

Warsaw, 7 September 2020

KMP.570.5.2020.MK

**Report of the National Mechanism for the Prevention of Torture
on the ad hoc visit to the rooms for detained persons or persons brought for sobering up
within the units reporting to the Warsaw Police Headquarters**

1. Introduction

Based on Article 19 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment, adopted by the General Assembly of the United Nations in New York on 18 December 2002 (Journal of Laws [Dz. U.] of 2007 No 30, item 192), hereinafter referred to as OPCAT, and acting at the request of the Commissioner for Human Rights, on 8 August 2020 the National Mechanism for the Prevention of Torture (hereinafter: NMPT) carried out visits to the selected rooms for detained persons or persons brought for sobering up (RDP) within the structures of the Warsaw Police Headquarters.

Deputy Director of NMPT, Mr Marcin Kusy (lawyer), and Ms Aleksandra Nowicka (criminologist, security expert) conducted a visit to the RDP at the Warsaw Police Headquarters (Nowolipie Street) and to the RDP at the District Police Station Warsaw V (Żeromskiego Street)¹ in Warsaw. Ms Aleksandra Osińska (psychologist) and Mr Michał Żłobecki (lawyer) made a visit to the RDP at the District Police Station Warsaw IV (Żytnia Street) and to the RDP at the District Police Station Warsaw II (Janowskiego Street). Dr Justyna Józwiak (sociologist) and Justyna Zarecka (political scientist, security expert) made a visit to the RPD at the District Police Station Warsaw VI (Jagiellońska Street) and to the RDP at the Powiat Police Station in Piaseczno.

¹ As RDP at the District Police Station Warsaw V (Żeromskiego Street) was designated to receive only those detained who are suspected of the Coronavirus infection, no persons detained in connection with the manifestations on Friday were staying there. The last placement in the RPD took place on 16 July 2020.

Due to the epidemiological situation, the NMPT representatives, while performing their duties, used personal protective equipment such as protective masks meeting standard SNN200642, disposable gloves and disinfectant.

The visits were of an *ad hoc* nature, and their objective was to examine the situation of those detained by the police in connection with the protests which took place in Krakowskie Przedmieście Street and in Wilcza Street in Warsaw on 7 August 2020, and the conditions of their detention in the context of the implementation of the so-called minimum anti-torture guarantees. The visits were conducted between 11.30 a.m. and 4.30 p.m.

The following activities were carried out during the visits:

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

Following the visits, the detention reports were analysed as well as monitoring recordings showing the admission and the course of detention and placement in one of the RPDs

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

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

2. Prohibition of repression

According to Article 21.1 of OPCAT, no person (e.g. a detained person, police officer or employee of the police station, a family member or any other person) or organization that has communicated information to NMPT, may bear any sanctions or be otherwise prejudiced in any way, regardless of whether the information provided was true or false.

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

3. Anti-torture guarantees

a) Access to a lawyer from the beginning of detention

In practice, not every detained individual in Poland has access to a lawyer from the outset of detention. Such situation poses a risk of ill-treatment, because, as NMPT experience shows, the risk of torture is the greatest immediately upon detention. Of crucial importance is in this respect the situation of poor people who cannot afford to pay for a defence counsel of their choice. Furthermore, the procedure for selecting a public defender does not in practice ensure access to a defence counsel immediately upon detention. The request for the appointment of a public defender may only be submitted following the first hearing as a suspect and not immediately upon apprehension. Thus, the situation is such that prior to the appointment of a public defender and their first contact with and the client, police officers conduct their work-related duties involving the detained (e.g. interrogation, preliminary hearing). Difficulties in ensuring contact with a lawyer/legal adviser from the outset of detention are signalled by international bodies and institutions, including the European Committee for the Prevention of Torture (hereinafter: CPT), the Committee Against Torture (hereinafter: CAT), and by Polish bar associations and professional self-governments.

The right to obtain legal aid at an early stage of criminal proceedings stems from the case-law of the European Court of Human Rights (ECHR) in Strasbourg, which has repeatedly stressed that suspect's access to a defence counsel, including enabling their preparation for the defence and the exercise of this right in the course of the proceedings, is extremely important for the fairness of the trial and should be guaranteed from the first police interrogation. In 2016 the ECHR pointed out that the right of any person accused of a crime to effective defence by a lawyer, guaranteed by Article 6.3(c) of the European Convention on Human Rights, is one of the fundamental features of a fair trial. Immediate access to a lawyer represents an important counterbalance to the vulnerability of suspects in police custody and constitutes a fundamental guarantee against coercion and ill-treatment by the police. It also and contributes to the prevention of miscarriages of justice and to the achievement of the objectives set out in Article 6, namely equality between the accusation and the defence and the accused².

Referring directly to the conditions of the Polish system, in its Report on the Visit to Poland in 2017 the CPT emphasized that access to a lawyer is a fundamental safeguard against ill-treatment, but regardless of that, practical access of detainees to the exercise of this right is

² ECHR judgement of 13 September 2016, case Ibrahim and others vs the United Kingdom (Grand Chamber, complaints no. 50541/08, 50571/08, 50573/08 and 40351/09)

still a problem³. Furthermore, there is still no provision in Polish law allowing for the appointment of an *ex officio* lawyer before the stage of court proceedings. Therefore, persons in police custody who are not in a position to pay for legal services are effectively deprived of the right of access to a lawyer.⁴ The Committee has also indicated that in its opinion persons taken into police custody in Poland continue to run an appreciable risk of being ill-treated and that the Polish authorities should step up their efforts in this area⁵.

In addition, in 2019 the CAT was of the opinion that persons detained in Poland are deprived, in practice, of the possibility of contact with a lawyer or legal adviser from the very outset of detention, including before the first interrogation by the law enforcement authorities. The Committee pointed out to the necessity of taking effective measures by the Polish authorities to guarantee that all detained persons are afforded all fundamental legal safeguards from the very outset of their deprivation of liberty, in accordance with international standards. It also emphasized the need to implement into Polish law Directive 2013/48/UE of the European Parliament and of the Council (EU) of 22 October 2013 and to ensure that the guidelines laid down therein are applied in practice⁶.

It should be stressed that according to the abovementioned Directive of the European Parliament and of the Council (EU), suspects or accused persons have access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively. Access to a lawyer should be provided without undue delay: before they are questioned by the police or by another law enforcement or judicial authority, upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act, without undue delay after deprivation of liberty, where suspects or accused persons have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court⁷.

In addition, pursuant to Directive 2016/1919 of the European Parliament and of the Council (EU) of 26 October 2016, suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require. Legal aid should be granted without undue delay, and at the latest before questioning a

³ Cf. CPT Report on the visit to Poland, CPT/Inf (2018) 39, para. 23.

⁴ Ibid., paragraph 25.

⁵ Ibid., paragraph 21.

⁶ Cf. Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, point 16.

⁷ Cf. Directive 2013/48/UE of the European Parliament and of the Council (EU) of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ UE.L.2013.294.1)

particular person by the police, by another law enforcement authority or by a judicial authority, or before the investigative or evidence-gathering acts⁸.

It must be emphasized that since 2017 the Commissioner for Human Rights (CHR) has appealed to the Minister of Justice for the implementation of Directive 2013/48/UE of the European Parliament and of the Council (EU), however the Ministry of Justice has considered that Polish legal regulations are in compliance with it and no change is required in this regard. In its last intervention in 2019 the CHR quoted the arguments of CAT pointing out, inter alia, that in the light of the provisions of the Treaty on the Functioning of the European Union, failure to implement the Directive in practice may mean that it is directly applied by the courts in place of the provisions which are contrary to it, and the legality of the procedural steps which are contrary to its requirements may be challenged. In addition, it may result in the state's liability for damages⁹. The Supreme Bar Council in Warsaw, in turn, pointed out that the deadline by which Poland was obliged to implement into its legal order the directive on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings passed in May 2019¹⁰.

As regards persons detained on 7 August 2020, with whom NMPT representatives held talks, it was the issue of access to lawyer/legal adviser from the outset of detention which was the key problem. In the NMPT's opinion this situation showed most clearly all the shortcomings of the current systemic solutions in this area. It was also the Regional Bar Council in Warsaw¹¹ and Bar Association "Defensor Iuris"¹² which pointed out the fact that essential standards of defence laid down in Directive 2013/48/UE of the European Parliament and of the Council (EU) of 22 October 2013 were not complied with.

The NMPT's interviewees admitted that when the detained person knew the name and telephone number of the lawyer and demanded contact with him, it was possible to meet the lawyer. In some of the detention reports analysed, there was a note that a lawyer was present when the activities were carried out; these detainees also confirmed this in their talks with the NMPT's representatives. However, these were occasional situations. A large part of NMPT's interviewees were people who were apprehended by the Police for the first time; many of them

⁸ See Directive 2016/1919 of the European Parliament and of the Council (EU) of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ EU.L.2016.297.1)

⁹ General Intervention of CHR of 8 October 2019, ref. II.5150.9.2014.

¹⁰ Position no 1 of the Regional Bar Council in Warsaw of 9 August 2020 on the exercise of the right of defence.

¹¹ Ibid.

¹² The letter of the Bar Association "DEFENSOR IURIS" from Słupsk concerning the detentions on 7 August 2020 sent to the Commander-in-Chief of the Police on 10 August 2020.

had never had contact with lawyers before. **In the opinion of the NMPT, if it had not been for the sacrifice of the lawyers who arrived at the police stations on their own initiative and helped all the detainees, the vast majority of these persons would not *de facto* have had the possibility to receive legal aid.**

In this context, it is worthwhile to point out that several detainees claimed that information about the possibility of using legal aid of the lawyers gathered before the police stations was provided only after they had signed the detention report and submitted explanations. In these cases, the detainees contacted the lawyers only before they were transported to the RDP. In the detention reports of these persons, however, there are notes that they did not request contact with a lawyer. Two of the detainees said that they were not aware of the grassroots initiative of the lawyers, but at one of the police stations they were given a declaration to sign on their willingness to receive assistance of a defence counsel before a court. Both men claimed that the information about what this actually meant was given in a chaotic way, and, what is more, in the middle of the night. None of them filled in this document because they could not understand what such a declaration could result in, and in particular whether such assistance would be free of charge. By their own accounts, no one explained to them whether they could make such a request at a later stage of the proceedings. According to the information provided by one of the men, he met with the lawyer after being placed in the RDP when he was taken for questioning, which happened as late as in the afternoon of 8 August. However, the man was apprehended at 10.10 p.m. on 7 August, so the first contact with the lawyer did not take place until after over a dozen hours. Several other interviewees also said that until the moment of meeting the NMPT representatives (despite the apprehension on the previous day around 9:00 p.m. and 11:00 p.m.), they had no contact with a lawyer and did not know how they could receive their assistance (they did not know the particulars of any lawyer/legal advisor at the time when the detention report was being drawn up). Their detention reports comprised information that they did not request contact with a lawyer.

It should be pointed out that among the interviewees there were also persons who did not request contact with a lawyer deliberately, because they were convinced that the activities would be completed immediately and they could return home as soon as possible.

It is worthwhile to note that some detainees had a telephone number written on their bodies at which legal assistance would be available. According to the information provided by them, this number was given during the protest, without the personal data of its owner. The analysis of the detention reports shows that police officers made attempts at calling the number, but to no avail. In one case, however, the detained person requested contact with the lawyer,

giving his name and surname, without knowing his telephone number. There was no information in that person's detention report, whether that contact was ensured, but it appears from his account that the meeting with the lawyer finally took place.

In this context, it should be pointed out that on 9 August 2020 the Regional Bar Council (RBC) in Warsaw adopted position no. 1 on the full exercise of detainees' right of defence. It indicated that the fundamental element of the right of defence is the right to legal aid at an early stage of detention. This right should be exercised by ensuring each person a lawyer involved in the earliest procedural steps, including by providing information on the client's situation. The RBC has assessed as inappropriate the fact that it is still the detainee's responsibility to provide their defence counsel's telephone number and that access to a lawyer is not effectively ensured at this stage¹³.

When visiting police units, the National Mechanism for the Prevention of Torture emphasises each time that, in order to increase access to a legal counsel, a list of attorneys and legal advisers authorised to act as legal counsels should be drawn up for the area within the jurisdiction of the relevant self-government of attorneys and legal advisers. In addition, detainees should be informed of the existence of this list and it should be made available to them if they wish so. This standard is in line with the recommendations of the CPT, which recommended that lists of *ex officio* lawyers available to detained persons should be drawn up in cooperation with the self-government of attorneys and legal advisers. Such lists should be available in every police station¹⁴. Furthermore, in accordance with the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, in order to ensure prompt access to legal aid at police stations, it is recommended that a list of lawyers be compiled, in consultation with the self-government of attorneys and legal advisers¹⁵.

Also CAT in its concluding observations on Poland's implementation of the UN Convention against Torture¹⁶, pointed out the information obligations on the part of police officers in this respect. The Committee emphasised that Poland should take effective measures to guarantee that all detained persons are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, in accordance with international

¹³ Position no. 1 of the Regional Bar Council in Warsaw on the full exercise of the detainees' right of defence of 9 August 2020.

¹⁴ Cf. Report on the CPT visit to Serbia, CPT/Inf (2018) 21, paragraph 17; Report on the CPT visit to Slovenia, CPT/Inf (2017) 27, paragraph 15.

¹⁵ Cf. Annex United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A. Introduction, paragraph 2; Principle 3. Legal aid for persons suspected of or charged with a criminal offence, paragraph 21. Principles and Guidelines adopted by the UN General Assembly on 20 December 2012.

¹⁶ Cf. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the UN General Assembly on 10 December 1984 ((Journal of Laws) of 1989, No 63, item 378).

standards. Officers in police stations are responsible for providing detained persons with a list of on-duty attorneys and legal advisors¹⁷.

As the NMPT experience shows, the lists of attorneys and legal advisers are kept in the station's duty rooms, and there is access to their electronic version there. However, none of the detainees interviewed by the NMPT delegation were informed about the possibility of using such list, either during their stay in the police stations or after their placement in the RDP.

The meetings with defence counsels which took place were held in the conditions not ensuring confidentiality, within the sight and hearing of police officers. They were held in the corridors, in the offices. One person claimed that the conversation with the lawyer took place in a body search room with open doors. The lawyer was to clearly signal to the police officers that he did not agree to this form of contact and ordered them to record it. However, there is no mention of this in the detention report, as the talk with the lawyer was to be held after the detention report was signed. In this context, it should be stressed that the person was apprehended at 9:00 p.m., whereas the report was finished at 11:10 p.m. This means that the detained person had no contact with the lawyer for at least two hours.

It appears from the talks with the detainees that contact with the lawyer lasted only a few minutes. One person was to be informed that it could not last longer because of the immediate transfer to the RDP. However, by this person's own account, he was waiting in the corridor for the arrival of the police car for about 30 minutes after the talk with the lawyer.

During the visit, also the lawyers themselves signalled to the NMPT that their access to the clients was hindered, among other things, by waiting for a long time for the opportunity to meet the detainee who was already staying in the RDP. The Regional Bar Council in Warsaw expressed its firm opposition to those police actions which hindered or prevented access of legal counsels to the detainees¹⁸. In addition, the Bar Association "Defensor Iuris" emphasised that the lawyers who gathered at police stations and who were performing their professional duties were not a threat to the state security or public order. The representatives of the Association stressed that it is incumbent on the police as the law enforcement authority to ensure the detainees immediate contact with lawyers¹⁹.

¹⁷ Cf. The Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, paragraphs 15 b) and 16 b).

¹⁸ Position no. 1 of the Regional Bar Council in Warsaw on the full exercise of the detainees' right of defence of 9 August 2020.

¹⁹ The letter of the Bar Association "DEFENSOR IURIS" from Słupsk concerning detentions on 7 August 2020 sent to the Commander-in-Chief of the Police on 10 August 2020.

In this context, it should be stressed that, in the opinion of the NMPT, the right of access to a lawyer upon detention by the police must include the right to meet them in private. The direct physical presence of a lawyer by the detained person is essential and should be seen as one of the crucial elements aimed to prevent ill-treatment of persons deprived of liberty. It is an important means of ensuring that the physical and mental state of a particular person is properly assessed. Furthermore, if the meeting with the lawyer is not held in private, the detained person may not feel comfortable enough to reveal how they have been treated²⁰. In the CPT report on its last visit to Poland, the Committee called upon the Polish authorities to ensure that persons detained by the police can in all cases exercise their right to talk to a lawyer in private²¹.

However, as the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: SPT) emphasises, detainee's access to a lawyer is a broader concept that goes beyond the provision of legal aid, exclusively for the purposes of defence in criminal proceedings. The presence of a defence counsel may not only deter the police from resorting to ill-treatment of persons deprived of their liberty, but may also work as a protection for the police officers in case they face unfounded allegations of ill-treatment²². In addition, the lawyer is the key figure in assisting the person deprived of liberty in exercising his or her rights, including access to complaint mechanisms²³.

The SPT also points out that the system of protection against torture must be looked at systematically. Access to a lawyer, combined with the oversight of all places of deprivation of liberty by independent bodies, judicial and prosecutorial oversight of custody, and the possibility to lodge complaints with an independent body charged with examining allegations of ill-treatment, are key safeguards against torture²⁴. The SPT also recommends that national authorities should provide adequate information on the availability of a lawyer, including the lawyer of choice²⁵.

²⁰ CPT/Inf(2011)28-part1.

²¹ Report on the CPT visit to Poland, CPT/Inf (2018) 39, paragraph 26.

²² Cf. Report on the SPT visit to the Maldives, 26 Feb. 2009, CAT/OP/MDV/1, paragraph 62; Report on the SPT visit to Mexico, 31 May 2010, CAT/OP/MEX/1, paragraph 126; Report on the SPT visit to Sweden, 10 September 2008., CAT/OP/SWE/1, paragraph 61; Report on the SPT visit to Benin, 15 March 2011, CAT/OP/BEN/1, paragraphs 53 and 85.

²³ Cf. Report on the SPT visit to the Maldives, 26 Feb. 2009, CAT/OP/MDV/1, paragraph 62; Report on the SPT visit to Brazil, 5 July 2012, CAT/OP/BRA/1, paragraph 67; Report on the SPT visit to Ukraine, 16 March 2016, CAT/OP/UKR/1, paragraph 39; Report on the SPT visit to Sweden, 10 September 2008, CAT/OP/SWE/1, paragraph 61; Report on the SPT visit to Benin, 15 March 2011, CAT/OP/BEN/1, paragraph 85.

²⁴ Cf. Report on the SPT visit to the Maldives, 26 Feb. 2009, CAT/OP/MDV/1, paragraph 63.

²⁵ Cf. Report on the SPT visit to Brazil, 5 July 2012, CAT/OP/BRA/1, paragraph 68; Report on the SPT visit to Ukraine, 16 March 2016, CAT/OP/UKR/1, paragraph 42; Report on the SPT visit to Benin, 15 March 2011, CAT/OP/BEN/1, paragraph 87.

For years the National Mechanism for the Prevention of Torture has been focussing on the problem of the lack of access to a defence counsel from the outset of detention²⁶. It was also signalled to the Minister of Justice by the Commissioner for Human Rights²⁷. Unfortunately, since 2017 the Minister has not responded to the general interventions made by the Commissioner for Human Rights on this matter.

Given the above, the National Mechanism for the Prevention of Torture recommends that:

- **an effective system of legal aid ensuring each detained person access to a lawyer from the very outset of detention be introduced;**
- **meetings with a defence counsel be ensured in private, out of the sight and hearing of police officers;**
- **a list of attorneys and legal advisers authorised to act as legal counsels be drawn up, in the area within the jurisdiction of the relevant self-government of attorneys and legal advisers; detainees should be informed about its existence and it should be made available to them, if they wish so.**

b) Right to have a third person informed of the detention

According to the analysis of the detention reports, each detained person who requested that a person indicated by them should be informed, by giving their name and surname, telephone number, had the possibility of notifying the selected person of the detention and location. This right was exercised by a police officer. Each of the reports stated that the right was exercised, indicating the time when the phone call was made. Usually, the notification was made about 2-3 hours after the apprehension.

Some of the detainees whose detention reports indicated that they did not require a third party to be informed of their detention claimed that they themselves contacted the related persons by phone during transport to the police station, as they still had their mobile phones.

However, the delegation received worrying signals that some officers required that the number to a designated person should be given from memory, not allowing the contact to be found in the phone during the activities. One of the detainees claimed that he was permitted to give the phone number to the third person while the detention report was being

²⁶ Cf. annual reports of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland.

²⁷Cf. General Interventions of CHR to the Minister of Justice of 18 April 2017 and 27 September 2018. KMP.570.3.2017.RK.

drawn up, but he could not remember it. He was not allowed to check the number in his own mobile phone, even under the supervision of a police officer. When, having signed the report, the man recalled this number, he was to hear from the police officer that it was too late then and maybe they would let him notify someone in the RDP. It was particularly stressful for the detainee because he hoped that the related person would arrange legal aid for him. The detainee claimed that he still did not have the opportunity to inform the related person after being placed in the RDP. Meanwhile, the report comprised the information: "I do not request that an immediate family member or another designated person be notified".

It is worthwhile to stress, however, that this was not a common practice, as some of the interviewees reported that the police allowed them to find the number in their own phone, under police supervision. The situation seemed to depend on the practice established with regard to this issue in a particular police unit.

The NMPT recalls that the right of persons deprived of their liberty to inform a person of their choice about their detention and about the fact and the place of detention is one of the fundamental guarantees against torture. According to principle 16.1. of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment²⁸ (hereinafter: the UN Body of Principles), promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of their family or other appropriate persons of their choice of the arrest, detention or imprisonment or of the transfer and of the place where they are kept in custody. It is worthwhile to underline that this is an extremely stressful situation for the people who are detained by the police for the first time. In addition, the detention reports were often drawn up as late as at night, which also did not provide conditions in which the detained person could easily recall the telephone number. In the opinion of the NMPT, the requirement to recall from memory a telephone number effectively prevents detainees from exercising the right to notify a third person of their detention and it should not exist.

Many interviewees also pointed out that they did not receive any feedback from police officers on whether their related persons were informed of their detention. Some detainees kept asking the police officers about this. This was an additional element that introduced a sense of anxiety and uncertainty. In the opinion of the NMPT, a detainee should, as a rule, be able to inform the selected person about their detention themselves, and only in special situations

²⁸ Resolution of the UN General Assembly 43/173 of 9 December 1988.

justified by the specific nature of a given situation should the duty to inform be carried out by a police officer. It should be borne in mind that not every reason for detention justifies restrictions on contact with related persons. Lack of contact with a relative, especially for minors or persons detained for the first time, may constitute an additional, unjustified discomfort. The possibility of personal contact between the detained person and a related person enables them to communicate possible information about ill-treatment, which may lead to appropriate intervention.

The National Mechanism for the Prevention of Torture recommends that:

- **effective exercise of the right to have a third person informed of detention be ensured;**
- **a detainee should be able to inform, on their own, the selected person of their detention, and only in special situations justified by the specific nature of a given situation the performance of this duty should be entrusted to a police officer.**

c) Medical examination

There is no obligation in Poland to subject every detained person to a medical examination. The list of circumstances when a person is obligatorily subjected to such an examination is specified in the Regulation of the Minister of the Interior²⁹. These are as follows: persons who demand a medical examination; persons with visible injuries not posing an immediate risk to human health; persons who declare that they suffer from a condition requiring permanent or periodic treatment, the interruption of which would present a threat to life or health; breastfeeding women and pregnant women; persons with infectious diseases; persons with mental health disorders; and intoxicated minors or any other substance that has similar effect.

The interviews with the detainees and the analyses of documentation show that the majority of persons reporting the diseases were examined by the doctor. However, in the case of two persons, the medical examination was not carried out, despite the mention, in the detention reports, of the disease and the fact of taking medicines. In addition, two persons claimed to have informed a police officer about taking psychotropic drugs on a permanent basis due to epileptic attacks. Meanwhile, their detention reports indicate respectively: *according to*

²⁹ Cf. Regulation of the Minister of the Interior of 13 September 2012 on medical examinations for persons detained by the Police (Journal of Laws [Dz. U.] of 2012, item 1102), Article 1(3)

the declaration a person is healthy, does not take medication on a permanent basis and a person is not provided with treatment for chronic diseases. In the case of these people, no medical examinations were carried out in hospital prior to their detention. Three of the interviewees had visible injuries on their bodies, but they were not examined by a doctor. In the case of one person, the description of the injuries in the detention report did not correspond to the actual injuries. The document stated that *he had visible abrasions of the epidermis on the right cheek and right ear*, while the NMPT's representatives noticed that he also had abrasions, scratches and redness visible on his back, forehead, hands and chest. Moreover, this man was apprehended without his upper clothing and he wasn't given any clothing in the RDP either, so the injuries were visible³⁰. In the detainee's opinion, he was not offered medical consultation because the wounds and abrasions were superficial. In the case of another person who had scratches on the forehead, police officers asked if she needed medical consultation. The detainee refused because the wound was not deep and was disinfected at the place of detention by random people. A description of the injuries was included in the detention report. The detention report of the third person does not contain any information on the injuries sustained, while this person had visible bruises and redness on the body.

Another detainee, on the other hand, had abrasions on his hands, as recorded in the detention report. The man himself said that he did not know when they were sustained, these were minor scratches. They were also seen by a doctor, but there was no reference to these abrasions in the doctor's certificate issued before the detainee was placed in the RDP.

Although national law does not provide for such a requirement, the NMPT thinks that all detainees should undergo mandatory medical examinations. The medical examination of detainees and proper documentation of injuries found during the examination is considered to be the fundamental and minimum safeguards for these persons against torture and violence, which is strongly emphasised by international institutions monitoring the treatment of persons deprived of their liberty³¹. The careful and prompt documenting and reporting of such evidence makes it much easier to investigate cases of possible ill-treatment and to hold the perpetrators responsible, which in turn is an important element of preventing future ill-treatment. Any injuries that are noticed should be entered in a special form provided for this purpose, with body

³⁰ The detainee was given substitute clothing after the visit.

³¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Cf. e.g.: 2nd General Report, CPT/Inf (92) 3, Art. 36-38; Report of the CPT visit to Poland, 25 June 2014, CPT/Inf (2014) 21, Art. 26, 30; Report of the CPT visit to Poland, 25 July 2018, CPT/Inf (2018) 39, Art. 27.

charts to mark the injuries, which will be kept in the medical file. It would also be desirable to photograph the wounds and the photographs should be attached to the medical file³².

A medical examination aimed to reveal possible traces of violence and torture should meet two basic criteria: it should be carried out as soon as possible after the event has occurred and it should take into account the rules on the effective documentation of torture. The time taken to carry out the examination is also extremely important due to the requirement to determine as precisely as possible the time when the injuries were sustained or complaints were reported. Prompt contact with the doctor can also be of great importance for the people who are mentally ill or display suicidal behaviour. Being in a new, stressful situation, often without information on how long the detention will last, without access to the medication taken on a permanent basis and to quick medical consultation, may, among other things, cause a sense of anxiety, sudden low mood, panic attacks and also long-term consequences for the functioning as regards mental health. In this context, it is worth noting that in the case of detention reports and medical certificates analysed by the NMPT, it appears that access to the doctor was only provided after a few hours. An example is the situation of a man who was apprehended at 8.00 p.m. on 7 August 2020. The detention report was drawn up at 11.10 p.m. and it indicated that the detainee *suffers from a condition requiring permanent or periodic treatment, the interruption of which would pose a threat to life or health, he requests a medical examination, he displays no visible external injuries, and is treated for depressive disorders*. However, the medical examination was carried out as late as on 8 August 2020 at 3.23 a.m., which is more than 7 hours after apprehension. Another man whose detention report stated that he suffers from anxiety disorders and depressive disorders, and in addition he had visible abrasions and scratches on his hands, was apprehended at 10.10 p.m. on 7 August 2020. The detention report was completed at 2.28 a.m., while contact with the doctor was ensured at 3.04 a.m. on 8 August 2020. It is worthwhile to note that at that time none of these men had contact with the lawyer, who could even briefly assess the psycho-physical condition of his client.

It should be noted that a medical examination also protects police officers as such from false allegations that injuries were sustained during detainees' stay in the police unit. Furthermore, the awareness that possible signs of violence may be determined and documented may act as a deterrent to those considering the possibility of using violence against a person deprived of liberty.

³² Also CPT recommends that a specific register of injuries be established to record all types of injuries, cf.: Report of the CPT visit to Poland in 2017 [CPT/Inf (2018) 39], Article 80.

A medical examination of all detainees would also permit to demonstrate health problems that do not necessarily have to be reported to police officers, including health-related contraindications for detention. This is particularly important for people from marginalised social groups, which may be connected with an increased risk of the occurrence of health problems. The risk of such problems may increase due to the stress of deprivation of liberty.

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

The Commissioner for Human Rights has repeatedly drawn attention to the need to introduce an obligation to carry out medical examinations of every person detained by police officers, among others in the general intervention of 15 February 2012 addressed to the Commander-in-Chief of the Police³³ and in annual reports of the National Mechanism for the Prevention of Torture for the following years: 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018. The issue was also raised by the Commissioner in the letters concerning the Strategy of Activities aimed at Counteracting Human Rights Violations by Police Officers, adopted by the Ministry of the Interior and Police Headquarters on 11 March 2015³⁴.

The activities undertaken during the visit revealed another problem, raised by the NMPT, of examining people with mental disorders by doctors other than psychiatrists. The detainees reporting mental health problems were examined by doctors on duty in the emergency rooms. Only one person reporting psychiatric treatment was provided with an examination at the Institute of Psychiatry and Neurology in Warsaw. This person was first subjected to an internal examination at the Hospital in Solec District, and as a result of a medical referral, he was transported for a psychiatric consultation.

One interviewee claimed that the doctor from the hospital ignored his information about the psychotropic drugs he was taking, which he did not have with him. The doctor noted in the certificate the treatment of depression and the drugs taken, indicating that the detainee *did not require urgent administration of medication within 24 hours from the apprehension.*

Another person who underwent psychiatric treatment was also examined by the doctor (the detention report states wrongly that she was not) in the Hospital in Solec District. In the doctor's certificate there is information about the medicines taken, indicating that she does not

³³ File no. RPO-687961-VII-720.8.1/11/WS.

³⁴ File no. KMP.570.24.2015.WS.

have to be taken during the stay in the RDP. However, the doctor also noted the remarks of the detainee: *However, she should take the third medicine after 24 hours from her stay in the RDP, this evening following her release from the RDP – it is required in the case of depression to prevent a withdrawal syndrome, states the patient, who herself is a doctor.* The detainee was to hear from the doctor who examined her: *you will survive without one dose.* During the talk with the NMPT' representative the woman was worried about how long she would stay in the RDP, because she had already missed two doses of her medicines since her apprehension.

One of the men suffering from anxiety and depressive disorders was examined in the Wolski Hospital at Kasprzaka Street in Warsaw. There is information in the doctor's certificate about the medicine and its dose – once in the evening, every day. The man said that he always took it before bedtime. However, because he was detained at 10 p.m., he was unable to take the medicine that day, even though he had it in his backpack. The man was afraid that this would significantly deteriorate his condition.

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

As early as in 2016, the Commissioner for Human Rights addressed to the Commander-in-Chief of the Police and to the Minister of the Interior and Administration³⁵ the General Intervention on the examination of persons with mental disorders by doctors other than psychiatry specialists. Unfortunately, he did not share the Commissioner's arguments. Therefore, as the NMPT continues to disclose the cases of not ordering an examination of detainees by a psychiatrist, this issue needs to be re-examined by the Ministry of the Interior and Administration.

The interviewees claimed that the medical examination was carried out when they were handcuffed, in the presence of a police officer, although the medical staff did not ask for such

³⁵ General Intervention of the CHR to the Police Commander-in-Chief of 07 Jan. 2016, KMP.570.25.2015.; General Intervention of the CHR of 30 June 2016 to the Ministry of Interior, KMP.400.9.2015

assistance. One of the detainees claimed that the doctor measured his blood pressure on his handcuffed hands, because the blood pressure monitor did not require his hand to be slipped into the device. Only one of his handcuffs was unlocked when he had to sign something.

In the opinion of the NMPT, this practice weakens the preventive nature of access to medical examinations as a safeguard against torture. In the presence of a police officer a detainees may not feel comfortable enough to tell the doctor about the way they have been treated and to give full information about their health, the medication they are taking, their treatment or the psychiatric consultations they have had. This practice also entails the risk of violating the detainee's intimacy, respect for their dignity and medical confidentiality. Doctors are often the first persons, besides police officers, who detainees have contact with. For this reason, they take on a huge responsibility. Above all, they must determine whether a person's state of health allows for their isolation. Medical personnel should also assess and properly document the injuries of a detained person. Victims of violence are often unwilling to reveal their experiences, and therefore the expertise of the staff who deal with them is very important.

The use of handcuffs during medical examinations should be considered unacceptable. Such practice violates human dignity, hinders proper medical treatment, inhibits the development of a proper doctor-patient relationship and may be detrimental to the objectivity of medical findings³⁶.

According to the information provided by the detainees, the medicines they were prescribed by the examining doctor were bought for them by police officers. However, the transgendered person claimed to have been deprived of access to testosterone, which they should take on the day of the placement in the RDP according to the instructions of the doctor. They informed about it the examining doctor, who was to refuse to prescribe testosterone, claiming that he was not authorised to do so. There is no mention in the doctor's certificate about taking testosterone by the detainee, but the doctor prescribed psychotropic drugs which were bought. Without the possibility of verifying the information obtained, the National Mechanism for the Prevention of Torture recalls that the state of health of transgendered persons requires special attention. Deprivation of access to the medicines administered as part of hormonal therapy may pose a threat to their life and health.

Moreover, the irregularities described under this item of this report indicate that it is necessary for the Minister of Health to take actions in order to apply in practice specific rules

³⁶ Cf. Report on the CPT visit to Spain, CPT/Inf (96) 9 [Part 1], paragraph 150; Essex paper 3 Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, Penal Reform International Head Office and Human Rights Centre University of Essex, February 2017, p. 57 and 163.

on the role of medical professionals, laid down in the Istanbul Protocol³⁷. The Istanbul Protocol provides detailed information and guidance on how to identify and document cases of ill-treatment for the purposes of investigative bodies and courts. It is aimed, inter alia, at disseminating the knowledge of the methodology of conducting a medical and psychological examination of alleged victims of torture. It contains detailed guidelines on how to reflect the results of medical examinations in the documentation, and provides knowledge on how to interpret the information collected. It also touches upon important ethical problems that doctors may face. This document is therefore a valuable training tool for doctors.

The National Mechanism for the Prevention of Torture recommends that:

- **an obligation to subject to a medical examination each person detained by police officers should be introduced;**
- **a medical examination in situations where it is obligatory in accordance with the existing legal regulations should be definitely carried out;**
- **injuries sustained by detainees should be accurately documented;**
- **persons reporting mental disorders should be examined by psychiatrists;**
- **medical examinations should be carried out of sight and hearing of police officers, unless the doctor requests assistance;**
- **transgender persons should be ensured an appropriate level of medical care after detention;**
- **topics, described in the Istanbul Protocol, of detection and documentation methods for cases of torture and other cruel, inhuman and degrading treatment should be included in the professional training programme for doctors.**

d) Right to information and right to lodge a complaint

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

³⁷ Cf. The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (translation into Polish available at: <https://www.rpo.gov.pl/pl/content/protok%C3%B3%C5%82-stambulski-podr%C4%99cznik-skutecznego-badania-i-dokumentowania-tortur-oraz-innego-okrutnego>)

facilitates access to complaint mechanisms, thereby fulfilling an important role in preventing violence.

According to the directives of the European Parliament and of the Council (EU) the detainees should be informed, in accessible language, of the procedural rights and appeals they are entitled to. This Letter of Rights should be provided immediately after deprivation of liberty³⁸. Persons who do not understand Polish should be provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings³⁹.

SPT and CPT emphasise the right to information. SPT recommends that each person deprived of their liberty should be informed orally and in writing of the reason of their detention and their rights during detention. That information should be provided in a language that they can understand, at the outset of detention, and it should be recorded.⁴⁰

CPT points out that all persons detained by the police should be fully informed of their fundamental rights as from the outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police unit). Particular care should be taken to ensure that detained persons understand their rights. It is incumbent on police officers to ascertain that it has been done⁴¹. The CPT also stresses that persons deprived of their liberty should promptly receive information, both orally and in writing, about all avenues of complaint (including appeal procedures), both internal and external to the places in which they are being held. They should also have a clear understanding of the modalities for exercising their right to lodge a complaint⁴².

Meanwhile, the detainees indicated that police officers did not inform them in an understandable way about their rights, including, among other things, about access to legal aid, which has already been mentioned in this report. They only received the detention report and the Letter of Rights addressed to a detainee in criminal proceedings, not fully understanding the meaning of their rights. They also signalled that they did not have enough time to familiarize themselves with the detention report and, being under police supervision, they felt pressure and were afraid to ask additional questions in order not to provoke conflict situations. It should be

³⁸ Cf. Directive of the European Parliament and of the Council (EU) 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings (OJ EU L.2012.142.1).

³⁹ Cf. Directive of the European Parliament and of the Council (EU) 2010/64/UE of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ.EU.L.2010.280.1).

⁴⁰ Cf. Report on the SPT visit to Ukraine, 16 March 2016, CAT/OP/UKR/1, paragraphs 35-36.

⁴¹ Cf. Report on the CPT visit to Poland, CPT/Inf (2018) 39, paragraph 28.

⁴² Fragment of paragraph 79 of the 27th General Report [CPT/Inf (2018) 4].

emphasised once again that these activities were carried out at night, with many people under significant stress because they found themselves in such situation for the first time. When asked if they familiarized themselves with their rights and rules upon placement to the RDP, the interviewees responded: “I think we got something to sign”. But as they stressed, they arrived at the RDP in the early morning hours around 5:00-6:00 in the morning, after the sleepless night throughout which they were waiting and they were transported to different police stations and to the doctor. Therefore they admitted that they did not fully comprehend the information containing legal terminology. The interviewees pointed out that they were only informed that the wake-up call was at 6:00 a.m., breakfast at 7:00 a.m.; they also complained about the lack of information on the video surveillance in the cell. On Saturday morning one of the men was to ask a police officer on duty at the RDP for a copy of the rules and regulations for detainees, as the one hanging on the cell door was so faded that it could not be read, all the more so as the man did not have his glasses. As the detainee claimed, the police officer answered that there were no copies of rules and regulations available that he could give to the detainee.

The NMPT recommends that:

- **all persons detained be informed of their rights from the outset of their deprivation of liberty. The letter of rights should be provided by giving clear information orally upon detention, and then supplementing it in writing.**

Policemen should make sure that the detainees has understood their rights. The detainee should also have time to read the detention report prior to signing it. If necessary, police officers should provide the detainee with additional, oral explanations and enable him to familiarize himself thoroughly with the RDP rules and regulations.

e) Documentation and registers

During the visit, the NMPT’s representatives could observe the difficulties the lawyers encountered in getting access to their clients. The attorneys used the list of names, which was supplemented on an ongoing basis by entering, inter alia, information on the police station to which a particular person was transferred, so that they could exchange information on their clients placed in RDPs not only in Warsaw, but also in the surrounding towns. While starting visits before noon on 8 August 2020, NMPT received an information that the current place of detention of the 16 detainees was unknown.

This situation clearly confirmed the validity of the conclusions reached in 2019 by the UN Committee against Torture, which in its Concluding observations on the implementation by Poland of the UN Convention against Torture pointed out that deficiencies in the system of police registers result in lawyers having difficulties in locating their clients before the first interrogation⁴³. Then the CAT recommended that the deprivation of liberty be recorded in a national register at all stages, including transfers to different facilities, that lawyers and legal advisors have access to them, and that lawyers and legal advisors are able to promptly access their clients and communicate with them in private in adequate premises⁴⁴.

Moreover, the SPT stresses that the maintenance of complete and reliable records of persons deprived of their liberty is one of the fundamental safeguards against torture or ill-treatment. It is also an essential condition for the effective exercise of due process guarantees, such as the right to challenge the legality of detention (*habeas corpus*), and the right of the detainee to be brought before a court promptly. The SPT recommends that electronic registers be progressively established throughout the country, and that registers be harmonised. All persons deprived of their liberty should be promptly registered in a standardised and unified system, whereas police officers should be properly trained in the maintenance of registers, and they should enter the information upon arrival of the detainee⁴⁵.

In the talks with the NMPT representatives the detainees pointed out that it was very difficult for some police officers to draw up detention reports. They had a feeling that some young police officers had recently entered the service and were just learning how to carry out particular activities. The analysis of the detention reports leads to the conclusion that not all activities were properly documented. For example, there are obvious errors in the report of one of the detainees: under the item where notification to the district prosecutor should be entered, another person's personal data were provided. On the basis of the report itself, it is difficult to determine whether this was just a typographical error or there was wrong notification to the prosecutor. In another report, under the item concerning the notification to the prosecutor, the wrong surname of the detainee was entered (the name was correct). In addition, under the item for entering the name and surname of the prosecutor notified of detention, the word "District" was inserted, and therefore the entry reads: (...) "the District Prosecutor from the District

⁴³ Cf. Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, paragraph 15(c).

⁴⁴ Ibid., paragraph 16(c).

⁴⁵ Cf. Report on the SPT visit to Ukraine, CAT/OP/UKR/1, paragraphs 49-52.

Prosecutor's Office in Warsaw was notified". It was not even indicated which locally competent prosecutor's office should receive this notification.

The NMPT recommends that:

- **an electronic register of persons detained by the police be established, which would cover the whole country and contain, inter alia, information on detainees' place of stay, including transfers to different facilities. These data should be made available to detainees' attorneys forthwith;**
- **documentation on the detained persons be maintained in a reliable manner.**

4. Treatment

a) Legality of detention

According to the interviewees' accounts, there were people among the detainees who did not actively participate in the rally in Krakowskie Przedmieście Street or Wilcza Street, but they were only observing the events. Among the detainees there were also random people who said that at a particular moment they went out, for example, to the store and were on their way back home with their shopping. All persons pointed out to the enormous chaos prevailing among police officers. At the time of their detention, they were not given any reasons for it. Finally most of the persons apprehended were accused of committing the act under Art. 254 of the Penal Code⁴⁶, involving active participation in a riot knowing that its participants jointly commit a violent assault on a person or property.

The issue of legality of detaining persons is the subject of separate proceedings instituted by the Criminal Section at the Office of the Commissioner for Human Rights.

Without referring to the legitimacy of the detentions made, the National Mechanism for the Prevention of Torture stresses that placement in the RDP as a form of imprisonment should always be the last resort (*ultima ratio*). Its application must be necessary in a specific situation due to the nature of the act the detained person is suspected of having committed as well as the circumstances under which it was committed. Otherwise, this form of deprivation of liberty may be regarded as an instrument of repression and demonstration of state power over the individual. The abovementioned situations, reported by the persons interviewed, can hardly be regarded as requiring the use of a measure which interferes so much with human rights. Undoubtedly, a mere clarification of the matter in the police station would be a much more

⁴⁶ Act of 6 June 1997 – The Penal Code (Journal of Laws [Dz.U.] of 2019, item. 1950).

proportionate measure to the whole situation. A solution that would allow the detainees to avoid the negative impressions of being deprived of their liberty in the RDP would be to call them to a hearing the following day. The placement in the RDP in the circumstances when the detained person is ready to cooperate with the police and to demonstrate their innocence, is undoubtedly an attempt to intimidate such a person by having recourse to the last resort, i.e. isolation.

b) Apprehension

Of greatest concern to the NMPT's representatives was the information about the brutality of police officers towards the detainees. One person reported battery in a police car. According to the information provided, this person was thrown into a police car and when fell to the knees, the police started to kick, push and call their names. Then, a person was handcuffed⁴⁷. The NMPT representatives observed and recorded injuries on the bodies of some of the interviewees⁴⁸. The National Mechanism for the Prevention of Torture (NMPT) is deeply concerned about this information. It recalls that, in accordance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Poland, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The prohibition of torture is an absolute prohibition and is not subject to any restrictions. Torture is the most extreme example of a violation of human rights and it shows contempt for human dignity and degrades the society that allows it.

The detainees also pointed out to the disproportionate use of direct coercion measures, e.g. handcuffing detainees behind their back during transportation, throwing them to the ground to be handcuffed.

The National Mechanism for the Prevention of Torture recalls that the use of direct coercion measures must always be based on three fundamental premises: legality, finality and proportionality. This means that, when applying direct coercion measures, police officers may

⁴⁷ This person did not make an official complaint about the violence he reported.

⁴⁸ See paragraph *Medical examination*.

only use the measures that are laid down in the Act⁴⁹. The application of direct coercion measures should be preceded by other forms of non-invasive disciplinary measures and, if it is necessary to take them, they must be proportionate to the risk posed by the detainee.

Doubts arise over the way one of the detainees was escorted to the police car. According to his explanations and recordings, which appeared in the media, he was carried, handcuffed behind his back, by three policemen, facing down; one of the officers was holding his legs, the other two were carrying him by his forearms twisted back. Then he was thrown into the police car.

In the opinion of the NMPT, the way in which the detainee was brought to the police car was disproportionate to the situation and it cannot be justified from the viewpoint of the action itself. The measures taken by the police in this case appear to be disproportionate and are a showcase example of the demonstration of state power over an individual, which should not take place in a democratic state based on the rule of law.

The NMPT strongly emphasises that manifestations of violence against detainees, presented by some police officers, should be treated as unacceptable behaviour which has a negative impact on the image of the entire police service.

The European Court of Human Rights has repeatedly stressed in its case-law that the use of force by police officers may be justified upon detention. However, such force should only be used if it is lawful and absolutely necessary and should not be excessive. Failure to meet these basic requirements may constitute a breach of Article 3 of the European Convention on Human Rights⁵⁰.

The NMPT sees the need for taking further educational measures among police officers, aimed at treating citizens in a way that respects the inalienable dignity of each and every one of them, because only properly selected and trained police personnel are able to perform their duties properly, without resorting to violence, which is also an effective safeguard against torture for those deprived of their freedom. The CPT stresses that the effective prevention of torture and other forms of ill-treatment by police officers requires change of police culture, targeted at the respect for human rights and the reaction of police officers to any cases of ill-treatment by their colleagues. Violence against persons under police supervision should be seen as a violation of human rights and an unacceptable lack of professionalism, which affects the

⁴⁹ Act of 24 May 2013 on direct coercion measures and fire arms (consolidated text: Journal of Laws [Dz. U.] of 2019, item 2418).

⁵⁰ Cf. Bouyid v. Belgium, case no. 23380/09, paragraph 100-113, Rehbock v. Slovenia, case no. 29462/95, paragraphs 71-78, Layijov v. Azerbaijan, case no. 22062/07, paragraphs 39-48.

image of the entire police service. A change in the way police think and act should start with a competitive and rigorous recruitment system for service and adequate remuneration, which is an important tool to attract the best candidates and retain highly competent staff.⁵¹

In the talks with the NMPT's representatives, the detainees provided information on obscene, biting, homophobic and transphobic expressions: "now you're fucked", "if there were Fascists here, you would fucking run away from them", "an activist from Wielkopolska, how much do they pay you to come from as far away as Gorzów?", "in your Radzyń, you wouldn't be able to protest like that, because you would be kicked out". When the man was getting in the police car, one of the police officers was to start asking him about his health, adding: "you know, we transport people with HIV, tuberculosis, so we want to know if you have anything". One of the men was to say during his conversations with police officers that he would not give testimony, which was to result in him hearing when he asked the officer to use the toilet: "now I refuse to testify". It was only the other policeman whom he asked to use the toilet, let him do so. He was also supposed to hear the policemen's comments during all the activities: "was it worth it?", "Didn't you go over the top with it?". And while addressing a transgender girl, only male pronouns were used.

The NMPT recalls that the police officers' reticence in expressing their personal attitude towards detainees who have committed or are suspected of having committed a prohibited act is a measure of their professionalism. This is the consequence of the police role as a law enforcement agency, which should be limited to capturing persons who violate the legal order and safeguarding the necessary evidence of such violations. Evaluation of the conduct of persons detained by the Police is reserved for independent courts. It should be pointed out that it was already during its visit to Poland in 2017 that the CPT called upon the Polish authorities to pursue rigorously their efforts to combat ill-treatment by the police. It emphasised that police officers throughout the country should receive a firm message that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are unlawful and will be punished accordingly. Further, police officers must be trained in preventing and minimising violence in the context of an apprehension. In cases in which the use of force becomes necessary, they need to be able to apply professional techniques which reduce as much as possible any risk of harm to the persons whom they are seeking to apprehend⁵².

⁵¹ Cf. 28th General Report CPT, CPT/Inf (2019) 9, paragraphs 69-71; Report on the CPT visit to w Poland, CPT/Inf (2014) 21, paragraph 24.

⁵² Report on the CPT visit to Poland, CPT/Inf (2018) 39, paragraph 21.

All the persons who spoke to the NMPT's representatives drew attention to the enormous chaos prevailing among police officers. In many cases, these people were transported from one police station to another. Analysis of the detention reports showed that the time between detention and the start of activities at the police stations was in some cases more than five hours. Some of the interviewees were questioned at night. Unless it is justified by the specific circumstances of the case, it should be avoided to carry out this procedural activity late at night. There is no obstacle to the detainee being questioned the next day, in the presence of and after the consultation with their defence counsel. The carrying out of the questioning and interrogation at night, when the detainee is physically and emotionally exhausted by the very fact of their detention and the previous police interrogation, cannot be regarded as humane treatment.

The National Mechanism for the Prevention of Torture recommends that:

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

c) Misuse of handcuffs

According to the talks with the detainees, handcuffs were used during transportation, during activities at police stations and even during medical examinations. They were used despite the fact that the detainees remained under police supervision and were in closed vehicles or police premises. The detainees were often handcuffed behind their back, which is not always necessary or proportionate.

According to the Act on direct coercion measures and firearms, handcuffs may be used, inter alia, to ensure the safety of the convoy or to take detainees for questioning, and to prevent escape and symptoms of aggression or self-aggression⁵³. However, regardless of the reasons for use, their application should be individual, proportionate to the degree of risk and necessary to achieve the objective laid down in the Act. When choosing a direct coercion measure, the police officer should choose the one which causes the least possible level of discomfort to the detainee⁵⁴.

⁵³ Cf. Art. 11.9(1-11, 13 and 14); Art. 13.1, Art. 15.1 of Act of 24 May 2013 on direct coercion measures and fire arms (consolidated text: Journal of Laws [Dz. U.] of 2019, item 2418).

⁵⁴ Cf. Art. 6.1 in conjunction with z Art. 12.1(2a) of Act of 24 May 2013 on direct coercion measures and fire arms.

In the NMPT's view, handcuffs should not be used in a preventive manner with regard to all detainees, but only when clearly justified by a risk assessment in an individual case. Other police behaviour can be interpreted as an example of a demonstration of state power over an individual, which should not happen in a democratic state based on the rule of law. Handcuffs should not be fastened too tightly (this may have serious medical consequences) and should only be used as long as absolutely necessary.

The above standard is in line with CPT and SPT recommendations⁵⁵. Furthermore, CPT points out that handcuffs should not be used during interrogation or questioning of suspects⁵⁶.

As a rule they should not be used during transportation⁵⁷. Their application ought to be justified by the risk assessment in an individual case, when it seems absolutely necessary. Then they should be used in such a way as to eliminate the risk of injury to the transported person⁵⁸. The practice of handcuffing detainees behind their back should be avoided due to the potential for discomfort to the person concerned and the risk of injury in case of accident.

CPT emphasises that the escorted persons should be transported in safe vans, thereby eliminating the necessity to have handcuffs on during transportation⁵⁹.

Also experts from the University of Essex draw attention to the fact that handcuffs should not be used automatically during every transfer of detainees. They stress that precautions need to be taken to prevent physical harm of passengers who are restrained in vehicles in case of break action or accident, in particular as handcuffs limit the ability of prisoners to protect themselves from falling forward⁶⁰.

As already mentioned in paragraph 3c of this report, the use of handcuffs during medical examinations, particularly with hands behind the back, should be considered unacceptable. This

⁵⁵ Cf. Report on the CPT visit to France, CPT/Inf (2017) 7, paragraph 13; Report on the CPT visit to Cyprus, CPT/Inf (2018) 16, paragraph 15; Report on the CPT visit to the Netherlands CPT/Inf (2017) 1, paragraph 13; Report on the CPT visit to Belgium, CPT/Inf (2018) 8, paragraph 18; Report on the CPT visit to Spain, CPT/Inf (2017) 34, paragraph 8; Report on the CPT visit to the UK, CPT/Inf (2017) 9, paragraph 14; Report on the CPT visit to Serbia, CPT/Inf (2016) 21, paragraph 53; Report on the CPT visit to Gibraltar, CPT/Inf (2015) 40, paragraph 11; Report on the CPT visit to Russia, CPT/Inf (2013) 41, paragraph 28; Report on the SPT visit to Chile, CAT/OP/CHL/1, paragraphs 45-46; Report on the SPT visit to New Zealand, CAT/OP/NZL/1, paragraphs 110-112.

⁵⁶ Cf. Report on the CPT visit to Kosovo, CPT/Inf (2009) 3, paragraph 38.

⁵⁷ Cf. Report on the SPT visit to New Zealand, CAT/OP/NZL/1, paragraphs 110-111; Transport of detainee, Factsheet, June 2018, CPT/Inf (2018) 24, paragraph 3. Security measures.

⁵⁸ Cf. Transport of detainee, Factsheet, June 2018, CPT/Inf (2018) 24, paragraph 3. Security measures; Report on the CPT visit to Serbia, CPT/Inf (2016) 21, paragraph 53.

⁵⁹ Cf. Transport of detainee, Factsheet, June 2018, CPT/Inf (2018) 24, paragraph 3. Security measures; Report on the CPT visit to Ireland, CPT/Inf (2007) 40, paragraph 101; Report on the CPT visit to the UK, CPT/Inf (2006) 28, paragraph 23; Report on the CPT visit to Hungary, CPT/Inf (2006) 20, paragraph 126; Report on the CPT visit to Serbia, CPT/Inf (2016) 21, paragraph 53.

⁶⁰ Cf. Essex paper 3 Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, Penal Reform International Head Office and Human Rights Centre University of Essex, February 2017, Use of restraints, s. 57.

is a degrading practice which, combined with the supervision by police officers of the person examined, increases tension and discourages him from informing the doctor of ill-treatment by police officers. It also poses a threat to the objectivity of the examination. Under such conditions, a patient may not want to give full, truthful information about his condition⁶¹.

In his general intervention of 20 January 2020⁶², the Commissioner for Human Rights informed the Minister of the Interior and Administration of the abuse of the preventive use of handcuffs in relation to detainees both during their transportation and interrogation. In his reply the Minister invoked the provisions of the Police Act and the Act on direct coercion measures, considering the preventive application of handcuffs by police officers in specific situations as rational. He also undertook to make an appropriate speech to the voivodship police commanders-in-chief in order to use it in the course of professional development of police officers.

The National Mechanism for the Prevention of Torture recommends that:

- **handcuffs be used only when the risk assessment in an individual case clearly justifies it;**
- **the use handcuffs during a medical examination be abandoned.**

d) Body searches

Most of the detainees were subjected to a body search. Most of strip-search involved stripping down naked and performing a squat. The searches were usually performed as one stage operation, i.e. the detainee had to take off all the clothes at once and stand naked in front of a police officer; sometimes two officers were present. In some cases, the checks took place twice – after the detainees were transported to the police stations and then in the police detention centres. Body searches were carried out in the presence of police officer(s) of the same sex as the detainee. However, in the case of a transgender girl, the search was carried out by a male officer.

In the view of the National Mechanism for the Prevention of Torture, police officers abused body searches of the detainees and conducted them in the way that violates their dignity. The NMPT is of the opinion that body searches should not be conducted routinely

⁶¹ Cf. Report on the CPT visit to Spain, CPT/Inf (96) 9 [Part 1], § 150; Essex paper 3 Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, Penal Reform International Head Office and Human Rights Centre University of Essex, February 2017, p. 57 and 163.

⁶² KMP.570.29.2019.AN

with regard to all detainees but only in exceptional cases, justified by the specific nature of the situation and after an individual risk assessment.

A similar standard is recommended by the CPT, which underlines that detainees should be subjected to strip-search to ensure their own safety and the safety of police officers. However, not all detainees should be routinely subjected to a strip-search, as this is a very invasive and potentially degrading measure. A strip-search should be carried out only when there are reasonable grounds to suspect that a detained person may have hidden on him/her dangerous items or those that may be evidence of a crime, and an ordinary search will not result in their discovery⁶³. In addition, more than one officer should be present during any strip-search as a protection for detained persons and staff alike. Personnel carrying out the check should be of the same sex as the searched person⁶⁴.

The CPT also points out that the search should be carried out in two stages to minimise embarrassment of the searched person. Persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and get dressed before removing further clothing⁶⁵.

According to the Police Act⁶⁶, a police officer should carry out a body search in a manner which least infringes the personal rights of the controlled person and to the extent necessary in the given circumstances to achieve the goal of the check. During the search, the person checked should be partly dressed. A police officer should first check part of the clothing and, before checking the next part, allow the controlled person to put on the clothing already checked.

Separate reference should be made to the body search of persons brought to the RDP. Based on the opinion of some of the interviewees and the analysis of the monitoring recordings, before being placed in the room, the detainees were subjected to a search for which were required to strip down naked. Meanwhile, in accordance with Article 5.2 of the rules and regulations on the stay in the rooms for detained persons or persons brought for sobering-up⁶⁷ (hereinafter: the rules), only a preventive search is obligatory for persons placed in the room. It consists, among other things, in a manual check of the person, the contents of their clothing and

⁶³ Report on the CPT visit to the Czech Republic: CPT/Inf (2019) 23, paragraph 31 paragraph CPT/Inf (2015) 18, paragraph 22; Report on the CPT visit to Lithuania, CPT/Inf (2017) 16, and 37; Report on the CPT visit to Kosovo, CPT/Inf (2011) 26, paragraph 19.

⁶⁴ Cf. Report on the CPT visit to Lithuania, CPT/Inf (2017) 16, paragraph 37; Report on the CPT visit to the Czech Republic, CPT/Inf (2015) 18, paragraph 22; Report on the CPT visit to Kosovo, CPT/Inf (2011) 26, § 19.

⁶⁵ Cf. Report on the CPT visit to Norway, CPT/Inf (2019) 1, paragraph 37.

⁶⁶ Art. 15d of the Police Act of 6 April 1990 (i.e. Journal of Laws [Dz.U.] of 2020, item 360).

⁶⁷ Annex 1 to Regulation of the Minister of the Interior of 4 June 2012 on rooms for detained persons or intoxicated persons brought for sobering-up, transitional facilities and police emergency centres for children, as well as rules and regulations on the stay in such facilities and procedures for image recordings of those facilities in which the broadly defined search is performed (Journal of Laws [Dz. U.] of 2012, item 638)

items on their body or in their possession⁶⁸. Only if the conditions referred to in Article 15.1(5) of the Act have occurred in relation to detained persons or persons brought for sobering-up, a body search is carried out in accordance with the principles and in the manner laid down under Article 15(d) of the Act, including the possibility to check the intimate parts of a detained person in “particularly justified cases” (Article 15(g.2) of the Act).

Due to the fact that the detainees were subjected to a body search at police stations and were under permanent police supervision during the transfer from the police station to the RDP, the NMPT does not find it justified to carry out body searches again before their placement in the RDP. The repetition of a procedure that interferes with dignity should be considered a form of abuse and an attempt to humiliate the detainees.

In view of the above, it seems necessary to review the practice of body search, since in the past Polish courts found that the detained persons were ill-treated by the police, inter alia, they were forced, without reason, to a body search, including removing underwear to their ankles and holding apart their knees⁶⁹.

As mentioned above, in order to ensure respect for the dignity of the detained person, body searches are carried out by a police officer of the same sex as the detained person. However, in the case of transgender and intersex persons, particularly during the period of transition when the biological sex is different from their gender identity, a body search conducted by an officer of the same sex as the biological sex of the detained person is a degrading practice. In such a case, in the opinion of the National Mechanism for the Prevention of Torture, it is the detained person who should decide on the sex of the officer who is to carry out the activities. This practice is in line with the position of the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, who in 2016 called on Member States to ensure transgender persons a possibility to choose a police officer for body search⁷⁰.

The National Mechanism for the Prevention of Torture recommends that:

- **the practice of routine body search of detainees be abandoned. Body search should be carried out only in an exceptional case, justified by the specific situation, and after an individual risk assessment;**

⁶⁸ The full scope of the preventive search is laid down in Art. 15g(1 and 3) of the Police Act of 6 April 1990 (i.e. Journal of Laws [Dz.U.] of 2020, item 360).

⁶⁹ Cf. CHR’s General Intervention to the Minister of Justice of 18 April 2017, KMP.570.3.2017.RK.

⁷⁰ Cf. Report of the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 5 Jan. 2016, A/HRC/31/57.

- **the practice of routine body search of all detainees prior to their placement to the RDP be abandoned, only a preventive search should be carried out;**
- **if a body search is necessary, it should be carried out in two stages (a detainee should have a possibility to get dressed before removing further clothing);**
- **transgender persons be ensured a possibility to choose the sex of a police officer for body search;**

e) Material conditions of detention

As already mentioned in this report, the time between the detention and the undertaking of activities in the police station was even more than five hours. Then, after the activities were completed, the detainees were transferred to the RDPs. In this case, the interviewed persons said, for example, that after being taken to the police station where he was to be placed in the RDP, he still had to wait about one hour and thirty minutes for reception, sitting on chairs next to the duty room. This took place in the morning, after the whole sleepless night. One of the detainees claimed that he was transported twice between two police stations, because the police officers forgot to take the medical certificate necessary for his placement in the RDP. According to the interviewees, in some cases, the time between detention and actual admission to the RDP was as long as twelve hours. This issue is now being clarified because, until the completion of this report, the NMPT did not receive any information about the hour at which the detainees were placed in the RDPs.

The interviewees also reported that they had no access to drinking water at the police stations. If someone had their own bottle of water, they shared it with others. They also pointed out that if they wanted to use the toilet, they had to wait a long time.

The persons placed in the RDPs were given bedlinen, a mattress, a pillow and a blanket, but at 7 a.m. these items were taken away because of the end of the night-time silence⁷¹. However, in some RDPs the detainees were allowed to keep the blanket. Some persons were transferred to the RDP in the morning and were not given these items, so they slept on hard bunks, without a blanket and mattress.

Meanwhile, pursuant to paragraph 9.6 of the rules and regulations⁷², it is possible to give a detainee a mattress, a pillow, a blanket and bedlinen during the day. In the opinion of the

⁷¹ These items were not taken away from those placed in the RDP in Piaseczno.

⁷² Annex 1 to Regulation of the Minister of the Interior of 4 June 2012 on rooms for detained persons or intoxicated persons brought for sobering-up, transitional facilities and police emergency centres for children, as well as rules and regulations on the stay in such facilities and procedures for image recordings of those facilities in which the broadly defined search is performed (Journal of Laws [Dz. U.] of 2012, item 638).

National Mechanism for the Prevention of Torture, the all-night activities at the police stations, which, in fact, deprived the detainees of sleep, justify the distribution of these items also during daytime.

In the RDP in Piaseczno, the detainees did not receive a meal until the time of the interview with the NMPT representatives, i.e. around noon. When asked about this fact, the custody officer and the Head of the Prevention Department replied that it was less than five hours between their placement in the RDP and the time of serving breakfast, so they were not entitled to have breakfast, and lunch was not served until the NMPT's visit. It is true that according to the above mentioned rules and regulations, meals are given after a minimum of five hours from the time a detainee is placed in the room, but it should be borne in mind that the detainees were apprehended between 8 and 9 p.m. and did not have access to food from the time of detention. It is worthwhile to note in this context that in other RDPs visited on that day the detainees received both breakfast and lunch.

The detainees who were placed in the premises of the Warsaw Police Headquarters pointed out that they received a slice and a half of toasted bread and pâté for breakfast, which was not a sufficient meal given the time of their detention. Vegans and vegetarians refused breakfast at all. Therefore, vegetarian, vegan and meat menu was offered for lunch. In another RDP, meatballs were served for lunch, even though many of the detainees were vegetarians/vegans. In the case of one woman who refused this lunch, a policeman brought her an instant soup - probably from his own stock.

Most of the detainees did not complain about the treatment by the police officers on duty in the RDPs. Some even stressed their professionalism, personal culture and understanding of their situation. However, there were some signals of inappropriate statements made by police officers. One woman signalled to the officer that she ran out of soap in the bathroom, and in response she was to hear: "You're your so spoiled, you want hotel standards".

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

NMPT recommends that:

- **in case a detainee was deprived of sleep, a mattress, a pillow, a blanket and bedlinen be made available during the day;**

- **all detainees be ensured meals suitable for their diet and be given breakfast, if according to the detention report, the activities with detainees were carried out throughout the whole night.**

f) Protective measures against the Coronavirus

All the interviewees had their own protective masks. They all also pointed out that no precautions were taken during their stay at the police stations in connection with the Coronavirus pandemic or the arrangements introduced were very limited. Only in the case of a few out of the thirty-three persons interviewed, the body temperature measured prophylactically. In most cases, the detainees were also not allowed to wash or disinfect their hands. The interviewees pointed out that there were dispensers with antibacterial fluids at the entrance to the police station, but they were mainly used by officers. One of the detainees even asked to be allowed to disinfect the hands before applying the mouthpiece to the breathalyser. The police officer performing the activity was supposed to say that this was not possible because the disinfectants were at the entrance and the detainee should have thought about it then. It was only possible to wash hands after using the toilet, which was done with the consent of the policemen. The detainees stayed in rooms where it was not possible to keep a social distance of 1.5 m. They said, among other things, that 2-3 people were placed in small, separated and barred premises. The Covid interview and the temperature measurement took place only at the stage of medical examination, depending on the hospital, e.g. in the so-called Covid tent just before entering the admission room, or during the examination at the hospital emergency ward. However it should be noted that, as mentioned earlier in this report, only a few persons made use of medical consultations. There were also situations where the temperature was taken upon admission to the RDP. In the visited police detention facilities, the precautions that have been taken varied. Not all police officers were wearing protective masks and gloves on the day of the visit, especially in direct contact with the detainees. Disinfectants were available in the RDPs.

The National Mechanism for the Prevention of Torture expresses its deep concern about the lack of precautionary measures in people-to-people contacts in police stations. The epidemic situation throughout the country remains a cause for concern. Organised action is needed to ensure safety of detainees and police officers. A number of recommendations in the context of the epidemiological threat in penitentiary units have been made by the World Health Organisation (WHO), the European Committee for the Prevention of Torture and Inhuman or

Degrading Treatment or Punishment (CPT) and the UN Subcommittee on the Prevention of Torture (SPT).

In connection with the above, the NMPT would like to ask for information on the types of procedures adopted in police stations as regards precautionary measures and infection prevention.

5. Summary

Taking into account the irregularities found by the NMPT concerning:

- the fundamental anti-torture guarantees, including, above all, obstacles to access to a defence counsel, the way in which meetings with a lawyer are held, but also obstacles to notifying a third person of the detention, the lack of medical examination of all detainees and conducting such examination in the presence of police officers;

- the treatment of the detainees, including information on police brutality, abuse of a body search, the way of carrying it out, and the direct coercion measures applied, including handcuffs during medical examinations of the detainees;

- the material conditions ensured to detainees, including the lack of general access to drinking water, night-time activities, the failure to provide all the detainees with food and adequate conditions to rest after all-night activities and the absence of appropriate anti-Covid precautions,

in the opinion of the National Mechanism for the Prevention of Torture, the way in which the police treated the detainees was humiliating and, in some cases, the accumulation of complaints fulfilled the constitutive elements of inhuman treatment. Both degrading and inhuman treatment are absolutely prohibited by the Polish Constitution (Article 40) as well as international agreements (Article 16 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, Article 7 of the International Covenant on Civil and Political Rights).

The National Mechanism for the Prevention of Torture expresses its hope that the comments made above will become the subject of in-depth reflection on the part of the relevant authorities, leading to systemic action which will not only eliminate the irregularities identified, but will above all cause a change in the attitudes of police officers, in a spirit of respect for human rights. Combating torture is, in fact, a complex process which requires a holistic,

systemic approach to the issue, as well as education and an appropriate legal framework. The NMPT hopes for a constructive dialogue of the authorities on the prevention of torture and effective systemic changes.

6. Recommendations

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

II. to the Minister of the Interior and Administration:

- 1) introduction of an effective legal aid system ensuring access to a lawyer from the very outset of detention;
- 2) introduction of an obligation to carry out medical examinations of every person detained by police officers;
- 3) introduction of an obligation to examine persons reporting mental disorders by psychiatrists;
- 4) ensuring transgender persons an adequate level of medical care after their detention;
- 5) ensuring transgender persons the possibility to choose the sex of the police officer to carry out a body search;
- 6) introduction of an electronic register of persons detained by the police which would cover the whole country and contain, inter alia, information on detainees' place of stay, including transfers to different facilities. These data should be made available to detainees' attorneys forthwith.

IV. To the Minister of Health:

- 1) inclusion in the professional training programme for doctors the topics, described in the Istanbul Protocol, of detecting and documenting cases of torture and other cruel, inhuman and degrading treatment;

V. to the Commander-in-Chief of the Warsaw Police:

- 1) ensuring meetings of detainees with a defence counsel in private, out of the sight and hearing of police officers;

- 2) drawing up a list of attorneys and legal advisers authorised to act as legal counsels, in the area within the jurisdiction of the relevant self-government of attorneys and legal advisers; informing detainees about its existence making it available to them, if they wish so;
- 3) ensuring an effective exercise of the right to have a third person informed of detention;
- 4) enabling a detainee to inform the selected person about the detention themselves and only in special situations justified by the specific nature of a given situation entrusting the performance of this duty to a police officer;
- 5) definitely conducting a medical examination in situations where it is obligatory in accordance with the existing legal regulations;
- 6) documenting accurately injuries sustained by detainees;
- 7) carrying out medical examinations out of the sight and hearing of police officers, unless the doctor requests assistance;
- 8) ensuring that all the persons detained be informed of their rights from the outset of their deprivation of liberty. The letter of rights should be provided by giving clear information orally upon detention, and then supplementing it in writing. Policemen should make sure that the detainee has understood their rights. They should also have time to read the detention report prior to signing it. If necessary, police officers should provide the detainee with additional, oral explanations and enable him to familiarize himself thoroughly with the rules and regulations on the stay in RDP;
- 9) maintenance in a reliable manner of the documents on the detained persons;
- 10) strict compliance by police officers with the obligation to treat detainees in a manner that respects their dignity;
- 11) undertaking educational activities among police officers as regards the treatment of detainees;
- 12) the use of handcuffs only when the risk assessment in an individual case clearly justifies it;
- 13) the cessation of the use of handcuffs during a medical examination;
- 14) the cessation of the practice of routine body search of detainees. Body search should be carried out only in an exceptional case, justified by the specific situation, and after an individual risk assessment;
- 15) the abandonment of the practice of a routine body search of all detainees prior to their placement to the RDP, the conducting of a preventive search only;
- 16) if a body search is necessary, carrying it out in two stages (a detainee should have a possibility to get dressed before removing further clothing);

- 17) in case a detainee was deprived of sleep, the provision of a mattress, a pillow, a blanket and bedlinen during the day;
- 18) ensuring all detainees placed in RDPs meals suitable for their diet and giving them breakfast, if according to the detention report, the activities with a detainee were carried out throughout the whole night.

In addition, the NMPT would like to ask for information on the types of procedures adopted in police stations as regards precautionary measures and prevention against infection with the COVID-19 virus.

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For the team: