that reciting brought them peace. Sometimes it even sends them to sleep. And it certainly puts them in control of their mental life, puts them in touch with the language and sometimes with pleasant memories of their young years. This strategy also applies to music. However, with a tendency towards sad and sentimental music.

When she was 5 years old, one of my young patients decided not to speak to other people who did not belong to her family. In a detention centre, she witnessed a threatening incident that she did not understand, so she fell silent (in psychology this is called selective mutism). Despite this, she went to school, she was a good student, but never spoke out. What was astonishing was that all those around her accepted her strategy of withdrawal. It was only after psychological intervention that this already young woman began to speak out. She spoke very carefully and slowly. This dramatic change enabled her to work on the trauma she had suffered for many years, to change relationships within her family and to take a healthier control of her life.

3.6 Centres for foreigners – what may be changed?

It is necessary to think about self-determination of foreigners in the centres which are intended for them. Changes can start with meals, making it easier for families to prepare and eat them together. This is especially important where there are small children who do not want to eat according to the canteen clock. Family meals together often mean a return to apparent normality. It is a community that gives a sense of dignity and promotes dialogue between generations.

Another element conducive to normality, which helps with coping, is privacy – sleeping, bathing or going to the toilet. In many institutions, the lack of such basic facilities leads to physiological and psychological disorders.

It should be noted that in closed centres there are both adults and children, families and individuals, but also children without families who flee on their own. It would seem that a basic step to maintaining relative peace would be to organise activities for children, adults and entire families. This would allow

to create a relatively healthy environment and thus divert their attention from the depressing time of waiting for an asylum decision, thereby shedding light on the uncertainty of the future.

Foreigners always live in a double world – at the place where they are right now and in their thoughts with the family they have left behind. Parents are at risk of losing their authority – a path that has serious consequences for everyone in the family, both at present and later, when the children are older and seek their own ways of survival.

As many refugees have experienced violence in their home countries or while fleeing, a conscientious medical examination is absolutely essential. Experienced doctors know that not all torture leaves marks. First of all, all kinds of pain are important – headache, backache (spine pain), limb pain, cigarette burn marks, insomnia.

Experienced doctors know how to create a situation in which a foreigner is able to gain trust in another person, what questions to ask and what direction to take in order to discover things that are often inaccessible due to the psychological chaos of everyday life in the centre.

More time should be devoted to refugee examination. And it must be an interdisciplinary effort, i.e. cooperation between the foreigner and the doctor, psycho-traumatologist and physiotherapist. The key person here has to be a qualified interpreter who is bound by professional secrecy and knows the nuances of the medical language. At the same time, during this process, the team of experts should perform psycho-educational work, which is aimed at providing immediate assistance.

Finally, I would like to emphasise a very important role of education of the personnel, aimed at preserving dignity and humanity of all people staying in guarded centres, both foreigners and employees themselves.

4. Selected international standards

4.1 Lawfulness of foreigners' stay in guarded centres

According to art. 5.1(f) of the European Convention of Human Rights:

*Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save **the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.***

- The detention of migrants should be an **exceptional** measure that is taken only when necessary, reasonable and proportionate in a specific case and that it should be applied only for the shortest period possible and for a legitimate purpose⁷³.

The administrative detention of migrants should never be punitive in nature. Alternatives to detention should be pursued before a decision to detain a person is taken. The State party should establish by law a series of measures as alternatives to or substitutes for the deprivation of liberty, duly taking into account international human rights standards⁷⁴

Every instance of deprivation of liberty should be covered by a proper individual detention order, readily available in the establishment where the person concerned is being held; and the detention order should be drawn up at the outset of the deprivation of liberty or as soon as possible thereafter. Further, the fundamental safeguards of persons detained by law enforcement agencies are reinforced if a single and comprehensive custody record is kept for every such person, recording all aspects of his/her custody and all action taken in connection with it⁷⁵.

- Any detention or deprivation of liberty **must be in accordance with and authorised by national law.** Any deprivation of liberty that is not in

⁷³ Report on the SPT visit to Macedonia, 10 May 2019, CAT/OP/MKD/1, Article 62; Report on the SPT visit to Panama, 31 July 2018, CAT/OP/PAN/1, Article 121; UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline No 4.2 par. 34; Report of the UN Special Rapporteur for Human Rights of Migrants, 25 April 2017, Thirty-fifth session 6-23 June 2017 Agenda item 3, A/HRC/35/25/Add.1 Article 93; Recommendations of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers published on 16 April 2003, Rec(2003)5, Article 4.

⁷⁴ Report on the SPT visit to Panama, 31 July 2018, CAT/OP/PAN/1.

⁷⁵ 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 85.

conformity with national law would be unlawful, both as a matter of national as well as international law⁷⁶.

A detention is lawful if it was ordered in compliance with the substantive and procedural rules of national law and it is not arbitrary⁷⁷.

“Arbitrariness” is to be interpreted broadly to include not only unlawfulness, but also elements of inappropriateness, injustice and lack of predictability. To guard against arbitrariness, any detention needs to be necessary in the individual case, reasonable in all the circumstances and proportionate to a legitimate purpose⁷⁸.

To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the grounds of detention relied on by the Government, the place and conditions of detention must be appropriate, and the length of the detention must not exceed that reasonably required for the purpose pursued.

(ECHR Judgement of 14 February 2017 in case S.K. v. Russia, Application no. 52722/15, Article 111)

Any foreign national should have a possibility to benefit from an effective legal remedy enabling him to have the **lawfulness of his detention decided before a judicial body**⁷⁹.

This judicial review should entail an oral hearing with legal assistance, provided free of charge for persons without sufficient means, and interpretation (if required). Moreover, detained irregular migrants should be expressly informed of this legal remedy⁸⁰.

4.2 Rights of foreigners in administrative detention

⁷⁶ UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline No. 3 par. 15.

⁷⁷ ECHR Judgement of 22 September 2015, case Nabil and others v. Hungary, Application no 62116/12, Article 30

⁷⁸ Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline No. 4 par. 18.

⁷⁹ Report on the CPT visit to Malta, 25 August 2005, CPT/Inf (2005) 15, Article 18; 19th General Report of the CPT, 20 October 2009 r., CPT/Inf(2009)27-part, Article 86; Report on the CPT visit to the Former Yugoslav Republic of Macedonia, 17 March 2016, CPT/Inf (2016) 8, Article 130.

⁸⁰ Report on CPT visit to Malta, 25 August 2005, CPT/Inf (2005) 15, Article 18; 19th General Report of the CPT, 20 October 2009 r., CPT/Inf(2009)27-part, Article 86.

a) Right to information and complaint mechanism

- Each foreigner should be expressly informed, without delay and in a language he understands, **of all his rights and of the procedure applicable to him**⁸¹.

Foreign nationals held at the centres should be systematically provided with documents explaining the procedures applicable to them and setting out their rights. These documents should be available in the languages most commonly spoken by those concerned and, if necessary, recourse should be had to the services of an interpreter. In addition, each detainee should be regularly updated on issues concerning his/her future⁸².

- The house rules should contain disciplinary procedures and provide detainees with the **right to be heard on the subject of violations that they are alleged to have committed**, and to appeal to an independent authority against any sanctions imposed⁸³.
- **Copies of house rules should be made available in relevant languages**⁸⁴. The house rules should primarily be informative in nature and address the widest range of issues, rights and duties which are relevant to daily life in detention⁸⁵.

b) Right to legal aid

- Each foreigner should be guaranteed **access to a lawyer** throughout the entire period of deprivation of liberty⁸⁶.

⁸¹ 7th General Report of the CPT, [CPT/Inf (97) 10], Article 30; 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 84; Report on the SPT visit to the Former Yugoslav Republic of Macedonia, 10 May 2019, CAT/OP/MKD/1, Article 64; Article 16.5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ of EU L. 2008 No 348, 98); Report on the CPT visit to the Former Yugoslav Republic of Macedonia, 17 March 2016, CPT/Inf (2016) 8, Article 130; Report of the UN Special Rapporteur for Human Rights of Migrants, 24 April 2017, Thirty-fifth session 6-23 June 2017 Agenda item 3, A/HRC/35/25/Add.3, Article 112; Report of the UN Special Rapporteur for Human Rights of Migrants, 25 April 2017, Thirty-fifth session 6-23 June 2017 Agenda item 3, A/HRC/35/25/Add.1 Article 100.

⁸² Report on the CPT visit to Serbia and Montenegro, 18 May 2006, CPT/Inf (2006) 18, Article 76.

⁸³ 19th General Report of the CPT, 20 October 2009., CPT/Inf(2009)27-part, Article 88.

⁸⁴ Report on the CPT visit to the Former Yugoslav Republic of Macedonia, 17 March 2016, CPT/Inf (2016) 8, Article 130.

⁸⁵ 19th General Report of the CPT, 20 October 2009., CPT/Inf(2009)27-part, Article 88.

⁸⁶ 7th General Report of the CPT, [CPT/Inf (97) 10], Article 30; Report on the CPT visit to the Former Yugoslav Republic of Macedonia, 17 March 2016, CPT/Inf (2016) 8, CAT/OP/MKD/1, Article 64; Report on the CPT visit to the Former Yugoslav Republic of Macedonia, 17 March 2016, CPT/Inf (2016) 8, CPT/Inf (2016) 8, Article 130; Recommendation of

- Each foreigner should be guaranteed the **right to speak with the lawyer in private**⁸⁷.
- Each foreigner should be guaranteed **the right to have the lawyer present during interviews** with the authorities concerned⁸⁸.

When foreigners are not in a position to appoint and pay for a lawyer themselves, they should benefit from access to **legal aid free of charge**⁸⁹.

As regards access to legal aid the **CPT** recommended to the Polish authorities that steps be taken to ensure that all foreign nationals detained under aliens legislation are effectively able to benefit from legal counselling and, if necessary, legal representation. For indigent foreign nationals, these services should be provided free of charge.

Further, it would be desirable for foreign nationals to receive a written translation in a language they understand of the conclusions of decisions regarding their detention/expulsion, as well as written and oral information on the modalities and deadlines for appealing against such decisions.

(Report on the visit to Poland, 25 July 2018, CPT/Inf (2018) 39, Article 47)

c) Right to medical care

- Each foreigner should be ensured access to **appropriate medical care**.

As regards access to appropriate medical care, particular attention should be paid to the physical and psychological state of asylum seekers. It is worthwhile to remember that very often these persons flee from persecution, they may have been tortured or otherwise ill-treated in the countries from which they have come. Under international standards the right of access to a doctor should include the right - if a detainee so wishes - to be examined by a doctor of his choice. However, the detainee might be expected to cover the cost of such a second examination⁹⁰. Ensuring appropriate medical treatment and

the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers published on 16 April 2003, Rec(2003)5, Article 17.

⁸⁷ 7th General Report of the CPT CPT/Inf (97) 10, Article 30.

⁸⁸ 7th General Report of the CPT, CPT/Inf (97) 10, Article 31; Report on the CPT visit to Malta, 25 August 2005, CPT/Inf (2005) 15, Article 35.

⁸⁹ 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 82.

⁹⁰ 7th General Report of the CPT, CPT/Inf (97) 10, Article 31.

psychological counselling is particularly relevant for persons with special needs: minors, pregnant women, elderly people, persons with physical or mental disabilities and people who have been seriously traumatised, including torture victims⁹¹.

In addition, it is recommended that a full medical and psychological examination undertaken by specialized professionals be provided for all persons suffering from health and mental health problems. Following the examination, migrants should receive the necessary treatment and their health situation should be taken into consideration in any legal procedure for deportation⁹².

- Each foreigner be immediately medically screened by a doctor, or a fully qualified nurse reporting to a doctor, **within 24 hours of his arrival at the establishment**⁹³.

Such screening is essential to ensure that any injuries are recorded in good time, as well as in terms of preventive medicine (for example, to counter the spread of transmissible diseases)⁹⁴.

- **An individual medical file** should be established for each foreign national⁹⁵.

Records drawn up after the medical examination of a detainee – whether newly arrived or following a violent incident in a Centre – should contain:

- 1) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment),
- 2) a full account of objective medical findings based on a thorough examination, and
- 3) the doctor's observations in the light of 1) and 2), indicating the consistency between any allegations made and the objective medical findings.

⁹¹ Recommendation of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers published on 16 April 2003, Rec(2003)5, Article 13.

⁹² Report on the SPT visit to Romania, 8 March 2018, CAT/OP/ROU/1, Article 117.

⁹³ Report on the CPT visit to Serbia and Montenegro, 18 May 2006, CPT/Inf (2006) 18, Article 74; 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 82.

⁹⁴ Report on the CPT visit to Serbia and Montenegro, 18 May 2006, CPT/Inf (2006) 18, Article 74.

⁹⁵ Report on the CPT visit to Serbia and Montenegro, 18 May 2006, CPT/Inf (2006) 18, Article 74.

The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and any further procedures performed⁹⁶.

- Each foreigner’s medical data should be kept in conformity with confidentiality rules, designated medical personnel should have access to them. Moreover, a medical examination should be conducted **respecting the right to privacy** without presence of third persons⁹⁷.

Obviously, medical confidentiality should be observed in the same way as in the outside community; in particular, irregular migrants’ medical files should not be accessible to non-medical staff but, on the contrary, should be kept under lock and key by the nurse or doctor. Moreover, all medical examinations should be conducted out of the hearing and – unless the doctor requests otherwise– out of the sight of non-medical staff⁹⁸.

During its last visit to Poland, the CPT observed with regard to medical care that all medical examinations should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of custodial Border Guard officers. Detained persons’ medical files and other medical documentation should not be accessible to non-medical staff.

(Report on the visit to Poland, 25 July 2018, CPT/Inf (2018) 39, Article 45)

- **Each foreigner should be ensured access to a qualified interpreter**, whenever members of the medical and/or nursing staff are unable to make a proper diagnostic because of language problems⁹⁹.

d) Right to contact with the outside world

⁹⁶ Report on the CPT visit to Spain, 9 April 2015, CPT/Inf (2015) 19, Article 23.

⁹⁷ Report on the CPT visit to Malta, 25 August 2005, CPT/Inf (2005) 15, Article 54; 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 92.

⁹⁸ Report on the CPT visit to Malta, 25 August 2005, 16 CPT/Inf (2005) 15, Article 54.

⁹⁹ Report on the CPT visit to Malta, 25 August 2005, CPT/Inf (2005) 15, Article 55; Report on the CPT visit to Serbia and Montenegro, 18 May 2006, CPT/Inf (2006) 18, Article 73; 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 92.

Foreigners should be entitled to maintain contact with the outside world during their detention, and in particular they should be ensured:

- access to a **telephone**¹⁰⁰,
- possibility to receive **visits** from relatives¹⁰¹.

Visiting rooms should enable immigration detainees to meet under open conditions with family and friends visiting them, and the environment should be child-friendly (including a play area for children). If, exceptionally, it is considered necessary to impose restrictions on visits of a particular foreign national, this should be done on the basis of an individual risk assessment¹⁰².

- Possibility to receive visits from **representatives of relevant organisations**¹⁰³,
- Possibility to ask for **consular assistance**¹⁰⁴.

Third-country nationals in detention shall be allowed — on request — to establish in due time contact with legal representatives, family members and competent consular authorities¹⁰⁵.

- Detainees should be ensured access to computers, including the possibility of using **Skype and VoIP (Voice over Internet Protocol)**¹⁰⁶.

e) Personal search

- Detainees may be **searched to ensure their own safety and the safety of police officers**. However, not all detainees should be routinely subjected to a strip-search because it is a very invasive and potentially degrading measure. A strip-search should be carried out only when there are reasonable grounds to suspect that a detained

¹⁰⁰ Report on the CPT visit to Malta, 25 August 2005, CPT/Inf (2005) 15, Article 70; 7th General Report of the CPT, CPT/Inf (97) 10, Article 31; Report of the UN Special Rapporteur for Human Rights of Migrants, 25 April 2017, Thirty-fifth session 6-23 June 2017 Agenda item 3, A/HRC/35/25/Add.1 Article 94.

¹⁰¹ 7th General Report of the CPT, CPT/Inf (97) 10, Article 31; 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 87; Recommendation of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers published on 16 April 2003, Rec(2003)5, Rec(2003)5, Article 18.

¹⁰² Report on the CPT visit to the Czech Republic, 31 March 2015, CPT/Inf (2015) 18, Article 41.

¹⁰³ 7th General Report of the CPT, CPT/Inf (97) 10, Article 31; 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 87.

¹⁰⁴ 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 83, Report of the UN Special Rapporteur for Human Rights of Migrants, 25 September 2017., Seventy-third session Agenda item 74 (b), A/73/178/Rev.1, Article 71.

¹⁰⁵ Article 16.2 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ of EU L 2008 No 348, 98).

¹⁰⁶ Report on the CPT visit to the Former Yugoslav Republic of Macedonia, 17 March 2016, CPT/Inf (2016) 8, Article 133; Report on the CPT visit to Denmark in 2014, 17 September 2014, CPT/Inf (2014) 25, Article 82; Report on the CPT visit to Poland, 25 July 2018 r., CPT/Inf (2018) 39, Article 54.

person may have hidden on him/her dangerous items or those that may be evidence of a crime, where an ordinary search being unlikely to result in their discovery¹⁰⁷.

- The practice of strip-searching persons deprived of liberty should be limited to exceptional cases and it should meet the criteria of necessity, reasonableness and proportionality¹⁰⁸.

f) Material conditions

- The premises where foreign nationals are to be placed should provide accommodation which is **adequately-furnished**, clean and in a good state of repair, and which offers sufficient living space. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment¹⁰⁹.

Each room where a foreign national stays should be ensured access to sufficient natural light and also be provided with a call system, table and chairs and the washbasin¹¹⁰.

First of all, **conditions of detention of foreign nationals may not provide a carceral environment**. It should be noted that in some States, irregular migrants are detained in prisons which are not a suitable place for persons who are neither accused nor convicted of a criminal offence¹¹¹.

- Detainees should be ensured **ready access to a toilet facility** at all times, including at night¹¹².
- Each foreign national should be ensured a **bed, bedding and mattress, all clean**¹¹³.
- Detained persons staying are provided with a **basic sanitary kit** (including adequate rations of soap, washing powder, toilet paper, shampoo, shaving utensils and toothpaste, and a toothbrush) free of charge¹¹⁴.

¹⁰⁷ See Reports on the CPT visit to the Czech Republic: CPT/Inf (2019) 23, Article 31 and CPT/Inf (2015) 18, Article 22; Report on the CPT visit to Lithuania, CPT/ Inf (2017) 16, Article 37; Report on the CPT visit to Kosovo, CPT/Inf (2011) 26, Article 19.

¹⁰⁸ Report on the CPT visit to Poland, CAT/OP/POL/ROSP/1, Article 111.

¹⁰⁹ 7th General Report of the CPT, [CPT/Inf (97) 10], Article 29.

¹¹⁰ Report on the CPT visit to Spain, 25 April 2015, CPT/Inf (2015) 19, Article 15.

¹¹¹ 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 77,79.

¹¹² Report on the CPT visit to Spain, 25 April 2014 r., CPT/Inf (2015) 19, Article 15.

¹¹³ Report on the CPT visit to Greece, 10 January 2012 r., CPT/Inf (2012) 1, Article 38.

¹¹⁴ Report on the CPT visit to Greece, 10 January 2012 r., CPT/Inf (2012) 1, Article 38.

- Detained **families** are provided with separate rooms guaranteeing the appropriate level of privacy¹¹⁵.
- **Female detainees should be placed in an area which is separated from that accommodating male detainees**, unless they are family members and all of them agree to it¹¹⁶.
- All detained persons are provided with **three meals per day** and a more varied menu, taking into account the religious requirements and dietary habits¹¹⁷.
- Each facility should have a **common association room**, equipped with television and games, a library and a prayer room¹¹⁸.

g) Recreational and sport activities

Foreign nationals placed in guarded centres should have:

- access to **outdoor** exercise every day, including week-ends¹¹⁹,
- access to a day room and to **radio/television**¹²⁰,
- access to **newspapers/magazines**¹²¹,
- access to other appropriate means of recreation (e.g. **board games, table tennis**)¹²².

4.3 Detention of children

Unaccompanied or separated children should not be detained in guarded centres for foreigners. Detention cannot be justified based solely on the fact that the child is not provided with appropriate care. Where possible, children should

¹¹⁵ Article 11.4 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ of EU L. 2008 No 348, 98).

¹¹⁶ Article 11.5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ of EU L. 2008 No 348, 98); UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline No 8 par. 48.; Recommendation of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers published on 16 April 2003, Rec(2003)5, Rec(2003)5, Article 14.

¹¹⁷ Report on the CPT visit to the Former Yugoslav Republic of Macedonia, 17 March 2016, CPT/Inf (2016) 8, Article 120.

¹¹⁸ Report on the CPT visit to the Former Yugoslav Republic of Macedonia, 17 March 2016, CPT/Inf (2016), 8, Article 12.

¹¹⁹ 7th General Report of the CPT, CPT/Inf (97) 10, Article 29; Report on the CPT visit to Malta, 25 August 2005, CPT/Inf (2005) 15, Article 47; Report on the CPT visit to Serbia and Montenegro, 18 May 2006, CPT/Inf (2006) 18, Article 70; Report on the CPT visit to Greece, 10 January 2012 r., CPT/Inf (2012) 1, Article 38.

¹²⁰ 7th General Report of the CPT, CPT/Inf (97) 10, Article 29.

¹²¹ 7th General Report of the CPT, CPT/Inf (97) 10, Article 29; Report on the CPT visit to Malta, 25 August 2005, CPT/Inf (2005) 15, Article 47.

¹²² 7th General Report of the CPT, CPT/Inf (97) 10, Article 29.

be released into the care of family members who already have residency within the asylum country. Where this is not possible, alternative care arrangements, such as foster placement or residential homes, should be made by the competent child care authorities, ensuring that the child receives appropriate supervision. A primary objective must be the best interests of the child¹²³.

Minors must not be held under prison-like conditions. They should be released from detention as quickly as possible and placed in other accommodation¹²⁴.

Children have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status. (...) the Convention on the Rights of the Child encourages States to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents.

(ECHR Judgement of 19 January 2012, case *Popov v. France*, Applications nos. 39472/07 and 39474/07, § 91)

All appropriate alternative care arrangements should be considered in the case of children accompanying their parents, not least because of the well-documented deleterious effects of detention on children's well-being, including on their physical and mental development. The detention of children with their parents or primary caregivers needs to balance, inter alia, the right to family and private life of the family as a whole, the appropriateness of the detention facilities for children, and the best interests of the child¹²⁵. Moreover, minors should not be separated from their parents against their will, nor from other adults responsible for them whether by law or custom¹²⁶.

It is worthwhile to emphasise that in 2018 the European Court of Human Rights delivered the first judgement **against Poland in case *Bistieva and Others v. Poland***¹²⁷. The case concerned the family from Chechnya who submitted asylum application in Poland. In 2013 the Head of the Office for Foreigners

¹²³ UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline No. 9.2 par 54; Recommendation of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers published on 16 April 2003, Rec(2003)5, , Rec(2003)5, Article 23; ECHR Judgement of 12 October 2006, case *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application no. 13178/03.

¹²⁴ Recommendation of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers published on 16 April 2003, Rec(2003)5, Article 22.

¹²⁵ UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline No. 9.2 par. 53.

¹²⁶ Recommendation of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers published on 16 April 2003, Rec(2003)5, Article 21.

¹²⁷ ECHR Judgement of 10 April 2018, case *Bistieva and Others v. Poland*, Application no. 75157/14

refused to grant them the status and issued a decision on expulsion from Poland. The family fled to Germany, where their third child was born. In January 2014 the mother and her three children were sent back to Poland and placed in the Guarded Centre for Foreigners in Kętrzyn. “Ms Bistieva appealed, arguing that the administrative detention of herself and her children was unjustified and disregarded the fact that her husband had stayed behind in Germany, having been hospitalised when his family was sent back to Poland. On 27 January 2014 the Warmińsko-Mazurski Governor (*Wojewoda*) refused to order the expulsion of Ms Bistieva’s youngest child, who was sought by the head of the Świecko Border Guard. It was held that the 2013 expulsion decision did not cover the child, who was born later in Germany and whose presence in Poland resulted from a decision of the German authorities. It followed that the child’s presence in Poland, unlike that of the rest of his family, was not illegal. On 28 January 2014 Ms Bistieva applied for refugee status for herself and her three children. She also applied for a stay of the enforcement of the 2013 expulsion decision. On 4 February 2014 the Kętrzyn District Court decided to extend the detention of all the applicants at the guarded centre for foreigners until 27 April 2014”¹²⁸. The applicants were released on 24 June 2014. The Court underlined that “the child’s best interests cannot be confined to keeping the family together and that the authorities have to take all the necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve the right to family life. In this context, given the reasoning of the domestic authorities’ decisions, the Court is not convinced that the Polish authorities had in fact, as they should have, viewed the family’s administrative detention as a measure of last resort. Nor had they given due consideration to possible alternative measures, especially in the period of time when the applicants were reunited with their husband and father.”¹²⁹ The Court has found in this case a violation of Article 8 of the Convention¹³⁰ and has awarded EUR 12,000 in respect of non-pecuniary damage.

Convention on the Rights of the Child ¹³¹

Article 22

¹²⁸ *Ibidem*, Article 17-20.

¹²⁹ *Ibidem*, Article 85-86.

¹³⁰ Article 8: 1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

¹³¹ Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1989 (Dz. U. of 1991 No. 120, item 526).

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

When a child is placed in a guarded centre, each minor should be ensured the following guarantees:

- the deprivation of liberty should be for the **shortest possible period of time** and should only be applied as last resort¹³²,
- **the right to benefit from the same minimum procedural guarantees as adults** but these should be tailored to their particular needs¹³³,
- an initial **interview should be conducted in a language the child understands**¹³⁴,
- unaccompanied or separated children should be provided with **prompt and free access to legal** and other appropriate **assistance**, including the assignment of a guardian or legal representative ¹³⁵,
- a regular presence of, and individual contact with, **a social worker and a psychologist**, should be ensured¹³⁶,
- children should have the possibility **to engage in leisure activities**, including play and recreational activities appropriate to their age, and, depending on the length of their stay, they should have access to education¹³⁷.

In addition, in order to limit the risk of exploitation, special arrangements should be made for living quarters that are suitable for children, for example, by separating them from adults, unless it is considered in the child's best interests not to do so. This would, for instance, be the case when children are in the

¹³² 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 97; Article 17.1 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ of EU L. 2008 No 348, 98).

¹³³ UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline No. 9.2 par. 56

¹³⁴ 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 98.

¹³⁵ Ibidem, Article 98.

¹³⁶ Ibidem, Article 99.

¹³⁷ Article 17.3 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ of EU L. 2008 No 348, 98);

company of their parents or other close relatives. In that case, every effort should be made to avoid splitting up the family¹³⁸.

The Court found that there was a violation Article 3 in relation to the detention of the minor in the centre (...). The Court noted that the conditions of the deprivation of liberty of the applicant, then aged five, were the same as for an adult, that the child was held for two months in the centre initially designed to house adults, while she was separated from her parents without anyone being assigned to take care of her, without psychological or pedagogical supervision and support measures from qualified staff, specifically authorised for this purpose. The Court stressed that the extreme vulnerability of a child was paramount and took precedence over the status as an illegal alien. (ECHR Judgement of 19 January 2010 in case Muskhadzhiyeva v. Belgium, Application no. 41442/07, § 56)

¹³⁸ 19th General Report of the CPT, 20 October 2009, CPT/Inf(2009)27-part, Article 100; Recommendation of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers published on 16 April 2003, Rec(2003)5, Article 14.

5. Results of the visit of the National Mechanism for the Prevention of Torture to the guarded centres for foreigners in Poland

5.1 Introduction

In 2016 the National Mechanism for the Prevention of Torture undertook visits to the guarded centres for foreigners in the following towns: Biała Podlaska¹³⁹, Lesznowola¹⁴⁰, Krosno Odrzańskie¹⁴¹ and Kętrzyn¹⁴². In 2017 the NMPT experts visited the Guarded Centre for Foreigners in Przemyśl¹⁴³ and carried out the follow-up visit to the Guarded Centre for Foreigners in Krosno Odrzańskie¹⁴⁴. In 2018 the recontrol was conducted in the guarded centres in Biała Podlaska¹⁴⁵ and Lesznowola¹⁴⁶ and a comprehensive visit was carried out to the centre in Białystok¹⁴⁷.

The activities of the National Mechanism for the Prevention of Torture were focussed on the assessment of psychological care provided to the persons placed in the guarded centres for foreigners and the identification of victims of torture. External experts in psychology and psychiatry participated in the visits.

5.2 Strengths of the facilities visited

The National Mechanism for the Prevention of Torture pointed out to the following strengths of the facilities visited:

a) Psychological care

In the Guarded Centre for Foreigners in Biała Podlaska, psychological assistance was provided by three persons: a civilian employee of the Border Guard employed as the Head Psychologist of the Educational Team, an officer employed within the structures of the Border Guard (a member of the uniformed personnel) and a psychologist not employed within the structures of the Border Guard (an external psychologist). In the opinion of the NMPT, a very good solution for identifying persons that experienced violence and for providing them with adequate psychological and medical assistance was the use

¹³⁹ KMP.572.1.2016.

¹⁴⁰ KMP.572.2.2016.

¹⁴¹ KMP.572.5.2016.

¹⁴² KMP.572.6.2016.

¹⁴³ KMP.572.3.2017.

¹⁴⁴ KMP.572.1.2017.

¹⁴⁵ KMP.572.3.2018.

¹⁴⁶ KMP.572.2.2018.

¹⁴⁷ KMP.572.4.2018.

of foreigner's observation sheets (different sheets for adults and for children) in the Guarded Centre for Foreigners in in Biała Podlaska.

At the time of the NMPT visit the establishment in Białystok was undergoing renovation, but before that, foreigners were able to make appointments for counselling on their own and directly. Moreover, persons who benefitted from psychological services could go to the psychologist's office on their own without being accompanied by officers. The information about the days and hours of psychologist's duty was posted on the door of the office. According to the information¹⁴⁸ obtained, the refurbishment of the Guarded Centre for Foreigners in Białystok was completed in mid-December 2018. From that moment, it was possible to make again a direct appointment for psychological counselling. In addition, on 1 July 2019, a full-time psychologist post was filled by a Border Guard officer, working 8 hours a day from Monday to Friday. If necessary, he also provided support at weekends or was available for more hours. In addition, an external psychologist provided services three times a week for 3 hours each time. What is particularly important is that the persons placed in this guarded centre for foreigners had a possibility to choose a psychologist.

In the centre in Lesznowola, psychological support was provided by a psychologist who is also a certified addiction therapist. Moreover, a positive aspect of psychological care in the centre was no limit on the number of hours of the service from which each of the detainees could benefit¹⁴⁹.

b) Contact with the outside world

As it was prohibited to have technical devices that record images¹⁵⁰, foreigners who used mobile phones with the recording function were obliged to deposit them. Some of the facilities had a sufficient number of mobile phones without the image recording function, which were distributed among foreigners in place of their own mobile phones that were deposited. The detainees could put their own SIM cards into these mobile phones. Persons who did not have mobile phones had access to the stationary phone at the centre which was made available by the head of the shift¹⁵¹.

c) Material conditions

In Biała Podlaska, special attention was paid to the rooms where additional activities for children were carried out. The rooms were adapted to the needs

¹⁴⁸ Letter of 29 July 2020, PD-SO-I Y.4225.11.2020.

¹⁴⁹ In the last six months, 43 persons benefitted from psychological counselling. A maximum of 73 foreigners can be placed in the centre. In the analysed period the centre was not used to the maximum of its capacity (68 persons were detained in the centre during the visit). This means that more than 60% of people placed in the centre benefitted from counselling.

¹⁵⁰ See Article 420 of the Act on foreigners of 12 December 2013.

¹⁵¹ GCF Biała Podlaska, GCF Białystok, GCF Kętrzyn, GCF Krosno Odrzańskie, GCF Lesznowola, GCF Przemysł.

and interests of the youngest residents of the centre, which had a positive impact on their development and well-being.



Division for Families, Biata Podlaska, 2018.



Division for Families, Biata Podlaska, 2018.

In the establishment in Lesznawola, foreign nationals were accommodated in two buildings that were connected by a connecting passage. All (two and three-bed) rooms were furnished with wooden beds, tables and chairs as well as standing and hanging wardrobes. What should be stressed is that the interior décor of the rooms was different than that typical of detention centres. Moreover, the windows were not barred, but they were fitted with anti-burglary protection.



Residential room, Guarded Centre for Foreigners in Lesznowola, 2018.



Rest and refreshment room, Guarded Centre for Foreigners in Lesznowola, 2018.

In the Guarded Centre for Foreigners in Przemyśl, the visiting persons were shown a large recreational and sports area, which was closed at that time due to the ongoing renovation works. The facilities in the area included: a football pitch and basketball court, outdoor gym and a well-equipped playground for children with a surface made of soft, safe for children, surface.



Playground for children, Guarded Centre for Foreigners in Przemyśl, 2017.

It should also be emphasised that the doors to the residential rooms in this establishment were not fitted with peepholes, which increased the sense of intimacy of the residents.

Thanks to the financial resources obtained by the staff of the Guarded Centre for Foreigners in Krosno Odrzańskie from foreign funds, it was possible to arrange a basketball court and a beach volleyball court in the areas of the walking yards.



Volleyball court, Guarded Centre for Foreigners in Krosno Odrzańskie, 2016.

In addition, in one of the rooms in the building of the centre exercise equipment was installed (atlas, exercise bike, treadmill). Moreover, the detainees were provided with board games (checkers, chess), billiards, table football, rackets for table tennis and badminton.



Sport equipment, Guarded Centre for Foreigners, Krosno Odrzańskie, 2016.

d) Cultural and educational activities

The visiting persons paid attention to a rich cultural and educational offer provided for the residents of the establishment in Biała Podlaska.

Educational activities for children were carried out in the centre: manual tasks aimed at improving visual functions and logical thinking, as well as mathematical tasks.

The minors detained in the centre in Kętrzyn were able to receive compulsory education on the basis of the agreement signed with Primary School No. 4 in Kętrzyn.

Additionally, the Educational Section of the Guarded Centre for Foreigners in Krosno Odrzańskie cooperated with Caritas of the Zielonogórsko-Gorzowska Diocese. The centre also introduced a good practice of organising, besides current assistance, weekly Wednesday meetings of foreigners with employees of the Section for Foreigners' Administrative Service (return guardians).

e) Staff training

In the Guarded Centre for Foreigners in Biała Podlaska, the NMPT representatives drew their attention to the wide range of training for the staff. Significantly, civilian personnel or officers in service in the Guarded Centre for Foreigners in Biała Podlaska were provided with training to improve their qualifications in identification and handling of victims of violence. In addition, in 2018 they also took two training courses on child detention.

- During the visit to the Guarded Centre for Foreigners in Kętrzyn it was communicated to the NMPT that **in 2007 the establishment would be designated to accommodate foreigners with disabilities.**

According to the information obtained later¹⁵², the centre was adapted in 2017 to accommodate such persons. A residential room with two bathrooms (one with a shower, washbasin and toilet, the other with a toilet and washbasin) was arranged in this guarded centre for foreigners. The room was furnished with two specialist beds (with adjustable body position) for persons with disabilities. In addition, a wheelchair, an electric stairlift and a car adapted to transport people with disabilities were purchased.

5.2 Systemic problems

5.3.1 Identification of torture victims in the guarded centres for foreigners

¹⁵²Letter of 24 July 2020, WM-SO-SOg_RdSOZF.4225.1.2020

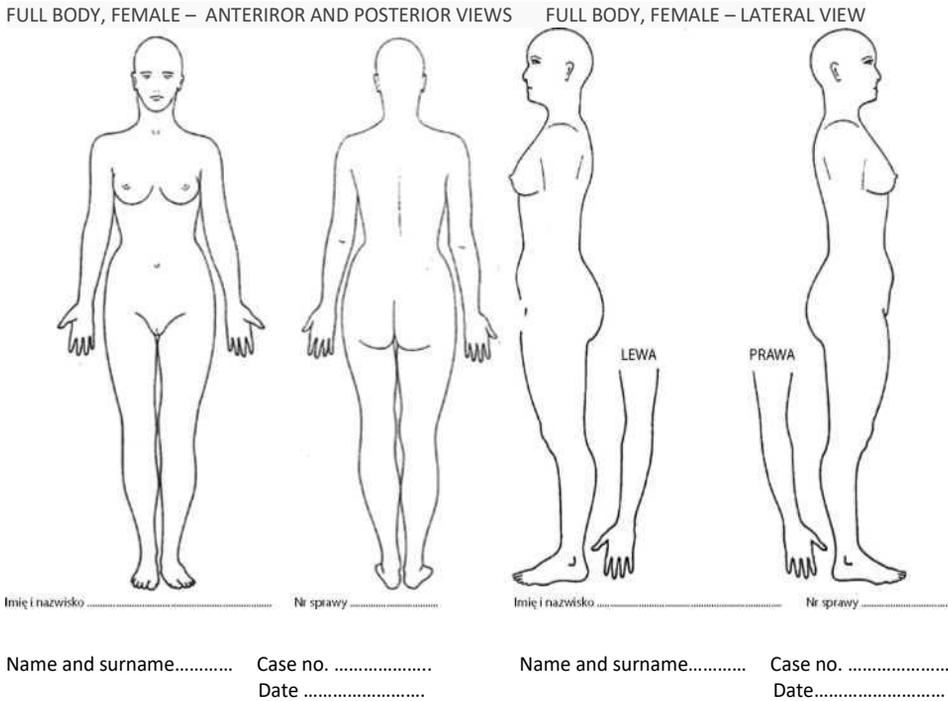
The main systemic problem identified by the NMPT is the lack of the effective identification of victims of torture among foreign nationals detained in the guarded centres. An internal document of the Border Guard entitled “Principles of Border Guard's Conduct towards Foreigners Requiring Special Treatment”¹⁵³ is binding in those centres. Its objective is to define personal scope and to adopt the definition of foreigners that require special treatment and the conditions necessary to identify this category of persons during their stay in the guarded centre for foreigners and to establish the procedure for their identification, with particular emphasis on the procedure if there are prerequisites for releasing them from the guarded centres for foreigners. The document is applicable to persons detained pursuant to Article 394 of the Act on foreigners and placed in the guarded centres for foreigners.

In the opinion of the NMPT, the document is contrary to the provisions of the Polish law and to the standards of the Istanbul Protocol and other international standards established. The algorithm does not allow for the “immediate release” from the guarded centre regime of the detained foreign nationals who are alleged victims of violence. In addition, the treatment and therapy which are available in the centres for the identified victims of torture are only of such nature that it deepens the psychological trauma of the foreigners in detention. It should be stressed that the experience of the National Mechanism shows that, despite the existence of the algorithm, there are persons held in the guarded centres for foreigners who, despite visible symptoms of PTSD, have not been identified as victims of torture or violence, and frequently if this has already happened, the identification itself has taken too long.

The document which would undoubtedly help to effectively identify torture is the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”), mentioned earlier in the text. Unfortunately, as the NMPT visits show, it is not used by the Border Guard in practice. The document contains, inter alia, international standards for the protection of human rights and prevention of torture, as well as the guidelines on carrying out effective investigations in cases of torture, e.g. the methodology of questioning the victim and the witness, obtaining and securing material evidence (including evidence of medical nature), information to be obtained during the investigation, collecting and analysing documentation. It also focuses on psychological effects of torture and the risk of the victim’s retraumatisation.

¹⁵³Doubts and reservations of the Commissioner for Human Rights related to the regulations and the application in practice of the document are expressed in Chapter 6.1 – General Interventions.

The Protocol also shows how to document all injuries by marking them on the so-called body maps.



An example of the anatomical drawing for the documentation of torture and cruel treatment. Annex III to the Istanbul Protocol.

One of the key issues that raises so many NMPT’s doubts is **the way in which the Border Guard evaluates the prerequisites that prevent placement of foreign nationals in the guarded centres for foreigners**. The algorithm imposes an obligation on the Border Guard to verify whether the prerequisites set out in Article 400 of the Act on Foreigners of 12 December 2013 occur. The verification should take place before filing the application to the court. The legislator clearly points out to two, independent from each other, prerequisites that prevent detention. Detention should be abandoned, if: *1) it could pose threat to the life or health of a foreigner; 2) the foreigner's physical and psychological condition could justify a presumption that a foreigner has experienced violence*. As it clearly follows from the content of the quoted article, the occurrence of only one of them constitutes a sufficient counterindication to detention in the

guarded centre. However, according to the algorithm, an application should be filed only when both prerequisites are excluded and the information about the absence of each of them should be included in the application.

As the analysis of the information collected during the visit indicates, before filing the application, a doctor only gives an opinion on whether the person's physical state of health at the moment of examination allows for his detention in the centre. This means that with respect to the first prerequisite, the following is not subject of the evaluation:

- danger to life and health, i.e. the risk of worsening the current health condition, e.g. the exacerbation of somatic diseases due to detention, emergence or deterioration of mental disorders due to retraumatisation and stress caused by the detention,
- the state of mental health (no psychological or psychiatric examination is conducted);
whereas with regard to the second prerequisite the following is not evaluated:
- either the person's mental state or the physical state with the view to the presumption of being subjected to violence (in this respect no psychological or psychiatric examination or medical assessment of the injuries and their possible causes is carried out).

In the view of the NMPT, the Border Guard only to a small extent applies the algorithm as regards actions taken before placing a person in a centre. The lack of a mechanism to fully verify each of the prerequisites leads to a situation where, contrary to the Act and thus the algorithm, persons who have experienced violence, including torture, have no chance to be identified, which results in depriving them of liberty.

During the visit, the representatives of the NMPT met with persons who claimed, as early as at the stage of being detained, that they had been subjected to violence or came from the country where the likelihood of experiencing violence, including torture, was high, but they were not examined with the view to that. At the same time the applications on their detention filed to courts contain no contraindications for their detention. It happens that at the moment of the detention itself or during the examination, foreigners are in good physical condition, but due to the type of a somatic disease and/or traumatic experiences, they risk a breakdown of their health under the influence of factors present in the detention (retraumatisation, stress, collective living and eating conditions, being cut off from one's own social support network, difficulty or

impossibility to use previous coping strategies, possible relapse, especially of mental illness and psychosomatic autoimmune diseases, etc.)¹⁵⁴.

In assessing the effectiveness of the process of identifying survivors of torture and inhuman treatment, the time in which they are identified and covered by measures appropriate to their needs is particularly important.

It is crucial how soon after his admission to the centre the person has been classified as belonging to the vulnerable group and within what time from the moment of such classification he has received the necessary assistance. In the case of survivors of torture and other forms of violence, the measures taken should include the earliest possible release from the centre and, until the time of the release, the provision of comprehensive support to reduce the negative effects of detention (the release from the centre should be of key importance, as the support itself is, in a way, the consequence of the detention, and therefore the deprivation of liberty should not be extended because of the provision of such support).

During the visits to the guarded centres for foreigners, the NMPT representatives encountered situations where there was no mention, in the internal notes on the first interviews, of conducting an in-depth interview aimed at a preliminary identification of the prerequisites that might indicate an experience of torture or violence or special needs existing for other reasons. There were also no guidelines for such interviews – their scope, the questions to be asked when investigating the membership of particular vulnerable groups.

This means that the mechanism of early identification is unreliable. This is crucial, as early identification is intended to trigger further actions foreseen by the algorithm and, in the case of contraindications to detention, to result in the person's release from the centre. This has a negative impact on the speed and effectiveness of identification, thereby delaying the release from the guarded centre for foreigners, or on the lack of identification and the continuation of detention. As a result, this leads to situations where there are people held in the guarded centres who, despite having visible symptoms of PTSD, are not subject to identification or the identification process takes a very long time and their mental state deteriorates under the conditions of detention. In the next chapter such stories are described in detail, which should be an impulse for taking action to change the current legal status and the Border Guard's practice.

¹⁵⁴ All the cases of conduct not complying with the algorithm are described in chapter 5.3.1.1 – Examples of ineffective identification of torture found by the NMPT.

5.3.1.1 Examples of ineffective identification of torture victims, identified by the NMPT

During its visit, the NMPT used the support of external experts who were experienced in working with traumatized people. As a result of their work, a dozen or so torture victims living in guarded centres for foreigners were identified and the process of identification, including the psychological care provided, were analysed:

A couple from Chechnya

A couple and their three minor children aged 2, 4 and 8 were placed at the guarded centre for foreigners on 7 October 2016 after their transfer from Germany under the Dublin III Regulation. They were released from the facility on 25 October 2016.

The grounds for placement underlined the need to place them in a guarded centre for foreigners *„for correct and efficient examination of the application because a foreigner does not have funds which would make it possible to apply liberty measures to him/her, or does not have an address in Poland for the time needed for the application examination”*.

The transfer of the foreigners by the Germans was done without securing and providing adequate and clear information about their current medical condition and treatment they received while in Germany where they applied for a refugee status. This type of information should be crucial in the context of filing a request for placement in a guarded centre by the Polish Border Guard.

The foreigners' medical records, which they had with them at the time of their detention by the German police (written in the German language) and throughout the transfer based on the Dublin III Regulation showed that their physical and mental condition was not only inadequate for the transfer itself, but above all inadequate for detention at the guarded centre for foreigners.

Moreover, the foreigners were not secured against detention because:

- the German party did not provide appropriately secured health records of the foreigners or translation thereof from the German language,
- the Polish Border Guard did not give any consideration to health records in German during the transfer,
- a physician who conducted a medical interview and examination for the

purpose of a „regular check-up“ concluded that they could be escorted and that there were no contraindications to their detention,

- the court did not consider the medical documentation held by the foreigners which provided the grounds for not detaining them, and merely approved of the Border Guard request.

During the NMPT visit the man described very openly his concerns, fears and frustrations related with staying at the guarded centre, which had a very negative effect on his mental health and wellbeing. As an elderly person who, in the Chechen culture, used to be surrounded with respect of younger persons, he had a very hard time withstanding what he perceived as the degrading rigors of the guarded facility, particularly with regard to his relations with younger men on duty who did not communicate respect and concern for the elderly. He associated small rooms with prison cells. Every departure, even for a moment for a cigarette, had to be agreed upon with the guards, which was very humiliating for the man. He said *"cigarettes are the only thing I have left"* and here *"they treat me like a prisoner"*.

A Chechen couple with three children (aged 2, 3 and 5), the woman being in the second trimester of pregnancy, her husband being tortured

During the interview, the man explained that he had been experiencing excessive agitation and a tendency to strong reactions since being tortured in his country of origin. His wife was lying in bed her room crying due to feeling unwell - she said she was feeling very unwell - but she did not report violence from her husband. When asked about it in private, she said that her husband sometimes shouts and has problems with nerves, but he does not beat her or the children. The woman specified that *„he yells and gets upset at the doctor because he is very worried about her and her pregnancy“*, and he does not know how he can help her at the guarded centre.

The foreigners' medical documentation did not include any records concerning examination by a psychologist, the foreigners were not identified as victims of violence – the problems with excessive agitation of the man or depressive reactions of his wife did not seem to attract attention of the medical personnel.

A single women with three children (aged 5, 8 and 9)

During an interview with the woman it turned out she was a victim of

torture and violence – one of her children – according to her account and a photo she showed, had its feet shot through during a militia raid on her home in her country of origin. After the interview of the NMPT expert with the woman, the little boy was brought to the room. He was withdrawn and cautious, and when he took off his socks, irregular scars could be noticed on his feet.

A man who reported torture and inhuman treatment in his country of origin, as well as wartime violence that resulted in him suffering a shot through his leg and chest injuries

According to the NMPT expert, the man's account was confirmed by his mental and physical condition, the scars from the gunshot wound to his leg, as well as the documentation presented by him - including documentation confirming his disability, history of psychiatric treatment and numerous descriptions of current symptoms indicating the deterioration of his health under the influence of the detention.

On the date of admission to the guarded centre for foreigners the man provided information about violence suffered and psychiatric treatment received, which was confirmed by a record made by the doctor during an initial examination „in 1995 - gunshot wound in the left thigh”, „he claims to have been treated for stress”. Moreover, the medical documentation of the man included a Hospital Discharge Summary – not translated from German – which pointed to a diagnosed paranoid schizophrenia, nicotine addiction, hypothyroidism (low level of thyroid hormones) and recurring headaches.

Since the medical documentation was not translated into Polish, the man was not provided with pharmacotherapy at the guarded centre for foreigners, he was not referred for specialist neurological examination despite persistent headaches, as recommended after his hospitalization in Germany.

And the psychologist's opinion read: „On the basis of the diagnosis conducted there are no reasons to indicate that further stay at the guarded centre for foreigners would pose a threat to the life or health of the abovementioned Russian citizen due to his mental condition”.

Furthermore, when asked if he had documentation of previous interviews in Poland or Germany regarding his torture, the man replied that he had not been examined in Germany immediately prior to the transfer to Poland based on Dublin III Regulation. Neither was an examination carried out at the border crossing point in Poland.

A man who was tortured in the country of origin

During the interview with the NMPT expert, he reported sleep disturbances and intrusive memories. He indicated that he had been tortured in his country of origin - at that time the fingers of his left hand had been broken, he had visible scars, he could not straighten the fifth finger of his left hand. According to the NMPT expert, his psycho-physical condition was adequate to the reported violence.

In his medical history at the preliminary examination the man indicated balance disorders, musculoskeletal fractures, head injuries, depression, other respiratory illnesses, and confirmed traumatic experiences.

The medical records showed that standard biochemical blood tests had been carried out. However, there was no information about the initiation of any torture victim identification procedure. Moreover, the documentation did not include a psychological opinion.

A woman who reported numerous tortures in the country of origin

According to the NMPT expert, the symptoms observed pointed to the development of the PTSD and depression. The woman's condition worsened in detention.

During an initial examination the woman revealed that she was suffering from cystitis, balance disorders, back pain, head injuries and depression. She indicated that she had been subjected to physical and psychological violence.

However, the information about the health situation and reported ailments did not include any information about her health or ailments and did not include a statement that there were no contraindications to detention at the guarded centre for foreigners.

In addition, the woman was referred to a psychologist who noted as follows: *„The patient reports fatigue, lack of appetite, problems with sleep and dejection. She says the stay at the centre is too difficult for her (...). Her current dejection is caused by information about the death of her husband – she is mourning. In addition, her mood is affected by the feeling of loneliness, lack of support of her family and fear of the future. She looks tired, emaciated, pale. She reported one event related with physical and mental violence in her country of origin (when arrested in 2014). She does not exhibit any symptoms pointing to long-lasting negative consequences related with the event. According to the psychological opinion her current feeling of tension and dejection is a reaction to her current predicament. There are no indications for diagnosing post-*

traumatic disorders. She does not require a psychiatric consultation at the moment. She was provided with psychological advice”.

One has to underline that the woman had indicated in her initial examination that she was a victim of physical and mental violence, which should be a sufficient reason for collecting an in-depth medical history.

The psychologist did not justify his opinion on what has an effect on the woman's condition (a stay at the guarded centre for foreigners, lack of relatives, death of husband) and what does not (detention, physical and mental violence). Neither did the psychologist evaluate the character of the traumatic event or deepen his interview. By concluding that *„There are no indications for diagnosing post-traumatic disorders. She does not require a psychiatric consultation at the moment”* he made it impossible for a proper examination to be carried out.

In addition one has to mention that the woman made it to the guarded centre with her nearly 18-month-old daughter. The centre staff reported that she cared for her baby insufficiently. The baby sought attention of other people present around her – Border Guards and other detainees. One has to underline that the situation described made it very likely that the woman reacted with lower mood and suffered from PTSD which could manifest itself also by a lack of emotional care for the baby. This may explain the baby's behaviour when seeking contact with other people.

A man who suffered from mental torture

The man reported torture in the country of origin, including: abduction and mental torture (being threatened with killing him and his family as a direct cause of migration). In addition, he had trouble sleeping and was hyperactive and irritable with recurring intrusive thoughts.

As he pointed out, the Border Guard officers did not inform about what will happen to the detainee: *“they don't say anything, what is done with people, it is not known if they are taking them to the hospital or to the doctor?”* and *“they put them in a cage, they put handcuffs on, they don't say anything”*.

The man denied that he suffered from physical violence in the country of origin (Russia/Chechnya): *„there was no physical trauma, I was not beaten”*. However, according to his account, he was detained (abducted) by an administrative official for 6 hours at first time and for 8 hours at the second time: *„I was pushed into a car”* and gone. They threatened him with death if he will not leave the country in 3 days, they also said *„you will never see your kids again”*. He said that those threats were made in a different way also to his

whole family. During abductions and interrogations, when asked about his denomination, he was honest. He was being persuaded to change the denomination. During the interview he said that „*in Chechnya saying that someone is a Wahhabi is all bad*” and he was accused of being a Wahhabi. Despite a lack of physical violence there are no doubts that his account of how the state service acted towards him is a description of mental violence and unhuman treatment.

A man in an acute suicidal crisis

A moment before the interview with the NMPT expert the man started preparing a rope from sheets torn in his room, on which he wanted to hang himself. For the sake of the NMPT expert’s safety, two Border Guard officers went into the room with her. At the beginning the man was very agitated, he hit his head with his hands and shouted loudly „*will you give me my brain back*”; it seemed that he did not want to talk to anybody. After making a contact with the man, when he was appeased, he agreed to an interview in a medical consultation room in which there were no cameras and no Border Guard officers.

As he had said, despite taking medications he suffered from sleep disorder, he heard voices when he was alone in his room, and sometimes he would see a black silhouette although he knew he was alone in the room. He had nightmares, but he did not remember what about, he would wake up shouting. He suffered from permanent headaches (every day), and he felt pain in his left leg (post-traumatic pain around a knee joint).

According to the NMPT expert, during the intervention the man was deeply immersed in the current trauma, agitated, emotionally unstable, which made interviewing impossible, not least because of the danger of re-traumatization. He denied he was afraid by saying that he was not afraid of anything and that he wants to die. He exhibited cognitive impairment, impaired attention and concentration, seemed hyper-vigilant, constantly "scanning" the environment for any stimuli he interpreted as threatening.

Throughout the interview, the man sustained a desire to take his own life, a sense of no prospects and helplessness. As a result, a decision was made to consult/hospitalize the man in a psychiatric hospital due to his life-threatening condition. After consultation with the head of the facility, transportation to the psychiatric hospital was agreed upon with the man. He was voluntarily, without handcuffs, transported to the psychiatric hospital by the Border Guard.

In the case described, it is also important to highlight the conduct of the medical staff in the admission room of the psychiatric hospital, which raised serious doubts of the NMPT. During the consultation, they doubted the veracity of the symptoms reported by the patient - *"they are all like that, simulators, we know them"*. Reference was made to cultural traditions saying that *"they are so loud when they want something"*.

In this context, it is important to note the doctor's attitude. He referred to the stereotype of a detained person, which basically could affect the lack of objectivity and reliable assessment of the patient's mental state. The doctor did not speak a foreign language, which also made it impossible for him to establish contact or take an accurate history, which is important in making a diagnosis.

A woman who reported multiple physical ailments

Analysis of the medical documentation pointed to numerous records saying that the woman complained about headaches, stomach ache, back ache, malaise, difficulty with falling asleep, nightmares, loss of appetite.

According to the psychologist, *"the woman does not tolerate her stay at the centre well. During a conversation she cries, interrupts and her voice breaks down. She has a hunched posture and avoids eye contact. She answers reluctantly and perfunctorily, has a depressed mood, without suicidal tendencies.. (...) During the interview she complained about inability to sleep, nightmares, anxiety, tinnitus. She claims she is afraid to fall asleep despite that she does not feel a real danger from anybody"*. Having recognized symptoms of adjustment disorder the psychologist recommended a psychiatric consultation. The consultant psychiatrist diagnosed *"adjustment disorder"* and suggested anti-depression and anti-anxiety treatment. A follow-up consultation in a month was recommended. After the follow-up consultation the former diagnosis was upheld. The doctor changed the drugs and recommended psychological assistance. The referral for further treatment read: *"check-up in a month. Change of the facility recommended."* Another record from a consultation included the following observation: *"the foreigner presents low mood, without suicidal tendencies. She complains about worse and worse mood, long-lasting sleeplessness, loss of appetite, headaches. She shows unwillingness to each proposal of action that may improve her mood. She declares she is unable to feel pleasure. In her opinion, the pharmacological treatment she receives is ineffective"*. Next, the psychologist pointed out: *"in my opinion she requires support within the facility, she requires empowerment"*

and motivation to take actions and to participate in activities. Another psychiatric consultation is worth considering due to continuing low mood and persisting sleeplessness – in order to adjust the treatment to the patient's needs".

The woman was also hospitalized in a psychiatric hospital. During that time she was diagnosed with adjustment disorders. Her medical records include the following observation: *„during the admission procedure she was calm, her mood was low, she complained about anxiety, fear, loss of appetite, sleeplessness, emotionally difficult personal situation, fear about her and her family's future. (...) As a result of the pharmacotherapy and psychotherapeutic interventions applied, a satisfactory improvement of her mental health was achieved, as well as mitigation of reactive complaints. Discharged with the recommendation of follow-up consultations and treatment in outpatient conditions".* She was treated with anti-anxiety and anti-depression medications, with recommended continuation of pharmacotherapy and regular check-ups by internist.

The NMPT expert was talking to the woman during the visit. The woman presented most of the above mentioned symptoms: she complained about numerous physical ailments, she was crying, talking in a quiet voice, her mood was low, she kept saying that *"she can't bear it"*. She revealed that she spent approx. 12 hours in a car while being transferred from Germany to Poland, she feared a lot, she did not know what would happen to her and where she was going. She was afraid to die, she revealed the feeling of threat. She admitted she had been consulted many times, that she had been hospitalized *„but it has no effect"*, she felt tense and helpless. Her husband – who was present during the NMPT expert's visit – revealed suicidal thoughts, which also affected the woman.

One has to underline that a point of concern in that case was that no procedure was applied in order to release the woman from detention despite a common awareness of her symptoms which pointed to a bad mental and physical state, which could indicate the experience of violence, and despite the common knowledge about her state of mind resulting from her husband's being tortured (and also demonstrating a bad mental and physical condition) and despite the doctor's suggestions to change the facility.

A man coming from a country in which a military conflict has been developing for several years and tortures are commonly applied, including violence against civilians

His native language was Arabic. He was kept at the guarded centre for foreigners for 5 months and 15 days, and he was released due to a reasonable suspicion of being subjected to violence.

The man's detention record noted that a medical examination had been conducted, but there was no document to support this. The foreigner's medical records kept in the facility's outpatient clinic also lacked medical history. The man did not have a chance to answer questions in language he understood about the physical abuse, psychological abuse, and traumatic events he experienced. Also missing from the admin file was a note of the social worker's first interview.

During the psychiatric consultation, the doctor noted that the man was shaken by the news that his friend had been killed ten days ago. The note also stated that the patient reported having contact with his slain friend, talking to him, seeing him screaming and covered in blood, smelling burnt bodies. These experiences occurred mainly at night and were accompanied by sleep disturbances. The psychiatrist also noted that the man had collected human body parts, had seen bombed refugee camps, and that his home had been bombed. The diagnosis was adjustment disorder. The psychiatrist recommended observation for post-traumatic stress disorder and antidepressant medication.

In this man's case, the first appointment with the psychologist lasted 50 minutes. In the psychological services record, the psychologist noted *"visual and auditory hallucinations"*. The second meeting took place 11 days later and lasted 50 minutes. In the record of psychological services, the psychologist noted *"PTSD? Visual and auditory hallucinations."* After five days, the nurse noted in the medical history: *"after psychotherapeutic consultation the patient received a referral to a psychiatrist - attached. Visual and auditory hallucinations - possible development of psychosis. Conversation with the patient – he was informed about a psychiatric consultation"*. The attached document concerned was most probably the following one: *„Please refer this patient to a psychiatrist, auditory and visual hallucinations -> possibility of developing psychosis"*. The document was stamped with the following *„Psychotherapy and Analysis Practice"*, but there was no signature and no date.

Thereafter, no identification activities were noted in the records for over a month. The subsequent psychological consultation lasted 40 minutes. In the service record, the psychologist noted *"depressive disorder"*. The fourth consultation took place on the next day and lasted 35 minutes. No other information was available in the record. The fifth meeting with a psychologist

lasted 20 minutes. It was described as "*psychological support*" in the service register. The sixth psychological consultation was held two days later and lasted one hour. The psychologist noted in the service register: „*talks about „s*"¹⁵⁵ On the same day the man was consulted by a psychiatrist at the admission department of a psychiatric hospital, which was documented by a Hospital Discharge Summary. The interview data included information on psychiatric consultation, administration of anti-anxiety drugs, antidepressants, and sedatives at the guarded centre for foreigners. Suicidal thoughts and aggressive behaviour were indicated as the purpose of the consultation with a psychologist. The examination record included information about a difficult contact with the foreigner due to a language barrier – a poor competence of English. As a result of the consultation, adjustment disorder was diagnosed, and an antiepileptic drug used to reduce mood swings in bipolar affective disorder was recommended for outpatient treatment. Further in the document the following note was provided: „*May stay at the centre for foreigners*". The seventh psychological consultation lasted 1.5 hours and was described in the service record as a "*consultation*".

The next, eighth, consultation took place over 2 weeks later, and lasted 45 minutes. The psychologist noted "*mental deterioration, psychological support*" in the service record. It was not until the ninth appointment that the psychologist made a diagnostic assessment. The consultation lasted 45 minutes and was described in the service record as "*diagnosis of PTSD*". Moreover, a psychiatric examination took place upon Border Guard doctor's request. The psychiatrist noted down that the man felt bad, as if another person was inside him, he became idle, avoided company, had a sense of meaningless life and nightmares. The psychiatrist suspected post-traumatic stress disorder and requested a psychological examination. A request for a psychological consultation was included in the medical documentation. However, the request was not signed or addressed.

After eight days from diagnosing and after more than 4 months of the first psychological consultation the first psychological opinion was written. The opinion included information that the first psychological consultation took place upon the patient's own request.

This sequence of actions indicates that, first of all, no identification actions were conducted towards the man. Secondly, it means that the psychologist did not consider the earlier consultations. Here a question arises whether she had insight into the documentation developed during the earlier consultations and whether such documentation was developed anyway (the

¹⁵⁵ „s" means suicide in such compounds as: to talk about „s", „s" thoughts, „s" intentions.

foreigner would have to agree for the consultation to be documented). The psychologist reported that the man had lived many years in immediate danger of death and that he had been tortured. In her conclusions, she found a history of trauma, post-traumatic stress disorder (using the acronym PTSD), and indicated that continuing to stay at the guarded centre for foreigners "*would put [him] at risk of losing his health*".

A social worker wrote an official note concerning the release of the man from the guarded centre for foreigners. The note included information about 11 psychological consultations (although only 10 of them were documented) and about conducting numerous conversations aimed at helping the man in adjustment to the detention, and at investigating his situation in terms of qualifying him to the sensitive group. At the same time the documentation lacked evidence of conducting the actions described. It has to be highlighted that the man was not qualified by the educational section to the sensitive group throughout his stay at the guarded centre for foreigners, and that the psychological and psychiatric identification followed only after more than 4 months, despite conducting numerous psychological consultations and three psychiatric examinations, and despite determining symptoms typical of people who experienced violence, and despite continuous worsening of the man's mental condition.

A man who experienced sexual violence

The social care officer qualified the man to the vulnerable persons group and placed him in a monitored room. Although a psychiatrist diagnosed post-traumatic stress disorder and adjustment and anxiety disorders, no steps were taken to release the foreigner from the guarded centre. The man was detained at the guarded centre for the whole period specified by the court until he returned to his country of origin. His mother tongue was Urdu, but he also spoke English.

In the administrative and medical records concerning the man there were no documents indicating that a medical and psychological examination had been conducted in order to assess whether there were grounds excluding detention. Moreover, neither on the day of admittance to the guarded centre's outpatient clinic nor afterwards, a medical interview was conducted using a form in which the foreigner could answer questions in a language he understood about his experience of physical and psychological violence and traumatic events.

The man was consulted 8 times by a psychologist. The "Record of Other

Psychological Services" indicated that none of the meetings resulted in a psychological diagnosis to assess whether his psychological and physical condition reasonably suggested that he had been subjected to violence.

The social care officer classified the foreigner in the vulnerable persons group on the basis of the observation of the foreigner's behaviour and information from the foreigner that he had experienced sexual violence. It was documented in an official service note. The descriptions of the man's behaviour included in the note indicated that he might have experienced violence¹⁵⁶. The social care officer recommended covering the men with „(...) *further SE analysis*¹⁵⁷" and „*psychological support*". The content of the note was read by the head of the education section and the head of the department-manager of the centre, which was confirmed by handwritten annotations and signatures on the document. The social worker started to observe the man and documented it with subsequent notes. Most of them were reviewed by the head of the education section and the head of the department-manager of the centre. The first observation sheet was given to the psychologist who provided services at the centre. It should be noted that the first observation sheet was completed in detail, having used the opportunity to enter additional comments and remarks.

Although the social worker acted appropriately, no psychological or psychiatric examination was ordered for over a month to further verify whether the allegation that the man had been subjected to violence was justified.

The men saw a psychiatrist at the request of the guarded centre's doctor. There was no document in which an unequivocal justification for such a consultation was indicated. It can be presumed that it was ordered on the basis of the analysis of the monitoring notes, which were found in the man's medical records and which were most probably read by the doctor. The psychiatrist diagnosed adjustment disorder and anxiety disorder and indicated the need for observation for post-traumatic stress disorder. He recommended a psychological examination and another psychiatric consultation after the psychological examination. He also recommended ad-hoc administration of sedatives and anti-anxiety drugs.

There was also no documents indicating that a psychological examination had been conducted (psychological opinion, consent for

¹⁵⁶ „(...)As I got in better contact with the foreigner, I noticed that his statements about himself were impersonal and shallow. He talks a lot about family and problems in (... country of origin...), often accompanied by crying, but does not give details. He features a high level of social control – both present and remote – parental. He is reserved in showing his emotions, constantly trying to give the impression of being happy."

¹⁵⁷ SE – educational section.

psychological examination, etc.). The register of psychological services only indicated that psychological support was provided regarding a return to the country [of origin].

During a subsequent consultation, the psychiatrist confirmed the diagnosis of post-traumatic stress disorder. He recommended another psychiatric consultation in 3-5 days and again recommended a psychological examination. Also after this consultation, no psychological examination was carried out. The next two meetings with the psychologist were described in the service register as being about returning to the country of origin.

The man was released from the guarded centre for foreigners in order to proceed with the return to his country of origin. This means that, despite clear symptoms indicating the experience of violence, as a result of slow identification activities, post-traumatic stress disorder was diagnosed only at the end of the man's stay at the guarded centre, which ultimately resulted in that he was detained for the period of administrative proceedings, i.e. for the whole period of his stay in Poland.

A man with a disability, whose native language was Spanish

The medical examination sheet indicated that the examination focused only on assessing the patient's physical parameters. It was noted that the patient had been blind since childhood. Neither the examination sheet nor the certificate of no contraindications to detention included any information concerning mental health.

Since the moment of arrest, the man had self-mutilated his hands and face several times (with nails and with a sharp object) as an attempt to cope with stress. The first self-mutilation took place during the escort. There was no medical history form in the medical records.

The man was classified as special needs due to sensory impairment (vision). He reported that he had difficulty navigating stairs independently and that he had mutilated himself in the past to relieve stress. An analysis of his situation for special needs due to his disability was initiated. The education section made efforts to recognise and accommodate the special needs of the foreigner by assisting with daily personal hygiene activities, doing the laundry, and taking meals. The man was placed in medical isolation "*due to possible difficulty going down for meals, as well as possible other health complications.*" Subsequent monitoring notes and an observation sheet included information about the man's self-injury and licking of his wounds, the use of direct coercion against him (isolation room, incapacitating belts), refusal to take meals due to

fear of being poisoned by kitchen staff, the man's declaration that he was forced to take drugs by police officers in the Netherlands, information about his psychiatric hospitalization after the death of his mother six years ago and his labile behaviour (mood swings, alternately avoiding and seeking contact with officers).

It was also noted that the man explained his behaviour both with stress and with the need to relieve tension and he said he wanted to leave the centre as soon as possible (this declaration was recorded during interviews in which the man was instructed about the consequences of self-aggressive behaviour, namely direct coercion and detention). At the request of the guarded centre's physician, a psychiatric consultation was conducted where the psychiatrist diagnosed adjustment disorder and recommended psychological support. The physician further noted that the man explained that his previous delusional statements and self-injury resulted from being nervous and from frustration that no one was working on his release from the guarded centre for foreigners. It should be emphasized that the psychiatric consultation took place the day after the application of direct coercion (isolation room, incapacitating belts) and an instruction on the possibility of placement in custody in case of repeated failure to comply with the rules.

The man had four meetings with a psychologist during his stay at the facility. All the consultations took place in the medical isolation room and were of a supportive nature. None of them was of a diagnostic nature.

The man was detained at a facility which was not adjusted to the needs of people with disabilities, no comprehensive identification activities were carried out in relation to his experience of violence and a threat to his life and health for psychological reasons. As a consequence, the foreigner was detained for the whole period of conducting administrative procedures until he was transferred to the Netherlands.

A man who was a third country national transferred to Poland from another EU Member State

On the day of placement at the guarded centre for foreigners and examination at the centre's outpatient clinic the man told the physician and nurse that he survived torture. He provided medical documentation in Russian, which was prepared under the Rehabilitation Program for Victims of Torture. The documentation included, among other things, a psychiatrist's diagnosis of posttraumatic stress disorder and a recommendation for observation, further clinical evaluation, and application of cognitive psychotherapy. In his medical

history, the man declared multiple experiences of mental and physical abuse. The last page of medical history was missing from the medical records, so it is not known whether the foreigner was able to answer the question about traumatic experiences.

The Border Guard physician and nurse did not plan any further actions due to their lack of knowledge about the procedures to be followed in such cases. Both women were employees of the Border Guard Service as healthcare professionals dedicated to work for Border Guard officers. They worked at the guarded centre for foreigners on a temporary basis while substituting for other physicians and it was an extra job for them in addition to their normal duties, for which job they dedicated a small amount of their working time. They were also not aware that a reasonable presumption of being subjected to violence is a prerequisite for excluding detention. Neither were they familiar with the Istanbul Protocol.

Although such an organization of medical assistance provided at the centre was only temporary, it should be emphasized that the facility continued to receive foreigners. One should assume therefore that the identification and release of persons who are reasonably presumed to have been subjected to violence should be carried out in an appropriate manner. This situation also revealed a lack of an effective mechanism for explaining to new medical staff members their duties related to the identification of vulnerable groups, including survivors of violence.

A man whose native language was Arabic and who was not provided with translation service in the process of identifying his specific needs

On the day of admission to the outpatient clinic, the nurse recorded in the health book that the patient had a poor command of English and communicated in Arabic. There were no records in the health book about the provision of translation into Arabic. The man had two psychological consultations and two psychiatric consultations. The psychiatrist recorded that the man's command of English was poor while the note lacked information about the translation of the course of consultations into Arabic. On the same day, the foreigner had a psychiatric consultation in a hospital.

One assumed from the information sheet of the admission unit that a psychiatric consultation was translated into Arabic on the phone by another foreigner detained at the centre. One of the notes made by the psychologist indicated that the foreigner tried to provide for the translation on his own. In the same note, the psychologist pointed out that she received information

from the centre that the man had a communicative command of English. The psychologist noted that the data from the psychiatric interview contradicted the data she had harvested herself. A note of the first translation from Arabic was made in connection with the third psychological consultation.

During his medical history account and later during psychiatric and psychological consultations, the man declared that he had been subjected to violence and had experienced trauma. During the identification activities undertaken, he was not provided with professional translation into a language he was fluent in. In addition, another foreigner detained at the guarded centre participated in the psychological and psychiatric consultations (in person, on the phone). This constituted an invasion of the patient's privacy and a violation of ethical rules. As a detainee whose relationship with the patient is other than a professional one and who is dependent on the Border Guard, that foreigner should not have provided interpreting services or come into possession of intimate information about the cohabitant.

Moreover, the translation competence of the foreigner mediating the communication during the diagnostic tests was not verified. Thus, it could not be concluded that the translation was provided in a professional, reliable and ethical manner. Thus, due to the way in which data was obtained during the identification process, the information collected was subject to a high risk of bias. This is due to both possible misunderstandings and linguistic misrepresentations as well as violations of the ethics and confidentiality of psychiatric and psychological consultations. This means that conclusions based on these data were also bias.

This case also points to an error in the flow of information - in the medical documentation there was information about the foreigner's poor command of English, at the same time the psychologist noted that the centre had received (it was not clear from whom) information about the foreigner's communicative knowledge of English.

A man who reported surviving mental and physical violence

Despite a justified allegation of the man being subjected to violence (diagnosed by a psychologist), life and health threat (diagnosed by a doctor on three occasions, a psychiatrist's opinion that the stress experienced during detention may increase the frequency of epilepsy attacks and a psychologist's opinion provided twice that a foreigner should not stay at the centre due to his psychological condition), his detention time was extended.

In his medical history, the man reported experiencing psychological and

physical abuse. The nurse recorded that he spoke Russian and Polish. This information was shared with the education team the same day. The next day, the physician recorded a history of epilepsy and the presence of suicidal thoughts and requested a psychological consultation. Two days later, the man experienced his first epileptic seizure. Three days later, the physician recorded depression and neurosis and once again requested a psychological consultation. A consultation with a psychologist was held the following day, one week after reporting the information about the violence experienced. In her note, the psychologist indicated that the purpose of the consultation was to assess the mental and physical state of the detainee. The psychologist noted that the detainee told about the torture during his stay in prison (beating, stun gunshots) and showed marks on his body which could indicate that he had experienced physical violence. The psychologist concluded that *"it cannot be categorically ruled out that the patient may have been subjected to psychological and physical violence in the territory of his country"*, at the same time she indicated that the mental condition of the detainee made it possible for him to stay in a guarded centre.

The physician requested a psychological and psychiatric consultation to verify the presence of post-traumatic stress disorder. Two days later, the psychologist produced a document in which she testified that she had met with the man in the presence of a Russian interpreter. The description of the situation indicated that upon entering the consultation room where the psychologist and the interpreter were present, the man became upset at the sight of the interpreter and refused to have a consultation in his presence in the Russian language. The psychologist, in turn, refused to conduct the examination without the interpreter, saying that she did not know the professional vocabulary in Russian. As a result, the examination did not take place. In the health book, the nurse recorded *"There was a psychological consultation with a participation of an interpreter. During the consultation the foreigner refused to cooperate"*. In the medical and psychological records as well as in the file of the foreigner there was no information that he had been warned about the presence of a third person (an interpreter) during the psychological consultation, that he had been prepared for it, and that he had been informed about the purpose of the meeting, which was to carry out a diagnostic examination. On the same day, the doctor issued a medical certificate in which he stated that *"the foreigner's present state of health makes him suitable to stay at a guarded centre."*

The man himself reported to the outpatient clinic upset about his difficult family situation (his pregnant wife was hospitalized, five children were

left unattended) and asked for sedative pills, psychiatric and psychological consultation. He also agreed to have the meetings translated into Russian. Three days later, a psychological examination took place, after which the psychologist made two notes. In both she included information about the meetings with the Russian interpreter, giving the interpreter's name. In one note, she described the foreigner's emotional state, described by the foreigner himself as the worst in his life. The detainee was experiencing incapacity and helplessness due to his wife's hospitalization and the consequences for their five children. He explained that he had not attended the previous consultation due to agitation and bad mood. The second note described symptoms grouped into diagnostic criteria for posttraumatic stress disorder. The psychologist requested a psychiatric consultation. However, in neither of the notes did the psychologist address the issue of the foreigner's stay at the centre.

On subsequent days, the nurse noted that the patient had not appeared to collect the prescribed medication for 8 days. One day later (two weeks after the psychological consultation), the physician noted the inclusion of the psychologist's note in the record (he did not indicate which note he was referring to). On the following day (two weeks after the psychologist observed symptoms which met the criteria for posttraumatic stress disorder and four weeks and one day after the physician requested a psychiatric consultation), a psychiatric examination took place. On subsequent days, the physician noted self-injury. A psychological consultation with an interpreter (the same as before) followed. The man requested to be placed in a psychiatric hospital. He refused to take medication due to vomiting with blood and diarrhoea with blood. He reported seeing bugs and having feelings of losing control of himself, experiencing angry outbursts. He was involved in a struggle with another detainee. The psychologist further described intrusive thoughts about the torture experienced. She provided psychological support and talked to the man about possible consequences of his aggressive behaviour. She informed him that he can make another appointment if necessary. The note did not make any reference to the issue of a further stay at the guarded centre.

On the following days, the nurse noted that the patient did not report regularly for medication (antibiotics). When asked why, he replied that he knew what was good for him. The foreigner was then consulted in a hospital. The information sheet showed that he was consulted in the ED for epilepsy. The diagnosis was G40.8 other epilepsies. Five days later, the doctor issued a certificate stating that "*further stay at the facility poses a threat to life or health*". The next day, the foreigner requested a psychiatric consultation which took place on the following day. The doctor advised the foreigner to stop

taking medication prescribed by physicians at the centre and to have a neurological consultation and diagnosed adjustment disorder, specific personality disorder (without specifying the type of disorder) and epilepsy (without specifying its type). On the same day, the doctor reviewed the psychiatric records and recommended that the medication be discontinued as indicated by the psychiatrist. A psychological consultation followed. In her note, the psychologist described mental exhaustion, hypersensitivity to social stimuli, and described anxiety and tension. However, she did not address the issue of the stay at the facility.

Another psychiatric consultation took place on the following days. The physician noted visible self-mutilation on the forearms and thighs and whole body tremor. She noted that the patient was aggressive or auto-aggressive before and after seizures. She again diagnosed F43.2 and G40. She noted that *"the condition associated with the facility stay may exacerbate the patient's frequency of epileptic seizures."* A psychological consultation was held on the same day (it was not clear from the records which consultation came first). In the note, the psychologist indicated that in her opinion *"it is not advisable for the above mentioned to continue to stay at the detention centre due to his deteriorating mental condition"*. The doctor also reviewed the psychiatrist's recommendations on the same day. A day later, the doctor indicated that *"the general condition is deteriorating day after day"*. Based on the psychological, psychiatric, and other medical records, he concluded that *"his continued stay in detention threatens his life and health."*

After a period of time, a nurse noted that the patient did not come down for breakfast. At about 10:00 a.m., he had a battered face from shaving and did not know what was happening to him or remember what was happening to him. That same day, in a subsequent entry, the nurse recorded: *"the detainee reported to an officer on duty that he was going to kill himself today."* The nurse, after a telephone consultation with a physician, referred the foreigner to a psychiatric hospital. He was hospitalized. In the hospital he was diagnosed with adjustment disorder, post encephalitis syndrome and suspected epilepsy (no type indicated). Psychotropic treatment was administered. Further treatment at the mental health clinic and neurological clinic was also recommended. The psychologist wrote down that in her opinion *"the foreigner should no longer be detained"*. She noted that his mental condition was deteriorating and that the man was functioning worse and worse. The next day, the doctor issued another certificate stating that *"further stay at the centre poses a threat to life or health"*. On the same day he noted that the foreigner would be leaving the centre. The doctor prepared a

certificate of his health condition, medical documentation which was issued to the foreigner, together with medications for 5 days.

To sum up, the foreigner had spent 4.5 months at the guarded centre since reporting the experience of physical and psychological violence and epilepsy.

5.3.2 Detention of children

As it has already been said hereinabove, detention of children should be used as a last resort. This issue has been addressed for years by NGOs¹⁵⁸, international institutions¹⁵⁹ and the Commissioner for Human Rights¹⁶⁰. However, despite numerous appeals of the Commissioner for Human Rights, no decision was made to introduce a complete ban on placing minors and persons who have custody over them in guarded centres for foreigners. Polish legislation still allows detention of minors in guarded centres, including unaccompanied minors. It is worth noting, however, that over the years the actions taken by the Commissioner for Human Rights have brought some results. First of all, the Border Guard has selected centres where minors can be placed and has adjusted the conditions to the needs connected with, among others, the education of minors. The situation has also changed with the introduction of the aforementioned alternative measures to detention in the Act on Foreigners, thanks to which the number of minors placed at guarded centres for foreigners has decreased by more than 40%.¹⁶¹

However, according to the information received lately from the Border Guard¹⁶², a group of children placed at the guarded centres for foreigners is still quite big. In 2016 this group amounted to the total of 316 minor foreigners, including 24 unaccompanied; in 2017 the number reached 298, including 17 unaccompanied minors; in 2018 the total of 229 minor foreigners were admitted to the guarded centres, including 19 unaccompanied ones. In the first six months of 2019 the total of 71 minors were admitted to the guarded centres, 13 of them unaccompanied.

¹⁵⁸ e.g. the position of the Association for Legal Intervention of 30.03.2015: <http://interwencjaprawna.pl/stanowisko-sip-w-sprawie-detencji-dzieci-cudzoziemskich/>

¹⁵⁹ i.a. Judgement of the European Court of Human Rights case *Muskhadzyhiev vs. Belgium* (41442/07).

¹⁶⁰ General Intervention of the Commissioner for Human Rights to the Prime Minister of 5 October 2015, no. V.542.32.2014.

¹⁶¹ Sośniak M., Łakoma K., *Actions of the Commissioner for Human Rights for the sake of protecting the rights of migrants in the period 2010 -2015 – challenges and achievements*, p. 9-10 [w:] <https://www.rpo.gov.pl/pl/content/rpo-na-rzecz-ochrony-praw-migrantow>

¹⁶² Based on the information obtained from Border Guard in a letter of 18 September 2019 (KG-CU-IV-1.4222.34.2019).

According to the National Mechanism for the Prevention of Torture, no matter how much attention is given to the conditions of stay and the provision of care to minors at the guarded centres for foreigners, placing the minors there should be treated as the last resort. It should be remembered that the regime in such places is not suitable for children and can be a traumatic experience for them, with negative consequences for their mental and physical development and future.

5.3.3 VoIP (*Voice over Internet Protocol*) Technology

Although provided with access to the Internet, the foreigners staying at the guarded centres¹⁶³ often did not have a possibility to make use of free of charge international telephone connections via VoIP (*Voice over Internet Protocol*). The need to provide the detainees with modern technologies for the purposes of facilitating communication between them and their families was pointed to by CPT many times¹⁶⁴.

¹⁶³ Guarded centre for foreigners in Bielsko Biala KMP.572.3.2018, guarded centre for foreigners in Białystok KMP.572.4.2018, guarded centre for foreigners in Lesznowola KMP.572.2.2018, guarded centre for foreigners in Krosno Odrzańskie KMP.572.1.2017.

¹⁶⁴ CPT report on a visit to the Former Yugoslav Republic of Macedonia, 17 March 2016 r., CPT/Inf (2016) 8, Article 133; CPT Report on a visit to Denmark in 2014, 17 September 2014, CPT/Inf (2014) 25, Article 82; Report on a visit to Poland, 25 July 2018., CPT/Inf (2018) 39, Article 54

5.3.4 Bars in room windows

Metal bars in room windows are a problem noticed during a visit to some guarded centres for foreigners¹⁶⁵.



Kratyw oknach, SOC Białystok, 2018

Although the use of bars in windows is allowed by the domestic legislation pursuant to Article 6.2 of the Ordinance concerning guarded centres

¹⁶⁵ Guarded centre for foreigners in Bielsko Biała KMP.572.3.2018, guarded centre for foreigners in Białystok KMP.572.4.2018, Guarded centre for foreigners in Krosno Odrzańskie 2017.

and detention centres for foreigners¹⁶⁶, the need to abstain from this practice, especially at the centres in which there are children, has been highlighted by the National Mechanism for the Prevention of Torture many times.

This position is supported by international standards, according to which the conditions of stay at detention centres for foreigners should reflect their legal status¹⁶⁷. Whereas the foreigners placed at the guarded centres are not prisoners, any and all analogies to prisons should be eliminated.

5.4 Areas which require improvement

5.4.1 Treatment

One of the issues considered by the NMPT when evaluating the treatment of detainees was **the method of conducting personal search**. It has to be highlighted that during the visits conducted in 2016¹⁶⁸ the foreigners were subjected to the so called detailed search. This act involved stripping the detainee naked by removing all garments, including underwear. At one of the facilities¹⁶⁹ it was decided that such personal search also applied to children. Such a procedure was based on the then applicable wording of Article 412.1 of the Act on Foreigners of 12 December 2013, which provided that: *Upon admission to the guarded centre for foreigners or a detention centre and during their stay there foreigners shall be subject to detailed search in cases justified by safety and order considerations.*

The control carried out in this manner violated the sense of intimacy of a person being subject to inspection. The fact that the statutory regulation in this respect should be extremely precise was shown in a later judgment¹⁷⁰ issued by the Constitutional Tribunal upon a request of the Commissioner for Human Rights. The Constitutional Tribunal declared unconstitutional the provisions of, among others, the Border Guard Act, to the extent that they did not clarify the limits and concept of personal search. In December 2018, the

¹⁶⁶ „Rooms for foreigners in a guarded centre are equipped with: tilt windows, the ratio of the area of which, counted in the clear opening of the frame is no less than 1/8 of the floor area, with bars or flat bars installed on the outside, or windows, the ratio of the area of which counted in the clear opening of the frame is no less than 1/8 of the floor area, with a structure ensuring security and preventing the escape of the foreigner, at least one of which is tiltable”.

¹⁶⁷ CPT Seventh General Report, [CPT/Inf (97) 10], Article 29; CPT Report on a visit to Malta, 17 February 2011, CPT/Inf (2011) 5, Article 51.

¹⁶⁸ Guarded centre for foreigners in Lesznowola 2016, Guarded centre for foreigners Biała Podlaska 2016, Guarded centre for foreigners Kętrzyn 2016, Guarded centre for foreigners Krosno Odrzańskie 2016.

¹⁶⁹ Guarded centre for foreigners Biała Podlaska 2016.

¹⁷⁰ Judgement of the Constitutional Tribunal of 14 December 2017. case no K 17/14.

Border Guard Act was amended in this regard¹⁷¹.

According to the currently applicable legislation¹⁷² a personal search involves i.a. checking the contents of garments and shoes of a person and items on his/her body, without uncovering the body area covered with the garments. Moreover, the search should be carried out in two stages, namely during the search a person searched should be partially dressed. An officer must first check one piece of garment, and before checking another piece he/she allows the garment already checked to be put on by the person under search.

As far as the issue of conducting a personal search of a foreigner is concerned, it must be noted that respect for the foreigner's right to intimacy and personal dignity also implies respect for the individual's sense of shame, which is undoubtedly violated if that person is left undressed. The resort to personal search should be based on an individual risk assessment and be subject to strict criteria and supervision. All reasonable efforts should be made to minimize feelings of embarrassment; detainees undergoing personal search should not be required to remove all of their clothing at the same time, e.g., they should be allowed to remove top clothing above the waist and to dress before removing the bottom clothing.

When assessing the treatment of detained foreigners the NMPT also investigated reports¹⁷³, according to which the **officers entered the detainees' rooms without knocking and asking their permission**. The foreigners reported that in their rooms they set up an area dedicated to religious practices, where they put the prayer mats on the floor, which was disregarded completely by the officers, as when the latter entered their rooms, it happened that they walked over the mats. Moreover, the foreigners reported during interviews that the Border Guard officers searched their rooms while they were praying. The NMPT stressed the need to treat the detainees so as to respect their dignity, privacy and customs. One has to remember that practising religion and using religious services is guaranteed to the foreigners in the Polish legislation¹⁷⁴. The NMPT recommended taking all the measures possible in order to facilitate religious practices to the detainees.

5.4.2 Legality of placement at the guarded centre for foreigners

When analysing the foreigners' personal files, the NMPT

¹⁷¹ Act of 14 December 2018 amending the Police Act and certain other acts, (Dz.U. of 2018 r., item 2399).

¹⁷² Article 11aa of Boarder Guard Act of 12 October 1990 (consolidated text: Dz. U. of 2020 item 305 as amended).

¹⁷³ Guarded centre for foreigners in Biała Podlaska 2016.

¹⁷⁴ Article 415.1(9) of the Act on Foreigners.

representatives paid special attention to those fragments of court decisions about detention or extension of the detention at the guarded centre for foreigners, where the courts referred to a possibility to order measures which were alternative to detention (freedom measures). One has to remember that pursuant to Article 401. 5 and Article 403. 7a of the Act on Foreigners, the court competent to decide about a foreigner's placement at a guarded centre/detention centre for foreigners or about extension of the detention time must assess whether alternative measures can be used in a given case¹⁷⁵. In the majority of cases, in the grounds for decisions examined, the courts analysed the assumptions for using alternative measures while referring to the facts of the case. In the decisions which raised objections, the courts limited themselves only to statements about the lack of grounds for applying alternative measures, without presenting any justification for such a statement.

In one of the cases examined, which is worth mentioning here, the District Court in Białystok ordered to extend the detention time in case of a foreigner despite the fact that the head of the detention centre visited¹⁷⁶ applied for alternative measures. In its decision, the court did not agree with the suggestion of the Border Guard that for security reasons it is sufficient to deposit the foreigner's travel document with the Boarder Guard and to make him report regularly to the Border Guard post. The court based its decision on the foreigner's statement made at the time of detention, in December 2017, according to which he would not voluntarily comply with a possible decision committing him to come back to his country of origin. The court concluded that even if the foreigner declared a change of his attitude later, that was the consequence of long-lasting stay at the guarded centre rather than a consequence of his change of attitude. Finally, the court did not agree that there were assumptions for applying freedom measures towards the foreigner concerned.

5.4.3 The right to healthcare service

The NMPT representatives found out about cases where, during **a medical examination of a foreigner, a Border Guard officer was present in the examination room**, although he was not a healthcare professional. At some facilities¹⁷⁷, medical consultations were held in the presence of

¹⁷⁵ Listed in Article 398. 2 of the Act on Foreigners.

¹⁷⁶ Guarded centre for foreigners in Białystok 2018.

¹⁷⁷ Guarded centre for foreigners in Kętrzyn 2016.

interpreters who also belong to the Border Guard staff and who were not healthcare professionals.

The NMPT underlined each time that the participation of an officer who is not a healthcare professional in a medical examination of a foreigner leads to a violation of the right of the foreigner to privacy and a violation of doctor-patient privilege. Such practices were also contrary to the international standards on confidentiality of a medical examination, already referred to herein¹⁷⁸.

Another issue concerning the right to confidentiality during the provision of healthcare services is **storage and processing of the so called sensitive information**. During one of its visits¹⁷⁹ the NMPT observed that personal data of foreigners were posted on an information board along with lists of medications assigned to particular names.

There was no doubt that the publicized medical data were of sensitive nature. In this context one cannot forget that observing patient-doctor privilege should be honoured in the same way as it takes place outside the detention centres¹⁸⁰.

At another facility¹⁸¹ visited by the NMPT, **medical records** concerning the detainees were held by an external company which provided healthcare service based on a contract. Transfer of medical documentation between the subsequent entities who provided healthcare services was based merely on good practice.

Considering a great importance of information included in medical records of detainees, the NMPT expressed the opinion that in case of change in the medical service provider, the method of documentation transfer to a new service provider should be regulated in a contract.

Moreover, the NMPT noticed that at the facilities¹⁸² there were no sets of guidelines on how to handle sensitive groups. **The healthcare professionals did not have access to the Istanbul Protocol** or to a special manual (attached to the Protocol and dedicated to healthcare professionals). Healthcare professionals were not prepared to apply the Protocol and were not aware about the underlying obligations¹⁸³.

Another issue was **inadequate healthcare** guaranteed to minor

¹⁷⁸ See a Report on a visit to Poland, 25 July 2018, CPT/Inf (2018) 39, Article 45; CPT Report on a visit to Malta, 25 August 2005, CPT/Inf (2005) 15, Article 54; CPT's Nineteenth General Report, 20 October 2009, CPT/Inf(2009)27-part, Article 92.

¹⁷⁹ Guarded centre for foreigners in Lesznowola 2018.

¹⁸⁰ CPT Report on a visit to Malta, 25 August 2005, 16 CPT/Inf (2005) 15, Article 54.

¹⁸¹ Guarded centre for foreigners in Biała Podlaska 2018.

¹⁸² Guarded centre for foreigners in Białystok 2018, Guarded centre for foreigners in Lesznowola 2018.

¹⁸³ Guarded centre for foreigners in Białystok 2018, Guarded centre for foreigners in Krosno Odrzańskie 2016.

detainees. A facility¹⁸⁴ dedicated to families with children and to unaccompanied minors did not employ a paediatrician for a full-time basis. Such a situation violated the minor detainees' right to adequate healthcare. The NMPT was also concerned that the facility did not employ any female physicians. Such a practice could pose an effective constraint to female detainees. In many cases cultural and religious aspects may make it difficult or even impossible for a male doctor to conduct a physical examination of a woman. Moreover, one has to remember that pregnant women, women with gynaecologic problems or victims of violence, including sexual violence, may expect a contact with a female doctor. One has to remember that, according to international standards, the provision of adequate healthcare is very important in case of individuals with specific needs, including minors¹⁸⁵.

5.4.4 Psychological services

a) Availability

While assessing the availability of psychological services, the experts considered methods of making appointments, waiting time and the number of service hours available to detainees who look for that kind of support.

At one of the guarded centres for foreigners¹⁸⁶ under renovation¹⁸⁷, the detainees could request psychological service verbally or in writing while referring to education section staff, healthcare professionals and other officers on duty. Such a request was then forwarded to the healthcare services in order to make an appointment at an external practice. A detainee was escorted to such an appointment, handcuffed in justified cases.

One has to underline that for detainees for whom the very decision to request psychological support and to go to an appointment was already a huge challenge (individuals having problems with everyday functioning, individuals for whom it is difficult to ask for help and accept it), such a way of arranging for consultations and escorting could be a significant constraint in an access to psychological services.

It should also be noted that the sense of empowerment of the person

¹⁸⁴ Guarded centre for foreigners in Kętrzyn 2016.

¹⁸⁵ Recommendations of the Committee of Ministers issued on 16 April 2003 concerning detention measures towards persons applying for a refugee status, Rec(2003)5, Article 13.

¹⁸⁶ Guarded centre for foreigners in Białystok 2018.

¹⁸⁷ As it was pointed out in the chapter on the strengths of the visit facilities, before the start of renovation psychological services at that facility were available on site, i.e. there were fixed duty hours for psychologists, and foreigners could make appointments directly and on their own, without being escorted to the consultation room. This influenced positively the access to psychological support. It was also advantageous from the point of view of the education section, as during the first interview with the foreigners the social workers had an opportunity to introduce the psychologist and to them and show them where he/she works.

seeking psychological support was not strengthened by the fact that the foreigner was not able to choose the time of the appointment. Such situations could translate to the effectiveness of the support itself, as one has to remember that reinforcing empowerment in a person who is in a mental crisis is a vital element of the whole process.

The quality of psychological services provided was problematic in some facilities. An analysis of documents in one of the guarded centres for foreigners¹⁸⁸ showed that among its detainees there were those suffering from PTSD confirmed by diagnosis as well as those who experienced violence, including tortures. The records showed that each of them had stayed in the facility for more than one month. Unfortunately the number, frequency and descriptions of the consultations effected showed that they involved a mere harvesting of initial medical history and making a psychological diagnosis. Information provided in the records did not prove that the psychological services provided included psychological support aimed at reducing re-traumatising effect of the environment on a detainee who – which has already been explained herein – should not, according to the standards applicable, have been placed in such a facility in the first place.

A psychological therapy by an external psychologist was conducted at another facility¹⁸⁹. In this context, however, one has to highlight that according to the NMPT experts the therapy should not take place in detention. Victims of violence, including torture, might require psychological therapy as well as pharmacological therapy, but such a therapy might be ineffective when conducted in detention due to its re-traumatising nature. One of the basic requirement of an effective psychological therapy is to ensure stabilization and safety during the therapy. However, the very fact of being detained is stressful and can lead to deterioration of mental and physical health of a detainee. If a therapy of a detainee is necessary, he/she should be released from the detention centre so that the therapy should be conducted in non-detention conditions. Until the release (which should take place as soon as possible), persons with disorders which suggest being subjected to violence, including torture (PTSD, anxiety disorder, affective disorder) and other persons suffering from mental disorders which increase in detention, should receive regular and intensive (several times a week) psychological support.

Another problem noticed by the NMPT representatives was an inadequate time limit provided for a psychological consultation. A contract

¹⁸⁸ Guarded centre for foreigners in Lesznowola 2018.

¹⁸⁹ Guarded centre for foreigners in Biała Podlaska 2018.

between one of the facilities¹⁹⁰ and an external healthcare service provider provided for 80 hours of psychological consultations which should take place within one year of the contract date while there were as many as 120 detainees, and in exceptional situations – even 125. The annual limit of 80 hours meant less than one hour of psychological consultation per one detainee. At another facility¹⁹¹ a psychologist was available for 4 hours per week for 56 detainees. Still another facility with a capacity of 103 detainees¹⁹² offered services of a psychologist for 20 hours per month. It has to be underlined that the guarded centres admit foreigners from many different countries and language zones. Thus, it is assumed that a trained interpreter should participate in the majority of diagnostic examinations. The participation of an interpreter in psychological and other medical examinations is of key importance. Assuming (very optimistically) that an average consultation of an individual, in the presence of an interpreter takes 2-3 hours for a psychologist to identify detainees who were subjected to violence and to make at least a preliminary diagnosis of existing mental disorders, a detainee is expected to wait even several months for such a consultation.

The indicated limit of hours was insufficient in relation to the number of foreigners who can benefit from psychological assistance at the guarded centre for foreigners. In this context, it is worth pointing out that due to the rotation of detainees, the number of those who are in fact placed at the centre in a given year can be even several times higher than the maximum capacity of the centre. In such a situation, the statistical time needed for psychological counselling of one foreigner is still reduced and therefore has a negative impact on the actual availability of this type of support.

Another problem¹⁹³ revealed during the visit was a lack of fixed working hours of psychologists on duty at the guarded centre for foreigners. The NMPT underlined multiple times how important it is for a psychologist to meet the expectations of detainees who request his/her service and to work according to the needs while making an appointment with a given patient individually. At the same time it is also advisable that a psychologist be available in a dedicated consultation room at the guarded centre premises for a fixed period of his/her duty (or at least a half of that period). This relates both to the psychologists employed by the guarded centre and the external ones.

The actual availability of psychological services also depends on the information that foreigners have obtained about receiving psychological

¹⁹⁰ Guarded centre for foreigners in Białystok 2018.

¹⁹¹ Guarded centre for foreigners in Krosno Odrzańskie 2017.

¹⁹² Guarded centre for foreigners in Przemyśl 2017.

¹⁹³ Guarded centre for foreigners in Biała Podlaska 2018.

assistance. It is therefore important to know that such a possibility of support exists at the centre, what it consists in and what its purpose is. A detainee's sense of empowerment and awareness of his/her right to obtain psychological support is important.

During their visit¹⁹⁴, the NMPT representatives talked to foreigners who did not have such an awareness and did not know their rights. They were detainees who have never had any such consultation with a psychologist as well as those who were provided this opportunity. The foreigners could not tell a difference between the profession of psychologist and psychiatrist. They did not know what happened with information they provided to a psychologist. They did not even know that psychologists must observe a doctor-patient privilege and what the scope of the latter was.

In still another centre¹⁹⁵ the tasks of a psychologist and a social worker were assigned to the same person. This was of concern as those roles are separate and even mutually exclusive in some situations. Apart from difficulties the foreigners who used psychological support had in telling the difference between the two roles, this situation was problematic from the point of view of conducting observation and preparing opinions concerning the detainees, namely – two documents were drawn up: a social worker report and a possible psychological opinion. Preparing both documents by the same person raises ethical doubts. One has to remember that a psychologist is bound by doctor-patient privilege, which applies also to an opinion drawn by him/her, while social workers' reports are filed in a given foreigner's file, which can be accessed by a wider circle of people than it is the case with psychologist's records.

Another factor which impacts the actual availability of psychological service involves competences of people providing the service, their number and learned profession.

At one facility¹⁹⁶ psychological services were (due to ongoing renovation of the guarded centre for foreigners) provided by an external entity which employed 3 psychologists. However, the contract did not specify how many of them were to be dedicated to provide services to the detainees of the guarded centre for foreigners. Neither did it oblige the contractor to provide more than one psychologist to serve the detainees. According to the information obtained, there was a plan to employ or to hire only one psychologist. At another facility¹⁹⁷ psychological services were provided by

¹⁹⁴ Guarded centre for foreigners in Białystok 2018, Guarded centre for foreigners in Lesznowola 2018.

¹⁹⁵ Guarded centre for foreigners in Biała Podlaska 2018.

¹⁹⁶ Guarded centre for foreigners in Białystok 2018.

¹⁹⁷ Guarded centre for foreigners in Lesznowola 2018.

only one psychologist who was also a certified addiction therapist.

In this context it should be noted that the presence of only one psychologist in the facility is associated with a high risk of discontinuity of psychological care and the inability to intervene and provide support in psychological crises. An emergency call may coincide with the lack of availability of the only employed psychologist, which makes it impossible to carry out the intervention.

The second limitation arising from the provision of services by one specialist is related to the specificity of this type of work. In order to provide psychological services effectively and reliably, it is necessary to build a positive relationship with a patient, based on mutual respect and trust. An important role in this aspect is played by the human factor, which is an indispensable element of psychological services and is independent of the psychologist's competence. If a patient does not feel comfortable in the presence of a particular psychologist, he/she will not use or resign from the service. Regardless of their competence, the service provider may not be the right person to provide support in a given case because of their age, gender, appearance or even the way they speak. When working with multicultural populations, where there are also differences in culture, language, religion, non-verbal communication, etc., the human factor plays an even more important role and it can be difficult to establish trust. Therefore, it is very important to be able to seek psychological help from more than one person. When there is no alternative, when a patient cannot trust the only psychologist who provides support in a given institution, psychological care is deemed no longer available.

A third negative consequence of the provision of services by one specialist only is competence limitations. Compared to a well-matched team of several psychologists, the only psychologist has a smaller repertoire of work techniques, experience, and competence. Moreover, in the field of psychotherapy, there are different schools and approaches with different working techniques. Not every approach will be equally effective with a given patient. Therefore, the real availability of support is enhanced by being provided by a diverse team consisting of at least several people of different ages, specializing in different areas of work and using different methods.

A fourth limitation is a possible conflict of interest that can occur when individuals using the same psychologist are in dispute. The same psychologist should not assist different parties to the conflict. The centre is a place of collective residence, foreigners are forced to have long-term intensive contact with one another - they live in one room, in one building, they use common

areas. Restriction of freedom accompanied by constant high social exposure often leads to tiredness of the presence of other people. Symptoms include a lowered frustration threshold, impaired emotion regulation, reduced patience and a lowered irritability threshold, which easily leads to conflicts. An important element of psychological support in this context is the ability to freely express thoughts and feelings about other people in an empathic, safe, supportive and confidential relationship with a psychologist. For this to be possible, trust in the support providing person is needed. In a conflict situation at a guarded centre both parties often need support. As mentioned above, using the support of the same person would be a conflict of interest. In addition, it could undermine trust and create doubts about the psychologist's intentions, or it could make the person seeking support fearful of being judged because of what information the psychologist or psychotherapist obtains about the situation from the other party to the conflict. Regardless of the effort of the support provider to maintain impartiality, doubts on the part of the foreigner may result in their fear of seeking help and, in consequence, their refusal to use it. The more so because the detainees placed at guarded centres for foreigners, especially those who have experienced violence or torture, tend to have low levels of trust and lose it easily. The provision of psychological support by different people to each of the parties to the conflict should be standard, as it is the case with providing support to e.g. relatives.

As already mentioned herein, language competence is also a very important factor in the availability of support. In order for the support to be available and to be provided effectively, a psychologist and his/her patient must be able to communicate fluently in a language they both have competence of. This means that the psychologist must be able to speak a foreign language or that interpreting services are provided.

The NMPT established that there were difficulties in providing interpretation services for the purposes of psychological consultations. The problems involved a low availability of interpreters from non-European languages, the fact that interpreters lived at a considerable distance from the guarded centre for foreigners, and the rates that they estimated as not being cost-effective in relation to the costs, travelling time and volume of services requested. Therefore, interpretation services were provided by the staff of one of the guarded centres¹⁹⁸ (this concerned European languages, e.g. French) or by other detainees, or a google translator was used.¹⁹⁹

One of the guarded centres²⁰⁰ provided interpreting services in

¹⁹⁸ Guarded centre for foreigners in Białystok 2018.

¹⁹⁹ Guarded centre for foreigners in Kętrzyn.

²⁰⁰ Guarded centre for foreigners in Lesznowola 2018.

languages which were non-native to the detainees, namely in Russian and English, whereas all the detainees interviewed indicated they would prefer interpreting onto their native language. One detainee's account was of concern for the NMPT, as he said that the meetings with the psychologist were held in English which was a foreign language to the detainee concerned. According to the NMPT the detainee's competence of English was too poor for him to obtain effective support, therapy or for the psychologist to make a diagnosis.

In order for psychological support, therapy or diagnosis to be provided reliably and effectively, the interpreter must not only meet the criterion of being fluent in the languages between which he or she interprets, but should also be able to cooperate with the psychologist, so that his or her tone of voice, choice of words, and body posture facilitate the process of support or diagnosing and avoid disturbing it. Here one has to mention the ethical dimension of collaborating with an interpreter. The interpreter should be bound by the same ethical rules as the psychologist, as the interpreter obtains the same information and is a part of the support relationship. Violation of those rules may (apart from having ethical consequences) negatively impact the process of support, therapy or diagnosis. It may also result in a loss of trust in the interpreter, and as a consequence, in the psychologist, which can result in the patient's resigning from support.

b) Documentation drawn up by psychologists

At some guarded centres for foreigners²⁰¹, documentation drawn up by psychologists was kept together with medical records.

The NMPT has repeatedly stressed that psychological documentation is not medical documentation and as such should be kept and stored separately. The content of psychological documentation is subject to confidentiality principles. No unauthorized persons should have access to it. It should be noted that under the currently applicable legislation, doctor-patient privilege which applies to a psychologist and a physician differ in scope and are differently secured by the Polish law²⁰².

Moreover, the files of detainees examined at the facilities visited by the NMPT²⁰³ did not include their written consents to conducting a medical

²⁰¹ Guarded centre for foreigners in Białystok 2018, Guarded centre for foreigners in Lesznowola 2018.

²⁰² Article 14.1 of the Act of 8 June 2001 on a profession of psychologist and a professional body of psychologists (consolidated text: Dz.U. of 2019, item 1026) and Article 40.1 of the Act of 5 December 1996 on the professions of physician and dentist (consolidated text: Dz.U. of 2019 item 537).

²⁰³ Guarded centre for foreigners in Białystok 2018, Guarded centre for foreigners in Lesznowola 2018.

examination, to issuing a psychological opinion following the examination, or to providing the documentation to third parties (healthcare professional or head of the guarded centre), although such procedures are required in the algorithm, referred to above.

An analysis of documentation at one of the facilities²⁰⁴ revealed that the psychologist did not use the ICD-10 for any of her opinions. None of her opinions included information about diagnostic methods used. Moreover, the opinions prepared included information which was beyond the scope of psychological diagnosing - e.g. it concerned the psychologist's assessment of the foreigner's credibility or subjective feelings of the psychologist, such as whether the person is "warm in contact". Such a method of documentation (by providing information in the form of diagnosis that in fact is not a diagnosis) may mislead readers of such opinions. Secondly, if the opinion is made available to third parties (even with the foreigner's consent) it may lead to disclosure of data that should be protected by doctor-patient privilege.

Such situations indicate that guarded centres for foreigners lack a single standard for keeping psychological records, diagnosing in order to identify grounds excluding detention and drawing up opinions.

c) Rooms used for providing psychological service

At one of the facilities²⁰⁵ psychological services were rendered in two rooms depending on which entity provided them and upon whose request. Consultations with a psychologist employed by the Border Guard were held in a room belonging to the outpatient clinic. Consultations with external psychologists (from NGOs or commercial healthcare providers) were held in visitation rooms. There was no dedicated room at the whole premises which could be appropriately equipped for psychological consultations. Two doors led to the outpatient clinic room – one from the corridor and the second one from the neighbouring room. The door to the neighbouring room ensured sufficient acoustic insulation but the door to the corridor did not. A conversation conducted in a usual tone, even at the greatest possible distance away from the door, could be heard in the corridor to the extent that one could understand the clearly what it is about.

In addition, it resulted from the information obtained that a foreigner was led by an officer to a meeting with a psychologist and during the meeting the officer waited for him in the corridor. It also happened that other

²⁰⁴ Guarded centre for foreigners in Białystok 2018.

²⁰⁵ Guarded centre for foreigners in Lesznowola 2018.

foreigners used the outpatient clinic during psychological consultations and waited in the corridor, also accompanied by an officer.

In this situation, the NMPT stressed that the lack of soundproofing and the occasional presence of bystanders who could hear the conversation may have led to a breach of confidentiality of the meeting. In addition, in some detainees this could have caused reluctance and make them resign from support for fear of being overheard.

5.4.5 Access to lawyers

Access to lawyers' services is one of key anti-torture guarantees and should be provided in appropriate environment. However, the NMPT representatives encountered a situation²⁰⁶ where detainees could meet a lawyer in a monitored room.

The NMPT stressed that the right to communicate freely with a defence counsel (attorney) includes, above all, freedom from rationing as to the frequency of contacts and observance of lawyer-client privilege. The direct physical presence of a lawyer with a person deprived of liberty makes it possible to assess his or her physical and mental condition. Moreover, it is only by talking out of sight and hearing of the officers that the information about the treatment of the person deprived of liberty can be freely communicated.

Furthermore, it should be noted that the Polish legal system provides a foreigner with the right to contact and see his/her attorney in the conditions that do not violate the right to privacy.²⁰⁷ CPT underlines that every foreigner should have a guaranteed right to talk to his/her attorney in private²⁰⁸.

5.4.6 The right to information

When visiting one facility²⁰⁹ the NMPT representatives were informed by the manager that information about a planned enforcement of a decision on deportation date and time is communicated to a foreigner concerned immediately after the decision is made. However, the very fact of communicating such information to a detainee is not recorded anywhere by the Border Guard. In practice the statement about communicating the decision on deportation to a foreigner concerned early enough was not confirmed because on the visitation day – 16th of July, the management already knew

²⁰⁶ Guarded centre for foreigners in Lesznowola 2016, Guarded centre for foreigners in Biała Podlaska 2016.

²⁰⁷ Article 415.1(3) of the Foreigners Act.

²⁰⁸ CPT Seventh General Report, CPT/Inf (97) 10, Article 30.

²⁰⁹ Guarded centre for foreigners in Lesznowola 2018.

the date of the decision enforcement with respect to two Uzbekistan nationals: they were to leave Poland on 20 July. The foreigners concerned were not informed about this fact on the date of visitation.

Moreover, at the same facility,²¹⁰ the NMPT representatives observed that the deposit receipts and the list of items to be deposited are made in Polish. As a result, a foreigner who did not have a competence of Polish was made to sign the document which he in fact did not understand.

The NMPT representatives were also informed by the detainees²¹¹ that the detainees were not aware of a possibility to refer to the facility staff for support in case of financial difficulties, in the form of e.g. making telephone connections at the cost of the facility or sending mail.

According to the NMPT, detainees who do not speak Polish must receive all the information related to detention so that they can understand it. It is unacceptable for a foreigner to sign a document which was not translated to him/her. According to the international standards applicable every foreigner must receive information about his/her rights and procedures applied to him/her immediately and in a comprehensible language²¹². Foreigners detained at guarded centres must be provided with written guidelines in which procedures applied to them are explained and their rights are listed clearly. The guidelines should be available in the languages which are most frequently used by the detainees, and translation services should be used if necessary. Moreover, every detainee should be informed regularly about issues concerning his/her future²¹³.

5.4.7 Contact with the outer world

The NMPT encountered various ways of restricting foreigners' rights to contact the outside world. The restrictions consisted in blocking access to certain websites and imposing time limits. According to the established rules, a computer could be used by one user for a maximum of 30 minutes at a

²¹⁰ Guarded centre for foreigners in Lesznowola 2016.

²¹¹ Guarded centre for foreigners in Krosno Odrzańskie 2016.

²¹² CPT Seventh General Report, [CPT/Inf (97) 10], Article 30; CPT Nineteenth General Report, 20 October 2009, CPT/Inf(2009)27-part, Article 84; SPT Report on a visit to a Former Yugoslav Republic of Macedonia, 10 May 2019, CAT/OP/MKD/1, Article 64; Article 16.5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 r. on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L. 2008 No 348, item 98); CPT Report on a visit in the Former Yugoslav Republic of Macedonia, 17 March 2016, CPT/Inf (2016) 8, Article 130; Report of the Special UN Rapporteur for the Human Rights of Migrants, 24 April 2017, Thirty-fifth session 6-23 June 2017 Agenda item 3, A/HRC/35/25/Add.3, Article 112; Report of the Special UN Rapporteur for the Human Rights of Migrants, 25 April 2017, Thirty-fifth session 6-23 June 2017 Agenda item 3, A/HRC/35/25/Add.1 Article 100.

²¹³ CPT Report on a visit to Serbia and Montenegro, 18 May 2006, CPT/Inf (2006) 18, Article 76.

time²¹⁴. In this situation the NMPT stressed that enabling foreigners to communicate freely with the outside world is one of the fundamental human rights (it constitutes the implementation of the right to private life). According to the Polish law, foreigners are guaranteed the possibility to use the Internet at computer stations available at the guarded centre or the detention centre for foreigners.²¹⁵

At one of the facilities²¹⁶ foreigners could use a multi-functional device for scanning, copying and sending e-mails, but during the NMPT visit the device was out of order. In such a situation foreigners could send faxes, but it was possible only by giving messages to be sent to the centre staff. Such a solution raised doubts with the NMPT representatives concerning the respecting of the confidentiality rule, in particular if a foreigner wanted to fax documents to his/her attorney.

5.4.8 Direct coercion

The NMPT representatives encountered a situation²¹⁷ whereas two officers – one on duty at the guarded centre and the other on duty at the detention centre for foreigners always had stun guns on them. The stun guns were worn so that they could be visible – they were fixed to the officers' belts.

According to the NMPT, stun guns should be stored in a place inaccessible to third parties and taken only when necessary by authorised persons. It must be underlined that wearing guns, batons, stun guns in a visible way may be perceived as a sign of weakness and may attest to officers' being unable to control the situation without resorting to direct coercion. Having regard to a potential health risk for people who have been incapacitated as a consequence of using an electroshock the NMPT underlined preventively that Border Guard officers should be trained on how to use the devices appropriately. No doubt that a trained Border Guard personnel can carry out their duties appropriately without resorting to violence, which effectively protects foreigners against torture.

At two facilities²¹⁸ a detainee was brought to a doctor escorted and handcuffed. According to the information obtained, there were situations in which handcuffs were used throughout the duration of a visit at the doctor's. The NMPT repeatedly underlined that handcuffs should be used if justified

²¹⁴ Guarded centre for foreigners in Lesznowola 2018.

²¹⁵ Article 415.1(11) of the Foreigners Act.

²¹⁶ Guarded centre for foreigners in Krosno Odrzańskie 2017.

²¹⁷ Guarded centre for foreigners in Przemyśl 2017.

²¹⁸ Guarded centre for foreigners in Krosno Odrzańskie, Guarded centre for foreigners in Przemyśl.

clearly by a risk assessment in an individual case. Specific recommendations concerning the use of handcuffs, also towards escorted individuals were presented by the CPT²¹⁹ and the SPT²²⁰.

The use of handcuffs during medical examinations, particularly with the hands clasped behind the back, should be considered unacceptable. This is a degrading practice, which, combined with the supervision of the examinee by officers, increases the tension and discourages people from informing the doctor about the ill-treatment. It also poses a threat to the objectivity of the examination. Under such conditions, the patient may be unwilling to provide full and truthful information about his or her condition. The CPT has commented on the use of handcuffs during medical examinations and consultations and has indicated that the practice should be stopped immediately. The use of handcuffs during medical examinations is, in the CPT's opinion, a practice that violates the dignity of the examined person, hinders the development of a proper doctor-patient relationship and poses a threat to the integrity of the medical examination.²²¹

At one of the facilities visited²²² the NMPT expert investigated how direct coercion was used towards a foreigner during a crisis intervention.

Three men detained at the guarded centre for foreigners refused to eat meals as a form of protest. The Border Guard officers received the information that the protesters had taken a large amount of unidentified medicines. In such a situation, a decision was made to place the foreigners in a medical unit. Shortly afterwards, one of the foreigners was transferred to the detention centre for foreigners in Przemyśl upon a motion of the Border Guard and a relevant court's decision. The second foreigner renounced the hunger protest and left the isolation room after a medical examination. The third man remained in the room and decided to continue the hunger strike. During one of the conversations with the Border Guard officers, the man made a suicide attempt by trying to put a loop of a cord from a vertical blind on his neck. The officers present at the scene used direct coercion against the foreigner, namely physical force. The foreigner was subsequently moved to an isolation room and the Border Guard moved to the court for changing the form of detention from

²¹⁹ See: Transport of detainee, Factsheet, June 2018, CPT/Inf (2018) 24, pkt. 3. Security measures; CPT's Report on a visit to Ireland, CPT/Inf (2007) 40, Article 101; CPT's Report on a visit to the UK, CPT/Inf (2006) 28, Article 23; CPT's Report on a visit to Serbia, CPT/ Inf (2016) 21, Article 53.

²²⁰ See SPT's Report on a visit to New Zealand, CAT/OP/NZL/1, Article 110-112.

²²¹ See CPT's Report on a visit to the Czech Republic, CPT/Inf (2019) 23, Article 70.

²²² Guarded centre for foreigners in Krosno Odrzańskie 2017.

a guarded centre to a detention centre for foreigners. The decision of the court who had granted the motion, was issued on the following day. On the same day the foreigner was transferred to the detention centre in Przemyśl.

The NMPT expert visiting the facility at the time saw the CCTV recording of that event. The conversations could not be heard, but one could see the situation directly preceding the auto-destructive behaviour of the foreigner. The analysis showed that neither psychologist nor a healthcare professional participated in the intervention made directly prior to the suicidal attempt. The intervention was managed directly by the head of the guarded centre for foreigners. Just before the suicidal attempt the foreigner was left with the interpreter from Arabic who, however, did not interpret anything, and according to the information provided by the head of the guarded centre, upon his request the conversation with the foreigner was conducted by the interpreter on his own. After an exchange of words with the interpreter, the detainee threw himself on a rope from a vertical blind and wrapped it around his neck in order to hang himself. The Border Guard officers reacted and prevented the suicide.

In the opinion of the NMPT, the intervention in the given situation was carried out incorrectly. First of all, the crisis team did not include a physician or a psychologist. It consisted of the head of the centre, a social worker and an interpreter - a civil employee of the Oder River Border Guard Headquarters. What is more, the man who made a suicide attempt was not consulted by a psychologist even after the incident. He was not examined by a psychiatrist to assess his condition.

According to the head of the centre, the refraining from eating meals was not treated as a crisis situation. It was only after receiving information about foreigners taking unknown drugs that the health service was informed about the incident and the foreigners were placed in a separate room. It should be noted here that in the opinion of the head of the centre, the probability of uncontrolled taking of drugs was low: all foreigners' drugs are stored in the centre's depository and substitutes are ordered and issued only by medical staff. The proceedings of the Border Guard after a foreigner's suicide attempt (self-mutilation) were also standard: according to the head of the centre, in every similar case, if it is considered to be a "serious" case, the Border Guard files a motion to the court to change the type and place of detention from a guarded centre to a detention centre for foreigners. If the case is not considered as "serious", the head of the centre applies for a disciplinary punishment of the foreigner according to the procedure set out in Article 421 et seq. of the Act on Foreigners. At the same time, it has not been determined what types of cases

fall into the category of "serious" cases and which do not meet this criterion.

In this context it should be noted that people after traumatic events often suffer from disorders such as depression, PTSD, acute stress reactions, anxiety disorders, dissociative disorders. Their symptoms may be classified as bad behaviour resulting from disobedience to the rules of the centre. Excessive agitation and even aggressive behaviour, as well as depressive symptoms (e.g. abstaining from meals) are common symptoms of e.g. PTSD or depression - the most common disorders among victims of torture and violence. Such behaviour cannot be punished by arrest or isolation. They should be treated as a symptom that may indicate a need for identification in order to make appropriate help and treatment available. This, however, did not occur in the case described.

5.4.9 Cultural and educational activities

The NMPT found out that detainees of one of the facilities²²³ had limited access to the sportsground. Theoretically, according to the daily schedule, foreigners were allowed to stay on the ground during their free time, which was only limited by meal times and quiet hours at night. In practice, however, the possibility to stay there depended on whether the number of Border Guard officers on duty on a given day allowed the shift manager to appoint an officer to supervise detainees staying outside the buildings.

It must be pointed out that a limited number of officers must not determine the foreigners' right to use the sportsground^{224 225}. The CPT underlined that the detainees must be able to exercise every day in the open air, also during weekends.

5.4.10 Living conditions

In some cases the NMPT recommended renovation of the guarded centres²²⁶. In case of one of the facilities, the NMPT pointed out that there was no infrared surveillance camera in the isolation room, so that the room had to

²²³ Guarded centre for foreigners in Lesznowola 2018.

²²⁴ Article 415.1(13) of the Act on Foreigners.

²²⁵ CPT's Seventh General Report [CPT/Inf (97) 10], Article 29; CPT's Report on a visit to Malta, 25 August 2005, CPT/Inf (2005) 15, Article 47; CPT's Report on a visit to Serbia and Montenegro, 18 May 2006, CPT/Inf (2006) 18, Article 70; CPT's Report on a visit to Greece, 10 January 2012, CPT/Inf (2012) 1, Article 38.

²²⁶ Guarded centre for foreigners in Przemyśl 2017, Guarded centre for foreigners in Biała Podlaska 2018.

be illuminated at night²²⁷. At other facilities²²⁸, in the monitored isolation rooms, despite partial blackout, WCs were also visible on the monitoring images. The masking zones should be situated in such a way as to ensure privacy and intimacy for the person using the WC.

Foreigners detained at the facility in Przemyśl were subject to continuous monitoring. The NMPT found the system disproportionate to the threat posed by the foreigners. It should be noted that even in the penitentiary system, it is only applied to particularly dangerous inmates. Additionally, there were no sanitary facilities in the cells of the detention centre. The foreigners held there had to ask the warden each time for permission to use the toilets. As a result, some urinated into plastic bottles. The NMPT considered such conditions inhumane. According to the CPT standards, detainees should be provided with easy access to a toilet at all times, including at night.²²⁹

Moreover, at one of the facilities²³⁰ there were no blinds/shades in the windows despite heavy insolation, as a result of which the detainees covered the windows with black foil.

Another problem noticed by the NMPT representatives at one of the facilities²³¹ was the access to the only smoking room, located in Building „B” (the facility was composed of two buildings “A” and “B”). The passage between the buildings was locked at 10.00 p.m. and after locking the detainees accommodated in Building “A” could not use the smoking room despite the fact that it was still accessible for the detainees accommodated in Building “B”.

At the Krosno Odrzańskie facility the NMPT observed that the room in which personal search of foreigners was carried out did not meet the standards, which could consequently lead to the violation of the inspected persons' dignity. It was a room in the administrative part of the guarded centre which served as a warehouse at the same time. The room had no windows and on both sides, along the walls, there were metal racks, partly filled with objects and packages of undetermined content. The personal checks took place in the narrow space between the racks.

The NMPT points out that in accordance with international standards, the rooms in which foreigners are to be placed must be adequately equipped, clean and they must guarantee adequate living space, and should be designed and arranged in such a way as to avoid associations with the prison

²²⁷ Guarded centre for foreigners in Biała Podlaska 2018.

²²⁸ Guarded centre for foreigners and detention centre for foreigners in Przemyśl 2017.

²²⁹ CPT's Report on a visit to Spain, 25 April 2014, CPT/Inf (2015) 19, Article 15.

²³⁰ Guarded centre for foreigners in Lesznowola 2018.

²³¹ Guarded centre for foreigners in Lesznowola 2018.

environment.²³² Moreover, each room in which a foreigner is staying should have access to sufficient natural light and be equipped with a paging system, a table, chairs and a washbasin.²³³

5.4.11 Personnel

At one of the facilities²³⁴ security officers on duty in the residential part of the facility did not have any identification badges with their name or official number on them. Foreigners had therefore a limited possibility to identify them, e.g. for complaint purposes. According to the National Mechanism for the Prevention of Torture, uniformed security officers should have at least their official number in a visible place that would make it possible to identify them.

Within internal training available for the staff working at guarded centres for foreigners there was no training concerning identification and dealing with detainees who experienced torture and inhuman treatment. There was no training related to identification and treatment of individuals who experienced trauma, including violence, or training dedicated to recognising and responding to behaviour that can reveal symptoms which could be threatening mental health²³⁵.

The NMPT stressed that training in this area is particularly important because in accordance with the binding algorithm, after a medical examination, a social worker conducts an individual interview with a foreigner, during which they should identify possible grounds for regarding him/her as vulnerable. There is no doubt that in order to diagnose such cases, it is necessary to acquire appropriate knowledge and skills.

This is particularly important in the context of the systemic problem already discussed in this Report concerning the functioning of the algorithm and the possibility of releasing detained foreigners who have experienced torture and other forms of ill-treatment.

According to a head of one of the facilities²³⁶, a foreigner who may have been a victim of torture could be released from a detention centre only if his further stay there threatened his/her health or life. When presenting such an

²³² CPT's Seventh General Report, [CPT/Inf (97) 10], Article 29.

²³³ CPT's Report on a visit to Spain, 25 April 2015 r., CPT/Inf (2015) 19, Article 15.

²³⁴ Guarded centre for foreigners in Krosno Odrzańskie 2017.

²³⁵ Guarded centre for foreigners in Białystok 2018, Guarded centre for foreigners in Lesznowola 2018, Guarded centre for foreigners in Biała Podlaska 2016, Guarded centre for foreigners in Przemyśl 2017, Guarded centre for foreigners in Krosno Odrzańskie 2017.

²³⁶ Guarded centre for foreigners in Przemyśl 2017.

opinion, the head of the facility visited referred to the wording of Article 400 of the Act on Foreigners²³⁷. In the opinion of the head of the facility, both prerequisites for release from detention specified in the Act should be read together. The detainee's mental and physical condition should justify the assumption that he had been subjected to violence and at the same time his further stay at the facility would pose a threat to his/her life or health.

Meanwhile, as it was already underlined herein, according to the Human Rights Commissioner's opinion, Article 400 of the Act on Foreigners introduces two independent prerequisites and the occurrence of either of them should oblige the authority to release a foreigner from detention. The mere probability that the foreigner has experienced violence should therefore result in his/her release from the guarded centre or detention centre for foreigners, irrespective of whether his/her further stay at such a facility would pose a threat to his/her life or health.

Another important aspect in the context of professional development of staff and functionaries at the guarded centres for foreigners is the access of psychological staff to supervision. Unfortunately, this is not the case in each centre.²³⁸ Such meetings could also contribute to the improvement of relations between the staff, which, as a result, could have a direct impact on the quality of their work. The NMPT repeatedly emphasised that appropriately selected and qualified staff constitutes an effective guarantee of protection of foreigners from improper treatment. Due to their knowledge and experience as well as daily contact with foreigners, the staff of the facility can monitor the health of detainees on an on-going basis and catch alarming signals that prove improper treatment. In case of alarming events they can also take effective countermeasures. This is why it is important that staff are well selected and given opportunities to improve their skills, professional development and knowledge in identifying signs of maltreatment.

5.5 Recommendations

Pursuant to Article 19 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the National Mechanism for the Prevention of Torture urges the Government of Poland to implement the following recommendations.

²³⁷ According to Article 406.1(2) of the Act on Foreigners, the same prerequisites oblige the Border Guard to issue a decision to release a foreigner from detention if they are revealed already during the foreigner's stay at the guarded centre/detention centre.

²³⁸ Guarded centre for foreigners in Biała Podlaska 2016 and 2018.

5.5.1 Recommendations concerning preparation of staff for work at a guarded centre for foreigners

- to provide training for medical staff, psychological staff, the education team, and officers performing other functions in recognizing, communicating and working with traumatized persons, survivors of violation, including torture and inhuman treatment, and persons with mental disorders; to make the staff participate in the training concerned. The scope of training should be adjusted to the tasks of each professional group. The training should be repeated periodically and supplemented with the latest expertise and supervision.
- to provide training for medical and psychological personnel in identifying victims of torture and documenting torture to the extent indicated by the Istanbul Protocol, and manuals on the Protocol for each of these professional groups; to make the staff participate in the training concerned. The training should be repeated periodically and supplemented with the latest professional knowledge;
- to provide guidelines for educational teams regarding the initial and in-depth interview regarding special needs; to identify topics to be addressed during the interview and sample questions related to membership of particular vulnerable groups, including victims of torture and other forms of violence; to establish guidelines for interpreting the data collected, to describe indicators and criteria for qualifying as a particular vulnerable group.

5.5.2 Recommendations concerning the algorithm and actions to be taken towards victims of torture and inhuman treatment before their being placed at a guarded centre for foreigners

- to introduce a mental health assessment for each of the prerequisites (danger to life and health, reasonable suspicion of being subjected to violence) through a psychological and psychiatric examination; to describe the standard and scope of each examination and a model opinion document recognizing or not recognizing the prerequisites;
- to expand the medical examination and the medical certificate to include a reference to the danger (risk of possible negative consequences) to life and health associated with the detention and to include an assessment of whether there is a reasonable presumption of being subjected to violence; to describe the standard and scope of the medical examination in relation to each of the prerequisites and to adjust the existing model document to the extended scope of the opinion;

- to include in motions for detention full information on the actions carried out to examine the presence of each of the detention grounds from the perspective of the foreigner's physical and mental condition, as well as on the fact that the examination of any of the grounds has been waived in whole or in part;

5.5.3 Recommendations concerning the algorithm and actions to be taken towards victims of torture and inhuman treatment after their being placed at a guarded centre

- to reduce the waiting time for psychological and psychiatric consultations;
 - to conduct a medical assessment of traces on the body reported by foreigners as traces of violence, including tortures, to verify a justified suspicion of being subjected to torture;
 - to provide professional interpreting and translation services, including personal interpretation in all identification actions (initial and in-depth conversation conducted by educational team, psychological and psychiatric examination at the facility and at external facilities to which a detainee is referred – hospitals and outpatient clinics);
 - to introduce a function to coordinate the identification process – a person to be responsible for efficient identification, for the flow of information, for collecting and comparing data from various sources, for issuing an opinion on the presence or absence of each of the grounds for withdrawal from detention, and for providing the centre's management with their conclusions together with the material on which they are based. This function should be performed alternately by a physician or a psychologist;
 - to align the procedure with the statutory independence of each of the grounds for detention enshrined in the law; to clarify that the decision to release a detainee should be made in cases of danger to life and health or reasonable suspicion of violence, or both; to remove the possibility of conducting therapy and treatment at a detention centre as a criterion to influence the decision on release (release from detention in the case of the presence of any of the prerequisites takes precedence over treatment and therapy).

5.5.4 Recommendations concerning psychological services

- Psychological services should be rendered by a team of specialists rather than only one of them. All of them should be competent in the scope of identification and support of foreigners with particular needs, including

the identification and documentation of torture and other forms of inhuman treatment, provision of support to torture victims and to victims of other types of violence. Apart from that, the team of specialists should include people of various age, using various methods and having various specializations;

- to define in writing the standards for rendering psychological services in terms of waiting time for psychological consultation and the application of emergency/urgent procedure if necessary;
- to practise individual information meetings with a psychologist. The purpose of the meeting would be to explain the goals and nature of psychological support, to present the offer of services available at the centre and at non-governmental organizations, and to indicate the types of problems with which a psychologist can be approached. Such a meeting would play an educational and preventive role;
- to define in writing the standards for interpreting for the purposes of psychological support with regard to the waiting time for interpretation service, a possibility to choose the gender of an interpreter and, in justified cases, the choice between a person from or outside the cultural background of the detainee;
- to impose the obligation to know the Code of Ethics and Professional Conduct for Psychologists Members of the Polish Psychological Association and to observe it in relation to the professional role, especially in terms of psychologist-patient privilege and maintaining contact with patients during the course and after the completion of the therapy;
- to provide translation/interpreting in the first (mother tongue) language of foreigners or at least translation/interpreting in languages in which foreigners communicate fluently (at a level close to competence in the mother tongue);
- to dedicate one room to serve as a psychological consultation room. The room should have access to daylight, allow fresh air to flow in, be non-transitive, non-monitored and protected against accidental entry of unauthorized people. It should also ensure confidentiality, have no glazing allowing unauthorized persons to look inside, provide acoustic insulation even if the windows are ajar;
- to keep psychological records separately from medical records;
- to use terminology, codes and diagnostic criteria according to ICD-10²³⁹;

²³⁹ In 2018 WHO presented a proposal for a new eleventh version of its International Statistical Classification of Diseases

- to provide in writing a list of standards concerning keeping and access to psychological documentation; to limit the access to the whole documentation to psychologists only;
- to provide uniform written forms of: an informed consent to a psychological examination and refusal to grant the consent, issuing psychological opinion, forwarding the opinion to third parties;
- to record dates, time and type of service provided (e.g. psychological support, informative meeting, therapy, crisis intervention, diagnosis) and a language in which the services provided, as well as whether translation service is provided and by whom.

5.5.5 Recommendations concerning the execution of rights by the detainees

- to ensure freedom of contact with the outside world by providing access to a telephone, visiting relatives, access to computers with Skype and VoIP (Voice over Internet Protocol) applications, providing opportunities to visit representatives of non-governmental organizations and to request consular assistance;
- to guarantee access to a lawyer throughout the detention. A foreigner should be guaranteed the right to speak to a lawyer in private and have a lawyer present during questioning by the competent authorities;
- to ensure that every detained foreigner is provided with information promptly and in an understandable language about all their rights and the procedures applicable to them;
- to enable daily exercise outdoors, including weekends, as well as to provide access to a community room with a radio/TV, newspapers/magazines, and other leisure equipment (e.g. board games, table tennis);
- to provide for unrestricted practising of a religion.

5.5.6 Recommendations concerning technical conditions to be fulfilled by guarded centres for foreigners

- The rooms in which foreigners are to be placed must guarantee adequate living space and should be designed and furnished in such a way as to avoid associations with the prison environment. It is therefore necessary to remove bars in windows in all units;

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- Toilets should be designed so that the detainees can have easy access to them all the time, including at night.

6. Actions taken by the Commissioner for Human Rights for the protection of the detained foreigners' rights

Regardless of the NMPT visitations, the Commissioner for Human Rights took numerous interventions in order to reinforce the rights of foreigners remaining in administrative detention, he has publicized problems during conferences and made general interventions to the central administration bodies.

6.1 General interventions

In his general intervention of 26 October 2015 to the Minister of the Interior and Administration²⁴⁶ the Commissioner pointed to a need to develop a procedure to identify from among the foreigners any victims of violence, torture or other inhuman treatment encountered in the country of origin or during travel.

The Commissioner emphasized that the adoption of the necessary solutions within this scope is a prerequisite for the Polish State to be deemed fulfilling its obligation under Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to create a comprehensive programme for the support and rehabilitation of victims of torture or other inhumane treatment.

The CHR also indicated that victims of torture are not always willing to talk about it. Therefore, the medical personnel not only at the guarded centres for foreigners, but at every medical facility appointed to provide services to foreigners, should be particularly sensitive to any signs and symptoms that might indicate that a foreigner concerned is a victim of violence. It is also desirable to create a uniform procedure which would indicate how to conduct medical interview and examinations, including psychological ones, in order to identify persons in need of appropriate assistance as soon as possible.

In his intervention, the CHR also pointed to the need to make use of the Istanbul Protocol. This document provides information and guidance on how to identify and document cases of torture or other cruel treatment or punishment for courts or investigative bodies. While the Protocol is not binding, international law obliges governments to investigate and document cases of torture and other ill-treatment and to punish those responsible.

²⁴⁶ General intervention of the HRC of 26 October 2015, KMP.572.1.2015.

Meeting the challenges of identifying and monitoring victims of torture among foreigners residing in our country requires the creation of a guarantee of reliable assessments carried out by specialists in forensic medicine, psychology and psychiatry at the centres of foreigners' detention.

The CHR applied for development and implementation of a procedure based on the Istanbul Protocol.

In his response, the Minister of the Interior and Administration²⁴⁷ underlined that the responsibility for foreigners who applied for a refugee status on the territory of Poland is taken by the Office for Foreigners (OFF). A foreigner is provided comprehensive support of OFF during the refugee procedure, which includes i.a. healthcare service and psychological service. In addition he underlined that, pursuant to Article 68 of the Act on the provision of protection to foreigners on the territory of Poland, foreigners who inform a body which conducts the procedure that they have been subjected to violence, are persons with disabilities or whose mental and physical condition gives rise to a presumption that they have been subjected to violence, the OFF head provides for examining such a person by a physician and/or psychologist in order to confirm the suspicions.

He also pointed out that on 13 November 2015, the Act of 10 September 2015 amending the Act on the provision of protection to foreigners on the territory of Poland and certain other acts, aimed at comprehensively regulating issues related to the identification and treatment of vulnerable persons during the proceedings for granting international protection, shall enter into force. He assured that the Act will introduce a catalogue of vulnerable persons, which shall include, among others, persons subjected to torture, victims of psychological, physical, including sexual violence, as well as victims of human trafficking.

As the Minister pointed out, in order to standardize the procedure of dealing with vulnerable foreigners and to maintain a high level of social assistance for them, the Office for Foreigners has developed a procedure for dealing with vulnerable persons in the field of social assistance. One of the groups included in the procedure are persons suspected of being or having been victims of torture.

In addition, the Minister stressed that the Border Guard has an algorithm, developed in September 2015, regarding the handling foreigners who are deemed vulnerable foreigners.

²⁴⁷ Response of the Minister of Homeland Affairs of 6 November 2015. BMP-0790-6-3/2015/MJ.

In his general intervention of 30 June 2017 to the Chief Commander of Border Guard²⁴⁸ the CHR presented his doubts and concerns related with regulations and practical use of the Border Guard's Rules of Handling Vulnerable Foreigners.

The CHR indicated that the term „vulnerable persons” has been introduced by Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 r. on common standards and procedures in Member States for returning illegally staying third-country nationals (hereinafter as the return directive). According to the definition, „vulnerable persons” include: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. The CHR observed that that definition was repeated in almost the same wording in the Border Guard’s Rules (while defining serious forms of violence without indicating them specifically), and it was complemented with persons who are victims or witnesses to human trafficking and persons who require support due to their personal situation or health condition. The qualification – as a result of repetition of the definition - of victims of torture, rape or other serious form of violence to the category of vulnerable foreigners raised CHR’s deep concern.

As pointed out by the CHR, the purpose of the “Border Guard's Rules of Handling Vulnerable Foreigners ” is to specify the conditions necessary to identify this category of persons during their stay at a guarded centre for foreigners. The subjective scope refers to foreigners detained under Article 394 of the Act on Foreigners and placed at a guarded centre for foreigners. However, Article 400 of the Act on Foreigners imposes an absolute ban on the placement, at guarded centres, of people whose mental and physical condition justifies a presumption that they have been subjected to violence. As the CHR pointed out, the above omission creates a serious risk of unlawful detention of persons who should never be deprived of freedom and who will possibly be released from the guarded centre only after a number of identification activities have been carried out by the Border Guard officers. The CHR also pointed to a shortcoming of the regulation, namely that its scope is limited only to foreigners subject to the so called return procedure, with total omission of foreigners who have filed an application for the provision of international protection.

According to the CHR, the process of determining the impact of

²⁴⁸ KMP.572.4.2016.

detention on a foreigner's mental condition is very complex. The lack of an effective mechanism for early identification of victims of torture and an effective mechanism for such identification to be carried out immediately after detention exposes the Polish state to liability for damages for wrongful imprisonment.

The CHR requested the Border Guard Commander to take immediate action to introduce effective mechanisms for early identification of victims of torture or other forms of violence, which would eliminate cases of illegal detention of foreigners and effective mechanisms for identification of victims of torture among foreigners already detained, regardless of the basis of their detention, so that in their case the detention would be ended as soon as possible.

In his response, the Deputy Commander of Border Guard²⁴⁹ pointed out that the guidelines provided in the "Border Guard's Rules of Handling Vulnerable Foreigners " are a tool which enables early identification of vulnerable foreigners (including people who may be victims of torture and violence), standing monitoring of those people and providing them with adequate healthcare services, including psychological and psychiatric service. Based on the guidelines concerned, identification was vested with social workers who provide individual care to the foreigners and who monitor their behaviour and moods.

The Border Guard representative underlined that the nature of the document application is not a release from a guarded centre for foreigners. The role of the algorithm applicable at the guarded centres for foreigners is to enable early identification of vulnerable foreigners and to provide them with necessary specialized medical and psychological services as soon as possible.

The Deputy Commander added that the solutions defined in the document do not refer exclusively to persons placed at a guarded centre for foreigners based on the Act on Foreigners, but it refers also to persons placed there based on the Act on the provision of protection to foreigners in Poland. Thus, Border Guard officers apply the algorithm based on the Border Guard's Rules of Handling Vulnerable Foreigners to all the detainees placed at the guarded centres for foreigners.

6.2 Committee of Experts on Migrants

A Committee of Experts on Migrants has been operating within the

²⁴⁹ Response of the Deputy Commander of Border Guard of 28 July 2017, KG CU-5089/IV/MP/17.

Office of the Commissioner for Human Rights for many years²⁵⁰. It consists of i.a. academics and representatives of NGOs. The Committee plays an advisory and consultative role. Its task is to analyse whether the rights and freedoms of foreigners are observed. Its competences include, among others, presenting the CHR with recommendations in that respect. The Committee's meetings are sometimes attended by representatives of public institutions which deal with foreigners, including the Border Guard, the Office for Foreigners and the Supreme Chamber of Audit.

During its meetings the Committee discussed i.a. topics concerning the procedure for identifying vulnerable persons among those seeking protection on the territory of Poland, amendments to the Act on the provision of protection to foreigners, situation in guarded centres for foreigners, migrant crisis as well as issues concerning education of migrants' children or taking legal jobs by migrants.

6.3 Conferences

The CHR undertakes many activities related to the protection of foreigners' rights, but in the context of the situation of the detainees of the guarded centres for foreigners it is worth mentioning two extremely important panel discussions organized by the CHR. One of them was a debate devoted to victims of torture detained at the guarded centres, which was held during the 1st Civil Rights Congress²⁵¹ in 2017. Among the panel members there were Maria Książak²⁵², dr Joanna Paruszkiewicz²⁵³, płk Andrzej Jakubaszek²⁵⁴ and Adam Chmura²⁵⁵. The panel was moderated by Aleksandra Chrzanowska from the Association of Legal Intervention.

During the discussion, representatives of NGOs emphasized that torture in the country of origin is often the direct cause of forced migration of foreigners to Poland. They pointed out that the existing the algorithm for identifying torture victims approved by the Border Guard Headquarters contradicts the Convention against Torture, the Istanbul Protocol, the Act on

²⁵⁰ <https://www.rpo.gov.pl/pl/tagi/komisja-ekspertow-ds-migrantow>

²⁵¹ <https://www.rpo.gov.pl/pl/content/kpo/panel/ofiary-tortur-w-strzezonych-osrodkach-dla-cudzoziemcow-na-terenie-RP>

²⁵² A psychologist working for the International Humanitarian Initiative Foundation and co-founder of the Polish Centre for Torture Victim Rehabilitation, activist of the PTSD Research Association, expert of the National Mechanism for the Prevention of torture and the Council for Migration by the Office of the Commissioner for Human Rights.

²⁵³ Pediatric psychiatrist, EMDR therapist, long-lasting head of Pediatric Psychiatry Ward, collaborator of the International Humanitarian Initiative Foundation / Polish Centre for Torture Victim Rehabilitation.

²⁵⁴ Director of the Foreigners' Board at the Border Guard Headquarters.

²⁵⁵ A lawyer at the Office of the Commissioner for Human Rights, lecturer in migration and asylum law, social and economic rights of foreigners.

Foreigners and medical ethics. A representative of the Border Guard pointed out that the process of identifying victims of torture is time-consuming and requires building trust, among other things. The panel also drew attention to the situation of children in detention. It was emphasized that it can have a negative impact on their further mental and physical development.

On 26 April 2019 a conference was held - under the motto „*Homo Homini Lupus est*” - at the Office of the Commissioner for Human Rights on detainees of the guarded centres for foreigners who suffer from PTSD. The discussion panel was organized within the framework of the NMPT social campaign „State without torture”. During the conference the participants could i.a. learn about psychological consequences of torture and other manifestations of ill-treatment and about the conclusions of the NMPT visits at the guarded centres for foreigners. The representatives of the Border Guard presented their position on the implementation of the aforementioned algorithm. Representatives of NGOs and the judiciary who deal with issues related to the protection of foreigners' rights on a daily basis also took the floor in the discussion, as well as representatives of national preventive mechanisms from the Czech Republic and Greece who spoke about the impact of the refugee crisis on the observance of migrants' rights.²⁵⁶.

Annexes. Selected national legislation

1. Rights of detainees at guarded centres for foreigners

This chapter presents selected standards described in Polish legislation, which apply to the detainees of guarded centres for foreigners.

a) *The right to healthcare services*

The detainees have the right to:

- **immediate medical examination**²⁵⁷,
 - **follow up examination**, to be conducted at least once per three months and directly prior to their release from the guarded centre for foreigners, and if possible – before each transfer²⁵⁸,

²⁵⁶ See more at: <https://www.rpo.gov.pl/pl/content/panel-dyskusyjny-homo-homini-lupus-est-osoby-z-ptsd-w-strzezonych-osrodkach-dla-cudzoziemcow-relacja>

²⁵⁷ Article 413 ust. 1 of the Foreigners' Act.

²⁵⁸ Article 25 of the Annex to the Ordinance on guarded centres and detention centres for foreigners. Rules and regulations for foreigners' stay at guarded centres and detention centres for foreigners (consolidated version: Dz. U. of 2018 r., item 1576).

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- **use medical services and** to hospitalization if necessary²⁵⁹,
 - regular medical check-up before transfer or release (**harvesting medical history and physical check-up**)²⁶⁰,
 - **receive test results** which are necessary for further medical or diagnostic procedures²⁶¹,
 - **being provided free of charge with dentures/prosthesis, orthopaedic devices and the like**, if lack thereof could result in deterioration of health, and in other cases – for a fee²⁶²,
 - to **confidentiality** of medical information relating to them.

A foreigner cannot choose²⁶³:

- a physician and a nurse,
 - outpatient healthcare service, dentist and hospital.

b) The right to psychological service

- **Every foreigner** detained at a guarded centre has the **right to psychological service**.

A psychologist employed at the guarded centre for foreigners is obliged to provide psychological services²⁶⁴ such as making psychological diagnosis of crisis reactions to traumatic events in the scope of occurring post-traumatic symptoms. This type of service is provided upon a written request of a head of the guarded centre or a doctor who examined a foreigner concerned, following his/her consent²⁶⁵. Moreover, the psychologist must provide psychological support in accordance with the time sheet of psychological services at a guarded centre. Such support is provided after a psychologist has received information about a difficult situation, forwarded to him/her by the head of a guarded centre, a doctor or a detainee²⁶⁶.

²⁵⁹ Article 415 ust. 1 pkt 5 of the Foreigners' Act.

²⁶⁰ Article 6 of the Ordinance of the Minister of Justice of 14 June 2012 on the provision of healthcare services by healthcare facilities to detainees (consolidated version: Dz. U. of 2017 r., item 2131), based on Article 417. 2 of the Foreigners' Act.

²⁶¹ *ibid* point 2.

²⁶² Article 115 Article 2 of the Code of Execution of Judgments in Criminal Cases (consolidated version: Dz. U. z 2019 r., item 676), pursuant to Article 417.2 of the Foreigners' Act.

²⁶³ Article 115 Article 1a of the Code of Execution of Judgments in Criminal Cases (consolidated version: Dz. U. z 2019 r., item 676), pursuant to Article 417.2 of the Foreigners' Act.

²⁶⁴ Article 22.1 of Decision no 182 of the Chief Commander of the Border Guard of 6 October 2017 on the provision of psychological services to the Border Guard (Official Journal of (Dz. Urz.) of KGSG of 2017, item 49 of 2017.10.06).

²⁶⁵ Article 22.5(1) of Decision no 182 of the Chief Commander of the Border Guard of 6 October 2017 on the provision of psychological services to the Border Guard.

²⁶⁶ Article 22.5(2) of Decision no 182 of the Chief Commander of the Border Guard on the provision of psychological services to the Border Guard.

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- Each foreigner has the right to have his psychological examination conducted in **a language known to him/her**.

In case of a language barrier such an examination is conducted in the language known to the foreigner in the presence of a translator or a person who fluently knows the language concerned²⁶⁷.

Moreover, a psychologist must observe doctor-patient privilege and must not disclose any information concerning patients²⁶⁸.

c) *The right to information and complaint procedure*

An officer who receives a foreigner to a guarded centre or detention centre checks his/her identity and provides him/her with information in writing in a language known by him/her about²⁶⁹:

- his/her **rights and obligations**,
- **rules and regulations** of the guarded centre or detention centre,
 - **a surveillance system operating for 24h** if such a system has been installed at the premises.

Moreover, each foreigner **has the right to lodge requests, complaints and applications**²⁷⁰ to the head of the guarded centre, to a detention centre manager or to Border Guard unit responsible for a given guarded centre or detention centre.

d) *The right to have contact with the outside world*

In this respect the foreigner has the right to:

- **write letters** and **use communications** for a fee, and especially in justified cases to use communications or send mail at the expense of the guarded centre or detention centre²⁷¹,
- **receive visitors in** specially dedicated meeting rooms, on consent of the Border Guard unit responsible for a given facility or its authorised representative²⁷².

Such a visit does not take longer than 90 minutes and no more than two persons of age may participate in it. The number of minors who have the

²⁶⁷ Article 22.6 of Decision no 182 of the Chief Commander of the Border Guard on the provision of psychological services to the Border Guard.

²⁶⁸ Article 14.1 of the Act of 8 June 2001 on the profession of psychologist and professional body of psychologists (consolidated text: Dz. U. of 2019, item 1026).

²⁶⁹ Article 4 of the Annex to the Ordinance on guarded centres for foreigners and detention centres for foreigners. Rules and regulations concerning the foreigners' stay at a guarded centre for foreigners and detention centre for foreigners

²⁷⁰ Article 415.1(18) of the Act on Foreigners.

²⁷¹ Article 415.1(17) of the Act on Foreigners.

²⁷² Article 415.1(19) of the Act on Foreigners.

consent to visit is not limited, provided that minors up to the age of 15 may visit detainees only under custody of adults who have a consent to visit. In justified cases, in particular those resulting from psychological recommendations, a visit may be extended or a detainee may be given a consent to have more than one meeting on the same day²⁷³.

It has to be pointed out that it is possible that a detainee does not receive a consent for a meeting if this is justified with a need to ensure law and order or to observe the facility's rules and regulations²⁷⁴.

Moreover, as far as contacts with central and international entities and institutions, the foreigner has the right to:

- contact **polish central administration bodies**, also a diplomatic representative or consular official of a foreign country²⁷⁵,
- contact **non-governmental and international organizations** which provide assistance to foreigners, including legal assistance²⁷⁶,
- contact and meet his/her **attorney** in an environment in which attorney-client privilege is not violated²⁷⁷,
- contact by mail or telephone **organizations dedicated to migrants**²⁷⁸,
- contact personally a representative of the **Office of the UN High Commissioner for Refugees** or a representative of an organization whose mission it is to help foreigners, including to provide legal assistance and to contact a legal service provider while the attorney-client privilege is observed²⁷⁹.

In addition, an arrested foreigner has the right to contact other detainees, following a consent of an official on duty in the detention centre in particular place and time²⁸⁰.

e) *Living conditions*

The rules for distributing the detainees play an important role in the ensuring of appropriate living conditions to foreigners.

A detainee of a guarded centre is placed in a room for foreigners, and an arrested foreigner is placed in a cell. Women and men live separately and a

²⁷³ Article 21 of the Annex to the Ordinance on guarded centres for foreigners and detention centres for foreigners. Rules and regulations concerning the foreigners' stay at a guarded centre for foreigners and detention centre for foreigners.

²⁷⁴ Article 415.1a of the Act on Foreigners.

²⁷⁵ Article 415.1(1) of the Foreigners' Act.

²⁷⁶ Article 415.1(2) of the Foreigners' Act.

²⁷⁷ Article 415.1(3) of the Foreigners' Act.

²⁷⁸ Article 89a.1(1) of the Act on the provision of protection to foreigners in Poland.

²⁷⁹ Article 89a.1(2) of the Act on the provision of protection to foreigners in Poland.

²⁸⁰ Article 416. 3 of the Foreigners' Act.

foreigner who is detained together with his/her family members or a minor child is given a common room. Moreover, a unaccompanied minor detained at a guarded centre is kept in a separate part of the facility. Foreigners who declare that they are close to each other are placed in one room (if possible) upon their joint motion in writing.²⁸¹

Moreover, each foreigner has the right to:

- receive three **meals** a day, including one warm meal and beverages²⁸²,
- receive **free of charge clothing, underwear and shoes adjusted to a season**,²⁸³,
 - **buy with own funds** food and personal care items and to keep them in his/her room or cell²⁸⁴,
 - **purchase with own funds** tobacco products and smoke them in a dedicated place, provided that they received a permission of an officer on duty²⁸⁵,
- **receive parcels**²⁸⁶.

f) *Leisure and sport activities*

Detainees may i.a.:

- read **press**, and they have the right to buy press with their own funds and keep it in their rooms²⁸⁷,
- use the **Internet** on computers available for them²⁸⁸,
- use a **library**²⁸⁹,
 - **play board games** in time and place defined by the officer on duty²⁹⁰,
 - **buy with their own money** stationery, books, board games and keep them in their rooms or cells²⁹¹,
- use **leisure and sports equipment**²⁹²,
 - go for at least a two-hour **walk** in the open air, unless otherwise is

²⁸¹ See Article 414 of the Foreigners' Act.

²⁸² Article 23.1 of the Ordinance on guarded centres and detention centres for foreigners.

²⁸³ Article 415.1(8) of the Foreigners' Act.

²⁸⁴ Article 415.1(14) of the Foreigners' Act.

²⁸⁵ Article 416.3 of the Foreigners' Act.

²⁸⁶ Article 415.1(16) of the Foreigners' Act.

²⁸⁷ Article 415.1(10) of the Foreigners' Act.

²⁸⁸ Article 415.1(11) of the Foreigners' Act.

²⁸⁹ Article 415.1(12) of the Foreigners' Act.

²⁹⁰ Article 416.3 of the Foreigners' Act.

²⁹¹ Article 415.1 (15) of the Foreigners' Act.

²⁹² Article 415.1(13) of the Foreigners' Act.

recommended by a doctor²⁹³.

The sportsground dedicated for foreigners must feature in particular a hardened pitch for team games and a playground for children equipped with playing equipment (in a guarded centre in which minors are kept)²⁹⁴.

g) *The right to religious practises*

Within the right to unrestricted religious practises the foreigners may²⁹⁵:

- **keep objects** of religious cult,
- **engage in religious practices** and use religious services,
 - listen or watch **religious services** broadcast through mass media in their rooms.

In addition, **a room dedicated to religious practices**²⁹⁶ must be provided at the premises of the guarded centre for foreigners.

h) *Additional entitlements for the minors*

In accordance with the adopted regulations, a minor staying at a guarded centre is entitled to participate in educational, recreational and sports activities at the time and place specified by the head of the centre. The programme of classes should be adjusted to the age of the minor and the length of his/her stay in the territory of the Republic of Poland²⁹⁷.

II. Obligations of a detainee at the guarded centre for foreigners

Apart from rights, the detainees have an obligation to observe and respect the rules and regulations applicable at the guarded centre or detention centre.

A foreigner detained at a guarded centre or detention centre must not i.a.²⁹⁸:

- disturb the peace and order,
 - possess, outside the deposit, technical devices used for image recording, as well as objects that may pose a threat to order or security,
- consume alcohol and use drugs or psychotropic substances,
- smoke outside the dedicated places,
 - cause bodily injury or health disorder to oneself, or incite or aid and abet in such acts,

²⁹³ Article 416. 3 of the Foreigners' Act.

²⁹⁴ Article 9.1 of the Ordinance on guarded centres and detention centres for foreigners.

²⁹⁵ Article 415.1(9) of the Foreigners' Act.

²⁹⁶ Article 3.1(6) of the Ordinance on guarded centres and detention centres for foreigners.

²⁹⁷ Article 416. 2 of the Foreigners' Act.

²⁹⁸ Article 420.1 and 2 of the Foreigners' Act.

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- arbitrarily change a room or place designated for sleeping.

Moreover, the Detainees must i.a.²⁹⁹:

- observe the rules and regulations applicable at the premises;
- carry out instructions of the centre's administrative staff or officers on duty,
- not disturb others with noisy behaviour during quite hours, i.e. between 10.00 p.m. to 7.00 a.m., and on holidays to 8.00 a.m.,
- observe the principle of social cohabitation,
- take care of personal hygiene and keep clean the premises they use.

A foreigner admitted to a guarded or detention centre must also deposit his/her documents, money and valuables³⁰⁰.

Moreover, at the admission to a guarded centre or detention centre and during their stay in there, foreigners may be **subject to personal search**³⁰¹. This kind of inspection³⁰² involves checking:

- the contents of clothes and shoes of a person being searched and any items on her/his body, without uncovering the parts of body covered by clothing,
- the contents of clothes and shoes of a person being searched and any items on her/his body while uncovering the body parts covered by clothing for the purpose of taking away guns or other items³⁰³ in case the possession thereof was proved to the person being searched during the check,
- oral cavity, nose, ears and hair of the person being searched,
- private parts of the person being searched, in particularly justified cases.

The detainee being searched must allow the officers to carry out their activities, and the officers should carry them out so that to avoid excessive infringement of personal rights of the detainee. The detainee should be partially dressed during the check. The officer shall first check a top or bottom part of the clothing and before checking the other part, the detainee shall be allowed to put on the clothing which has already been checked. It should also be noted that the officer should inform the detainee being checked of his/her right to complain and of the possibility of requesting a report of the personal search. Such a report should be drawn up if the detainee submits such a request directly after the search has taken place.

Apart from personal search, a head of the guarded centre, an officer in charge

²⁹⁹ Article 419 of the Foreigners' Act.

³⁰⁰ Article 410. 2 and 3 of the Foreigners' Act.

³⁰¹ Article 412.1 of the Foreigners' Act.

³⁰² Detailed regulations concerning personal check can be found in Article 11aa of the Act of 12 October 1990 on Border Guard (consolidated version: Dz.U. of 2020, item 305).

³⁰³ See Article 11 11.1(2)(b-d) of the Act on Border Guard.

of the detention centre or other people designated by them may carry out ad hoc inspections of foreigners' rooms and cells as well as other rooms in which foreigners stay³⁰⁴.

III. Disciplinary liability of foreigners

A detainee is liable for violating the prohibitions and orders resulting from the applicable legislation and rules and regulations which define the detention at the guarded centre of detention centre.

Penalties include an up to 7-day-ban on participation in educational, cultural or sports activities, except for the right to use a library and the right to read press or buy food and tobacco products and other items allowed at the guarded centre³⁰⁵.

A penalty is imposed by a decision upon a written application of a head of the guarded centre or an officer authorised by the letter, a commander of Border Guard unit or a commander of the Border Guard unit competent with respect to the location of the detention centre³⁰⁶.

IV. Supervision of the guarded/detention centres

Supervision over the legality and correctness of stay of foreigners in guarded centres and detention centres for foreigners is exercised by a penitentiary judge of a district court with jurisdiction over the area where the guarded centre or detention centre for foreigners is located. The supervision consists in particular in audit and assessment of³⁰⁷:

- the foreigners' living conditions, medical care conditions, distribution of foreigners in rooms and cells,
- correctness of handling foreigners' complaints and requests,
- whether disciplinary penalties imposed on the foreigners were justified,
- whether a medical procedure to which a foreigner was subjected was justified,
 - the rules and regulations of a given facility,
 - observance of safety rules at the facility, including the rules concerning

³⁰⁴ Article 1 of the Annex to the Ordinance on guarded centres for foreigners and detention centres for foreigners. Rules and regulations concerning the foreigners' stay at a guarded centre for foreigners and detention centre for foreigners.

³⁰⁵ Article 421.2 of the Foreigners' Act.

³⁰⁶ Article 421.3 of the Foreigners' Act.

³⁰⁷ Article 426.1 and 2 of the Foreigners' Act.

the use of direct coercion,

- the correctness of the procedures launched by the facility's administration in the event of a crime and also in case of extraordinary events, including a deaths of foreigners or revolts.

A penitentiary judge visits guarded centres and detention centres for foreigners. He/she has the right to enter and move around the premises at any time without any restrictions, he has the right to inspect documents, request explanations from the administrative staff and interview foreigners placed therein in the absence of other persons. If, in the opinion of the penitentiary judge, there is a need to issue a decision that does not fall within his or her jurisdiction, and in particular an administrative decision, he or she shall forward his or her findings together with relevant motions to the Border Guard authority in charge of the facility³⁰⁸.

³⁰⁸ Article 426.3 and 4 of the Foreigners' Act.

This publication presents harrowing stories of people who have experienced torture. Mothers whose children had their feet shot through; men who saw their friends dead; people who repeatedly made suicide attempts. These are just some of the situations revealed during 9 visits and re-inspections conducted by the NMPT at 6 guarded centres for foreigners in the period 2016-2018.

The purpose of this publication is to present the conclusions of these visits, list key systemic problems, and identify inadequacies that in many cases directly contribute to the re-traumatization of torture victims. The purpose of this publication is to present the conclusions of these visits, list key systemic problems, and identify inadequacies that in many cases directly contribute to the re-traumatization of torture victims.