

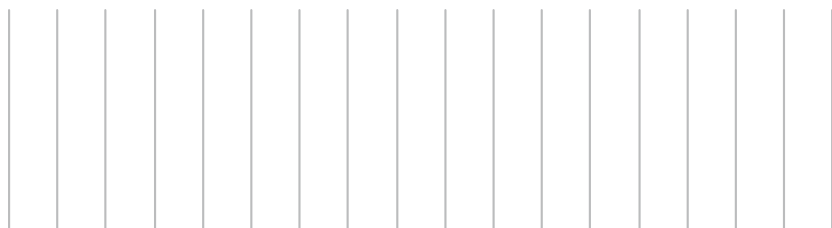
REPORT

OF THE HUMAN RIGHTS DEFENDER (OMBUDSMAN)

on the activities of the
National Preventive Mechanism
in Poland

2011

Warsaw, June 2012



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Abbreviations

APT	– Association for the Prevention of Torture
PTDT	– pre-trial detention centre
OHRD	– Office of the Human Rights Defender
CPT	– European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
WC	– Welfare Centre
ECHR	– European Court of Human Rights in Strasbourg
IGPDP	– Inspector General for Personal Data Protection
IMAP	– Independent Medical Advisory Panel to the Council of Europe
SS	– Sobering Station
DCMP	– Detention Centre of Military Police
GPH	– General Police Headquarters
NPM	– National Preventive Mechanism
EPC	– Executive Penal Code (Dz. U. of 1997, No 90, item 557, as amended)
YSC	– Youth Sociotherapy Centre
YCC	– Youth Care Centre
MoJ	– Ministry of Justice
MoIA	– Ministry of the Interior and Administration (now Ministry of Interior)
DPSI	– District Prison Service Inspectorate
OPCAT	– Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PDR	– Police detention rooms for detained persons or persons brought to sober up
PECC	– Police Emergency Centre for Children
JC	– Juvenile Shelter
SPT	– UN Subcommittee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
HRD	– Human Rights Defender
APJC	– Act of 26 October 1982 on proceedings in juveniles cases (Dz. U. of 2010, No 33, item 178)
Pr	– Prison
JDC	– Juvenile Detention Centre



Professor Irena Lipowicz
Human Rights Defender

Introduction

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 3 of the European Convention on Human Rights

The ban on torture is absolute, thus no circumstances justify its use. It should be repeated and emphasised in the light of recent discussions. The ban results from both, the Convention for the Protection of Human Rights and Fundamental Freedoms¹ and the Polish Constitution. It proves that nations undergo moral progress. The definition of torture is given in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment². The term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as:

- obtaining from him or a third person information or a confession,
- punishing him for an act he or a third person has committed or is suspected of having committed,
- or intimidating or coercing him or a third person,
- or for any reason based on discrimination of any kind,

¹ The Convention was done in Rome on 4 November 1950, amended by Protocols No 3, 5 and 8, and supplemented by Protocol No 2 (Dz. U. [Journal of Laws] of 1993, No 61, item 284, as amended).

² The Convention was adopted by the General Assembly of the United Nations on 10 December 1984 (Dz. U. of 1989, No 63, item 378).



- 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 Convention does not define inhuman or degrading treatment, but the rich case law of the European Court of Human Rights narrows the meaning to a certain extent. According to the Court's case law, treatment is degrading when it provokes a feeling of fear and humiliation leading to degradation. It may result in physical or psychological breakdown. Torture always represents inhuman and degrading treatment, and inhuman treatment is also degrading.³ One of the elements determining whether a given treatment is degrading in the meaning of Article 3 of the Convention is exceeding the minimum inconvenience threshold. The Court defines the threshold taking into account all circumstances of the case, e.g. age, sex, physical and psychological condition, duration, and motive. However, the list is not exhaustive. Each time the Court examines a breach of Article 3 of the Convention, the notions are defined more precisely. In one case, the Court pointed out that acts that are now considered as inhuman or degrading treatment, not torture, may be considered as torture in the future due to the increasing requirements in the area of human rights and fundamental freedoms in democratic societies.⁴

This report is the fourth one on the operation of the National Preventive Mechanism in Poland. The overriding objective of the Mechanism is to protect detainees from tortures and other cruel, inhuman or degrading treatment or punishment. In 2011, representatives of the NPM visited 89 various places of detention and found no evidence of using tortures in the Republic of Poland. However, they discovered in the places of detention they visited some instances of inhuman or degrading treatment or punishment, which was very disturbing. Nonetheless, I welcome the fact that many of the NPM recommendations issued following the visits were promptly implemented by the managers of places of detention, which will surely result in higher confidence of the public in the institutions, and will foster cooperation in the spirit of dialogue and understanding. The implementation of recommendations that requires significant financial outlays and systemic changes is monitored by the NPM staff on an ongoing basis.

The National Preventive Mechanism still faces many challenges. To fulfil the basic purpose of the Mechanism, i.e. to prevent torture, it is essential to visit all places of detention in Poland (approximately 1,800) on a regular basis. The task is impossible to perform without adequate funds provided by the State. Sufficient funding is a prerequisite for increasing the number of visits and for including experts (physicians, psychologists) in the visiting teams. Due to limited funds, in 2011 the NPM objectives were executed only to a certain

³ Ireland v. Great Britain of 18 January 1978, A. 25, § 167; report Hurtado v. Switzerland of 8 July 1993, § 67, A. 280-A; verdict Price v. Great Britain of 10 July 2001, Chamber (Section III), complaint No 33394/96, § 24; Peers v. Greece of 19 April 2001, Chamber (Section II), complaint No 28524/95, § 74; after: M.A. Nowicki, *Wokół Konwencji Europejskiej, Komentarz do Europejskiej Konwencji Praw Człowieka [European Convention. Commentary on the European Convention on Human Rights]*, p. 313, Warsaw 2010.

⁴ Verdict Kenaf v. France of 27 November 2003, Chamber (Section I), complaint No 65436/01, § 55, after: M.A. Nowicki, *Wokół Konwencji Europejskiej, Komentarz do Europejskiej Konwencji Praw Człowieka [European Convention. Commentary on the European Convention on Human Rights]*, p. 318, Warsaw 2010.



extent. The 1,800 places of detention existing in Poland would require the National Preventive Mechanism Department to employ 38 people, while in 2011 its staff consisted of 7 persons. Only in 2012 thanks to the Parliament's decision, the Department will take on four additional employees.

The first part of the report presents organisational matters concerning the operation of the National Preventive Mechanism as well as the actions taken in the framework of co-operation at national and international level. The second part describes the methodology applied by representatives of the Mechanism, it summarises the 2011 recommendations addressed to the visited places and to competent ministers, and it analyses the *status quo* in individual places of detention, based on results of the visits. I personally recommend the chapter entitled "Good Practices" as it provides examples of model solutions that may serve as inspiration for managers of places of detention, giving them ideas which, when put into practice, would foster the development of such places.

As before, the report is prepared in two languages as it is intended for international bodies and national preventive mechanisms in other countries. The report is also available at the website of the Human Rights Defender, bookmark "National Preventive Mechanism."

Professor Irena Lipowicz
Human Rights Defender



NATIONAL
PREVENTIVE
MECHANISM



HUMAN RIGHTS DEFENDER



PART I





1. Operation of the National Preventive Mechanism within the Office of the Human Rights Defender

On 14 October 2010, the National Preventive Mechanism Department was set up as a result of a reorganisation of the Office. Since January 2011, it has had eight employees with a background in law, education, resocialisation, and politology specialising in resocialisation and criminology. Insufficient staff of the Department did not allow for carrying out all the NPM visits scheduled for 2011, such visits were also performed by Criminal Law Department staff, as needed. The National Preventive Mechanism Department was also supported by personnel of the Offices of Local Representatives in Gdańsk, Wrocław and Katowice. All members of the National Preventive Mechanism Department and all employees of Offices of Local Representatives of the Human Rights Defender act by virtue of law, authorised by the Defender and on her behalf.⁵ The NPM personnel exercises the Defender's competence, and their actions are considered actions of the Defender herself.

Taking into account all aspects of detention, NPM visits require a multidisciplinary approach. In order to properly check the way in which the detainees are treated, it is necessary to obtain information from a number of sources. It is required, *inter alia*, to analyse medical records, talk to mentally disturbed patients and evaluate the access of detainees to medical care at the place of detention. Performing the above in a reliable way would be impossible without substantive support and expertise. Yet due to limited funds, experts participated only in 35 visits from the time when the National Preventive Mechanism was set up. In reality, participation of specialists, physicians in particular, should be ensured during each and every preventive visit under the Mechanism.

2. Financing

The National Preventive Mechanism Department is an organisational unit of the Defender's Office. The Defender's expenses are covered by the State budget, with the Defender being the fund administrator. In 2011, the Sejm cut the budget of the Office of the Human Rights Defender from the planned PLN 36,477,000 to PLN 35,424,000. This cut resulted in a reduced budget for the National Preventive Mechanism from the planned PLN 1,740,000 to PLN 1,265,000. Thus, the tasks of NPM were performed at the expense of other activities of the Defender, and were largely limited. This constituted a breach of Article 18(3) and (4) of the OPCAT. The situation is expected to improve in 2012 as the Human Rights Defender will, in all probability, be granted additional funds for running the National Preventive Mechanism (Article 24(3)(3) of the Act of 22 December 2011 amending the Acts

⁵ See Article 20(1) of the Act on the Human Rights Defender (Dz. U. of 2001, No 14, item 147, as amended) and § 4 of the Statute of the Office of the Human Rights Defender.

connected with execution of the Budget Act⁶). In the draft budget for 2012, the amount of PLN 1,872,000 was earmarked for the implementation of tasks under measure *Performing the function of the national preventive mechanism*. When this report was drafted, the Polish Parliament was still working on the Budget Act.

The financing of the National Preventive Mechanism has an impact, first of all, on the number of visits carried out. According to APT's position, comprehensive visits should not be too frequent. In the opinion of APT representatives, it is more effective to focus on one aspect of detention at a time, increasing at the same time the number of visits to places of detention. In addition, according to the UN Special Rapporteur on torture, ad hoc preventive visits under the NPM should be carried out once in several months, and comprehensive visits once in five years. According to minimum standards defined by the APT, comprehensive visits to organisational units of the Police, pre-trial detention centres and to places of detention of people particularly vulnerable to threats or aggression, such as women and foreigners, should be carried out at least once a year. Focussing the NPM activity on more frequent and shorter ad hoc visits is more effective from the point of view of human rights protection as the visited entities will pay more attention to their observance.

With the current number of National Preventive Mechanism Department staff (7 persons) and the number of places of detention (1,826), the Human Rights Defender is unable to guarantee that the above minimum standards of visit frequency would be adhered to. To be able to do that, the Department should employ 38 people.⁷

3. Cooperation with NGOs

In 2011, two meetings were held between the Human Rights Defender and members of the National Preventive Mechanism Department and the representatives of the Coalition for the implementation of the OPCAT⁸ (hereinafter: "Coalition"). The meeting on 14 March 2011 was devoted to evaluating the Human Rights Defender's activity in the capacity of the National Preventive Mechanism⁹ in Poland in 2009. Members of the Coalition presented to the Defender and to NPM members their evaluation of the organisation of the Mechanism and their opinion on the 2009 annual NPM report. The Human Rights Defender informed representatives of the Coalition about the difficulties relating to amending the Act on the Human Rights Defender, whose purpose is to regulate the functioning of the National Preventive Mechanism in Polish law, and about the NPM's financial standing. Changes made in the organisation and functioning of the NPM were discussed. The problem of insufficient staffing of the NPM Department was raised, as well as the problem of

⁶ Dz. U. of 2011, No 291, item 1707.

⁷ The number results from a calculation done by NPM representatives on the basis of APT standards.

⁸ The Coalition is an initiative group composed of representatives of the academia and NGOs acting for human rights and their protection.

⁹ Hereinafter referred to as "NPM" or "Mechanism."



not having external experts who would support the NPM with their specialist knowledge during preventive visits. The Coalition's comments on the NPM's operation were discussed. The majority of issues concerned the annual report.

During the meeting held on 10 October 2011, discussions concerned the Coalition's doubts as to amendments to the Act on the Human Rights Defender and its remarks on the *Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2010*.

On 6 June 2011, a representative of the National Preventive Mechanism attended a working meeting devoted to the employment of prisoners. The meeting was also attended by Halina Bortnowska, member of the Social Council at the Human Rights Defender, as well as by representatives of "Sławek" Foundation and "Patronat" Penitentiary Association.

On 13 September 2011, the activity of the NPM was presented to representatives of the Art Of Living Foundation during a meeting devoted to the Foundation's programmes: Prison Smart, YES, YES+ and NAP.

On 12 September 2011, the Office of the Human Rights Defender organised a meeting of Coalition members with representatives of the Office of the People's Advocate (Office of the Ombudsman) in the framework of the OPCAT AND OMBUDSMAN European Seminar. The talks focused on the rules of cooperation of the National Preventive Mechanism with NGOs. The history of the Coalition was discussed, as well as the rules of cooperation with the National Preventive Mechanism Department at the HRD's Office. The Austrian delegation was also informed about the process of selecting Coalition members.

4. Attendance at domestic conferences

On 23 May 2011, a representative of the National Preventive Mechanism attended the 5th Penitentiary Congress – Modernisation of the Polish Prison System, held in Warsaw and Popowo. Discussions concerned, *inter alia*, global universalisation of standards for dealing with prisoners, and the prison system as part of the state security system. On 10 June 2011, a member of the National Preventive Mechanism Department staff participated in a conference entitled "Education, training and employment of the convicts" organised by the Central Board of the Prison Service and the Reintegration of Ex-Offenders Community of Practice (ExOCop). The purpose of the conference was to draw up recommendations for the European Commission on education, trainings and employment of inmates, with particular focus on working with vulnerable groups, such as women, juveniles and foreigners.

On 15-17 June 2011, the Association of Directors and Chief Accountants of Polish Sobering Stations organised a conference devoted to the functioning of sobering stations and improving the conditions in rooms for the people detained or brought to sober up in Police organisational units. The conference was attended by a Human Rights Defender's representative from the National Preventive Mechanism Department. Representatives of



the Prevention Bureau of the General Police Headquarters and of the Ministry of the Interior and Administration presented their joint opinion on amending Article 39 of the *Act of 26 October 1982 on upbringing in sobriety and preventing alcoholism*¹⁰, and an opinion on liquidation of sobering stations and placing intoxicated people in Police facilities instead.

A representative of the NPM participated in the session of the Social Council at the Human Rights Defender held on 17 June 2011. One of the items on the agenda was the decrease in the employment of the detainees employment and their difficult social situation after leaving prisons. During the session, it was emphasised that the current penal policy required a reform. To that end, the Human Rights Defender suggested starting cooperation with court presidents and organising trainings for judges.

On 3 November 2011, the Office of the HRD organised a conference devoted to discussing the Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2010, during which major conclusions and recommendations as to the NPM's operation were presented. The meeting was attended, inter alia, by representatives of ministries, General Police Headquarters, Border Guard, Prison Service, NGOs and the academia.

In order to disseminate information on the NPM, representatives of the National Preventive Mechanism participated in a cycle of regional conferences on the "Use and execution of educative measures, including the temporary measure, in the context of the specific nature of youth care centres and youth sociotherapy centres"¹¹ during which they discussed the functioning of the National Preventive Mechanism as the method to improve the quality of work of Youth Care Centres and Youth Sociotherapy Centres.

5. Training of the NPM staff

On 20 June 2011, employees of the National Preventive Mechanism Department and a representative of the Coalition for the implementation of the OPCAT took part in a training on personal data anonymisation, organised by representatives of the Inspector General for the Protection of Personal Data (GIODO).

In addition, members of the National Preventive Mechanism and of Departments supporting the NPM attended a training on the "Methods of conducting individual conversations with difficult customers".¹² The 32-hour long workshop was devoted to interpersonal

¹⁰ Dz. U. of 2007, No 70, item 473, as amended.

¹¹ The cycle of conferences was organised by the Ministry of National Education in cooperation with the Minister of Labour and Social Policy, Human Rights Defender, Children's Rights Defender and Centre for Education Development (ORE). The purpose of the conference was to systematise and disseminate information on the use and execution of educative measures with particular emphasis on educative measures that consist in placing juveniles in youth care centres and youth sociotherapy centres, and the use of a temporary measure pursuant to Article 26 of the Act on proceedings in juveniles cases. The conferences were held in: Warsaw (7-8 April 2011), Poznań (15 September 2011), Kielce (11 October 2011), Olsztyn (21 September 2011), Zamość (7 December 2011), and Wrocław (12 December 2011).

¹² The trainings consisted of two modules held on 1-2 July 2011 and 14-15 October 2011.



communication, the art of conversation, assertiveness in relations with customers and superiors, diagnosing and identifying basic customer mechanisms, manipulation and lying, and work with the mentally disturbed.

6. International cooperation

The Human Rights Defender's activity in the capacity of the National Preventive Mechanism¹³ is one of the areas of international cooperation of the Human Rights Defender. The HRD and the NPM staff attended a number of international meetings dedicated to the prevention of torture.

On 25 January 2011, the Director of the National Preventive Mechanism Department attended a Round Table conference on imprisonment conditions in the European Union, organised in Brussels.

Representatives of the Polish National Preventive Mechanism took part in three cycles of thematic workshops of national preventive mechanisms.¹⁴ The fourth cycle of thematic workshops, devoted to security and dignity in places of detention, was held on 14-15 March 2011 in Paris. The fifth cycle of thematic workshops of national preventive mechanisms was organised in Tallinn, on 15-16 June 2011. The meeting focused on gathering and revising information during NPM visits and on the functioning of the Independent Medical Advisory Panel (IMAP).¹⁵ The sixth cycle of workshops took place on 20-21 October 2011 in Baku and was devoted to protection of people from the so-called vulnerable groups in places of detention. The representative of the Polish NPM discussed the Mechanism's experience in protecting LGBT¹⁶ persons deprived of liberty.

On 13-14 September 2011 in Warsaw, the Human Rights Defender jointly with International Ombudsman Institute (IOI) organised the OPCAT AND OMBUDSMAN European Seminar. The meeting was devoted to issues relating to the functioning of national preventive mechanisms and implementation of the assumptions of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. When the conference ended, on 14 September 2011, the staff of the National Preventive Mechanism Department met with representatives of the Austrian Ombudsman (Volksanwaltschaft) to fill them in on the Mechanism's history and the problems encountered in the process of assuming the role by the Polish Ombudsman. Appreciating the experience of the Office of the Polish HRD, Austria chose our Office for its partner in consultations on adopting the OPCAT by the Republic of Austria.

¹³ Hereinafter referred to as "NPM" or "Mechanism."

¹⁴ The NPM workshops are organised by the Council of Europe in the framework of programme "Setting up an active network of national preventive mechanisms against torture, an activity of the Peer-to-Peer Network."

¹⁵ The body's task is to provide answers to general NPM questions, e.g. on systemic medical issues.

¹⁶ Lesbians, Gays, Bisexuals, Transenders.



During the annual conference, entitled Human Dimension Implementation Meeting, held on 28 September 2011 in Warsaw, during a panel dedicated to the protection against torture, a representative of the NPM presented a number of examples of breaching the prisoners' rights. The conference was organised by the ODIHR.¹⁷ In addition, a representative of the NPM took part in a panel on responsibility for torture in secret CIA prisons.

Under the project entitled "Co-operation between Ombudsmen from Eastern Partnership Countries (EP) 2009-2013," a representative of the National Preventive Mechanism attended seminars organised on 27-30 September in Yerevan, and on 11-13 October 2011 in Baku. In the framework of exchanging experience, a representative of the Polish Mechanism discussed the recommendations issued by the NPM, concerning different types of detention places visited, and then informed about the organisation and functioning of the National Preventive Mechanism in Poland. He also participated in the visits to places of detention organised by the host Mechanisms, namely to a pre-trial detention centre and to a mental hospital (Armenia), and to a pre-trial detention centre (Azerbaijan).

A representative of the National Preventive Mechanism attended the regional conference in Pitagorsk, Russia, devoted to the "Ways to overcome the difficulties of public control in Russia" organised by the Commissioner for Human Rights of the Russian Federation, National Human Rights Structures and the Council of Europe on 5-6 October 2011. During the conference, a NPM representative presented the Mechanism's experience in protecting the detainees against torture and other inhuman or degrading treatment or punishment. The purpose of his address was for the Russian delegation to learn the methods of conducting preventive visits, the organisational structure of the NPM and the rules of cooperation with international institutions.

On 17 and 18 October 2011, a conference on establishing a national preventive mechanism in Ukraine was organised in Kiev. During a two-day session, a representative of the Polish Mechanism discussed the organisation and functioning of the NPM in the framework of the models in place at the Ombudsman's Office.

The first global forum for the prevention of torture was organised by the APT on 10-11 November 2011 in Geneva. It was attended by a representative of the National Preventive Mechanism. The purpose of the meeting was to evaluate, on the fifth anniversary of the entry of the Optional Protocol into force (June 2006), the impact of OPCAT on the protection of detainees against torture, and to share ideas with a view to ensure effective implementation of the Treaty.

On 21-24 November 2011, employees of the National Preventive Mechanism of the Republic of Macedonia paid a study visit to the National Preventive Mechanism Department at the Office of the Human Rights Defender. The main objective of the visit was to exchange the experience connected with the implementation of OPCAT, and to carry out joint preventive visits.

¹⁷ Office for Democratic Institutions and Human Rights.



On 14-15 December 2011, members of the NPM, in cooperation with the Council of Europe, organised a thematic workshop entitled “Roles and competencies of physicians participating in the project of cooperation between European National Preventive Mechanisms” in Warsaw. Its purpose was to create a forum for discussions between representatives of medical circles associated with IMAP and the teams of European national preventive mechanisms.

On 6-7 December 2011, the third annual meeting of heads or contact persons of national preventive mechanisms was organised in Ljubljana (Slovenia). The conference was also attended by representatives of the SPT, CPT, APT and the Council of Europe. On the first day, representatives of the Council of Europe declared that the duration of The European NPM Project¹⁸ was extended until June 2012. They went on to discuss the degree of its implementation. Representatives of the SPT and CPT expressed their intent to strengthen cooperation with national preventive mechanisms with a view to protecting prisoners against torture and other cruel, inhuman or degrading treatment or punishment. Yet, no concrete rules of cooperation were adopted. They only adopted their proposals tabled by members of national mechanisms. On the second day of the conference, conclusions were presented as well as a brief evaluation of the “On-site visit and exchange of experiences”¹⁹, of training, thematic workshops²⁰, and of the newsletter presenting topical issues connected with the activity of the mechanisms. Representatives of national preventive mechanisms presented their visions of a new project of active cooperation between the European national preventive mechanisms.²¹

The Human Rights Defender informed about the above cooperation, and updated international institutions, namely SPT, APT, and the representatives of the Council of Europe, on the problems with executing the mandate of the national preventive mechanism.

¹⁸ Project which entails active cooperation between European national preventive mechanisms sponsored by the Council of Europe and the European Union.

¹⁹ Project which entails active cooperation between European national preventive mechanisms co-financed by the Council of Europe and the European Union. The subject of the workshops is “Organising, conducting and reporting on preventive visits to different types of detention places: Exchanging experience between the National Preventive Mechanism and experts from the European Committee for the Prevention of Torture (CPT), UN Subcommittee for the Prevention of Torture (SPT) and the Association for the Prevention of Torture (APT).”

²⁰ In 2011, thematic workshops of national preventive mechanisms were organised in: Paris – 14-15 May 2011: “Security and dignity in places of detention”; in Tallinn – 14-16 June 2011: „Gathering and revising information collected during preventive visits”; and in Baku – 20-21 October “Protection of people from the so-called vulnerable groups in places of detention.”

²¹ Follow-up Project.



HUMAN RIGHTS DEFENDER



PART II





1. Methodology of visits

External difficulties in exercising the NPM mandate had an impact on the methodology of operations adopted by the Mechanism. Starting from November 2010, the employees of the National Preventive Mechanism carried out the visits only to a limited extent.²² This was due to a definite statement by the Inspector General for Personal Data Protection (GIODO), saying that the provisions of the Act on the Human Rights Defender in place at that time guaranteed no right of access to sensitive data. Work on amending the Act on the Human Rights Defender began immediately, at the initiative of the Human Rights Defender. Its aim was to create an appropriate legal basis for performing the tasks of the National Preventive Mechanism, imposed on the Republic of Poland by OPCAT, and also to regulate the admissibility of processing personal data. Before the relevant statutory amendments were introduced, the employees of the National Preventive Mechanism had performed their tasks without having access to sensitive personal data.

Nursing homes and psychiatric hospitals were included in the schedule of visits in 2011. Nevertheless, their specific characteristics and the experience of the National Preventive Mechanism with such establishments led to the conclusion that a thorough and reliable verification of the observance of rights and freedoms of persons staying there was not possible without legal access to personal data, including sensitive ones. Visits to nursing homes and psychiatric hospitals that are reduced in their scope, i.e. do not include an analysis of documentation, would come down to an external inspection of an establishment, and as such would only be superficial. Therefore, on 9 February 2011 the Human Rights Defender decided to suspend preventive visits to nursing homes and psychiatric hospitals until the relevant statutory amendments are introduced. The Defender notified international institutions about serious problems in exercising the mandate of the Mechanism.

Limited access to personal data, including sensitive ones, affected also the composition of visiting teams. For this reason, external experts were not included in visiting teams. Therefore, the visiting group was not interdisciplinary as is required. It consisted mainly of lawyers and political scientists specialising in social rehabilitation and criminology, as well as of rehabilitation educators. In view of the above, the need to amend the Act became a matter of urgency.

On 18 November 2011, the Act of 18 August 2011 amending the Act on Human Rights Defender²³ entered into force. Pursuant to the Act, the Defender may process all the information, including personal data, referred to in Article 27(1) of the Act of 29 August 1997 on personal data protection²⁴, which is necessary to perform the Defender's statutory tasks. The guarantee for appropriate protection of such data is also included in Article 21(2) of

²² Order No 5/2010 of the Human Rights Defender of 2 November 2010 on temporary limitation of the scope of tasks performed by the employees of the "National Preventive Mechanism" Team.

²³ Dz. U. of 2011 No 222, item 1320.

²⁴ Dz. U. of 2002 No 101, item 926, as amended.



OPCAT, which stipulates that *confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.* Furthermore, the Act also stipulates that the Defender has the powers to perform the functions of the national preventive mechanism. Pursuant to the amendment, the Defender also has the right to record sound or image in places where persons deprived of liberty are kept upon consent²⁵ of such persons, and to meet with persons deprived of liberty unaccompanied by other persons; the Defender may also meet with other persons who in her opinion may provide important information. Therefore, the possibility to carry out full, legal visits was restored. It must be emphasized that pursuant to Article 21(1) of OPCAT *no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.*

All visits under the National Preventive Mechanism are unannounced. The objective of monitoring any place of detention is to obtain the most accurate image of the visited establishment. If such visits were announced in advance, they could give a distorted image of everyday life in the place of detention, since their announcement would give the administration time to prepare, and, possibly, to conceal real problems. An unannounced visit to an establishment allows the visiting team to see the reality, and collect facts about the observance of the rights of detainees or kinds of violation of such rights.

In all the visited establishments, the National Preventive Mechanism operates based on the same methodology. The first stage is to establish the composition of the visiting group. According to OPCAT, experts of national mechanisms should have the required capabilities and professional knowledge. The visiting team usually consists of 4 persons, including 2 women and 2 men, with one person performing the role of the group coordinator. Two persons, including the team coordinator responsible for drawing up the report from the visit, perform the inspection of the premises and buildings of the establishment, while others conduct individual talks with prisoners. The length of a visit depends on the size of the visited establishment and on the problems encountered on site. It usually lasts for 1 to 3 days. The visits of the National Preventive Mechanism have the following stages:

- Talks with the management;
- Inspection of all rooms;
- Individual and group talks with the detainees;
- Talks with the personnel;
- Analysis of documents;
- Formulation of post-visit recommendations during the talk summing up the visit, and receiving explanations from the management.

²⁵ Images and sound registered in such a way are kept in the Office of the Human Rights Defender for the period required in a given case, however not longer than for 10 years.



During the visits, the National Preventive Mechanism uses measuring and recording devices, namely the CEM DT-8820 multimeter and Makita LD060P laser distance meter, and a photo camera.

The post-visit report includes information about the results of the visit. It describes living conditions and the situation in terms of observance of the rights, referring to individual issues, such as food, health care, treatment, cultural and educational activity, correspondence and visits, religious services, etc. It also presents the information stemming from the analysis of documents. In the conclusion of the report, recommendations of the National Preventive Mechanism are formulated. The report includes also proposed solutions to some problems. Reports drawn up after the visits are sent to the head of the visited facility, its superior authorities, the judge supervising the facility, to Helsinki Foundation for Human Rights, and to the Coalition “Agreement for the Implementation of the OPCAT”. Article 22 of OPCAT imposes an obligation on the authorities to examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Due to an insufficient number of employees performing the tasks of the National Preventive Mechanism, the implementation of recommendations is verified mainly by means of correspondence²⁶. The time between the provision of recommendations and getting a reply is monitored. If the Office of the Human Rights Defender does not receive a response from the addressees of recommendations within a month, a reminder is sent, informing of the need to respond to the recommendations. Often an exchange of arguments proves necessary, as well as a repeated explanation of the rationale behind the recommendations.

2. Places visited by the National Preventive Mechanism in 2011

In 2011, the Human Rights Defender, acting as the National Preventive Mechanism²⁷, carried out 87 preventive visits and 2 visits to verify the implementation of recommendations issued earlier by the Mechanism.

The largest number of visits were carried out to Police detention rooms (27 units). The visits were also conducted in prisons (12), youth care centres (12), Police emergency centres for children (10), youth sociotherapy centres (7), sobering stations (5), detention centres of Military Police (4), pre-trial detention centres (4), juvenile detention centres (2), juvenile shelters (2), juvenile detention centres and juvenile shelters operating together (2), and nursing homes (2).

²⁶ Between 2008 and 2011, the National Preventive Mechanism performed 7 revisits to places of detention in order to verify the implementation of recommendations issued by the NPM.

²⁷ Hereinafter referred to as “NPM” or “Mechanism.”

The figure below shows what places were visited by the National Preventive Mechanism in 2011, by structure of establishments, and what share (in %) a given type of establishment constituted in the total number of visited establishments.

Figure 1.

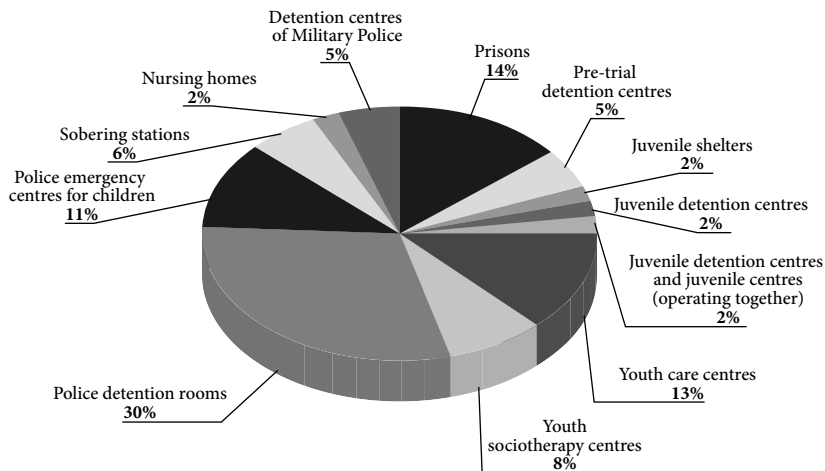




Table 1 below presents an overview of all places visited by the National Preventive Mechanism between 2008 and 2011. Figures in brackets refer to revisits by the NPM, which means that an establishment was visited twice.

Table 1.

Establishments	Number of establishments visited by NPM in 2008	Number of establishments visited by NPM in 2009	Number of establishments visited by NPM in 2010	Number of establishments visited by NPM in 2011	Total (2008–2011)
Prisons	13	16	5	11 (1)	45 (1)
Pre-trial detention centres	16	10	9 (1)	4	39 (1)
Juvenile shelters	3	3	0	2	8
Juvenile detention centres	2	2	2 (1)	2	8 (1)
Juvenile detention centres and juvenile shelters (operating together)	2	2	4	1 (1)	9 (1)
Youth care centres	3	7	12 (1)	12	34 (1)
Youth sociotherapy centres	1	4 (1)	1	7	13 (1)
Police detention rooms	11	21	15	27	74
Police emergency centres for children	4	5	4	10	23
Sobering stations	2	11	14 (1)	5	32 (1)
Nursing homes	0	1	6	2	9
Psychiatric hospitals	8	9	5	0	22
Deportation centres	4	2	2	0	8
Guarded centres for foreigners	3	2	1	0	6
Centres for foreigners applying for a refugee status or asylum	0	4	0	0	4
Border Guard detention rooms	1	0	0	0	1
Detention centres of Military Police	0	0	0	4	4
Total	73	99 (1)	80 (4)	87 (2)	339 (7)

Table 2 presents the number of establishments subject to visits by the National Preventive Mechanism.

Table 2.

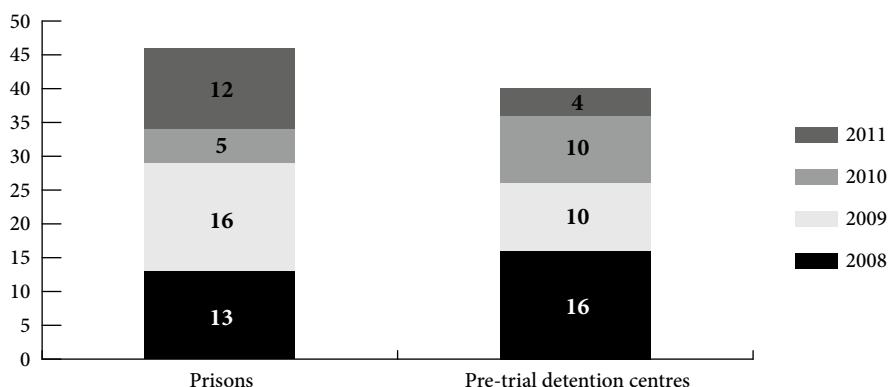
Establishments	Total number of establishment (as at the end of 2011)	Number of establishments visited by NPM between 2008 and 2011	Number of establishment which were not visited (as at the end of 2011)
Prisons	87	45 (1)	42
Pre-trial detention centres	70	39 (1)	31
Juvenile shelters	8	8	0
Juvenile detention centres	17	8 (1)	9
Juvenile detention centres and juvenile shelters (operating together)	10	9 (1)	1
Youth care centres	78	34 (1)	44
Youth sociotherapy centres	66	13 (1)	53
Police detention rooms	339	74	265
Police emergency centres for children	27	23	4
Sobering stations	43	32 (1)	11
Nursing homes	793	9	784
Psychiatric hospitals	218	22	196
Deportation centres	8	8	0
Guarded centres for foreigners	6	6	0
Centres for foreigners applying for a refugee status or asylum	15	4	11
Border Guard detention rooms	50	1	49
Detention centres of Military Police	11	4	7
Total	1846	339 (7)	1507



2.1. Prisons and pre-trial detention centres

In 2011, the representatives of the Human Rights Defender, acting as the National Preventive Mechanism²⁸, carried out visits to 12 prisons²⁹, including one revisit³⁰, and to 4 pre-trial detention centres³¹.

Figure 2. The number of visits under the National Preventive Mechanism to pre-trial detention centres and prisons between 2008 and 2011.



a) Overcrowding

The visiting teams checked on each occasion whether the rooms for prisoners were not overcrowded. According to the heads of visited establishments, the problem of overcrowding did not exist in their facilities. However, the findings made during the visits by the NPM employees often revealed that overcrowding was eliminated only in statistical terms. This effect has been achieved by applying improper practices. For example, recreation rooms were adapted to accommodate persons under temporary arrest (Prison in Kluczbork), patient rooms were included among the ordinary prison cells (Pre-Trial Detention Centre in Grójec, Prison in Płock, Prison in Nowy Wiśnicz) or some persons were kept in transition cells for excessively long periods (Prison in Płock).

Therefore, on 8 June 2011 the Human Rights Defender requested³² the Director General of the Prison Service to address the fact that the heads of some penitentiary establishments fail to report the actual overcrowding in their establishments. In reply, the Director

²⁸ Hereinafter referred to as “NPM” or “Mechanism.”

²⁹ Prisons in Kluczbork, Tarnów-Mościce, Płock, Koronowo, Nowy Wiśnicz, Nowogard, Łupków, Jasło, Wadowice, Trzebinia, Uherce Mineralne, Sieradz.

³⁰ Prison in Płock.

³¹ Pre-trial detention centres in Grójec, Mysłówice, Giżycko, Olsztyn.

³² RPO-665674-VII/11.



General informed that in order to implement the recommendations of the Defender, the phenomenon had been promptly examined in all penitentiary establishments, and persons responsible had been advised on how to solve the problem. The Director General also stressed that the main objective of all activities of the Prison Service thus far (i.a. placing inmates in patient rooms, cells in wards for dangerous prisoners, in transition cells) had been to guarantee the statutory rights to 3 m² of living space in a cell for each prisoner. The Director also ensured that the said phenomena would be regularly monitored by the Central Board of Prison Service.

In October 2011, a meeting on implementation of the European Court of Human Rights' judgments by Poland took place in the Prison in Radom, attended by the Ministry of Justice and the Central Board of Prison Service. Representatives of the Council of Europe invited a representative of the NPM to participate in the meeting. As a result of the conference, on 16 November 2011 the Human Rights Defender sent a letter³³ to the Committee of Ministers of the Council of Europe in which she presented her position on the Report of the Polish Government on measures taken to implement the judgment of the European Court for Human Rights in the case of *Orchowski and Sikorski vs. Poland*³⁴. The findings made during the visits by the NPM employees often revealed that overcrowding was eliminated only in statistical terms. This has been achieved by following many improper practices, such as adaptation of recreation rooms for living purposes, accommodating inmates in patient rooms, isolation cells and transition cells for periods exceeding the time limit defined by the law (14 days), in prison blocks subject to strict discipline and special safeguards and intended for detainees posing serious threat for the society or for the security in prison (the so-called "dangerous" detainees) or placing together detainees classified to various groups. Such activities result in unjustified violation of the rights of detainees, but also allow to conceal the actual overcrowding of the establishments³⁵. Measures required under the relevant legal provisions have not been undertaken. Heads of the visited establishments are encouraged to apply such practices by the recommendations of Central Board of Prison Service, obliging them to use all the available space in their establishment to reduce overcrowding. The current situation in Polish penitentiary establishments may lead to mass postponement of penalties of up to 2 years of imprisonment. **In the opinion of the Defender, the solution to the problem would be to change penal policy so that the judges would more often adjudicate alternative means of punishment than custodial sentences.**

³³ RPO-R-080-12/11.

³⁴ Complaint No 17885/04.

³⁵ Pursuant to the Ordinance of the Minister of Justice of 25 November 2009 on the procedure to be followed by competent authorities when the number of detainees in prisons or pre-trial detention centres in the entire country exceeds the total capacity of those establishments (Dz. U. No 2002, item 1564), the total capacity of the establishments shall not include accommodation in hospital wards, in blocks for the so-called "dangerous" detainees, in isolation cells, in medical centres for prisoners and in mother and child centres, as well as places where inmates are accommodated temporarily, i.e. transition cells.



b) Treatment of prisoners

During individual talks, the majority of prisoners stated that the officers treated them well. They denied when asked if the Prison Service officers infringed their personal inviolability or treated them inappropriately. They also did not witness such prohibited behaviour towards other inmates. Complaints concerned some officers from the security department who, according to complainants, did not address the detainees politely and in the appropriate form (addressing them by surnames or calling them by first name) (Pre-Trial Detention Centre in Grójec, Prison in Nowy Wiśnicz, Prison in Tarnów – Mościce, Prison in Jasło, Pre-Trial Detention Centre in Olsztyn, Prison in Uherce Mineralne, Prison in Sieradz). It must be remembered that pursuant to Article 27 of the Act of 9 April 2010 on the Prison Service³⁶, in contacts with prisoners the Prison Service officers and employees must respect their rights and dignity. The requirement to enforce penalties, means of punishment, security and preventive measures with respect for human dignity is also stipulated in Article 4 of the Executive Penal Code³⁷. Furthermore, pursuant to Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment³⁸, *all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.*

Many negative opinions concerning widely understood treatment by the Prison Service officers were recorded in the Prison in Tarnów-Mościce. Prisoners most often complained about being treated by officers in a provocative manner. They claimed that inmates working in waste disposal were referred to as “waste collectors” which in their opinion violates their dignity. According to the prisoners, provocative treatment and addressing the detainees in a vulgar and degrading way took place in particular during the searching of cells. It must be emphasized that pursuant to Rule 54.3 of the European Prison Rules³⁹, *staff shall be trained to carry out these searches in such a way as to detect and prevent any attempt to escape or to hide contraband, while at the same time respecting the dignity of those being searched and their personal possessions.* According to Rule 54.4, *persons being searched shall not be humiliated by the searching process.* Another inconvenience reported by the prisoners was the fact that four assemblies were convened in a single day. The prisoners emphasized that such a large number of assemblies, together with the fact that the first one was organised at 5 am, disorganised the day and caused unnecessary nervousness. According to the explanations of the director, four assemblies are necessary to count the prisoners when shifts change and results from the system organising the prisoners’ leaving for work. **According to employees of the National Preventive Mechanism, the fact that some prisoners go to work cannot be the reason for waking up all the prisoners, since they must have ensured undisturbed sleep at night-time.** The presented practice

³⁶ Dz. U. of 2010 No 79, item 523, as amended.

³⁷ Dz. U. of 1997 No 90, item 557, as amended.

³⁸ UN General Assembly Resolution 43/173 of 9 December 1988.

³⁹ Recommendation Rec(2006)2 of the Committee of Ministers to member states of the Council of Europe on the European Prison Rules.



can create a nervous atmosphere which is distinctly felt in the Prison. The prisoners also complained about the inconvenience caused by the ban on smoking in cells at night-time. In the opinion of the Director General of the Prison Service presented in a letter to the Human Rights Defender of 20 September 2006, inmates who smoke should be placed in specially designated cells in semi-open prisons as it is the case in closed prisons, in order to allow them to smoke at times when cells where they live are locked. Therefore, the ban on smoking in cells at night-time, in both semi-open and open prisons, is in contradiction to the presented opinion. In the opinion of the Mechanism, the relations between the Prison Service officers and inmates in Tarnów-Mościce Prison were tense and nervous. It is necessary to quote here the position of the CPT which in paragraph 45 of the 2nd General Report⁴⁰ states that *excessive penalties and degrading treatment of prisoners by the prison staff does not allow for constructive relations and by the same token increases the likelihood of violent incidents and associated ill-treatment*. The Committee also states that it *wishes to see a spirit of communication and care accompany measures of control and containment. Such an approach, far from undermining security in the establishment, might well enhance it*.

The visiting team also had reservations about the way in which the detainees of the therapeutic ward of the Prison in Sieradz polished the floor in the corridor of the ward. They were dragging a stone-loaded table upside down with a blanket underneath which served as a polisher. **In the opinion of the NPM, the method of cleaning the therapeutic ward constitutes a degrading treatment of the cleaners.** The practice was abandoned following the visit of the Mechanism.

The heads of the visited establishments reported to the Mechanism that they had reminded their subordinates about the principles of professional ethics of the Prison Service officers and employees, paying attention to appropriate treatment and the way of addressing detainees. The head of Tarnów – Mościce Prison explained that an ad hoc control had been performed by the District Prison Service Inspectorate in Kraków to investigate the alleged irregularities in the treatment of detainees, and the allegations of the NPM had not been confirmed. The treatment of detainees in the establishment is monitored by the Mechanism.

The National Preventive Mechanism recommended to:

- **Take actions aimed at elimination of provocative and degrading treatment of detainees by the staff;**
- **Reduce the number of assemblies to two and change the time of the morning assembly to ensure undisturbed sleep of detainees at night-time;**
- **Change the method of cleaning the therapeutic ward;**
- **Lift the ban on smoking in cells at night-time.**

⁴⁰ CPT/Inf (92)3.



c) Coercive measures

The representatives of the National Preventive Mechanism on each visit watched recordings presenting the placing of prisoners in a safe cell.

In the opinion of the National Preventive Mechanism, gross irregularities in using coercive measures were found in the Prison in Sieradz, resulting in degrading and inhuman treatment of prisoners subject to those measures. An analysis of the recordings from monitoring revealed that a prisoner placed in a safe cell had not received a meal from 12:09 pm to 9:17 am on the following day. Pursuant to §9(4) of the Ordinance of the Council of Ministers of 27 July 2010 on the application of coercive measures and the use of fire-arms and police dogs by the Prison Service officers⁴¹, every person placed in a safe cell must receive meals and have access to the toilet. The National Preventive Mechanism also voiced its objections as to the use of coercive measure against another prisoner who was pinned by an officer with a shield, although he did not resist and was passive. **The National Preventive Mechanism reminds that pursuant to the case law of the ECHR in Strasbourg, the use of force against a prisoner, which has not been made strictly necessary by his own conduct and is not excessive, is an infringement of Article 3 of the European Convention on Human Rights⁴², since it diminishes human dignity⁴³.** Furthermore, the prisoner was only in his underwear during his entire stay in the cell, he did not receive a meal and could not go to the toilet and urinated unintentionally as a result. The above irregularities found by the visiting team violate §9(3) and (4) of the above Ordinance and, first of all, constitute a degrading and inhuman treatment.

Similar reservations were voiced about the treatment of a prisoner placed in a safe cell in the Prison in Nowy Wiśnicz. In the opinion of the NPM, the use of physical force to carry the prisoner into the vestibule of the cell was inadequate to the situation. Furthermore, the prisoner was handcuffed with his hands behind his back for 11.5 hours, also at night. Furthermore, the fact that the prisoner moved around the cell with his genitals bare also constitutes a degrading treatment. None of the officers monitoring the cell saw to it that the prisoner was fully dressed when placed in the safe cell.

The representatives of the National Preventive Mechanisms also voiced their reservations about the living conditions in the safe cell in the Pre-Trial Detention Centre in Grójec. On the day of the visit the safe room was cold and, although no prisoner was placed there, the visiting team found that the radiator in the vestibule of the room where prisoners are placed was not sufficient to heat the cell. There was also no toilet for the prisoner, but only a bucket for that purpose. **In the opinion of the representatives of the National Preventive Mechanism, the fact that the prisoner cannot use the toilet and must use a bucket instead violates his dignity and contradicts the provisions set forth in Article 3 of the**

⁴¹ Dz. U. of 2010 No 147, item 983.

⁴² Dz. U. of 1993 No 61, item 284, as amended.

⁴³ See: Ribitsch v. Austria, Complaint No 18896/91, Altay v. Turkey, Complaint No 22279/93, Krastanov v. Bulgaria, Complaint No 50222/99.

European Convention on Human Rights. According to Rule 19.3 of the European Prison Rules⁴⁴, *prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy*. The Standard Minimum Rules for the Treatment of Prisoners⁴⁵ stipulate that the sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner (paragraph 12). **In the opinion of the NPM, the provision of a bucket to enable the prisoner to comply with the needs of nature does not meet the above standards.**

The head of the Pre-Trial Detention Centre in Grójec informed the representatives to the Mechanism that the safe cell had been modernised.

Due to irregularities found by the NPM in using coercive measures in the Prison in Sieradz, the Director General of the Prison Service in Łódź ordered the head of the visited establishment to take appropriate disciplinary measures against the responsible persons.

The issue concerning the use of coercive measures in the Prison in Nowy Wiśnicz was reported to the relevant prosecutor's office and is monitored by the NPM.

The National Preventive Mechanism recommended to:

- **Eliminate irregularities in the treatment of prisoners, in particular those subject to coercive measures;**
- **Create appropriate living conditions for prisoners in the safe cell by means of modernising it to ensure appropriate temperature, and by providing sanitary facilities.**

d) Right to health care

The quality of health care provided to prisoners in the visited establishments varied. However, due to the lack of medical experts in the visiting team, the NPM could not fully evaluate the health care provided.

During the visit to the Prison in Trzebinia and the Prison in Sieradz, the visiting team found that no preventive health care was provided in the establishments. According to the CPT standards, *the task of prison health care services should not be limited to treating sick patients. They should also be entrusted with responsibility for social and preventive medicine.*⁴⁶ **According to the employees of the National Preventive Mechanism, preventive health care should be provided to all prisoners.**

The representatives of the Mechanism also found that in some establishments the medical examinations of prisoners took place in the presence of Prison Service officers (Prison in Nowogard, Prison in Sieradz, Pre-Trial Detention Centre in Olsztyn). **The National**

⁴⁴ Recommendation Rec(2006)2 of the Committee of Ministers to member states of the Council of Europe on the European Prison Rules.

⁴⁵ Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁴⁶ § 52 of the 3rd General Report [CPT/Inf (93) 12].



Preventive Mechanism is of the opinion that the presence of a non-medical officer during the provision of health care services to a prisoner should be exceptional and take place only when it is required to ensure safety of the person providing health care services and is explicitly requested by the medical personnel. The CPT has also voiced some concerns about the issue. The Committee acknowledged that *special security measures may be required during medical examinations in a particular case, when a security threat is perceived by the medical staff. However, there can be no justification for prison guards being systematically present during such examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in those exceptional cases when a detainee becomes agitated or threatening during a medical examination. The CPT recommends that the Polish authorities take steps to bring practice in line with the above considerations. If necessary, the law should be amended accordingly.*⁴⁷

In Jasło and in Wadowice Prisons there were no patient rooms. Pursuant to § 4 of the Ordinance of the Minister of Justice of 28 March 2002 laying down detailed rules for creation, transformation, liquidation, organisation, management and control of health care centres for prisoners⁴⁸, prison health care centres include i.a. outpatient clinics with patient rooms. The Ordinance does not provide for outpatient clinics operating without patient rooms. Moreover, a sick person usually requires isolation ensuring peace necessary for the patient to get better. Isolation also ensures the safety of other detainees. In response to the recommendation issued, the head of the establishment in Jasło claimed that his Prison had a three-person patient room, which is a part of the health care centre premises. However, the inspection of the establishment revealed that the room mentioned by the head of the establishment did not serve as a patient room on the day of the visit.

Several prisons also failed to make available in a visible place the Charter of Patients' Rights adjusted to the needs of persons placed in penitentiary establishments (Prison in Wadowice, Pre-Trial Detention Centre in Grójec, Prison in Nowy Wiśnicz, Pre-Trial Detention Centre in Olsztyn). According to the information provided by the medical staff of the Prison in Nowy Wiśnicz, "Charter of Patients' Rights" is provided upon request of a prisoner. **However, the visiting team is of the opinion that patients may not be aware that such a Charter exists. Therefore, they asked to place the information stating that the "Charter of Patients' Rights" is available in the outpatient clinic on noticeboards in individual wards.**

⁴⁷ § 123 of the Report CPT/(2011)/20.

⁴⁸ Dz. U. of 2002, No 55, item 409, as amended.

When revisiting the Prison in Płock the representatives of the Mechanism found that the recommendation to adjust the contents of the Charter of Patients' Rights to the binding law, and in particular to the situation of patients deprived of liberty, had been fulfilled.

The patient room of the Prison in Nowy Wiśnicz was not used only for the purposes it was intended for. During the visits, two healthy persons were accommodated in the room⁴⁹.

In reply, the heads of the Pre-Trial Detention Centre in Grójec and the Pre-Trial Detention Centre in Olsztyn, the Prison in Nowy Wiśnicz and the Prison in Wadowice, agreed with the recommendations of the Mechanism concerning the "Charter of Patients' Rights". In response to the recommendations of the Mechanism, the head of the Prison in Nowy Wiśnicz stated that prisoners were placed in the patient room in line with its intended purpose. According to the head of the Prison in Wadowice, a cell which is to serve as a patient room was handed over in November 2011. The head of the Prison in Trzebinia stated that the information about preventive health care had been erroneously presented to the members of the NPM. He informed that a wide range of preventive health care services was offered, including HIV tests, X-rays of lungs, dental checkups, periodical vaccination and educational activities. The head of the Prison in Sieradz also declared that the prisoners in his establishment underwent preventive examinations and participated in preventive medicine programmes. He added that non-medical staff was present during the medical examination only at the request of a doctor and, in the case of intimate examinations, the patient and the doctor are out of view of non-medical staff. The Director General of the Prison Service informed the Mechanism that medical staff at the Prison in Nowogard were instructed to provide health care services to prisoners in a way protecting medical confidentiality.

The National Preventive Mechanism recommended to:

- **Provide health care services out of sight and hearing range of the Prison Service officers;**
- **Provide preventive health care services to prisoners;**
- **Ensure sufficient and permanent access to information about the patients' rights, e.g. by placing the "Charter of Patients' Rights" (adjusted to persons placed in penitentiary establishments) in a visible place in the rooms for patients.**

e) Disciplinary responsibility

Awards and penalties which are not provided for in the Executive Penal Code⁵⁰ have not been applied in the visited establishments.

However, during the interviews at the External Ward of the Pre-Trial Detention Centre in Olsztyn the prisoners complained that prison officers repeatedly threatened to lodge requests for punishing them. The prisoners claimed that such repeated threats led to a

⁴⁹ More information on the subject in: Living conditions.

⁵⁰ See: Article 138 and Article 143 of the Executive Penal Code (Dz. U. of 1997 No 90, item 557, as amended).



situation when they use their rights only to a limited extent, in fear of “falling into dis-favour with the staff”. In the opinion of the National Preventive Mechanism, the type of prison where prisoners of External Wards serve their custodial sentences (i.e. open and semi-open) is in itself a sufficient opportunity to verify the self-discipline of prisoners. The prisoners are well aware that they are in such wards thanks to a positive criminological prognosis and that they risk returning to closed prisons, if they violate the relevant regula-tions. The prisoners from the establishment also reported that the prison officers request for disciplinary actions against them, if they try to wash themselves in shower rooms avail-able to all at the time which is not meant for a bath. According to the NPM, disciplinary actions in such cases are an example of abuse of power by the prison officers. The National Preventive Mechanism reminds that pursuant to Rule 57.1 of the European Prison Rules⁵¹, *only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence*.

The visiting team found that in the Prison in Tarnów-Mościce the reaction to any sign of discontent showed by detainees resulted in a request for disciplinary action filed to the head of the establishment. Many interviewed prisoners stated that prison officers treated them too harshly and filed the said requests when it was unnecessary in view of the fact that their infringements were insignificant (for example, a request for disciplinary action for keeping food on a window sill, for asking for clarification of an unclear instruction or for using the teletext). Some prisoners complained that requests for disciplinary action were also filed when the given instructions could not be performed. **In the opinion of the National Preventive Mechanism, the above-described situations may result in tense relations between prisoners and Prison Service officers which, in turn, may lead to unnecessary conflicts.** In the same establishment, the prisoners complained about the collective responsibility practices. This is in contradiction to Rule 60.3 of the European Prison Rules⁵² stipulating that *collective punishments (...) and all other forms of inhuman or degrading punishment shall be prohibited*.

In reply to the recommendation on disciplinary actions, the head of the Pre-Trial De-tention Centre in Olsztyn informed the Mechanism that disciplinary procedures are a method of working with prisoners and serve to remind them about the limits, which if violated can result in severe consequences. He denied that there had been any requests for disciplinary action for prisoners washing themselves during the time not meant for a bath. The head of the Prison in Tarnów-Mościce explained that the issue of requests for disciplinary action was discussed at the briefing of the management and of the prison and security services, as recommended by the NPM. He denied that collective responsibility was applied to prisoners.

⁵¹ Recommendation Rec(2006)2 of the Committee of Ministers to member states of the Council of Europe on the European Prison Rules.

⁵² Ibidem.

The National Preventive Mechanism recommended to:

- **Stop reprimanding the prisoners incessantly and stop threatening them with disciplinary action;**
- **Assess whether there are no abuses consisting in unfounded requests by the prison officers to impose disciplinary punishments on the prisoners;**
- **Eliminate collective responsibility of the prisoners.**

f) Right of access to information

The observance of the right of the prisoners' access to information is one of the safeguards for human rights observance and as such it is verified by the National Preventive Mechanism during each visit.

All detainees in the visited penitentiary establishments were advised about their rights and obligations when they came to the establishment and could use the help of a prison counsellor in case of any doubts.

However, in the libraries of some penitentiary establishments (Pre-Trial Detention Centre in Grójec, Prison in Trzebinia, Prison in Nowogard, Prison in Uherce Mineralne, Prison in Nowy Wiśnicz, Prison in Kluczbork) there were no copies of Executive Penal Code and other legal acts, as well as „Compendium for foreigners”⁵³ in English, French, German, Russian and Arabic. **According to the Mechanism, all places of detention should have documents (translated into the most popular foreign languages) presenting the rights and obligations of detainees or prisoners, which should be provided to the foreigners placed in those establishments.** The European Prison Rules⁵⁴ stipulate that *at admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison* (Rule 30.1). In addition, the CPT emphasizes that *rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence*⁵⁵.

Noticeboards located in the corridors of living quarters of the Prison in Trzebinia and in Uherce Mineralne did not provide the addresses of institutions to which prisoners can apply if needed. **In the opinion of the visiting team, prisoners should have a permanent access to the addresses of i.a. Penitentiary Court, Human Rights Defender and the Helsinki Foundation for Human Rights.**

The prisoners were unaware about the judgments of the Constitutional Tribunal and of the European Court of Human Rights, and of their consequences (Prison in Trzebinia, Prison in Łupków, Prison in Jasło, Prison in Koronowo, Prison in Wadowice, Prison in Uherce Mineralne, Prison in Sieradz, Pre-Trial Detention Centre in Olsztyn, Prison

⁵³ The collection of rights and obligations compiled based on the Executive Penal Code, the Ordinance of the Minister of Justice of 25 August 2003 on the organisational and order regulations on serving custodial sentences, and the Ordinance of the Minister of Justice of 25 August 2003 on organisational and order regulations on temporary detention.

⁵⁴ Recommendation Rec(2006)2 of the Committee of Ministers to Member States of the Council of Europe on the European Prison Rules.

⁵⁵ See: § 44 of 12th General Report on the CPT's activities, [CPT/Inf (2002)12].



in Nowy Wiśnicz, Pre-Trial Detention Centre in Myslowice, Pre-Trial Detention Centre in Grójec). **According to the representatives of the NPM, information about the case law of the above courts could be provided by means of the radio broadcasting system in the prison.**

The heads of the visited establishments accepted the issued recommendations and informed the Mechanism that the prisoners were offered access to the judgments of the European Court of Human Rights in Strasbourg in the library area of prisons or were informed about them in the programmes on the radio broadcasting system. Furthermore, they also informed about the increase in the number of legal acts available in the libraries for prisoners and about the fact that the addresses of institutions protecting the rights of prisoners were provided on noticeboards.

In reply to the recommendation, the head of the Prison in Koronowo asked the National Preventive Mechanism to quote the legal basis imposing an obligation on Prison Service officers to inform the prisoners about the judgments of the Constitutional Tribunal and of the ECHR. The NPM explained that it is the Constitutional Tribunal that ruled about the need to disseminate among prisoners the information about legal consequences of the judgments of the Constitutional Tribunal concerning inmates in prisons and pre-trial detention centres. As a result of correspondence between the Human Rights Defender and the Office of the Constitutional Tribunal on dissemination of information about the judgments of Constitutional Tribunal and their legal consequences, the Head of the Office informed that the issue was raised in an increasing number of letters from inmates in prisons or pre-trial detention centres. Therefore, the Constitutional Tribunal took efforts to ensure that the information about its judgments concerning prisoners or detainees, and (legal and practical) consequences of such judgements be prepared and then provided to the interested parties in cooperation with the competent authorities of the Prison Service. As the Head of the Office of the Constitutional Tribunal stressed, the abovementioned educational activity should be one of the basic elements of penitentiary work whose aim is i.a. to raise awareness of the prisoners and detainees, and to ensure their access to elementary information about their legal situation. The activities intended to popularise the law and ensure education on public matters should not be limited in any way.

The National Preventive Mechanism recommended to:

- **Ensure that the libraries have the current issues of Executive Penal Code and of “Compendia for foreigners”;**
- **Provide the addresses of institutions protecting the rights of prisoners in a visible place, available to all;**
- **Provide the information to prisoners, i.a. as part of cultural and educational activities or via the radio broadcasting system, about legal and practical consequences of the judgments of the Constitutional Tribunal and of the European Court of Human Rights in cases directly concerning the prisoners.**



g) Right to complain

The visiting team praised the possibility for the prisoners to lodge complaints and requests to the head of their establishment and to other competent authorities.

However, the prisoners held in the Prison in Tarnów-Mościce complained to the visiting team that they were not informed about the reasons why their requests were rejected. Several prisoners claimed that in some cases persons submitting requests had not received any information about the examination of their requests, which violates the Rule 36.(4) of the Standard Minimum Rules for the Treatment of Prisoners⁵⁶ stipulating that *unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.*

The representatives of the Mechanism were also concerned about the lack of decisions in favour of complainants in the Prison in Nowy Wiśnicz and in Sieradz. According to the NPM representatives, this may point to the lack of objectivity on the part of persons examining the complaints and raises concerns regarding the efficiency of the complaints procedure. In individual interviews, the prisoners declared that complaints would not have an impact on changing their situation anyway. The head of the Prison in Nowy Wiśnicz informed the Mechanism that the request and complaints procedure in his establishment was compliant with the Ordinance of the Minister of Justice of 13 August 2003 on the procedure for handling applications, complaints and requests of inmates in prisons and pre-trial detention centres⁵⁷.

The National Preventive Mechanism recommended to:

- **Ensure the appropriate functioning of the complaints procedure.**

h) Staff

Penitentiary divisions of the visited institutions and detention centres employed persons with higher education. In the context of European requirements, **the National Preventive Mechanism kept stressing that staff working with prisoners should be regularly trained in the rights and duties of those kept in detention centres.** According to the European Prison Rules⁵⁸, *management shall ensure that, throughout their career, all staff maintain and improve their knowledge and professional capacity by attending courses of in-service training and development to be organised at suitable intervals (Rule 81.2). The training of all staff shall include instruction in the international and regional human rights instruments and standards, especially the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as in the application of the European Prison Rules (81.4).*

⁵⁶ Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁵⁷ Dz.U. of 2003 No 151, item 1467.

⁵⁸ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.



Psychological care was ensured to prisoners in all visited establishments. However, in the Sieradz Prison the psychologist informed the visitors of the need of additional positions for psychologists so that commissioned tasks and programmes could be implemented⁵⁹. In Jasło Prison, the visiting team noted that an average of 100 prisoners were under the care of one tutor. Moreover, in Uherce Mineralne Prison, Sieradz Prison and Olsztyn Pre-Trial Detention Centre, over 60 detainees were monitored by one tutor. **The National Preventive Mechanism is of the opinion that significant burden of various tasks placed on tutors and the need to work with large numbers of detainees decrease the effectiveness of formation efforts and can affect the detainees in a negative way.** According to CPT's position, *where staff complements are inadequate, significant amounts of overtime can prove necessary in order to maintain a basic level of security and regime delivery in the establishment. This state of affairs can easily result in high levels of stress in staff and their premature burnout, a situation which is likely to exacerbate the tension inherent in any prison environment*⁶⁰. **In the opinion of the NPM, efforts should be focused on diminishing the size of tutoring groups, i.a. through increased staffing of the penitentiary division.**

The difficulties in the work of penitentiary division identified by the management of visited establishments included an excessive administrative burden and the need to enter data both into the files of the detainees and into the Noe NET system; the result is less time for individual contacts with prisoners.

The answers given to the NPM by Regional Directors of Prison Service indicate that the implementation of recommendations issued in this area depends to a large extent on the good will of supervisory authorities. The Regional Director of Prison Service in Rzeszów explained that the staffing of Uherce Mineralne Prison will be increased by way of transferring one position from another penitentiary establishment in Rzeszowskie Voivodeship; the Regional Director of Prison Service in Łódź delegated a psychologist from Pre-Trial Detention Centre in Łódź to work in Sieradz Prison, and requested that the General Director of Prison Service decreases the number of prisoners in therapeutic ward, which will influence the scope of tasks carried out by the psychologist. According to the response given by the Director of Pre-Trial Detention Centre in Olsztyn, its penitentiary staff is regularly strengthened, depending on the employment potential; in the opinion of the head of Jasło Prison, the present staffing allows for the implementation of all the statutory tasks of a penitentiary establishment. Directors of Uherce Mineralne Prison and Sieradz Prison notified the Mechanism of their efforts taken to increase staffing.

⁵⁹ On the day when the establishment was visited, only one psychologist was present who, apart from the work in therapeutic ward, was carrying out the tasks of the absent psychologists from penitentiary wards.

⁶⁰ See: §26 of the 11th General Report [CPT/Inf (2001) 16].



The National Preventive Mechanism recommended to:

- **Include a course in international human rights instruments and standards in the staff training plans;**
- **Ensure appropriate staffing, according to the needs.**

i) Employment and education

Detainees performed work mainly for the establishment where they were held (work in laundries, kitchens, workshops, warehouses, as well as cleaning works). Each establishment employs against remuneration ca. 40 persons monthly, which represents a low percentage of those detained in visited establishments. Acquiring job offers from external entities is very difficult at the moment. In the view of administration of visited establishments, such situation results mainly from the insufficient professional qualifications of prisoners and from a statutory minimum wage requirement. Such situation is particularly afflictive for prisoners with maintenance duties, whose number is on the rise.

The professional qualifications of prisoners are being improved by vocational courses (teaching the profession of a painter, paperhanger, bricklayer, plasterer, fast-food cook, green areas gardener, locksmith or electrician).

Among the visited establishments, only Nowy Wiśnicz and Koronowo Prisons had schools. In the remaining establishments, efforts were made to facilitate access to schools at other prisons and pre-trial detention centres, as well as to schools in educational establishments outside penitentiary institutions.

The interviewed prisoners voiced no complaints concerning their employment conditions.

j) Cultural, educational and sports activities

The organisation of cultural, educational and sports activities in penitentiary establishments is crucial. According to Rules 25.1 and 25.2 of the European Prison Rules⁶¹, *the regime provided for all prisoners shall offer a balanced programme of activities. This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.* Moreover, according to CPT's position, *a satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial*⁶².

In all penitentiary establishments visited in 2011, prisoners had access to libraries; moreover, each establishment had a radio unit broadcasting the programmes of the Polish Radio as well as its own programmes on various topics, including competitions, talks on various topics and book reviews. All establishments organised cultural and educational

⁶¹ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.

⁶² See: §47 of the 2nd General Report [CPT/Inf (92) 3].



programmes: creative activities, tournaments, music concerts, exhibitions, meetings with interesting people, and thematic events.

However, during individual interviews with the Mechanism the majority of prisoners indicated that the cultural and educational offer is very poor (Uherce Mineralne Prison, Sieradz Prison, Olsztyn Pre-Trial Detention Centre, Nowy Wiśnicz Prison). In the Kluczbork and Sieradz Prisons, the reason for a limited offer was the fact that recreation rooms were transformed into cells. The National Preventive Mechanism recalls that according to CPT position, as expressed in point 91 of the Report on the visit to Poland in 2004⁶³, *the almost total lack of constructive activities is unacceptable. As stressed by the Committee in previous visit reports, the aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).*

In the Płock Prison, the hours of sports activities coincided with the hours of outdoor walk, which forced the choice between the right to a walk and to other types of activities. **In the opinion of the National Preventive Mechanism, the above arrangement was in-compliant with the legal provisions in force. It should be noted that the Executive Penal Code holds both these rights of persons deprived of liberty as equal (Articles 102(6) and 112 of the Executive Penal Code). However, in practice the Płock Prison failed to respect the equality of these two rights.**

Moreover, in Uherce Mineralne Prison, juvenile convicts were not allowed to have any RTV equipment in their cells, because they had to “deserve” it. In the opinion of the administration, a TV set in the cell would hamper their participation in cultural and educational activities. **In the opinion of the National Preventive Mechanism, when an establishment does not offer frequent and regular activities and workshops to prisoners, there are no grounds (unless provided for in the law) to limit juvenile convicts’ privileges that other prisoners can make use of, in this case the possession of RTV equipment in their cells.**

Walking yards in Giżycko Pre-Trial Detention Centre and in Trzebinia Prison were not equipped with any training equipment. According to Rule 21 of Standard Minimum Rules for the Treatment of Prisoners⁶⁴, *every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.*

In response to the Report by the Mechanism, Directors of Uherce Mineralne Prison, Kluczbork Prison and Olsztyn Pre-Trial Detention Centre increased the number of cultural

⁶³ CPT/Inf (2006) 11.

⁶⁴ Standard Minimum Rules for the Treatment of Prisoners adopted in Geneva in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.



and educational activities in the wards. Similarly, the management of Trzebinia Prison and Giżycko Pre-Trial Detention Centre reported that in their budget plans for 2012 purchase of training equipment for walking yards was envisaged. The Director of Sieradz Prison explained that recreation rooms in the living premises are occupied only due to overpopulation, and when overpopulation drops, the original functions will be restored. The Director of Plock Prison notified the Mechanism about changes made to the internal regulations of the establishment with the effect that cultural and educational activities do not longer coincide with the walks.

The National Preventive Mechanism recommended to:

- **Restore the original function of recreation rooms turned into cells;**
- **Extend the offer of cultural and educational activities.**

k) Right to contact with the outside world and to maintain family ties

The possibilities as well as conditions of executing the right to receive visits were evaluated positively by the visiting team. Nevertheless, some establishments lacked a separate room, equipped as defined in the Ordinance of the Minister of Justice of 17 October 2003 on living conditions for inmates of prisons and pre-trial detention centres⁶⁵, where visits could take place without a supervisor, as provided for in Article 138 1 (3) of the Executive Penal Code, (Grójec Pre-Trial Detention Centre, Olsztyn Pre-Trial Detention Centre, Kluczbork Prison, Mysłowice Pre-Trial Detention Centre, Trzebinia Prison, Łupków Prison, Jasło Prison, Wadowice Prison, Uherce Mineralne Prison). **The lack of a room which could be used to execute the reward provided for in Article 138 (3) of the Executive Penal Code makes it impossible to make use of such reward in practice.** In the opinion of the National Preventive Mechanism, appropriately equipped separate rooms for visits without a supervisor should be provided for in all establishments.

The National Preventive Mechanism encountered the practice and internal regulations forbidding telephone conversations with a defence counsel or a representative in the case of persons detained on remand (Grójec Pre-Trial Detention Centre, Mysłowice Pre-Trial Detention Centre, Giżycko Pre-Trial Detention Centre, Nowogard Prison, Koronowo Prison, Wadowice Prison, Sieradz Prison, Olsztyn Pre-Trial Detention Centre, Sieradz Prison, Jasło Prison). The National Preventive Mechanism repeatedly indicated the need to revoke the complete ban on telephone conversations by the detained on remand with their defence counsels or representatives – attorneys or legal advisers – in the absence of other persons, and to provide the possibility of such conversations with respect for secrecy and without the limitation of the frequency of contacts. In accordance with Article 215 1 of the Executive Penal Code, a person detained on remand has the right to contact a defence counsel or representative – an attorney or a legal adviser – in

⁶⁵ Dz. U. of 2003 No 186, item 1820.



private and by mail. Contrary to the literal wording of Article 215 of the Executive Penal Code, the provision gives the person detained on remand the right to contact the persons listed above also by telephone or by other available means of conveying information. It should be clarified here that correspondence – within the meaning of Article 8(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 – is represented by various means of communication, including a telephone conversation⁶⁶. The ban on the use of telephones and other wired and unwired means of communication, resulting from the content of Article 217c of the Executive Penal Code, does not apply to contacts of a detainee with persons listed in Article 215 of the Executive Penal Code. The position presented above was shared by the Minister of Justice (letter of 28 June 2010) and by the Criminal Law Codification Committee operating in the Ministry of Justice; in the opinion of the latter, neither judicial authorities nor prison service are entitled to introduce any limitations in this area.

It should be added that also CPT, during its fourth periodic visit to Poland in 2009, questioned the legal background of the total ban on telephone calls by persons detained on remand⁶⁷. Moreover, this total ban is contrary to Rules 95.3, 98.2 and 99 of the European Prison Rules⁶⁸.

In the Pre-Trial Detention Centre in Olsztyn, the conditions for visits paid to persons detained on demand for whom the competent authority did not limit the direct contact with visitors during the visits, failed to guarantee that the condition of direct contact would be satisfied. Even though there was no glass pane between the parties, they were separated by rather wide ledges which significantly impaired direct contact during the visit. The height at which the ledges were located was an additional impediment. For a person seated in a wheelchair who would like to come to visit, it would be difficult to even see the detained person, and direct contact would simply be impossible. Therefore, the Mechanism recommended a change in the conditions of visits with persons detained on remand, to assure that direct contact would be possible.

The directors of the visited establishments notified the Mechanism that until the binding legal provisions are changed, they would not permit persons detained on remand to have telephone conversations, including with their defence counsels or representatives (Olsztyn Pre-Trial Detention Centre, Wadowice Prison, Giżycko Pre-Trial Detention Centre, Grójec Pre-Trial Detention Centre, Nowogard Prison). The directors also stated that it would be possible to provide a separate room for visits without a supervisor, granted as a reward, only if adequate financial resources are secured (Wadowice Prison, Uherce Mineralne Prison), if temporarily populated rooms are returned to their original functions (Trzebinia Prison, Grójec Pre-Trial Detention Centre), or when the adaptation works have been completed (Sieradz Prison, Olsztyn Pre-Trial Detention Centre). In the opinion of

⁶⁶ See: Zbigniew Hołda, in: *Kodeks karny wykonawczy – Komentarz*, Arche Gdańsk 2007.

⁶⁷ See: point 138 of CPT Report on the visit to Poland in 2009 (CPT/Inf (2011)20).

⁶⁸ Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules.

the director of Olsztyn Pre-Trial Detention Centre, the solutions adopted in this establishment allow for all kinds of visits to which persons detained on remand are entitled.

The National Preventive Mechanism recommended to:

- **Make it possible for persons detained on remand to make telephone conversations with their defence counsels or representatives, and to include this provision in the internal regulations of the establishments;**
- **Provide rooms for visits without a supervising person.**

l) Right to religious practice

The visited establishments assured the appropriate conditions for prisoners to follow religious practices and receive religious services. The practices were carried out in prison chapels or in special rooms, dedicated for the purpose. Pastoral care over prisoners was exercised by a Catholic chaplain, but representatives of other denominations and religious associations were also active in the establishments.

Nevertheless, in Wadowice Prison persons detained on remand as well as persons qualified as dangerous had no opportunity to participate in the Mass (they could only listen to it on the radio). Attention must be drawn to the fact that both Article 88b(3) and Article 212b(3) of the Executive Penal Code provide for the right of persons detained on remand and those qualified as dangerous to participate directly in religious service in the wards where they are placed. Additionally, Articles 88b(1) and 212b(1) of the Executive Penal Code introduce the duty to equip, i.e. places dedicated for religious practice, with appropriate technical and preventive security equipment permitting those groups of prisoners to participate in a Mass.

The director of Wadowice establishment notified the Mechanism that the person responsible for religious services there was the chaplain, and that he was informed about the NPM's recommendations concerning the participation in religious practice by persons detained on remand and those qualified as dangerous. The Mechanism maintains its interest in the issue.

The National Preventive Mechanism recommended to:

- **Make it possible for persons detained on remand and those qualified as dangerous to participate directly in the Mass.**

m) Living conditions

The technical condition of the visited establishments varied significantly.

The National Preventive Mechanism evaluated the conditions in Pavilion A of Sieradz Prison and in Pavilion C of Nowogard Prison as deplorable enough to pose a risk of degrading treatment of prisoners staying there. **In the opinion of the National Preventive Mechanism, the lack of sufficient area to move freely, blocked ventilation systems, insufficient lighting, advanced mould in rooms, humidity, worn-out accommodation**



equipment, and open sanitary areas are particularly arduous and fail to meet the standards provided for in international and national legal instruments. Therefore, the Mechanism ordered urgent renovation of the pavilions listed above.

The visiting team was concerned with the sanitary conditions in cells inhabited by several prisoners (Nowy Wiśnicz Prison, Sieradz Prison, Koronowo Prison). **In the opinion of the NPM representatives, even though the national provisions do not specify the maximum capacity of cells in penitentiary establishments, it is impossible for sanitary and hygienic conditions in cells inhabited by around a dozen prisoners to meet the minimum standards of international law as regards the protection of rights and dignity of persons living in them.** CPT expressed a similar opinion in its 11th General Report: *in a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions. No doubt, various factors – including those of a cultural nature – can make it preferable in certain countries to provide multi-occupancy accommodation for prisoners rather than individual cells. However, there is little to be said in favour of – and a lot to be said against – arrangements under which tens of prisoners live and sleep together in the same dormitory. Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives. Moreover, the risk of intimidation and violence is high. Such accommodation arrangements are prone to foster the development of offender subcultures and to facilitate the maintenance of the cohesion of criminal organisations. They can also render proper staff control extremely difficult, if not impossible; more specifically, in case of prison disturbances, outside interventions involving the use of considerable force are difficult to avoid. With such accommodation, the appropriate allocation of individual prisoners, based on a case by case risk and needs assessment, also becomes an almost impossible exercise. All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions*⁶⁹. Moreover, Rule 19.3 of the European Prison Rules⁷⁰ states: *Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.* Similar is the approach in Standard Minimum Rules for the Treatment of Prisoners⁷¹, where Rule 12 provides: *The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature*

⁶⁹ See: §29 of the 11th General Report [CPT/Inf (2001) 16].

⁷⁰ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies.

⁷¹ Standard Minimum Rules for the Treatment of Prisoners adopted in Geneva in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.



when necessary and in a clean and decent manner. The international standards invoked above are treated as minimum conditions acceptable for Member States of the Council of Europe and of the United Nations. **In the opinion of the NPM representatives, one toilet for 15 persons is not enough to ensure that prisoners may comply with the needs of nature at any time; what is more, it can be a source of conflicts between co-inhabitants of one cell.** It can also hardly be said that all prisoners in a given establishment have equal access to sanitary equipment if in some cells there is one toilet for 3 persons, while in other – for 15 persons. The sanitary equipment is usually overly occupied in the morning, and as a result some prisoners have to wait for a long time to use it. In all these cases, the Mechanism requested that appropriate sanitary conditions are secured in these cells.

In the visited establishments, all cells had sanitary sewage system; in some pavilions hot water was available. However, not all cells had a separated sanitary “corner” (Sieradz Prison, Płock Prison, Nowy Wiśnicz Prison). **Representatives of the National Preventive Mechanism are of the opinion that where a privacy-respecting sanitary facility cannot be ensured in a cell, the capacity of such cell should be decreased to make it an individual cell.** According to the case law of the European Court of Human Rights⁷², the use of an open sanitary facility when there is more than one prisoner in a cell can be qualified as degrading treatment.

With reference to the possibility of maintaining personal hygiene, some prisoners reported a need to increase the frequency of baths and a problem of low-quality hygiene products provided to them. European Prison Rules⁷³ should be quoted here, providing as follows: *Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene* (Rule 19.4). The national legislation also does not limit the number of baths to one per week, which leaves the frequency of baths at the discretion of directors of penitentiary establishments⁷⁴. Taking the above into account, the NPM is of the opinion that the frequency of baths in penitentiary establishments should be increased.

In all penitentiary establishments the Mechanism noted the lack of ladders and security guards of bunk beds. **In the opinion of representatives of the Mechanism, this can result in falls and possible body injuries of those who try to climb the beds using the available but unsuitable pieces of furniture or to jump onto them.**

In the context of living conditions, the suitability of penitentiary establishments to the needs of disabled prisoners was also evaluated. The visited establishments were generally not adapted to accommodate such persons (Nowy Wiśnicz Prison, Grójec Pre-Trial Detention Centre, Łupków Prison, Jasło Prison, Sieradz Prison, Wadowice Prison, Uherce

⁷² Peers vs. Greece, case No 28524/95.

⁷³ Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules.

⁷⁴ See: §30(3) of the Ordinance of the Minister of Justice of 25 August 2003 on the regulations concerning the execution of deprivation of liberty (Dz. U. of 2003 No 152, item. 1493).



Mineralne Prison, Olsztyn Pre-Trial Detention Centre), however, some of them had cells adjusted to the needs of the disabled (Grójec Pre-Trial Detention Centre, Sieradz Prison). Such adjustment, however, was limited to a cell which had a sanitary “corner” for a disabled person, and to a special place in the bath suitable for a wheelchair. There were no facilitations for using the stairs to individual parts of the establishment, and the appropriate width of doors and entrances was not ensured. Meanwhile, the European Court of Human Rights in Strasbourg decided in its judgement of 2006 in the case *Vincent vs. France*⁷⁵ that placing a disabled person in a prison where they cannot move around, and in particular leave the cell on their own, constitutes degrading treatment within the meaning of Article 3 of the European Convention on Human Rights. Therefore, the Mechanism recommended that the infrastructure of penitentiary establishments be adapted to the needs of the disabled.

In their responses to the Mechanism, the directors of the visited establishments indicated that the necessary refurbishment depended on the funds received for the purpose. However, the action plans of each establishment included the refurbishments recommended by NPM.

With reference to adjusting prisons to the needs of the disabled, the directors of all the establishments where such adjustment was recommended informed the Mechanism that the lack of funds prevented them from making arrangements that would facilitate the disabled in moving around and from installing appropriate cell equipment. However, they indicated that the adaptation of infrastructure to the needs of the disabled was planned in 2012. The head of Uherce Mineralne Prison informed the National Preventive Mechanism that this establishment had a cell for the disabled with a separate bathing spot, and a wheelchair ramp at the entry to the building. In Łupków Prison – according to the response of its director – disabled prisoners are sent to a subordinate External Ward in Moszczaniec with a cell adapted to the needs of handicapped persons. A similar solution was adopted in the Olsztyn Pre-Trial Detention Centre. According to the explanations of the director, following a consent of the Regional Director of Prison Service for an exception from the catchment area system, the disabled prisoner is transported to the Barczewo Prison that has a cell fully adjusted to the needs of the disabled.

Moreover, all directors declared that bunk beds would be equipped with ladders and appropriate security guards, as soon as the funds from superior bodies become available.

Directors of Grójec Pre-Trial Detention Centre and Nowy Wiśnicz Prison noted that the accommodation of prisoners in transition cells and medical rooms takes place in accordance with their purpose and the legal provisions in force; moreover, he indicated that the rules concerning statistical data, including on the capacity of units, are defined by the Central Administration of the Prison Service.

⁷⁵ Case No 6253/03.

The National Preventive Mechanism recommended to:

- **Limit the time of prisoners' stay in transition cells to the necessary period, not longer than 14 days;**
- **Use medical rooms in accordance with their purpose, and to exclude them from the list of rooms to be taken into account for the purposes of calculating overpopulation;**
- **Promptly ensure appropriate living conditions for prisoners, in accordance with national legal provisions and with accepted international standards or to exclude the living pavilions from use;**
- **Ensure appropriate sanitary and hygienic conditions in shared cells for more than a dozen persons;**
- **Adapt cells for the needs of disabled prisoners;**
- **Equip bunk beds with ladders and security guards or exchange them for other beds whose design ensures the safety of prisoners;**
- **Increase the frequency of baths.**

2.2. Police detention rooms for detained persons or persons brought to sober up

Police detention rooms for detained persons or persons brought to sober up (hereinafter: PDRs) are separated parts of Police organisational units, appropriately located, equipped and secured, where persons who have been detained and brought up to sober up are placed.

Referring to recommendations of the Human Rights Defender acting as the National Preventive Mechanism⁷⁶, formulated with reference to Police detention rooms for detained persons or persons brought to sober up visited in 2010, the Minister of the Interior and Administration noted in his letter of 31 October 2011⁷⁷ that conclusions of representatives of the Mechanism resulting from the visits to PDRs go beyond national regulations. Having analysed the NPM assessment of individual aspects of PDRs functioning (living conditions, right to medical care, right to information about the legal rights, right of the detained to inform persons close to him of his arrest), the Minister drew attention to the fact that the NPM's recommendations are not grounded in the binding legal norms. In the opinion of the Minister, both the behaviour of officers on duty in PDRs and the organisation of the rooms are in conformity with the legal provisions in force. In response to the position of the Minister, the National Preventive Mechanism reminded in its letter of 4 December 2011⁷⁸ that as a body whose competences are based on international legal acts, it can formulate post-visit conclusions not only based on national legislation, but above

⁷⁶ Hereinafter: "NPM" or "Mechanism".

⁷⁷ DAiN-VI-5017-43-1-11

⁷⁸ RPO-R-071-32-11



all on international standards that apply to detention establishments covered by the scope of its visits. The National Preventive Mechanism shares the opinion of the Minister that the obligations of Police officers executing detention (informing the detainee about the right to complain against detention, the right to contact an attorney, the right to inform a close person about his detention) should each time be separated from their obligations resulting from their duties in PDR (informing the detainee about the rights and duties resulting from the fact of being placed in a PDR as well as about monitoring in the PDR, allowing the detainee to execute his rights connected with detention). The Mechanism notified the Minister that such differentiation was applied during the visits and in post-visit conclusions.

In 2011, employees of the National Preventive Mechanism visited 27 rooms for detained persons or persons brought to sober up⁷⁹. In comparison to earlier years of the NPM's work, 2011 brought about a significant increase of legal awareness in the visited Police units as to the role and competences of the NPM, expressed in practice by the fact that the NPM's employees' waited much shorter to enter PDRs.

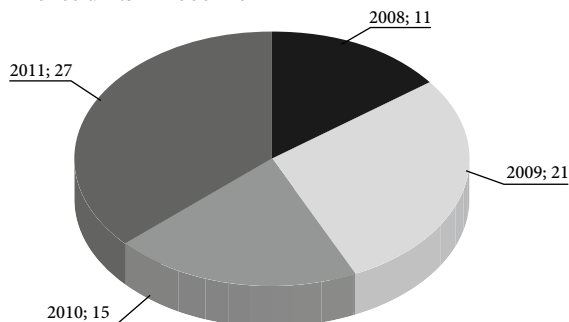
A problem identified during the visits was the lack of procedure for Police officers on duty in PDRs in the situations of threat to life or health of the NPM's employees during unsupervised interviews with the detainees present in PDRs during the visit. Such legal gap resulted in Police officers on duty in PDRs warning repeatedly the NPM's employees of the risk involved in interviewing detainees without witnesses. Despite being assured by the NPM's employees that such interviews are an indispensable element of each visit and that each of NPM's employees is prepared to carry them out, Police officers feel obliged to always warn them about possible negative consequences of such interviews. In practice, this prolongs the part of the visit dedicated to interviews with persons detained in PDRs.

The activities carried out during prevention visits of the Mechanism in 2011 revealed differences in basic aspects of stay in detention rooms for detained persons or persons brought to sober up. The verification of social and living conditions, as well as rights and duties of detainees placed in PDRs was based in the majority of establishments on visual examination of rooms and on interviews with detained persons, conducted without the presence of Police officers. In 9 PDRs⁸⁰, due to the absence of detained persons in the premises, the visits of the NPM's representatives were limited to visual examinations of conditions in PDRs and interviews with their staff.

⁷⁹ PDR at the Police Headquarters in Poznań-Stare Miasto, PDR in Oleśno, PDR in Zwoleni, PDR in Grodzisk Mazowiecki, PDR in Żyrardów, PDR in Tarnów, PDR in Oleśnica, PDR in Sochaczew, PDR in Kalisz, PDR in Ostrów Wielkopolski, PDR in Zawiercie, PDR in Olawa, PDR in Elbląg, PDR in Katowice, PDR in Bydgoszcz, PDR in Grudziądz, PDR in Sławno, PDR in Słupsk, PDR in Drawsko Pomorskie, PDR in Gorzów Wielkopolski, PDR in Kętrzyn, PDR in Chojnice, PDR in Ustrzyki Dolne, PDR in Sanok, PDR in Lublin, PDR Warszawa VI, PDR in Łódź.

⁸⁰ PDRs: Oleśno, Oleśnica, Zawiercie, Olawa, Sławno, Drawsko Pomorskie, Kętrzyn, Chojnice, Ustrzyki Dolne.

Figure 3. The number of visits of the National Preventive Mechanism in the premises for detained persons in Police units in 2008–2011



a) Treatment

While examining the treatment of detainees in PDRs by their personnel, which is a crucial aspect from the point of view of the Mechanism, the NPM's employees always check the following four elements: the application of direct coercive measures, the way in which strip searches of detained persons are executed, systematic controls of physical state of detainees, and treatment *sensu stricto* of detainees by officers on duty in PDRs. During the visits, the Mechanism does not examine unusual events occurring in the visited PDRs. Explanatory proceedings concerning such cases are carried out by one of specialised groups in the Human Rights Defender Office⁸¹.

Even though the legal provisions in force contain no obligation to document the application of direct coercive measures, the National Preventive Mechanism is of the opinion that such a register would facilitate analysing such cases from the perspective of observing the procedures concerning their causes and manner of application.

Due to the lack of such a register, the number and type of direct coercive measures used in PDRs are specified based on analysing duty log books and on information presented to the Mechanism by the management of the visited establishments. No persons against whom direct coercive measures had been used were present in PDRs during the NPM's visits, so the representatives of the Mechanism had no opportunity to obtain information from those against whom such measures had been applied. In 2011, the use of such measures was reported in 7 visited establishments⁸². The representatives of the Mechanism revealed no cases of the application of measures not specified in the law⁸³.

During each visit, the National Preventive Mechanism also checks the manner of performing strip searches of persons placed in PDRs (place where a search is carried out, responsible staff). **The Mechanism shares here the opinion of the Committee for the Prevention of Torture (CPT) that regardless of their age, persons deprived of their liberty**

⁸¹ Division of Penal Executive Law in the Group for Penal Law.

⁸² PDRs: Olesno, Żyrardów, Tarnów, Bydgoszcz, Drawsko Pomorskie, Kętrzyn, Łódź.

⁸³ The most frequently applied are: straitjacket and physical force.



*should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender. Mixed gender staffing is another safeguard against ill-treatment in places of detention. The presence of both male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention. Mixed gender staffing also allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches*⁸⁴. Irregularities related to the place of performing strip searches – the lack of guarantee that no third persons were present, and the lack of information about the course of the procedure were found in 8 PDRs⁸⁵. Inappropriate choice of the place to perform searches consisted in practice in the use of a monitored room⁸⁶ or a connecting room (corridor, hall) accessible for third persons⁸⁷. Among the establishments where irregularities of strip searches of the detainees were revealed were Chojnice PDR and Kętrzyn PDR, where additionally some searches were carried out by persons of opposite gender. In the opinion of the officers on duty in the former establishment, the criticised procedure could be justified by the fact that strip searches of a woman were performed by two male officers to ensure more effective defence in case of sexual harassment charges by the detained person. In the opinion of the Mechanism, such an explanation is unacceptable.

In order to verify the entries in the duty log books confirming that PDR's officers controlled the state of detained persons through spyholes in the doors of the rooms where those persons were kept, the employees of NPM used recordings from the monitoring system. In accordance with the wording of Article 13 of the Order No 1061 of the Police Commander in Chief on methods and forms of executing tasks in rooms for detained persons or persons brought to sober up of 2 September 2009⁸⁸, officers on duty in PDRs are obliged to control the behaviour of detained persons at least every 30 minutes or at least every hour if the room is equipped with a monitoring system. Due to the fact that during the visit, 7 establishments had neither monitoring equipment nor equipment for archiving monitoring recordings⁸⁹, it was impossible to compare the content of duty log books with the monitoring recordings. In 3 other PDRs, inconsistencies were revealed between the time of controlling the rooms for the detainees that had been entered in the log book and the monitoring recordings that were to confirm the said control⁹⁰. With reference to these units, the Mechanism ordered that the obligation to control the behaviour of persons detained and placed in PDRs should definitely be complied with.

In PDR Warszawa VI, the analysis of the duty log book revealed that no controls of the state of detained persons were carried out at night. Police officers informed the NPM

⁸⁴ See: para. 26 of the 9th General Report [CPT/Inf (99) 12].

⁸⁵ PDRs: Tarnów, Kalisz, Grudziądz, Sławno, Gorzów Wlkp., Lublin, Chojnice, Kętrzyn.

⁸⁶ PDRs: Kalisz, Sławno, Lublin.

⁸⁷ PDRs: Tarnów, Grudziądz, Gorzów Wlkp.

⁸⁸ Dz. Urz. KGP No 12, item 56.

⁸⁹ PDR Poznań-Stare Miasto does not have a monitoring system; PDRs in Olesno, Zwoleń, Sochaczew, Zawiercie, Chojnice, Drawsko Pomorskie have monitoring systems but without a possibility of archiving the recordings.

⁹⁰ PDRs: Ostrów Wielkopolski, Drawsko Pomorskie, Kętrzyn.



representatives that due to the lack of night lighting that would allow for monitoring behaviour of the detainees through a spyhole, controlling their state would require turning the on light in the room, which would disturb their night rest. The NPM recommended that the inappropriate practice should be discontinued immediately, and that individual rooms for the detainees be equipped with night lighting allowing for direct monitoring at night.

The *sensu stricto* treatment of the detained persons by officers on duty in PDRs was evaluated positively by the National Preventive Mechanism. Nevertheless, during their visits in Grudziądz and Warszawa VI PDRs, the detainees interviewed by representatives of the Mechanism expressed some remarks on their treatment by PDR staff. The detainees from Grudziądz establishment, who had stayed in it in the past, reported that the manner of treatment depended on the staff working in PDR on a given day. Examples of inappropriate treatment given by them included having to wait long for the permission to use the toilet, following a repeated request. The detained persons interviewed by the NPM's employees in Warszawa VI PDR complained about the prolonged process of being placed in the PDR, during which they were kept in a waiting room separated by bars, without any seats, and could not drink or eat. One of the interviewees reported that during the waiting time he was subject to mockery by Police officers. Referring to these reports that proved inappropriate treatment of the detainees in Grudziądz and in Warszawa VI PDRs, the superior bodies of the establishments where the said PDRs are located notified the National Preventive Mechanism that trainings on interpersonal communication for Police officers on duty in PDRs were conducted, and that compliance of Police officers with the obligation to respect the dignity of the detainees was constantly monitored.

One of the detainees held in PDR in Łódź notified the representatives of the Mechanism during the interview that his **bodily inviolability had been infringed by Police officers who had detained him**. The incident presented by the detainee was described in a similar way by another detainee interviewed by the NPM's employees during their visit to PDR in Łódź, who reported having seen Police officers exceeding their duties by slapping the man's face. Bearing in mind that both men gave a similar account of the situation while being interviewed in separate rooms, the NPM's representatives, upon consent of the aggrieved detainee, filed a notification of a suspected criminal offence to the competent prosecutor's office⁹¹. The case is in progress.

During their visit in the premises for detained persons or persons brought to sober up in the PDR in Kalisz, the representatives of the Mechanism came across a practice of changing clothes of all those brought to the PDR⁹², and confiscating the shoes of those who were placed in the unit against their will. It should be stressed that the National Preventive Mechanism does not deny that changing clothes of persons placed in PDRs should take place when this

⁹¹ RPO-689856-VII-720.6/11.

⁹² These persons stayed in a PDR in underwear only.



is required by hygiene or safety considerations. However, changing clothes of all persons detained in PDRs, regardless of the reasons, cannot be accepted. It should be noted here that as a rule, according to §10(1) of the Annex to the Ordinance of the Minister of the Interior and Administration of 13 October 2008 on the rooms within the Police organisational units for detained persons or persons brought to sober up and the regulations governing the stay in those rooms⁹³, persons detained or brought for sobering up in such rooms use their own clothes, underwear and shoes. It should also be noted that according to §7(2)(2c) of the Annex, only shoelaces can be confiscated, and not shoes. Taking into account the unsatisfactory answer given on 2 June 2011 by the Municipal Police Commander, who denied that the practice observed by the NPM was applied towards all the detainees, the Mechanism contacted the Police Commander for Wielkopolskie Voivodeship in Poznań. In his response of 19 August 2011, the Commander assured that actions had been taken with the aim to purchase substitute clothing for persons needing such clothing when brought to Kalisz PDR.

In some units, the detainees interviewed by the Mechanism reported that they could not execute their right to purchase hygienic and tobacco products for the money left in deposit (Poznań-Stare Miasto, Żyrardów, Grudziądz and Warszawa VI PDRs). In the opinion of the Mechanism, it is crucial to verify whether the above right is executed, due to the dynamic character of detention and the resulting lack of time to collect toiletries or purchase cigarettes or press.

Having analysed the responses of the management of individual Police headquarters concerning the Mechanism recommendation related to broadly understood treatment, it should be stated that implementing such recommendation should be treated as a priority. The Commanders reminded PDR's officers of their responsibilities related to their duty in these units. With reference to the installation of visual monitoring or equipment for archiving the monitoring recordings, the management of the visited units agreed with the reasoning behind the NPM's recommendations, and committed themselves to take them into account when planning expenditure for the functioning of rooms for detained persons or persons brought to sober up. The management of individual visited PDRs are aware of the existing problem in purchasing hygienic or tobacco products by a detainee for his own money which is kept in deposit. The reason given for such situation was the insufficient staffing of PDRs. Nevertheless, the managements committed themselves to facilitate such purchases whenever possible.

Following the visit, the National Preventive Mechanism recommended to:

- **Superior bodies of Police units with PDRs to remind the Police officers working in PDRs about their absolute obligation to respect the dignity of persons detained or brought to sober up;**
- **To create a register of direct coercive measures used in PDRs;**

⁹³ Dz. U. of 2008, No 192, item 1187, as amended.

- Police officers on duty in PDRs to fully comply with the requirement that strip searches are carried out by persons of the same gender as the controlled;
- To carry out strip searches of persons detained and held in PDRs in unmonitored rooms with guaranteed absence of third persons;
- Police officers on duty in PDRs to unconditionally comply with the requirement to regularly control behaviour of persons held in PDRs – not less frequently than every 30 minutes or at least every hour in the case of a PDR equipped with a monitoring system,
- To abandon the practice of undressing all persons brought to PDRs to sober up, against their will;
- To respect the right of persons detained or brought to PDRs to sober up to stay in their own clothes and shoes if this does not compromise safety of the detained and third persons, and poses no epidemiological risk
- To allow persons detained and placed in PDRs to exercise their right to purchase tobacco and personal hygiene products as well as press for their own money.

b) Right to medical care

During their visits in the premises for detained persons or persons brought to sober up, the employees of the National Preventive Mechanism did not reveal any violations of the right of the detained to have access to a physician. Persons detained and placed in PDRs, who met specific conditions defined in legal regulations and determining when medical examination should be carried out, always underwent such examination. The examinations were carried out by physicians from ambulance emergency services, cooperating with Police stations based on agreements for providing medical services.

Nevertheless, despite the fact that the practices applied in the significant majority of the visited establishments were in conformity with national legal provisions, it should be stressed that in the opinion of the Mechanism, all the detainees should be **examined before being placed in a PDR**. Such solution would meet the objectives of international standards on access to medical care in detention. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment should be quoted here: *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* (Rule 24)⁹⁴.

The NPM's representatives noted that in PDR in Lublin, all persons placed in rooms for persons detained or brought to sober up underwent medical examination. In the opinion of the Mechanism, it is a praiseworthy practice, particularly because it shows that covering all the detainees with initial examination is possible, even without specific legal norms

⁹⁴ Resolution of UN General Assembly No 43.173 of 9 December 1988.



regulating these issues. **Being a kind of pioneer initiative, the Lublin practice is presented by the NPM as a model, and its adoption by other units is recommended.**

While examining the access of persons held in PDRs to medical care, the representatives of the NPM verify the manner in which medical services are provided, in terms of presence of non-medical personnel (Police officers). The Mechanism is of the opinion that the presence of such persons should be limited to the necessary minimum justified by circumstances, namely to situations of justified concern about safety of medical personnel, or to places where medical services are provided not equipped with appropriate technical safeguards thus raising concerns that a detainee might escape. This point of view corresponds with the position of CPT on the matter and included in 12th CPT General Report in which the Committee stresses that all medical examinations must be conducted out of the hearing and out of the sight non-medical personnel⁹⁵. The employees of the Mechanism noted with satisfaction that appropriate approach to the presence of a Police officer during the provision of medical services is adopted in two PDRs, namely Bydgoszcz and Chojnice. As a rule, a Police officer is not present during medical examination of a detainee.

The NPM has found that a significant majority of visited establishments make efforts to ensure diligent records in the books of medical visits, paying attention to appropriate documentation of physicians' visits in a PDR, giving the date and time of examination, with doctor's stamp and signature. In 4 PDRs, however, some gaps in the entries in books of medical visits were revealed during visitations (Gorzów Wielkopolski, Sanok, Ustrzyki Dolne, Warszawa VI). Dates and time of medical examinations, as well as stamps of responsible persons, were lacking. The Mechanism is of the opinion that from the perspective of the right of detainees to medical care during their stay in PDRs, diligent records from examinations, made by persons conducting them, are a must in evaluating the quality of medical care. Such elements as date, time and stamp of person conducting the examination are of key importance in the case of any medical complications that may occur to the detainee after such an examination. From the perspective of the Mechanism as the visiting body, such information makes it easier to follow and assess the quality of medical services provided to detainees during their stay in a PDR.

The response of the management of individual entities towards the irregularities revealed by the Mechanism concerning realisation of the right of detainees to medical care has been evaluated positively. The National Preventive Mechanism was assured that officers on duty in PDRs would pay more attention to the accuracy of entries in the books of medical visits made by medical personnel examining detainees.

Following the visit, the National Preventive Mechanism recommended:

- **Subjecting all persons detained or brought to sober up to medical examination before placing them in PDRs;**

⁹⁵ See: para. 42 of [CPT/Inf (2002)15].

- **Limiting the presence of Police officers during the provision of medical services to detainees to situations of justified concern about safety of medical personnel, or to places where medical services are provided not equipped with appropriate technical safeguards thus raising concerns that a detainee might escape;**
- **Police officers on duty in PDRs paying attention to the necessity of making diligent documentation of medical services provided to detainees by physicians.**

c) **Right to information about the legal rights**

The National Preventive Mechanism verified – on the basis of information provided to its representatives by detainees staying in PDRs during the visits – whether detainees knew their rights. Discussing the results of this verification, **the Mechanism stresses that in the majority of rooms for detained persons or persons brought to sober up, visited in 2011, the detainees’ knowledge of the *Rules of procedure concerning the stay of persons placed in rooms for detained persons or persons brought to sober up* remained an issue.** Among the 27 Police units visited, some irregularities connected with the realisation of this right were noted in as many as 25.

On the basis of the activities conducted, the representatives of the Mechanism found that detainees had an opportunity to familiarise themselves with the Rules of procedure only at the moment of being accepted to the PDR. Moreover, the Rules of procedure were displayed in places where the detainees were unable to read them (duty officer’s room, PDR’s corridor, deposit room).

The stress that a detained person undergoes when being placed in a PDR weakens his/her concentration, perception and ability to assess the situation. Therefore the NPM recommends that each detained person should have constant access to the Rules of procedure. The document should be displayed in a place accessible to and visible for all the detained persons, so that reading it would not depend on the decision of Police officers or on any other factors. In the opinion of the Mechanism, the best place to display the Rules of procedure are rooms for the detained.

In Warszawa VI PDR, the representatives of the NPM encountered the practice of hanging a copy of the Rules of procedure on the inside of the doors to rooms for detainees. An equally effective method of presenting its contents was used in Elbląg PDR, where copies of the Rules of procedure were always given to detainees in the rooms where they were held.

Copies of the Rules of procedure in foreign languages were lacking only in one of the visited units (Ustrzyki Dolne PDR). The remaining units possessed translations prepared by the **Transport Division of the Prevention Bureau of the General Police Headquarters in cooperation with Foreign Language Department of the Łódź University and Prevention Division of Voivodeship Police Headquarters in Łódź.**



The analysis of this issue gave rise to a general motion of the Human Rights Defender, submitted to the Police Commander in Chief on 12 May 2011⁹⁶. In the response of 16 June 2011⁹⁷, the Police Commander in Chief assured the Defender that a change in presenting the Rules of procedure to detainees would be one of legislative tasks related to the amendment of the Ordinance on the rooms within the Police organisational units for detained persons or persons brought to sober up and of the regulations governing the stay in those rooms.

During their visits, the NPM's representatives also revealed that persons who were under the influence of alcohol at the moment of detention were not informed about their three basic rights, i.e., the right to notify persons close to them about the detention, the right to file complaint, and the right to get help of an attorney. **The National Preventive Mechanism is of the opinion that when detained persons, due to alcoholic intoxication, cannot be advised of their rights by the detaining officers, the obligation to inform them about their basic rights is transferred to PDR's officers**, who should fulfilled this duty immediately when verbal contact with the detainee becomes possible. Otherwise, the broadly understood right of detained persons to information about their legal rights is violated.

Summing up the issue of the right to information about the rights of persons detained in PDRs, the National Preventive Mechanism would like to remind the position of the CPT expressed in its 12th General Report: *Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence*⁹⁸.

Managements of the visited PDRs committed themselves – in response to post-visit reports – to remind Police officers of their basic obligation to advise persons detained and placed in PDRs about their rights.

Following the visit, the National Preventive Mechanism recommended:

- **To unconditionally comply with the obligation of detaining Police officers to inform detained persons about their rights in such situation;**
- **To unconditionally comply with the obligation of Police officers on duty in PDRs to inform persons detained and placed in PDRs about the rights they have while staying there;**
- **Police officers on duty in PDRs, to inform persons detained and placed in PDRs under the influence of alcohol about their rights in such situation;**
- **To change the manner of presenting the Rules of procedure to persons detained in PDRs.**

d) Right of detained persons to notify persons close to them about the situation

During the visits in PDRs in Police organisational units, the employees of the National Preventive Mechanism checked during the interviews with detainees the realisation of their right to demand that third persons be notified of their detention and stay in a PDR. **In the**

⁹⁶ RPO-668208– VII-720.6/11.

⁹⁷ EKO-4097/3392/11.

⁹⁸ See: para. 44 in CPT/Inf (2002)15.



opinion of the National Preventive Mechanism, due to a significant emotional charge of such information, a possibility of a detained to personally notify a third person should be considered first, and only in exceptional cases this right of the detained should be executed by a Police officer. Similar opinion was expressed by the UN in a Resolution of the General Assembly of the UN No 43/173 of 9 December 1988 on the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment: *Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody*⁹⁹.

It is worth stressing that despite the lack of clear regulation concerning the possibility for a detained person to personally inform person close to him/her about detention and stay in a PDR, in 4 visited establishments¹⁰⁰ the representatives of the Mechanism observed this praiseworthy practice. In the remaining units, this right was executed by Police officers. The National Preventive Mechanism believes, moreover, that every detained person who asked Police officers to execute this right for him/her should receive feedback (whether the indicated third person was informed, what was the reaction). One of the detainees interviewed by the NPM's representatives in Poznań-Stare Miasto PDR received no feedback from the officers about the effect of notifying the indicated third person (an analogous case was revealed by the Mechanism in Warszawa VI PDR). A detainee staying in Gorzów Wielkopolski PDR during the visit, informed the NPM that his request to notify a third person about his detention was not fulfilled.

Following the visit, the National Preventive Mechanism recommended to:

- **Ensure that the right of a detainee to personally notify a third person about his/her detention is observed, and limit the agency of Police officers to exceptional situations;**
- **Unconditionally comply with the obligation of Police officers on duty in PDRs to execute the said right;**
- **Provide feedback about the realisation of this right by Police officers to those detained who request it.**

e) PDR staff

While supporting all possible forms of professional training of officers, the Mechanism examines in all cases if PDR staff has an opportunity to gain and develop skills which are necessary to fulfil their duties in PDRs. Representatives of the Mechanism recommend regular updating of knowledge in the areas described above. Attention should be drawn

⁹⁹ See: Rule 16.1 of the Resolution of UN General Assembly No 43.173 of 9 December 1988.

¹⁰⁰ PDRs: Bydgoszcz, Drawsko Pomorskie, Chojnice, Ustrzyki Dolne (only the persons brought to sober up).



here to CPT recommendation which reads: *There is arguably no better guarantee against the ill-treatment of a person deprived of his liberty than a properly trained police or prison officer (...). Considerable emphasis should be placed on developing interpersonal communication skills (...). Skilled officers will be able to carry out successfully their duties without having recourse to ill-treatment and to cope with the presence of fundamental safeguards for detainees and prisoners*¹⁰¹.

An analysis of the observations made by the Mechanism in the area in question has shown that in the significant majority of visited PDRs, in-service training consisted in participation of their staff in courses on legal provisions applicable to such establishments. Taking into account the fact that officers on duty in PDRs are responsible for ensuring safety to detainees staying there, in particular to persons brought to sober up, and that this task is of particular importance due to the lack of medical personnel, the National Preventive Mechanism has always checked if the staff of visited PDRs participated in premedical first aid trainings. Recommendations concerning the need to carry out trainings for PDR personnel were issued for 10 visited establishments¹⁰².

The managements of individual Police units approved of the NPM's recommendations concerning trainings for PDR staff, and informed the Mechanism about the conducted trainings or the dates of planned trainings.

Following the visit, the National Preventive Mechanism recommended to:

- **Train PDR staff in premedical first aid and in interpersonal communication.**

f) Living conditions

The living conditions in the visited rooms within the Police organisational units for detained persons or persons brought to sober up varied. In the opinion of the Mechanism, the general picture of this type of detention places is still unsatisfactory¹⁰³.

Cruel, inhuman or degrading treatment can take various forms, many of which are unintentional, but result from organisational mistakes and insufficient funds.

The ban on such treatment is absolute; therefore, *no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment*¹⁰⁴. The Mechanism stresses that the term "cruel, inhuman or degrading treatment or punishment" should be interpreted in such a way as to ensure the widest possible protection against abuse both physical and mental in nature, including the holding of detained or imprisoned persons in conditions

¹⁰¹ See: paras. 59 and 60 of the 2nd General Report concerning the training of law enforcement personnel [CPT/Inf (92) 3].

¹⁰² PDRs: Grodzisk Mazowiecki, Zawiercie, Katowice, Grudziądz, Sławno, Słupsk, Drawsko Pomorskie, Gorzów Wlkp., Lublin, Sanok.

¹⁰³ See page 31 of the Report of the Human Rights Defender on the activities of NPM in 2010, in: Biuletyn RPO, Źródła 2011, No 3.

¹⁰⁴ Rule 6 of the Resolution of UN General Assembly No 43/173 of 9 December 1988.

which deprive them, temporarily or permanently, of the use of any of their natural senses, such as sight or hearing, or of the awareness of place and the passing of time.

When assessing the social and living conditions in PDRs, the Mechanism noted a significant disproportion between PDRs in Poznań-Stare Miasto, Tarnów, Oleśnica, Zawiercie and Elbląg and the remaining establishments visited in 2011.

The technical condition of rooms for the detainees in these establishments was assessed by the NPM as poor and requiring immediate refurbishment. In the case of Zawiercie, the NPM ordered to shut down the premises if a refurbishment proved impossible. The negative assessment of the conditions in these establishments has been an effect of a series of irregularities revealed during the visits and involving failures to comply with the standards specified in the Ordinance of the Minister of the Interior and Administration of 13 October 2008 on the rooms within the Police organisational units for detained persons or persons brought to sober up and the regulations governing the stay in those rooms (lack of separated rooms provided for in the Ordinance¹⁰⁵, PDR equipment failing to meet the standards¹⁰⁶, lacking or insufficient alarm installations¹⁰⁷); significant overexploitation of the premises also contributed to their negative assessment (damp walls, holes in walls and ceilings, too weak lighting, too low temperature, filth, dirty walls of the rooms for the detained).

The accumulation of these inconveniences in the 5 PDRs listed above clearly shows, in the opinion of the NPM, that general refurbishment is a must in these units. With reference to the rooms mentioned above, the National Preventive Mechanism stated that social and living conditions in them bring about an additional and utterly unjustified level of inconvenience resulting from detention. Basing above all on international norms¹⁰⁸, the **Mechanism decided that general refurbishment in the PDRs mentioned above is an essential condition for the respect of dignity of detainees staying in there as well as of Police officers on duty.**

The NPM's recommendations, directed to superior authorities and demanding funds for general refurbishments, encountered various reactions.

The Deputy Director of Prevention Bureau of the General Police Headquarters claimed that in the case of Poznań-Stare Miasto PDR, the adaptation of the rooms to the binding technical standards would generate considerable expenditure. Financial limitations make it impossible to carry out in a short period of time all the necessary refurbishments in all the rooms where it is required. The Voivodeship Police Headquarters in Poznań did not possess in 2011 the sufficient financial resources to cover all the necessary investments in

¹⁰⁵ PDR Żyrardów – lack of storing room for clothes of the detained persons; PDR Tarnów – lack of storing room for clean bed sheets; PDR Tarnów, Sochaczew, Olawa, Ślawno – lack of separate storing space for the belongings of the person with infectious diseases.

¹⁰⁶ PDR Zawiercie – several cm-wide spaces between platforms, conditional consent of Sanitary Inspector of MoIA for the use of rooms on condition of their renovation; PD Kętrzyn – no shadings for lamps in rooms for the detained persons.

¹⁰⁷ PDR Tarnów; PDR Ustrzyki Dolne (storing room).

¹⁰⁸ See para. 56 of the Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies [Rec. (2001) 10] and para. 42 of the 2nd General Report of CPT [CPT/Inf (92) 3].



this establishment. Therefore, in the rooms in question, refurbishment works were limited to the removal of sharp edges of tables and stools, and equipping the sanitary area in curtains ensuring intimacy. A general refurbishment will be possible only after the Voivodeship Headquarters in Poznań gets adequate funds for the purpose. Referring to the recommendation of the National Preventive Mechanism to carry out general refurbishment in PDR in Tarnów, Municipal Police Commander in Tarnów stated that the Voivodeship Police Headquarters in Kraków approved the refurbishment project, taking into account all the recommendations of the Mechanism. Deputy Poviast Police Commander in Oleśnica informed that a refurbishment of rooms for the detainees and of the admission room was done, and that sharp edges were removed from tables in the rooms.

With reference to Zawiercie PDR, the Director of Logistics Bureau of the General Police Headquarters informed that in Katowice Voivodeship Police Headquarter's budget for this year of PLN 300,000 was earmarked for general refurbishment of the establishment. The Voivodeship Police Commander in Olsztyn has informed in a letter that actions have been taken to implement the recommendations concerning the PDR in Elbląg. From the letter it resulted that implementing the NPM's recommendations would consist in running repairs due to the lack of funds for an overall refurbishment. Some renovation works have been planned – painting of walls and ceilings in all rooms and installation of missing lavatories, washing basins and taps. Discharge chimneys have also been cleared.

In the opinion of the Mechanism, the scope of refurbishment works undertaken by the managements of individual establishments has confirmed that these entities have for several years been underfunded by state budget.

In as many as 18 visited establishments¹⁰⁹, the employees of NPM encountered irregularities related to the use of tobacco products by the detainees. Permitting the detainees to smoke guarantees, in the opinion of the Mechanism, peace and security in PDRs. In the case of smokers, the stress resulting from being detained, placed in a PDR and uncertain as to the further legal situation can be efficiently relieved precisely by smoking a cigarette. The visits carried out in PDRs in 2011 have shown that the possibilities to use tobacco products in individual PDRs vary. In the opinion of the Mechanism, the lack of uniformity in the procedures applied in individual Police units in this scope may result from the amendment of the Ordinance of the Minister of the Interior and Administration of 14 September 2001 on the rules governing the admissibility of using tobacco products in the premises subordinate to the minister competent for internal affairs¹¹⁰, and from the resulting difficulty in interpreting provisions concerning the right of detainees to smoke tobacco in PDRs. It should be noted here that this right is provided for in §11(9) of the Rules of Procedure concerning the stay of persons placed in rooms for detained persons or persons

¹⁰⁹ PDRs: Poznań-Stare Miasto, Olesno, Żyrardów, Tarnów, Oleśnica, Chojnice, Sochaczew, Kalisz, Ostrów Wielkopolski, Oława, Drawsko Pomorskie, Sanok, Gorzów Wlkp., Lublin, Łódź – lack of designated space to use tobacco products by the detained; PDRs: Bydgoszcz, Sławno, Kętrzyn – prohibition of the use of tobacco products by the detained.

¹¹⁰ Dz. U. of 2001 r. No 106, item 1163.



brought to sober up – which constitutes an Annex to the Ordinance of the Minister of the Interior and Administration of 13 October 2008, mentioned above.

In the amended Ordinance of MoIA of 11 May 2011 on detailed conditions of using tobacco products in the premises and in the means of transport by persons subordinate to the minister competent for internal affairs¹¹¹, the legislator has introduced, on the basis of the Act of 8 April 2010 on amending the Act on protecting health against the consequences of using tobacco and tobacco products and of the Act on State Sanitary Inspection¹¹², the possibility for employees of Police units to smoke tobacco products only in dedicated rooms meeting the conditions of a smoking room provided for in the Act of 8 April 2010 on amending the Act on protecting health against the consequences of using tobacco and tobacco products (§3(1) of the Ordinance).

As regards detained persons staying in PDRs, the legislator confirmed the binding power of the right to smoke tobacco, resulting from the Rules of procedure mentioned above, and allowed for its realisation in designated rooms for detainees, on condition of good ventilation. **In the opinion of the NPM, the regulation included in the analysed Ordinance and referring directly to detained persons is consistent with the provision in Article §(9) of the Rules of procedure. The National Preventive Mechanism is therefore of the opinion that the amendment of the Ordinance does not result in the prohibition to use tobacco products by detained persons staying in PDRs.** As a consequence, the Mechanism believes that in the context of the provisions in force, smoking bans for detainees introduced in some of the visited PDRs (Sławno, Kętrzyn, Bydgoszcz) are groundless.

The managements of PDRs, where the NPM recommended to provide special areas for smoking, shared the NPM's arguments, and informed that such areas have been designated or that actions have been undertaken to obtain funds necessary to establish smoking rooms. In their answers the Commanders of Police units where the NPM revealed during its visits the existence of a smoking ban for the detainees have promised to designate special areas for smoking rooms as soon as fund for a refurbishment (Bydgoszcz) or for expansion (Sławno) are obtained).

Following the visits, the National Preventive Mechanism recommended to:

- **Make general refurbishments;**
- **Provide the lacking accommodation equipment;**
- **Provide all persons detained and placed in PDRs with sleeping sets;**
- **Provide conditions ensuring intimacy of detained persons when they use toilets and showers;**
- **Equip toilets for detainees with soaps and paper towels;**
- **Designate a place where detainees could use tobacco products.**

¹¹¹ Dz. U. of 2011 r. No 97 item 564.

¹¹² Dz. U. of 2010 r. No 81, item 529.



2.3. Police emergency centres for children

Police emergency centres for children (hereinafter referred to as ECC or Centre) were established by the Minister of Interior and Administration in order to allow a temporary supervision over juveniles who are suspected of committing a crime and who are likely to hide or try to destroy evidence, or whose identity cannot be established.

In reaction to the recommendations which the Human Rights Defender, acting as the National Preventive Mechanism¹¹³, put forward in the Report on the activities of the Mechanism in 2010, MoIA announced that work was under way aimed at reorganising ECCs. The Minister added that the issue of detaining juveniles in such Centres will be regulated comprehensively and in detail in a draft Ordinance of the Minister of Interior and Administration on police rooms for detained persons or persons brought to sober up, on template forms filled in and recorded in these rooms, on transition cells, temporary transition rooms, police children emergency centres and on the regulations for staying in such rooms, on methods for storing images recorded in these rooms, making these images available to authorised entities, and on disposal of such images (hereinafter referred to as draft Ordinance). The draft Ordinance attempts to codify standards that are already in force, like in the case of legal regulations applicable in PDRs within Police organisational units. **In the current state of law, neither the requirements for ECCs nor their internal regulations have been legally specified.** The Defender, who is of the opinion that the above-mentioned issues should form a part of the Polish legal order, sent a letter on the issue to the Minister of Interior and Administration, pointing out the need for an ordinance on Police emergency centres..

The Minister responded that the draft ordinance will include a list of addresses of institutions where juveniles can ask for assistance if their rights are not respected, as well as the regulations for stay of juveniles in ECCs, specifying also their rights and obligations. The draft ordinance, which is currently being elaborated upon in the Ministry, contains provisions also on the equipment and technical security measures used in ECCs.

In his response to the accusation included in the Report and concerning the prolonged (i.e. lasting over 72 hours) detentions of juveniles in ECCs, the Minister pointed out that these result from the practice employed by judges, who place juveniles in ECCs for an unlimited period of time until a place in a juvenile shelter or in some other establishment mentioned in the Act on j.d.p. and indicated in the court's decision is found. He added that the above was confirmed by the information received in May 2011 from the directors of ECCs, which showed that in 2010, 455 juveniles were detained in ECCs for over 5 days, due to a provision, included in the court's final decision in proceedings against such juveniles, that until a place in the establishment indicated in such decision is found a juvenile shall be detained in an ECC. Considering the above, the Chief Police Commander lodged a motion to commence legislative works to determine the maximum period of detaining a

¹¹³ Hereinafter referred to as: "NPM" or "Mechanism."

juvenile in ECC after a family judge has issued an order to place him/her in an establishment. From the information received from the Ministry of Justice it results that this issue should be addressed when the Act on j.d.p. is amended. The NPM is of the opinion that the centres are not properly adjusted for longer stays of juveniles. The issue remains within the Defender's scope of interest. The Defender stresses that the period of detaining juveniles in Police emergency centres for children should be as short as possible, whereas its time frame should be specified in the act.

The Minister of Interior and Administration addressed also the issue of placing juveniles in ECC based on a court warrant ordering a juvenile to be brought to foster care centre (youth care centre or youth sociotherapy centre). The Act of 9 June 2011 on granting support to family and on the system of alternative care¹¹⁴ (the Act entered into force on 1 January 2012) regulated the issue of escapees from juvenile detention centres (hereinafter JDC), who may also be placed in ECCs.

The Ministry also quoted the recommendations of the National Preventive Mechanism to provide juveniles, insofar as it is possible, with proper psychological care, and to ensure that all new arrivals are medically screened and that medical services are provided in rooms suitable for the purpose and are properly documented. In the opinion of National Preventive Mechanism, the Report rightly noted that national provisions regulating the functioning of Police emergency centres for children do not mention the obligation to conduct psychological and medical examination of each newly admitted juvenile. Moreover, they do not stipulate that there should be a separate doctor's room in each ECC. The NPM also stated that as regards the issue of proper recording of juveniles' medical examination in a register of medical consultations, which is done by a doctor, police officers on duty in an ECC have a very limited influence on observing this procedure, similarly as in the case of rooms for detained persons within the police headquarters (hereinafter referred to as Chambers), and all they can do is ask doctors to be more attentive when recording the data in the register. The NMP is of the opinion that the newly admitted juveniles should undergo medical consultations. This issue will be discussed in the part of the Report dedicated to access to medical care.

Continuing his answer on the issue of cultural and educational programme, which was raised in the Report, the Minister pointed out that following the NPM's recommendations, the Chief Police Commander obliged voivodship Police commanders (Warsaw Metropolitan Police) to take proper actions aimed at ensuring that juveniles detained in ECCs for over 24 hours can exercise in fresh air for at least one hour a day.

Due to the fact that juveniles have not had such right, the draft regulations for the stay of juveniles in ECC, attached to the draft Ordinance, stipulate that the above mentioned possibility to exercise is a rights of a juvenile detained in an ECC for over 24 hours. Moreover, it was suggested that the heads of ECCs set a framework daily schedule covering educational, disciplinary, cultural, sport, recreational and cleaning activities, and specifying

¹¹⁴ Dz.U. of 2011 No 149, item 887.



the time for post-dinner rest in sleeping rooms and the time for lights out. On the other hand, the Minister announced that due to the specific nature of such establishments and to the short period that juveniles stay in such establishments, which makes it impossible for them to attend school, there is no need for police officers on duty in ECCs to complete special training, allowing them to conduct educational activities with juveniles.

In response to the above-mentioned letter from the Ministry, the Human Rights Defender addressed the issues raised therein¹¹⁵. The Human Rights Defender explained that the recommendations by the National Preventive Mechanism, included in the 2010 Report, were reflected in international standards and international law, thus it would be necessary to amend national provisions. Quoting the Beijing Rules, stating that *juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical, that they may require in view of their age, sex and personality*¹¹⁶, the Defender declared that it was necessary to legally regulate the question of medical examinations of each newly arrived juvenile, the maximum time of their stay, and the conditions which the ECC should meet, as well as the regulations of juveniles stay therein. Quoting the Recommendations of the Committee of Ministers of the Council of Europe on the European Rules for juvenile offenders subject to sanctions or measures¹¹⁷, the Human Rights Defender also explained the meaning of educational competencies of police officers on duty in ECCs. According to these Recommendations, *staff responsible for the implementation of community sanctions and measures and the deprivation of liberty of juveniles shall have adequate initial training, dealing with theoretical and practical aspects of their work, and be given guidance that will enable them to have a realistic understanding of their particular field of activity, their practical duties and the ethical requirements of their work.*¹¹⁸ Next to the requirement which obliges the staff to undergo initial pedagogical training, the Defender also thinks it necessary to introduce a rule which states that police officers on duty in ECCs should systematically improve and develop their professional competencies by participating in further trainings. Adequate level of staff's competencies as well as ensuring legal regulations on the functioning of ECCs are extremely important in the context of protecting juveniles' rights.

In 2011, the National Preventive Mechanism visited 10 police emergency centres for children¹¹⁹.

Supervision over juveniles detained in ECCs is the responsibility of officers who are also their tutors. These people are faced with a difficult task of playing at the same time the role of a police officer and of a tutor. Due to the dual nature of their job and to the regulations of Polish legal system, there is a risk that juveniles in ECCs may be abused. The National Preventive Mechanism, guarding the rights of juveniles and aiming to ensure that

¹¹⁵ RPO-R-071-32/11.

¹¹⁶ See: Rule 13.5 in: Standard Minimum Rules for the Administration of Juvenile Justice. Resolution of General Assembly 40/33 of 29 November 1985 (The Beijing Rules).

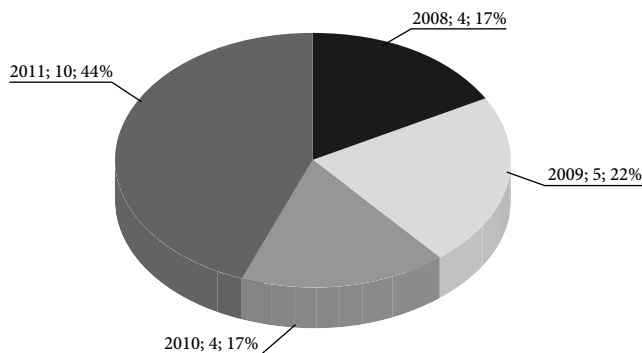
¹¹⁷ CM/Rec(2008) 11.

¹¹⁸ See: Rule 129.1 CM/Rec(2008) 11.

¹¹⁹ Bydgoszcz, Gorzów Wielkopolski, Lublin, Tarnów, Radom, Kielce, Elbląg, Olsztyn, Poznań, Ostrów Wielkopolski.

juveniles are protected against torture or other cruel, inhuman or degrading treatment or punishment, has continued its visits in ECCs, evaluating the treatment of juveniles by the staff, the legality of their stay, and the accommodation conditions.

Figure 4. Visits of the National Preventive Mechanism in emergency centres for children in 2008-2011



a) Legality and duration of stay

Pursuant to Article 40(1) of the Act on juvenile delinquency proceedings, the Police is authorised to arrest and subsequently detain a juvenile in emergency centre for children if it considers it necessary due to the circumstances of the case. Such decision is made when there exists a that a reasonable suspicion that a juvenile has committed a crime and there exists a justified concern that the juvenile may hide or attempt to obliterate traces of the offence, or when it is impossible to establish the identity of a juvenile. Article 40(6)(4) j.d.c. stipulates that the stay of a juvenile in an ECC cannot exceed 72 hours. On 1 January 2012, the Act of 9 June 2011¹²⁰ on granting support to family and on the system of alternative kinship entered into force. Article 205 of this Act amended the Act on juvenile delinquency proceedings. Pursuant to Article 40(7) “A *Police emergency centre can detain a juvenile who escaped from a juvenile centre, a youth care centre or a juvenile detention centre – for a period of time required to transfer the juvenile back to a relevant establishment, not exceeding, however, 5 days*”. On the other hand, pursuant to Article 40a(1) of the Act of 29 July 2011 amending the Act on juvenile delinquency proceedings¹²¹, a juvenile may be also placed in an ECC for a period of a justified stop during his or her convoy, however for no longer than for 24 hours (point 1), and based on a court order – for the period of time required to carry out the proceedings, not exceeding, however, 48 hours (point 2). The length and legality of stay of juveniles falls within the area of NPM’s interest. During each visit in Police

¹²⁰ Dz.U. of 2011 No 149, item 887.

¹²¹ Dz.U. of 2011 No 191, item 1134.



emergency centres for children, the representatives of the NMP checked whether a juvenile's stay in an ECC did exceed the period stipulated in the act. Pursuant to Article 37b of the Convention on the Rights of the Child, adopted by General Assembly on 20 November 1989¹²², the arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. The results of the NPM controls show that in all visited units cases were reported of detaining juveniles for a period of time longer than permitted by law, with the longest reported detainment amounting to as many as 108 days (ECC in Tarnów). It was also reported that juveniles were detained for 22 days (Ostrów Wielkopolski), 18 days (Bydgoszcz) or 12 days (Poznań). **Such practices are unacceptable not only because of the fact that isolation exceeds the period stipulated in the Act on j.d.p., and thus has a negative impact on juveniles' mental state, but also because the establishment was not adapted to detain juveniles for a longer period of time.** Such extended detention in an ECC has serious repercussions for a juvenile, making it impossible for him/her to attend school or limiting his/her contact with family members, which at that age is very important. In response to the NPM's Report, the Municipal Police Chief in Gorzów Wielkopolski announced that measures were being taken in order to shorten the period of detention as much as possible. He announced that cases when the length of juveniles' stays in Centres exceeded the acceptable period resulted from a court's order to place juveniles in an ECC until they are transferred to an indicated establishment. The Director of the ECC in Radom explained that the reason for detaining a juvenile, who was in the Centre on the day of the visit, for 6 days, was the necessity to transfer relevant documentation and to specify the establishment where the juvenile would be finally placed. According to the Director, such situations do occur occasionally, and the convoys to establishments indicated by the court are carried out as soon as possible. Similar explanations came from directors of other establishments, who expressed their willingness to make efforts to shorten the period of stay of juveniles in ECCs. Concerned by the numerous cases of prolonged stays of juveniles in ECCs, the Human Rights Defender once again addressed the Minister of Interior and Administration, the Minister of Justice and the Chief Police Commander¹²³. In the opinion of the Mechanism, the prolonged stays of detained juveniles result from the lack of legal provision stipulating the maximum period of time for detaining a juvenile in an ECC after a court has issued a decision to apply this measure. Until his/her placement in the establishment indicated in the court's decision, the juvenile stays in an ECC. Expressing his opinion on this matter, the Minister of Interior and Administration stated that the good of juveniles, as well as ensuring a proper care until they are transferred to the establishment indicated by the court, is the main concern of police officers. He confirmed that judges tend to place juveniles in ECCs without setting the time limit for such stays, making juveniles wait until there is a place for them in the indicated

¹²² Dz.U. of 1991 No 120, item 526, as amended.

¹²³ RPO-672816-VII-720.8.1/11.



establishment. The Minister announced that the probable cause for all this is the insufficient number of places in the indicated establishments, inadequate compared to the number of decisions issued by courts¹²⁴. On the other hand, the Minister of Justice announced that the cause for prolonged stays is not related to the system of management or to the lack of places. The Chief Police Commander noted that there is a legal vacuum related to the lack of provisions stipulating the maximum length of a juvenile's stay in an ECC. This concerns a juvenile against whom a court issued, within 72 hours of his/her detention, a decision to place him/her in a juvenile shelter or in some other establishment mentioned in the Act on j.d.p. **Despite extensive contributions to legislative work by the Ministry of the Interior and Administration, the Ministry of Justice and the Chief Police Commander, the issue of the maximum length of juveniles' stay in an ECC after a court has issued a decision remains to be regulated in the amendment of the Act on j.d.p.**¹²⁵ The issue of prolonged stays remains in the field of interest of the Human Rights Defender.

The National Preventive Mechanism recommended to:

- **Eliminate cases of detaining juveniles in Police emergency centres for children for a period exceeding that stipulated in Article 40 of the Act on j.d.p.**

b) Staff

Pursuant to Beijing Rules¹²⁶ (Rule 12.1), in order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained.

Pursuant to Decision No 346 of the Chief Police Commander of 9 August 2004 on police officers on duty in police children emergency centres¹²⁷, police officers-tutors (at least two police officers on duty), with at least a college degree and pedagogical training, are responsible for juveniles during their stay in a centre (§ 2). Officers in the visited establishments, who did not have a degree in education, completed a pedagogical training which prepared them for work in the Centre.

During its visits, the National Preventive Mechanism verifies whether the employees of ECCs have an opportunity to improve their qualifications. Irregularities in this area were discovered in Centres in Gorzów Wielkopolski and in Bydgoszcz, where staff members did not participate in regular, interdisciplinary trainings on how to work with juveniles or to how to administer first aid. Heads of the Centres were positive about the recommendations to carry out regular trainings of staff.

Another irregularity consisted in searches being made by person of different gender than that of person subject to searched (ECC in Olsztyn). Since there is only one female

¹²⁴ BMP-0790-6-1/11.

¹²⁵ Dz.U. of 2011 No 191, item 1134.

¹²⁶ Standard Minimum Rules for the Administration of Juvenile Justice. Resolution of General Assembly 40/33 of 29 November 1985.

¹²⁷ Dz. Urz. KGP. 04. 16. 101.



staff member in the ECC in Olsztyn (same as in Ostrów Wielkopolski), there are times when only male police officers are on duty. In such event, all the activities related to detaining a female juvenile are performed by a female police officer from a Police station. However, there some cases were reported when this requirement was not met. Mixed gender staffing is important not only with regard to activities performed when accepting a juvenile into a Centre. Pursuant to CPT it also constitutes *an important safeguard against ill-treatment in places of detention. The presence of male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention*¹²⁸. In response to the Mechanism's recommendations that searches of juveniles should be performed by staff of the same gender, the Municipal Police Chief in Olsztyn announced that there were no derogations from this rule. Due to contradictory information regarding this issue, it remains within the area of interest of the NPM.

In the opinion of the NPM, the Centre in Poznań deserves particular praise, since it employs a police-tutor with a degree in psychology who provides psychological counseling to juveniles. Being placed in an ECC is highly stressful, therefore it is important that juveniles receive support from a professional who can provide them with proper care.

The National Preventive Mechanism recommended to:

- **Conduct regular training for Centre's staff members in order to ensure that they are constantly developing their professional skills and that they are prepared to work with juveniles;**
- **Ensure that detained juveniles are only searched by police officers of the same gender.**

c) Treatment

In certain ECCs the NPM's representatives discovered that police officers were conducting investigation, which does not fall within the scope of their competencies as police-tutors in ECCs. When analysing the report on the activities of the ECC in Poznań, the fragment stating that police officers *acquired information which could be vital for their investigation and which was later reported to Police departments in order to be further used by relevant regional Police units* raised serious doubts¹²⁹. Reservations were also voiced in the case of information acquired from a juvenile placed in the ECC in Ostrów Wielkopolski. The juvenile told the NPM that he was forced to describe the unlawful act which he committed. He added that in return for this information he was promised that the court proceedings would be accelerated. According to the NPM, these activities prove that juveniles' procedural rights are not respected, and that members of staff on duty in ECCs engage in activities which should be performed by specialised bodies. The NPM also critically

¹²⁸ See: §23 CPT/Inf (2000)13.

¹²⁹ RPO-664999-VII-720.8.1/11.



evaluated the procedure for interviewing juveniles and recording the collected information in the form of notes which do not include a juvenile's personal data, and yet are still transferred to a relevant Police unit.

The NPM is of the opinion that juveniles cannot be a source of operational or evidence material.

The CPT also recommended taking steps aimed at ensuring that juveniles refrain from making any statements or from signing documents related to the offences they are suspected to have committed without the presence of a lawyer and/or a trusted person on whose support they can rely¹³⁰. The NPM discovered that also staff members of the ECC in Gorzów Wielkopolski engaged in operational and investigative activities which involved juveniles and were conducted for the purpose of the proceedings¹³¹. These activities, described in point II of the *2010 Report on the Activity of the NPM Centre in Gorzów Wielkopolski*, were classified as educational activities and were aimed at juveniles. Representatives of the National Preventive Mechanism expressed their concerns related to the above-mentioned events. The first one can be summed up in a question whether or not operational and investigative activities are conducted by the Centre's staff members (as can be inferred from the report). The second relates to the following question: can such actions be counted among disciplinary, preventive and educational activities. The head of the Centre explained that staff members did not engage in any activities which fall within the scope of competencies of relevant departments in the Municipal Police Headquarters in Gorzów Wielkopolski. **In the opinion of the NPM, conducting investigation in Police emergency centres is inadmissible, since juveniles are treated subjectively, as a source of evidence, whereas the task of police officers in ECCs is to resocialise the detained juveniles.** Moreover, such practices make it impossible for the staff to establish a close relationship with a juvenile, a relationship based on mutual respect and trust. Instead of acting as a role-model and an adult who inspires a feeling of security, a staff member becomes a representative of prosecuting authority. Consequently, the effectiveness of actions taken by staff members is low, because by maintaining a distance a juvenile cannot internalise the norms which he/she is being taught. Moreover, a juvenile's mental state while at a Centre and the fact that he/she is deprived of intimacy with people important for him/her may have a negative effect on his/her mood or behaviour.

In response to the NPM's Report, the Municipal Police Commander in Gorzów Wielkopolski announced that the provisions allowing police officers to conduct investigation activities would be removed from the reports on Centre's activities, and stressed that Police is responsible for investigating crimes and offences and for prosecuting the perpetrators. Therefore, police officers on duty in ECCs will continue to carry out their tasks related to investigation activities. Deputy Director of the General Police Headquarters in

¹³⁰ See §23 CPT/Inf (2006)11.

¹³¹ RPO-675178-VII-7020.8.1/11.



Poznań submitted a statement informing that the information provided by juveniles is not acquired during activities related to investigation. Since the issue remains unclear, the Mechanism shall continue to monitor it. Powiat Police Commander in Ostrów Wielkopolski stated that the provision allowing to conduct investigation and gather evidence in the Centre will be deleted from the regulations of the ECC.

The Human Rights Defender addressed the Chief Police Commander¹³² on the issue related to performing operational activities involving juveniles detained in ECCs. In her address, the Defender stressed that ECCs should serve as foster care centres pursuing educational purposes, which cannot be reconciled with investigative work. In their response to the NPM's recommendations to eliminate such practices, the Commanders in charge of the visited establishments pointed out that operational work in Police centres for children is justified by the need to carry out the tasks imposed by Order No 1619 of the Chief Police Commander of 3 November 2010 on methods and forms of conducting Police activities aimed at preventing demoralization and criminality among juveniles, and on actions benefiting juveniles¹³³. According to the Defender, these tasks remain within the scope of competencies of relevant departments and specialised Police units (e.g. Unit on juveniles and pathology, criminal service) and, consequently, should not be carried out in ECCs.

In response to the Defender's address, the Deputy Chief Police Commander, in his letter of 7 November 2011, pointed to the requirement stipulated in Article 4(6) of the Annex to the Decision No 346 of KGP of 9 August 2004 on police officers service in police children emergency centres¹³⁴. The requirement consists in the obligation to conduct an introductory interview with a juvenile in order to get to know him/her, and not to obtain detailed information on a crime. Having acquired knowledge on a crime committed by his/her interlocutor, a police officer is obliged to record this information.

In order to clear misunderstandings related to this issue, the Team of National Preventive Mechanism met with representatives of Chief Police Headquarters. It was concluded that permanent contact between the two should be maintained in order to exchange information swiftly, and to develop good cooperation. In result of the meeting, the Defender addressed the General Police Headquarters once more, asking him to take action to amend the internal provisions defining the rules and procedures for collecting, storing, processing and analysing statistical data on detection of crimes and punishable offences committed by juveniles, with a view to minimise the risk of abuses related to the area discussed above. This Defender continues to monitor this issue.

Representatives of the NPM were worried by the discoveries made during their visit to the ECC in Bydgoszcz. One of juveniles they interviewed had visible marks of injury (bruises and abrasions). The juvenile informed the visitors that he had been beaten by police officers when he was arrested and then interviewed at the Police Station in Nakło.

¹³² RPO-664999-VII-720.8.1/11.

¹³³ Dz. Urz. KGP.10.11.64.

¹³⁴ Dz. Urz. KGP No 16, item 101.

He said that he had undergone forensic examination and the beating had been reported to the prosecutor. The lack of access to personal data prevented the National Preventive Mechanism from verifying the said event. In accordance with principles stipulated in instruments of international law, and following the position of the CPT, the National Preventive Mechanism stresses that **a child, whose personality is not fully developed and who is not physically and mentally mature, is susceptible – more than an adult – to ill treatment and abuses of all kinds, especially immediately after his/her detention. In view of the above, all persons responsible for detaining, interviewing and isolating a minor should take special care of protecting his/her rights, irrespective of the reason for his/her detention.**

The National Preventive Mechanism recommended to:

- **Eliminate the practice of gathering information from juveniles, which is a duty of relevant Police departments and units;**
- **Abandon the practice consisting in producing operational and investigation materials obtained from juveniles detained in ECCs.**

d) Right to have contact with the outside world

As far as contact with the outside world is concerned, during their visits to Police emergency centres for children representatives of the National Preventive Mechanism noted the following irregularities: visits of parents and guardians were conducted in the presence of police officer, the right to receive visitors and make telephone calls were arbitrary limited by the ECC staff members.

Representatives of the NPM noted some unlawful provisions in the regulations for visits in the ECC in Tarnów. The regulations put certain limitations on the visits, for example, a detainee can be denied a visit in the event of “a high number of detainees”; or “juveniles waiting for a place in a resocialisation establishment, are entitled to receive first visit after two weeks from his/her admission to the ECC”¹³⁵. It should be stressed that **no provisions of the applicable law foresee such limitation of juvenile rights**. What is more, the above-mentioned provision in the regulations for visits suggests that the Centre’s management regards very long stays (over two weeks) as common. Such long stays, however, as already mentioned, are against the law. In response to the NPM’s recommendations, the head of the ECC in Tarnów announced that the rules governing visits to juveniles were amended.

In some Police emergency centres for children **visits took place in the tutor’s room, in the presence of a police officer, which, according to the Chief Police Commander, violates the right to confidentiality** Not satisfied with the response of the head of ECC in Radom, that *a visit paid to a juvenile always takes place in the presence of a tutor or a*

¹³⁵ RPO-668207-VII-720.8.1/11.



guardian if a Court issues a written order to that effect¹³⁶, representatives of the Mechanism asked the III Family and Juvenile Division of the District Court for explanation. The chairman of the said Division replied that judges gave consent for visits paid to juveniles in ECCs in the presence of a police officer occasionally, in properly justified circumstances. In response to the NPM's recommendations, Heads of the ECC in Radom and in Bydgoszcz were positive about the rule that visits take place without the presence of police officers. On the other hand, the head of ECC in Lublin announced that the presence of a staff member during visits paid by parents or guardians is often necessary for security reasons (as was also the case in the ECC in Olsztyn). He added that the Centre has a room equipped with a one-way mirror and a camera, which can be used provided that the number of juveniles accommodated in the Centre is not excessive. In order to clear all doubts related to this issue, the Mechanism continues to monitor this case. Moreover, the Municipal Police Chief in Olsztyn announced that the regulations on visits in the Centre include a provision stipulating that police officers on duty may deny a visit if a juvenile behaves reprehensibly. **The NPM stresses that such provision is not grounded in the applicable legal provisions. Moreover, since penalties which may be imposed on a juvenile detained in an ECC have been listed in Article 6 of the Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in Police emergency centres for children¹³⁷, the practice of imposing penalties which are not on the list has to be abandoned. At the same time, in the opinion of the Mechanism, the presence of police officers during visits of juveniles' parents or guardians is permissible only in justified and exceptional cases when safety in the establishment or safety of a juvenile or of the visitors may be threatened, or if a court issues a written order that visits should be taking place in the presence of a staff member.**

Malpractice was also discovered in the ECC in Ostrów Wielkopolski, where juveniles, against whom court proceedings were underway, were not able to contact their relatives for 72 hours after they had been placed in the Centre. The inspectors also pointed out that this procedure was not grounded in a document of 26 January 2010, adopted by the Centre in Ostrów Wielkopolski, entitled: "Rights and duties of a juvenile detained in a Police Emergency Centre for Children". The procedure, moreover, violates the provisions of the Ordinance of the Minister of the Interior and Administration of 2002 January on detailed rules governing the stay of juveniles in Police emergency centres for children¹³⁸. In his response, the head of ECC announced that juveniles may be visited by relatives, and that the previous information resulted from a misunderstanding. The Mechanism asked the Voivodship Police Commander to clarify the issue.

During the visits in the ECC in Bydgoszcz and in Lublin, the NPM's representatives were informed that detained juveniles were prohibited to make any phone calls, whereas

¹³⁶ RPO-665678-VII-720.8.1/11.

¹³⁷ Dz.U. of 2002 No 10, item 104, as amended.

¹³⁸ See: 5(1) 5 (Dz.U. of 2002 No 10, item 104, as amended).

while in Gorzów Wielkopolski they were informed that juveniles were allowed to make phone calls only after the court grants its consent. Until then any contacts with relatives takes place in the presence of a police officer. The condition for applying for the court's consent is closing down the investigation proceedings. In its report for the Polish government from its 2004 visit to Poland, the CPT recommends that *Polish authorities take the following steps at Police emergency centres for children: create more opportunities for juveniles to maintain contact with their families, in particular juveniles should be allowed to receive regular visits from their family, except for exceptional cases which are justified by the circumstances. Moreover, children should be allowed to make phone calls*¹³⁹. The National Preventive Mechanism is of the opinion that **due to the fact that a stay in an establishment is a difficult experience for a juvenile, maintaining contact with relatives is essential and may positively influence later functioning of a juvenile. Thus one should strive to ensure that such contacts take place in conditions guaranteeing privacy and freedom of speech, and that it is also possible to maintain them via the telephone.** In response to the NPM's recommendations, the head of ECC in Lublin stated that a telephone will be accessible to juveniles, but only in the presence of a police officer on duty, in order to prevent a risk of transferring to third parties information which may prove vital for the ongoing investigation. The head of ECC in Bydgoszcz announced, however, that it is impossible to grant a juvenile a possibility to make phone calls. Quoting international standards and international law, the National Preventive Mechanism recommended that such practices be changed, and that juveniles be permitted to use the telephone. The NPM also decided that the implementation of the above-mentioned recommendation by the head of ECC should be monitored.

The National Preventive Mechanism recommended:

- **to carry out visits without the presence of a police officer, unless specific circumstances justify such presence,**
- **allow juveniles to have phone contact with parents or legal guardians.**

e) Right to health care

National provisions governing the operation of Police emergency centres for children do not stipulate the obligation to conduct medical examination on every newly admitted juvenile. Usually, doctors or nurses did not make regular visits in Police emergency centres for children. When the health of a juvenile was at risk, his/her right to medical care was exercised by calling an ambulance. However, the National Preventive Mechanism is of the opinion that **each newly admitted juvenile should undergo medical examination.** Similar position was expressed by the CPT which in its report for the Polish Government from its 2004 visit to Poland recommended that *all newly admitted juveniles undergo immediate*

¹³⁹ See: § 44CPT/Inf (2006)11.



*medical examination and that they are regularly visited by a doctor or a nurse*¹⁴⁰. In response to the NPM's recommendation, the head of ECC in Lublin invoked Article 1 of the Ordinance of the Minister of the Interior and Administration of 21 June 2002 on medical examination of persons detained by the Police, according to which *a person detained by the Police, hereinafter referred to as a "detained person", shall be provided with immediate first aid or undergo a necessary medical examination if the person's health or life is at risk, in particular, if such person: has visible bodily injuries or lost consciousness, informs about suffering from an illness requiring permanent or periodic treatment, requests first aid and necessary medical examination*¹⁴¹. When juveniles report certain ailments or a sudden deterioration of their health, the medical examination is performed by an Ambulance Service doctor in the medical examination room at the emergency centre for children at the NMP's Prevention Department in Lublin. Similarly, a juvenile in Gorzów Wielkopolski undergoes medical checks when there is reasonable concern about the state of his/her health. Head of the ECC in Bydgoszcz has announced that in his opinion it is not necessary to conduct medical examination of all juveniles when they are admitted to a Centre, since this generates additional costs. The head of ECC in Olsztyn quoted Article 5 of the Annex to the Decision No 346 of KGP of 9 August 2004 which reads: *if a juvenile's state of health raises doubts, he/she should be referred to medical examination in order to obtain a doctor's opinion*. In the opinion of the head of Olsztyn ECC, the above is not equivalent to the obligation to medically examine a juvenile when he/she is admitted to the Centre.

The National Preventive Mechanism representatives reported that only during their visit in the ECC in Ostrów Wielkopolski they observed a good practice of performing medical examination of juveniles prior to their admission to the Centre. In the opinion of the Mechanism, such practice should be also applied by other ECCs.

During its visit to Police emergency centres for children in Gorzów Wielkopolski and in Bydgoszcz, the Mechanism was informed that juveniles were examined in the presence of a staff member in their bedroom or in a day room. **According to the NPM, the participation of a staff member should be exceptional and should be applied only in order to guarantee safety of person performing medical examination. Otherwise, the right of detainees to intimacy and respect for their dignity, as well as the right to medical secret are breached.** In response to the Mechanism's recommendations, the head of the ECC in Gorzów Wielkopolski informed that in his Centre, medical services may be provided at a distance which makes it impossible for the Centre's staff to hear the conversation between a juvenile and a doctor. The Chief Police commander in Bydgoszcz informed that police officers employed in the ECC were ordered to follow the provisions of the Act of 5 December 1996 on the profession of a physician and of a dentist¹⁴², which stipulates that only medical personnel may be present at the time of providing medical care.

¹⁴⁰ See: § 44 CTP/Inf (2006)/11.

¹⁴¹ Dz.U. of 2002 No 97, item 880.

¹⁴² See: Article 36(2) Dz.U. No 226, item 1943, as amended.

During their visit to the ECC in Olsztyn, representatives of the National Preventive Mechanism were informed that juveniles under the influence of alcohol are detained therein. The Municipal Police Commander in Olsztyn stated that the Prevention Bureau of General Police Headquarters confirmed the existence of a legal instrument which allows to place juvenile offenders who are under the influence of alcohol in Police emergency centres for children. **Due to the fact that no doctor is employed at the Centre, the National Preventive Mechanism disagrees with this statement and points to the increased risk that an exceptional event may occur. According to the Mechanism, juveniles under the influence of alcohol should be placed in a hospital, since there are no grounds to place them in a Police emergency centre for children.**

The National Preventive Mechanism recommended to:

- **Perform medical examinations of newly admitted juveniles, to provide medical services to juveniles in a way making it impossible for the Centre's staff to see and hear the procedure;**
- **Eliminate the practice of placing juveniles under the influence of alcohol in Police emergency centres for children.**

f) Living conditions

Although the living conditions in the majority of visited Police emergency centres for children were good, the representatives of the National Preventive Mechanism noticed some irregularities in the appearance and furnishing of those centres. Some of them required renovation and furnishing with elements ensuring that the rights of juveniles are respected. The criticism concerned in particular the damp patches and mouldy walls of the gym and the dining room (Poznań) or tiles coming off the walls and worn out bathrooms (Olsztyn). The directors of the Centres where renovations were recommended accepted the recommendations of the NPM.

The visiting team was also concerned about the lack of shower curtains (ECCs in Ostrów Wielkopolski and Lublin) which would keep the entire bodies of juveniles under shower from the sight of third persons. Although in Olsztyn showers were hidden behind movable partitions, they did not guarantee intimacy to juveniles. Therefore, the representatives of the Mechanism recommended that curtains or doors be install in showers to ensure full intimacy of children using them. In reply to the recommendations of the Mechanism, the director of ECC in Lublin explained that shower curtains had not been installed earlier for reasons of safety of the juveniles, but agreed with the recommendation and declared that curtains would be purchased and installed (as did the director of the ECC in Ostrów Wielkopolski).

The representatives of the Mechanism also noted that bedrooms for juveniles were equipped only with mattresses (ECC in Ostrów Wielkopolski, partly in Poznań). According to the NPM representatives, **beds must be placed in the bedrooms. The lack of beds**



cannot be justified with care for ensuring safety of juveniles, since safety can be guaranteed by installing beds with appropriate safety features (e.g. fastening to the floor, lack of sharp edges). Replying to the recommendations, the director of ECC in Ostrów Wielkopolski informed that due to the financial situation and the lack of a relevant legal obligation, the Centre would not be furnished with beds.

A reason for serious concern of the Mechanism during its visits to Police emergency centres for children was the lack of a change of underwear (ECC in Lublin, Elbląg and Kielce) and a small amount of one-off underwear. Moreover, one of the juveniles in the ECC (in Radom) had to wear pyjamas all day on the day of the visit, since he did not receive a sweat-suit. A similar situation occurred in ECCs in Olsztyn and in Poznań where no change of underwear was provided and the clothes available were worn-out and inadequate in terms of size. The National Preventive Mechanism recommended that the above Centres are provided with appropriate underwear and clothes for juveniles. A similar recommendation was issued by the CPT, which after its visit to Poland in 2009, recommended that **juveniles held in police establishments for children should be able to wear appropriate daytime clothing (including for outdoor exercise)**.¹⁴³ According to the NPM, **juveniles should also be provided with toiletries**. Therefore, the NPM recommended that ECC in Radom should have toothbrushes for juveniles and ECCs in Tarnów and Ostrów Wielkopolski should be provided with toiletries for juveniles. The above issues were regulated in the Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in Police emergency centres for children which stipulates in § 4(1) *that a juvenile staying in the centre shall receive full board and beverages, clean bed linen and underwear, pyjamas, sweatsuit and shoes, as well as toiletries*¹⁴⁴.

In reply to the recommendations, the Municipal Policy Commander in Kielce informed that juveniles staying in the Emergency Centre for Children of the Prevention Unit of the Municipal Police Headquarters in Kielce received bed linen, underwear, as well as daytime and night-time clothing and footwear. The Director of the ECC in Radom wrote in his letter that all juveniles staying at the Centre received a pair of pyjamas and clothing appropriate for the season of the year and temperatures (same as in Lublin), as well as toiletries, except when they have their own toiletries (provided by their parents) and want to use them. In reply to the recommendations of the NPM for the Centre in Elbląg, a request for purchase of 20 sets of female and male underwear was submitted to the Voivodeship Police Headquarters in Olsztyn.

The visiting team also inspected the isolation rooms used for calming down the juveniles. In the opinion of the NPM, in one of the Centres the room failed to fulfil its isolation functions, since it was separated from the corridor only with bars allowing for contact with others (ECC in Olsztyn). The isolation room with two bedrooms in the ECC in Radom was

¹⁴³ See: paragraph 41 CTP/Inf (2011) 20.

¹⁴⁴ Dz. U. of 2002 No 10, item 104, as amended.

converted into a storehouse. According to the Director of the Centre, the conversion was motivated by the fact that the rooms were not used due to a small number of juveniles. In the opinion of the NPM, in such cases the arrangement and capacity of the establishment should be reorganised.

The National Preventive Mechanism recommended :

- **Taking care about the technical condition and aesthetic qualities of the rooms;**
- **Furnishing bedrooms for juveniles with beds to ensure the appropriate rest at night-time;**
- **Furnishing shower cubicles with curtains ensuring intimacy;**
- **Supplying appropriate clothing for juveniles to the Centres;**
- **Supplying toiletries to the Centres.**

g) Disciplining

As regards disciplining in Police emergency centres for children, the representatives of the National Preventive Mechanism found practices that were contrary to the above-mentioned Ordinance which stipulates that disciplining measures are oral praise or reprimand. The visited establishments, however, used as disciplining measures i.a. a report on inappropriate behaviour of a juvenile sent to the court, ban on watching television (Radom), isolation (Elbląg), partial ban on watching television or on visits of parents or guardians (Olsztyn), a relevant entry in the documentation concerning a juvenile, a report on inappropriate behaviour of a juvenile sent to schools, family courts and establishments for juveniles, isolation (Tarnów). The NPM recommended that sanctions and rewards which are not listed in the Ordinance should not be applied.

The visiting team were particularly critical of using isolation as a form of punishment (Tarnów, Elbląg, Olsztyn), since the Act on juvenile delinquency proceedings stipulates that isolation may only be used in specific cases, as a coercive measure¹⁴⁵. Therefore, the National Preventive Mechanism recommended that isolation of a juvenile should be eliminated from the catalogue of sanctions. In reply, the Directors of ECCs in Tarnów and in Olsztyn informed that the provisions on rewards and sanctions which were incompliant with the law were repealed. It must be noted that the ECC in Elbląg did not have an isolation room meeting the safety requirements. In reply to the recommendations of the NPM, placement of a juvenile in an isolation room to protect his/her health or the health of the outsiders was eliminated from the catalogue of sanctions, and one of the patient rooms was designated as an isolation room. The sanction consisting in limiting the visits by family and friends finds no justification. The Convention on the Rights of the Child¹⁴⁶ states that *every child deprived of liberty shall be separated from adults unless it is considered in*

¹⁴⁵ See: Article 95a, § 1 and 2 of the Act on juvenile delinquency proceedings.

¹⁴⁶ See: Article 37c (Dz. U. of 1991 No 120, item 526, as amended).



the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. According to the National Preventive Mechanism, the sanction in the form of a ban on visits by family must be eliminated immediately.

The National Preventive Mechanism recommended:

- **Eliminating the practice of using sanctions and rewards incompatible with the Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in Police emergency centres for children¹⁴⁷;**
- **Adding a provision on rewards and sanctions to the Regulations of the Centre.**

h) Right of access to information

The representatives of the National Preventive Mechanisms who talked to one of the juveniles in the ECC in Radom learned that he was not acquainted with the regulations and the schedule of the Centre. He did not understand his legal situation as well, due to the lack of contact with his legal guardian. The Director of the Centre explained that this situation resulted from the lack of interest on the part of the families and legal guardians of detained juveniles in visiting them, despite being encouraged by the Police to do so. The Police do not contact other institutions although the NPM believes that they should **notify the relevant family court**. Furthermore, pursuant to Article 40(4) of the Act on juvenile delinquency proceedings, *the Police shall immediately notify parents or guardians of a juvenile about detention. The notification provided to parents or guardians of a juvenile should include information about the reasons for detention, the right to file a complaint and other rights.*

During the visits, the representatives of the National Preventive Mechanism checked if juveniles had access to the addresses of institutions protecting their rights. Such information was unavailable in some Centres (ECC in Bydgoszcz, Gorzów Wielkopolski, Poznań, Lublin, Radom; in the ECC in Tarnów only the address of the court was available). In the opinion of the National Preventive Mechanism, **all juveniles deprived of liberty should have permanent access to the addresses of institutions to which they may apply when their rights are violated. The addresses of such institutions should be placed in a publicly available place, easily accessible to juveniles, so that the access would depend neither on decisions of the personnel nor on any other factors.** The Commanders of Police units in Bydgoszcz, Tarnów, Gorzów Wielkopolski and Lublin informed that the recommendation of the NPM had been complied with.

¹⁴⁷ Ibidem.

The National Preventive Mechanism recommended:

- **The relevant family court should be officially notified about the lack of interest in the child on the part of his/her legal guardian and on the lack of taking legal measures on his/her behalf;**
- **The addresses of institutions protecting the rights of juveniles, including the Human Rights Defender, the Ombudsman for Children, the Helsinki Foundation for Human Rights and a family court judge, should be displayed in a well visible place.**

i) Cultural and educational measures

The majority of Police emergency centres for children offer instructional and preventive activities. The offer of activities at the ECC in Ostrów Wielkopolski was extended to include classes on addictions, Polish language lessons, mathematics and biology lessons. In the ECC in Lublin, the representatives of the Mechanism praised the offer of classes aimed at refreshing and consolidating the knowledge of orthography, grammar, mathematics, chemistry and geography, but also of activities testing the juveniles' powers of observation and logical thinking. Juveniles could also use a gym equipped with a ping-pong table and numerous fitness devices. The ECC in Gorzów Wielkopolski deserves special praise for organising a consultation point, a hotline, and meetings with youth in schools and in the Centre.

The visiting team of the NPM noted that in two Police emergency centres for children (Radom and Bydgoszcz) the offer of activities was poor. According to the Director of the Centre in Radom, juveniles at the Centre could watch educational films, they received brochures, rebuses to solve, and writing tasks.

In some visited centres, juveniles did not have access to any outdoor activities (Olsztyn, Gorzów Wielkopolski). Juveniles staying at the ECC in Olsztyn, interviewed by the representatives of the Mechanism, stated that their main activity was watching television. The staff successfully persuaded them not to participate in outdoor activities. The staff of the Centre confirmed that watching television was the main activity of juveniles. They did not take juveniles outdoors for safety reasons and due to reluctance declared by juveniles. The activities organised for juveniles at the Centre in Gorzów Wielkopolski took place only in the entertainment room, since the Centre does not have an exercise yard.

In its report for the Polish government following its visit to Poland in 2004, the CPT stated that the *Polish authorities should take the following steps at the police establishments for children: develop the range of constructive activities offered to detained children, with particular emphasis on education and ensure that persons detained in police cells for a longer time (i.e. 24 hours and more) are offered outdoor exercise everyday day*¹⁴⁸. The NPM also emphasizes that it is of utmost importance to **create conditions to enable juveniles to participate in educational, cultural and sports activities for an appropriate part of the day, including an hour of outdoor exercise.** The Directors of the Centres agreed with the

¹⁴⁸ See: § 36 and 44 in CPT/INF(2006)11.



recommendation to increase the quality of activities offered and to add educational elements to the activities.

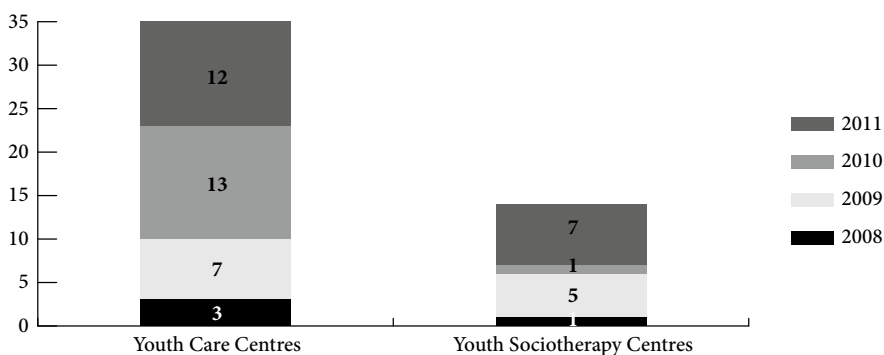
The National Preventive Mechanism recommended:

- **Undertaking measures to offer constructive activities to detained children, with particular emphasis on education;**
- **Increasing the offer of sports and recreation activities;**
- **Reducing passive leisure activities of juveniles to the minimum.**

2.4. Youth care centres and youth sociotherapy centres

In 2011 the representatives of the National Preventive Mechanism visited 12 youth care centres¹⁴⁹ and seven youth sociotherapy centres¹⁵⁰. By the day of this Report, the Human Rights Defender, acting as the National Preventive Mechanism¹⁵¹, has not received any response to the recommendations issued to the directors of the Youth Care Centres in Kraków, in Kolonia Szczerbacka, Youth Care Centre No 2 in Warsaw and Youth Care Centre in Łęka.

Figure 5. Number of visits of the National Preventive Mechanism to Youth Care Centres and Youth Sociotherapy Institutions in the years 2008-2011.



¹⁴⁹ Youth Care Centre in Antoniewo, Youth Care Centre in Julianopol, Youth Care Centre St. Joseph's House of Mercy in Kalisz, Youth Care Centre in Kalety, Youth Care Centre in Kamionek Wielki, Youth Care Centre in Wielkie Drogi, Youth Care Centre in Rzepczyno, Saint Faustina Youth Care Centre in Kraków, Youth Care Centre in Kraków, Youth Care Centre No 2 in Warsaw, Youth Care Centre in Kolonia Szczerbacka, Youth Care Centre in Łęka.

¹⁵⁰ Youth Sociotherapy Centre No 7 in Warsaw, Youth Sociotherapy Centre in Piaseczno, Youth Sociotherapy Centre No 4 in Warsaw, Youth Sociotherapy Centre No 5 Dom przy Rynku in Warsaw, Youth Sociotherapy Centre in Ustka, Common Home Sociotherapy Centre in Wilga, Youth Sociotherapy Centre No 3 in Łódź.

¹⁵¹ Hereinafter referred to as: "NPM" or "Mechanism."

a) Treatment

The most severe violations found by the Mechanism during its visits to youth care centres and youth sociotherapy centres consisted in the staff using psychological and/or physical violence against the juvenile residents of the centres. In the Youth Care Centre in Antoniewo, juveniles complained that two tutors *sometimes pulled juveniles' ears to calm them down, slapped them in the face when they had a lot of negative marks, beat them in the back when they entered the bathroom in a t-shirt and swore when they were irritated*. The half of juveniles interviewed at the Youth Care Centre in Warsaw said that tutors yelled, used vulgar language, bullied them and scuffled with them or punished them by hitting them on the back. Furthermore, the interviewed juvenile residents of the Youth Care Centre in Kolonia Szczerbacka reported instances of physical violence used against them by an employee of the Centre who slapped them in the face and often threatened to beat them. The juveniles at the Youth Care Centre No 2 in Warsaw complained about a tutor who raised his voice and criticized them heavily. The juveniles did not want to file an official complaint. The directors of Youth Care Centres in Antoniewo and Youth Care Centre No 7 in Warsaw informed that they had undertaken measures to verify the accusations, analyse the situation and implement measures among employees to prevent abuse in the relations between tutors and juvenile residents. Such measures included an analysis of interpersonal relations by means of a survey among the residents, tutor, parents, self-assessment sheets, observation of behaviour of juveniles and tutors, a meeting with representatives of the Student Board. **All forms of violence are regarded as unacceptable by the NPM and constitute inhuman and degrading treatment.**

In some establishments, instances were reported of physical and psychological violence exercised by juveniles with higher standing in the informal hierarchy against the “weaker” ones. The juveniles complained about being bullied, pushed, insulted and ridiculed by their colleagues (Youth Care Centre in Antoniewo) and claimed that one of them was instructed by teachers to “control others”, i.e. he pushed them and scuffled with them or used other forms of physical violence to force them to behave in a desired way (Youth Sociotherapy Centre No 5 in Warsaw, Youth Care Centre in Kalety). **The National Preventive Mechanism recommended to take actions aimed at preventing the subculture phenomenon among the juveniles.** The CPT clearly states that *all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions*¹⁵².

Discussion on appropriate treatment of juveniles should also cover the fact that the annex specifying the rules of granting scores to juveniles residing in the Youth Sociotherapy Centre in Ustka contained deprecating statements, such as *0 points for personal culture – the juvenile is a slob, slummock (...)*. **According to the National Preventive Mechanism, such statements are stigmatizing and should not be included in the scoring system for juveniles.** Another statement in the said annex that raises doubts is the comment referring

¹⁵² See: § 88 of the Report CPT/Inf (2011) 20.



to the maximum score in the area of offence, crime and pathology – *the juvenile did not commit any crimes, offences, pathologies, on the contrary he counteracts them and helps in finding perpetrators of such acts.* The above statement could result in the juvenile being perceived as an informer by the group and certainly discouraged juveniles from trying to obtain a high score in this area. The Director of the Centre promised to amend the scoring system, in particular by changing the deprecating statements.

The Mechanism also paid attention to the isolation of juveniles. In line with the Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures¹⁵³, the National Preventive Mechanism is of the opinion that isolation must be used only when it is absolutely necessary to ensure safety, and must follow closely defined rules. *If in very exceptional cases a particular juvenile needs to be separated from the others for security or safety reasons, this shall be decided by the competent authority on the basis of clear procedures laid down in national law, specifying the nature of the separation, its maximum duration and the grounds on which it may be imposed* (Rule 93.1). Therefore, the NPM recommended that in the Youth Sociotherapy Centres No 4 and No 2 in Warsaw **the rules of isolating juveniles from the group should be defined more precisely and ensure that juveniles isolated from the group were accompanied by an adult.**

Referring to coercive measures used in those centres, the NPM declared that such centres did not have any procedures for using coercive measures in place (Youth Care Centre in Kamionek Wielki), did not document their use (Youth Care Centre in Antoniewo), or their procedures were incompliant with the binding law, e.g. they provided for the possibility to use a straitjacket or a restraint¹⁵⁴ (Saint Faustina Youth Care Centre, Youth Care Centre in Łękawa).

The directors of the centres discussed accepted the recommendations of the Mechanism in this regard.

The National Preventive Mechanism recommended:

- **Eliminating physical and psychological violence used by the staff of the centre;**
- **Undertaking measures to prevent development of subculture among juveniles (in particular to prevent physical violence exercised by juveniles with higher standing in the informal hierarchy against the “weaker” ones);**
- **Defining more precisely the rules of isolating juveniles from the group to ensure that they are accompanied by an adult;**
- **Creating a procedure for using coercive measures, adjusted to the binding legislation, and documenting the use of such coercive measures;**
- **Eliminating stigmatizing statements from the rules of scoring behaviour.**

¹⁵³ CM/Rec(2008)11.

¹⁵⁴ See: Article 95a § 4 and 5 of the Act on juvenile delinquency proceedings (Dz. U. of 2010, No 33, item 178, as amended).

b) Disciplining

In each visited establishment the Mechanism found some irregularities concerning disciplining of juveniles.

An analysis of documentation and interviews with juveniles showed that sanctions used in the majority of establishments included disciplinary measures which, in the opinion of the Mechanism, should no longer be applied. Such sanctions include:

– Transfer to another centre – pursuant to § 7 of the Ordinance of the Minister of National Education of 27 December 2011 on detailed rules for referring, admitting, transferring, releasing and holding juveniles in a youth care centre¹⁵⁵, a juvenile may be transferred to another centre in justified cases of importance for efficiency of the rehabilitation or therapeutic process, based on the assessment of advisability of juvenile's further stay in the centre performed by a team which plans and coordinates psychological and pedagogical assistance offered at the centre. **In the opinion of the NPM, transfer should not be used as a disciplinary measure.** This position is also confirmed by the Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures¹⁵⁶. *Juveniles shall not be transferred as a disciplinary measure* (Recommendation 97) (refers to Youth Sociotherapy Centre in Ustka, Youth Care Centre in Kalisz, Youth Care Centre in Kraków, Youth Care Centre in Wielkie Drogi, Youth Care Centre in Rzepczyno, Youth Sociotherapy Centre No 3 in Łódź, Youth Sociotherapy Centre No 4 in Warsaw, Youth Care Centre No 2 in Warsaw, Youth Care Centre in Łęka, Youth Care Centre in Kalety, Youth Care Centre in Kamionek Wielki, Youth Sociotherapy Centre No 5 in Warsaw);

– Work for the centre – Rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹⁵⁷ states clearly that labour cannot be a disciplinary measure. **In the opinion of the NPM, such a sanction may in practice lead to pejorative perception of work by the juvenile and discourage him/her to seek employment in the future.** The Mechanism explained that the reservations did not concern situations where juveniles perform additional work for the centre to win additional points (or eliminate negative score), if they request themselves to perform such work. Furthermore, in the opinion of the Mechanism, an educational measure in the form of cleaning may be used when juveniles litter, do not change their footwear or make a mess, since such a measure will teach them to respect the work of others as well as to care for cleanliness and order (refers to Youth Sociotherapy Centre in Ustka, Youth Sociotherapy Centre in Piaseczno, Youth Care Centre in Wielkie Drogi, Youth Care Centre in Rzepczyno, Youth Sociotherapy Centre No 3 in Łódź, Youth Care Centre No 2 in Warsaw, Youth Care Centre in Łęka, Youth Care Centre in Kamionek Wielki, Youth Sociotherapy Centre No 5 in Warsaw);

¹⁵⁵ Dz. U. of 2011 No 296, item 1755.

¹⁵⁶ Recommendation CM/Rec (2008)11.

¹⁵⁷ UN General Assembly Resolution 45/113.



– **Physical exercise** – **in the opinion of the NPM the use of this sanction may form inappropriate attitudes of juveniles towards physical exercise, which should be perceived as a way to improve one's physical condition** (refers to Youth Sociotherapy Centre in Ustka, Youth Care Centre in Kraków, Youth Care Centre in Rzepczyno, Youth Care Centre No 2 in Warsaw, Youth Sociotherapy Centre No 7 in Warsaw);

– Suspension of the rights of juvenile residents – **the National Preventive Mechanism is of the opinion that disciplining cannot take the form of deprivation/suspension of the rights of a juvenile resident. The rights of juveniles do not depend on their behaviour or rehabilitation progress** (refers to Youth Sociotherapy Centre in Piaseczno, Youth Care Centre in Kalisz, Youth Sociotherapy Centre in Wilga, Youth Care Centre No 2 in Warsaw, Youth Sociotherapy Centre No 5 in Warsaw).

Furthermore, the employees of the NPM who visited youth sociotherapy and care centres often found that their personnel use punishments not provided for in the regulations, such as copying some sentences many times, ban on going outdoors, ban on contacts with the family, ban on using an iron, and collective sanctions. The National Preventive Mechanism stresses that, pursuant to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹⁵⁸, *collective sanctions should be prohibited* (Rule 67). *No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force* (Rule 70). The NPM **recommends to cease the use of sanctions not provided for in the regulations as well as collective sanctions** (Youth Sociotherapy Centre in Piaseczno, Youth Care Centre in Kalisz, Saint Faustina Youth Care Centre in Kraków, Youth Sociotherapy Centre No 7 in Warsaw, Youth Care Centre in Kolonia Szczerbacka, Youth Sociotherapy Centre No 5 in Warsaw, Youth Care Centre in Antoniewo, Youth Sociotherapy Centre in Ustka, Youth Care Centre in Kraków, Youth Care Centre in Julianpol, Youth Sociotherapy Centre No 3 in Łódź, Youth Care Centre in Kamionek Wielki).

During individual interviews, juveniles residing in Youth Sociotherapy Centre in Piaseczno and in Youth Care Centre in Julianpol complained about stigmatizing and degrading punishments, such as hair cutting, being forced to wear clothing of a peasant woman, cleaning the grout between tiles with a toothbrush, cleaning while wearing only briefs. **In the opinion of the employees of the NPM, such sanctions are degrading and stigmatize the juveniles. They may also lead to a breakdown of juveniles who are not mentally strong. Moreover, sanctions should eliminate undesirable behaviour and not induce additional severity. According to the representatives of the National Preventive Mechanism, the use of such sanctions constitutes degrading treatment and as such is unacceptable. The employees of the abovementioned centres should skilfully take care of juveniles so as to avoid inciting strong conflicts and copying bad standards of behaviour from the communities they come from.**

¹⁵⁸ UN General Assembly Resolution 45/113.

Furthermore, according to Rule 68 of the aforementioned international standards, legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

Therefore, the NPM recommended that certain establishments should specify the duration of disciplinary sanctions inflicted, use them taking into account individual characteristics and including information about persons authorised to impose sanctions and about the appeal procedure in the Regulations (refers to Youth Care Centre in Kalisz, Youth Care Centre in Wielkie Drogi, Youth Sociotherapy Centre in Wilga, Youth Care Centre No 2 in Warsaw, Youth Care Centre in Kamionek Wielki, Youth Care Centre in Rzepczyno).

The Mechanism also pointed to the need to change the statutes in terms of rewards by excluding the rights of juveniles from among them, and differentiating between juveniles' rights and privileges. Juveniles have the rights irrespective of their behaviour, while privileges are additional "bonuses/rights" that they can win during their education and therapy (Youth Care Centre in Wielkie Drogi, Youth Sociotherapy Centre No 4 in Warsaw, Youth Sociotherapy Centre No 5 in Warsaw, Youth Sociotherapy Centre in Wilga).

The directors of Youth Sociotherapy Centres No 4, No 5 and No 7 in Warsaw, Youth Care Centres in Wielkie Drogi, Kamionek Wielki and Rzepczyno, Youth Sociotherapy Centre in Wilga and Youth Sociotherapy Centre No 3 in Łódź accepted the recommendations of the Mechanism and/or provided detailed explanations of issues raising concerns of the NPM. The Director of the Saint Faustina Youth Care Centre denied using irregular sanctions in her Centre explaining that they were a form of therapy. The Director of Youth Sociotherapy Centre in Ustka, as well as the Director of Youth Sociotherapy Centre in Piaseczno, at first did not agree with the findings of the National Preventive Mechanism, but in the course of further investigation and as a result of correspondence with education officers, they eventually informed that the recommendations of the NPM had been implemented. The Director of Youth Care Centre in Kalisz did not respond to the reservations concerning the use of irregular disciplinary measures but the Deputy Education Officer of Wielkopolskie voivodeship imposed an obligation on her to implement the recommendations of the NPM as a follow-up to the inspection performed under the National Preventive Mechanism. The case is still monitored by the Mechanism.

The National Preventive Mechanism recommended:

- **Ceasing to use irregular disciplinary measures and apply only those sanctions that are acceptable within the strict limits of the law and the regulations;**
- **Eliminating all stigmatizing sanctions;**



- Stopping the collective sanctions;
- Eliminating the sanction in the form of work for the Centre, and adjust the provisions of the Regulations/Statute accordingly;
- Eliminating the sanction in the form of a transfer to another establishment and adjust the provisions of the Regulations/Statute accordingly;
- Eliminating the sanction in the form of deprivation/suspension of the juvenile's rights and adjust the provisions of the Regulations/Statute accordingly;
- Eliminating the sanction in the form of physical exercise and adjust the provisions of the Regulations/Statute accordingly;
- Specifying the duration of disciplinary sanctions inflicted and using them taking into account individual characteristics;
- Including in the Regulations the information about persons authorised to inflict sanctions and about the appeal procedure;
- Amending the provisions of the Statutes with respect to the list of rewards and rights, by excluding the rights of juveniles and separating the rights of juveniles from their privileges.

c) Right to health care

Health care provided to juveniles in the majority of visited Centres did not raise any concerns of the employees of the National Preventive Mechanism. It was also positively assessed by juveniles themselves. The only exception was Youth Care Centre No 2 in Warsaw where the organisation of health care raised serious concerns of the visiting team. The juvenile residents complained about difficulties in getting to the doctor and medical specialists, including gynaecologists and dentists; the files lacked information about the health status of juveniles upon admission to the centre, and the Rules governing health care contained the following statement: *The Centre provides ad hoc medical assistance, but due to the lack of a nurse we cannot treat the earlier detected conditions of the juvenile residents.*

The National Preventive Mechanism reminds that juveniles should have access not only to paediatricians/internists, but also to other specialists. Bearing in mind that such centres usually admit juveniles from the environments with not only the lack of parental care, but also the lack of proper health care, and the duration of the juveniles' stay in such centres, i.e. until they finish 18 years of age, the treatment of even earlier contracted diseases should be provided at the centre. **The Mechanism recommended that measures should be taken immediately, aimed at improving the organisation of health care and access to it by juveniles.**

Some centres did not employ any medical personnel – neither a nurse, a doctor nor a hygienist. In case of health problems, juveniles from those centres were taken to see the doctor at nearby health care centres. However, **in the opinion of the employees of the National Preventive Mechanism, a nurse should be employed permanently in such establishments, due to the incidents of self-mutilation among juveniles and to the fact that**

some juveniles are undergoing psychotropic pharmacotherapy. A recommendation was issued to employ medical personnel (concerns Youth Care Centres in Antoniewo, in Wielkie Drogi, and in Kraków, Youth Sociotherapy Centre in Ustka, and Youth Care Centre No 2 in Warsaw).

The Mechanism also noted that juveniles did not undergo preventive medical examinations e.g. dental or gynaecological check-ups. The failure to provide preventive health care violates the provisions of the Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures¹⁵⁹, i.e. Rule 71: *Juveniles shall be given preventive health care and health education*. Rule 75: *Health care in juvenile institutions shall not be limited to treating sick patients, but shall extend to social and preventive medicine and the supervision of nutrition*. The importance of preventive health care and health education in establishments for juveniles was also emphasized by the CPT in its 9th General Report¹⁶⁰ (concerns Youth Sociotherapy Centres No 4 and No 5 in Warsaw, Youth Sociotherapy Centre in Ustka, and Youth Care Centre No 2 in Warsaw).

It is worth mentioning here that the NMP found that in the Youth Care Centre in Rzepczyno juveniles were examined in the presence of a tutor. **The National Preventive Mechanism is of the opinion that the presence of non-medical staff during the provision of health care services to juveniles should be exceptional, and should take place only when it is required to ensure safety of person providing the health care services. Therefore, the Mechanism recommended that the health care services should be provided out of sight and hearing range of non-medical staff due to the right to privacy, medical confidentiality and a special relationship between a doctor and a patient.** The Director of Youth Care Centre in Rzepczyno accepted the above recommendation and emphasized that the health status of juveniles in his care was confidential.

Regular controls of the expiry dates of medicines and dressing materials are also important to ensure that the juveniles' right to health care is executed properly. The NPM recommended relevant controls at the Youth Care Centres in Łęka and in Rzepczyno where random controls had showed that some medicines were past their expiry date.

¹⁵⁹ CM/Rec(2008)11.

¹⁶⁰ CPT/Inf (99)12: 40. *Further, it is axiomatic that all juveniles deprived of their liberty should be able to have confidential access to a doctor at any time, regardless of the regime (including disciplinary confinement) to which they may be subjected. Appropriate access to a range of specialist medical care, including dentistry, should also be guaranteed. 41. The task of the health care service in any place of detention should not be limited to treating sick patients; it should also be entrusted with responsibility for social and preventive medicine. In this connection, the CPT wishes to highlight two aspects of particular concern as regards juveniles deprived of their liberty, namely, inmates' nutrition and the provision of health education. Health care staff should play an active part in monitoring the quality of the food which is being provided to inmates. This is particularly important for juveniles, who may not have reached their full growth potential. In such cases, the consequences of inadequate nutrition may become evident more rapidly – and be more serious – than for those who have reached full physical maturity. It is also widely recognised that juveniles deprived of their liberty have a tendency to engage in risk-taking behaviour, especially with respect to drugs (including alcohol) and sex. In consequence, the provision of health education relevant to young persons is an important element of a preventive health care programme. Such a programme should, in particular, include the provision of information about the risks of drug abuse and about transmittable diseases.*



The Directors of Youth Care Centres in Wielkie Drogi and in Antoniewo informed that they had taken steps to employ a nurse but it had proved to be impossible due to insufficient budgets. The Director of Youth Sociotherapy Centre agreed with the NPM's recommendation on the need to provide preventive health care to juveniles, but pointed to the problem of lengthy waiting times for visits to individual medical specialists. The directors of Youth Sociotherapy Centres No 4 and No 5 in Warsaw explained that juveniles received additional passes to use health care services in their places of permanent residence.

The National Preventive Mechanism recommended:

- **Ensuring appropriate organisation and access to health care for juveniles;**
- **Guaranteeing preventive health care to juveniles;**
- **Taking steps to employ a nurse;**
- **Providing health care services out of sight and hearing range of non-medical staff;**
- **Regularly checking the expiry dates of pharmacological materials and the conditions in which syringes and dressing materials are kept.**

d) Right of access to information

Generally speaking, juveniles' right of access to information was respected in visited establishments. Juveniles were acquainted with the regulations immediately after being admitted to the establishment. However, if from the interviews with juveniles it resulted that they were not familiar with the regulations of the establishment, nor with their rights, privileges and duties, **the visiting team recommended that regular meetings be organised dedicated to the rights of juveniles and the ways to execute these rights.** Additionally, in some establishments it was recommended to place their Regulations/Statute in a visible place (the following establishments: YCC in Łęka, YSC in Wilga, YSC No 5 in Warsaw and YCC in Rzepczyn).

Moreover, during every visit representatives of the National Preventive Mechanism checked whether juveniles had access to the addresses of the following institutions responsible for protecting their rights: the Ombudsman for Children, the Human Rights Defender, the Helsinki Foundation for Human Rights, and a competent family court. **The Mechanism recommended that contact details of these institutions are displayed in such a way that all the juveniles can have access to them, and that workshops are organized on the activities of these institutions.**

Having analysed the statutes of some of the visited establishments, the NPM noted that these documents lacked any information on a procedure for lodging complaints in cases of violation of juvenile's rights. Invoking § 8(2) of Annexes 3 and 4 to the Ordinance of the Minister of National Education of 7 March 2005 on the framework statutes of public establishments¹⁶¹, the Mechanism recommended adding the missing information to statutes

¹⁶¹ Dz. U. of 2005, No 52, item 466.

and regulations of relevant establishments' (YSC No 3 in Łódź, YCC in Kolonia Szczerebacka, and the Saint Faustina YCC).

Directors of the visited establishments agreed with the recommendations made by the NPM's employees and introduced the necessary amendments.

The National Preventive Mechanism recommended:

- **Regular meetings on the rights of the juveniles and the ways of executing these rights are organised;**
- **Workshops providing information on activities of institutions protecting human rights are organised;**
- **Regulations/Statutes of the establishment are displayed on boards in entertainment rooms;**
- **A provision should be added to the Statute of establishments informing about the procedure for lodging complaints about violation of rights of juveniles staying there;**
- **contact details to institutions where juveniles can turn for help when their rights are being infringed upon should be placed in place accessible to them, namely contact details of: are the Human Rights Defender, the Ombudsman for Children, the Helsinki Foundation for Human Rights, and family judges.**

e) Right to contact with the outside world

The Mechanism discovered that the most frequent infringement of the juveniles' right to contact with the outside world consisted in restricting the category of persons allowed to visit juvenile residents to the closest family members/relatives, often exclusively parents (YCC in Antoniewo, YCC in Kalisz, YSC in Piaseczno). In YCC No 2 in Warsaw, the right to receive visits from persons other than closet family members was made conditional on weekly behaviour assessment of a juvenile concerned. Such restrictions violate the provisions of the Act on j.d.p.¹⁶². § 66(4) of thi Act, specifying the rules for contacts of the juvenile, uses the expression "people from outside the detention centre", but does not impose an obligation to prove the degree of kinship with such people. The only reasons for restricting or prohibiting contacts of a juvenile with people outside the establishment, which were stipulated in § 66(4) of the Act on j.d.p., concern only cases when such contact would pose a threat to the legal order or safety of the establishment, or could adversely affect the course of the ongoing proceedings or social reintegration of the juvenile. In such case, the director of the establishment is obliged to promptly notify the juvenile and the relevant family court about the reasons of his decision. The court may overrule the decision made by the director. **The NMP recommended allowing detained juveniles to have contact with their siblings, relatives or other people from outside of the establishment,**

¹⁶² Dz. U. of 2010, No. 33, item 178, as amended.



and noted that all restrictions in this area should be compliant with the applicable law. The directors of the above-mentioned establishments promised to expand the category of persons permitted to visit detained juveniles.

It should be emphasized that the NMP had some serious reservations about the rules governing juvenile's contacts with their parents which apply in YCC in Kalisz and in the Saint Faustina YCC in Cracow:

- juveniles could be visited by their parents once a month and talk to them on the phone only once a week – on a specific day and at a specific time. Moreover, a juvenile who was newly admitted to the Saint Faustina YCC in Cracow was allowed to contact her parents only after 7 days. In their talks with the NPM's staff members, some of girls stated that they were allowed to contact their parents only after 14 days. The NPM emphasizes that juveniles should be allowed to contact their families as frequently as possible, especially during their first days in the establishment. Similar stipulation was included in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹⁶³: *Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel (Rule 60). Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence (Principle 61).* **The National Preventive Mechanism proposed to increase the frequency of visits and phone calls which juvenile residents are allowed to receive;**
- The visiting team was also concerned about the practice for granting passes to female juvenile residents. Information provided by directors of two establishments suggested that during their first year at these establishments juveniles were granted leaves to visit their parents/legal guardians for a couple of days during school recess only after 6 months since their admission to the establishment. Moreover, individual interviews with juveniles revealed that they were entitled to visit their homes about 3 times a year (sometimes they were issued special leaves in the event of a wedding, a funeral etc.). Also, in view of the fact that visiting home was regarded as a privilege, the denial of which was used by the establishments' staff as a penalty, it was possible that some juveniles left the establishment only once or twice a year. **The National Preventive Mechanism believes that such long periods when juveniles are not allowed to leave the establishment should not be a rule, and should only be used in exceptional cases.** International standards stipulated in Rule 86.1 of the Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject

¹⁶³ Resolution of the United Nations General Assembly 45/113.

to sanctions or measures¹⁶⁴ clearly state that: *As part of the normal regime, juveniles shall be allowed regular periods of leave, either escorted or alone. In addition, juveniles shall be allowed to leave the institution for humanitarian reasons.* **The National Preventive Mechanism recommended that the frequency of leaves granted to juveniles is increased, and that new juvenile residents are given an opportunity to visit their homes during their first 6 months at the establishment.** Since the Director of YCC in Kalisz refused to implement the above recommendations, the Mechanism addressed the Chief Education Officer in the Wielkopolskie Voivodship (i.e. the authority responsible for supervising the said establishment) to express his opinion on the recommendations. The investigation, which the Officer carried out in the establishment, revealed that parents of juveniles staying in the establishments were encouraged to visit them on a more frequent basis, and that the residents were allowed to hold more telephone conversations. As for Saint Faustina YCC, its director informed the Mechanism that the ban on the girls to visit their homes during the first 6 months at the establishment was justified by a justified concern that they would re-establish their contacts with the criminal world or escape. Therefore, the Director found the Mechanism's recommendations in this scope ungrounded. The Chief Education Officer agreed with the Director. The case will be monitored by the Mechanism.

Representatives of the NPM were also concerned by too strict control of personal correspondence of juveniles (YCC No 2 in Warsaw, Saint Faustina YCC and YCC in Kalisz). Interviewed juveniles stated that both their incoming and outgoing correspondence was controlled. Such practices violate Article 66(3) of the Act on j.d.p. Moreover, the Statutes of YCC No 2 in Warsaw states that in justified cases tutors are entitled to control telephone conversations and visits received by juveniles. **In the opinion of the National Preventive Mechanism such entitlement is not grounded in the applicable provisions. The NPM recommended eliminating the above-mentioned practices.** Directors of the establishments agreed to comply with the provision of Article 66(3) of the Act on j.d.p.

In one of the establishments (YCC in Cracow), the National Preventive Mechanism's representatives were concerned by the recently introduced rule, restricting or limiting the duration of outgoing calls to family members. Depending on the degree of their resocialization, the use of this right by juvenile residents varied, as well as the duration of calls they were allowed to make. **The National Preventive Mechanism, however, believes that juvenile residents, irrespective of the degree of their resocialization, should be guaranteed the right to maintain telephone contact with their families.**

Having analysed documents of the establishments, the representatives of the National Preventive Mechanism noted that it was necessary to include in such documents in some cases (YSC in Piaseczno and YCC in Kamionek Wielki) the rules on visiting the juveniles staying in such establishments. The recommendation was implemented.

¹⁶⁴ CM/Rec (2008)11.



The National Preventive Mechanism recommended:

- Enable detained juveniles to contact their siblings, relatives or other persons from outside the establishment; any restrictions in this scope should comply with the binding law;
- Increase the frequency of visits which juvenile residents are allowed to receive, and to allow them to hold telephone conversations;
- Increase the frequency of leaves granted and enable juvenile residents to visit their homes also at the beginning of their stay in the establishment;
- Handle personal correspondence of residents in compliance with the Act on j.d.p,
- Abandon the practice of monitoring residents' telephone conversations and visits;
- Abandon the practice of determining the length of residents' telephone conversations with their families on the basis of their degree of resocialization;
- Add to the Regulations the rules for paying visits to juvenile residents.

f) Educational, therapeutic, cultural and educational measures

As part of their resocialization process, residents in all of the visited establishments were offered access to a wide range of different activities. Educational and resocialization measures were carried out by group tutors, school teachers, psychologists and pedagogues, and consisted in group activities, workshops, individual sessions, trips and meetings with famous people¹⁶⁵. Frequently, juveniles also had some time to rest, do their homework, relax by playing computer games, watch TV or enjoy outdoor activities. They were also given a chance to participate in different hobby groups (e.g. theatre, brain teasers, computer games, arts, sports etc.). In the opinion of the NPM, the fact that in their daily activities juveniles are assisted by tutors, which was noted in the majority of visited establishments, plays a very important role in educational/resocialization process. **In YCC in Cracow, however, the NPM recommended to expand the offer of additional free time activities for juvenile residents.**

During individual interviews, residents pointed out that sometimes they were not allowed to go outside for a couple of days or more, e.g. due to their bad behaviour or during the initial stage of their stay in an establishment, or because of low temperatures. The National Preventive Mechanism noted that pursuant to Rule 81 of the Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures¹⁶⁶, all juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air, if the weather permits. Also national legislation provides for this right, e. g. §17 of the Ordinance of the Minister of National Education and Sport on types and detailed

¹⁶⁵ Establishments offered to residents workshops on sociotherapy, addiction prevention, remedial classes, biofeedback, psychological and social skills, help in establishing one's system of values, corrective/remedial classes, psychotherapy, occupational therapy, promoting healthy lifestyle, fostering good family relations, threats to psychological health.

¹⁶⁶ CM/Rec(2008)11.

rules of operation of public establishments, on living conditions of children and juveniles in these establishments, and on the amount and rules of payment by parents¹⁶⁷. A heavy snowfall or a storm could be regarded as conditions preventing outdoor activities. On the other hand, low temperature, even though it may not encourage exercises outdoor, is not a reason to deprive juveniles of any form of outdoor physical activity, such as a walk, should they express their interest in taking one. This right also cannot be restricted as a part of disciplinary measures. **Moreover, the Mechanism recommended adding to the catalogue of rights of juveniles listed in each establishment's Statutes and Regulations, the right to daily outdoor exercise** (YSC in Ustka, YSC in Piaseczno, YSC No 7 in Warsaw, YCC in Kalisz, YCC No 2 in Warsaw).

Directors of the establishments listed above informed the NPM that juveniles were given opportunity to stay outdoors, and actions were taken to make free time more entertaining for the juveniles and extend the offer of outdoor activities.

The National Preventive Mechanism recommended to:

- **Ensure that all juveniles can regularly exercise for at least two hours a day, of which one hour in the open air; the right to exercise should depend neither on a juveniles' classification to a motivational group, nor on the length of their stay in a given establishment, nor should be restricted as a part of disciplinary measure;**
- **Add to the catalogue of rights of juveniles listed in each establishment's Statutes and Regulations, the right to daily outdoor exercise;**
- **expand the catalogue of additional free time activities for residents.**

g) Right to education

In all of the visited establishments the right of juveniles to education was respected. Within the establishments, there were properly equipped schools and qualified staff. In the afternoon juveniles could participate in remedial programmes and could get assistance from their tutors in their homework. The work of by teachers and tutors was positively evaluated by the majority of residents in the visited establishments.

h) Right to religious practices

In the majority of the visited establishments the right to religious practices was respected. However, it should be noted that in 5 establishments the visiting team discovered that it was obligatory to participate in religious practices (YCC in Kalisz, Saint Faustine YCC in Cracow, YCC in Rzepczyn, YSC in Piaseczno, and YSC in Ustka). In certain establishments, on the other hand, some of juveniles interviewed by the representatives of the Mechanism reported that they were not allowed to participate in a Sunday mass or that they did not

¹⁶⁷ Dz. U. of 2011, No 109, item 631.



know that there was such possibility (YSC No 7 in Warsaw, YCC No 2 in Warsaw, YCC in Kolonia Szczerbacka and YCC in Kamionek Wielki).

Article 53 of the Constitution of the Republic of Poland stipulates that freedom of conscience and religion shall be ensured to everyone; freedom of religion shall include the freedom to profess or to accept a religion by personal choice, and no one shall be compelled to participate or not participate in religious practices.. The standards laid down by international legal instruments also distinctively point to the obligation that freedom of thought, conscience and denomination shall be ensured to everyone. For example, Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures clearly state *juveniles' freedom of thought, conscience and religion shall be respected. The institutional regimen shall be organised so far as is practicable to allow juveniles to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs. Juveniles may not be compelled to practise a religion, follow a belief, attend religious services or meetings, take part in religious practices or to accept a visit from a representative of any religion or belief*¹⁶⁸. On the other hand, Article 14 of the Convention on the Rights of the Child stipulates that: *States Parties shall respect the right of the child to freedom of thought, conscience and religion*. Similar stipulation was included in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty: *Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services.. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination*¹⁶⁹.

In the opinion of the National Preventive Mechanism, each establishment, also if it falls under Article 14 of the Concordate between the Holy See and the Republic of Poland of 28 July 1993¹⁷⁰, shall respect juveniles' right to freedom of denomination and conscience, and shall organise its educational activities in a manner respecting juveniles' freedom to choose their faith and to participate in religious practices.

Directors of YCC in Kamionek Wielki, YCC in Rzepczyn, YCC in Ustka and YSC No 7 in Warsaw accepted the recommendations of the Mechanism. Directors of YCC in Kalisz, YSC in Piaseczno and Saint Faustina YCC in Cracow rejected the NPM's findings, stating that female juvenile residents are obliged to accept and observe in their entirety the educational rules applicable in catholic establishments. The Mechanism addressed relevant Education Officers on this issue. Chief Education Officer in Mazowieckie Voivodship

¹⁶⁸ See: Recommendation 87.1-3 in: CM/Rec (2008)11.

¹⁶⁹ See: Rule 48, Resolution of the United Nations General Assembly 45/113.

¹⁷⁰ Dz. U. of 1998, No 51, item 318.



shared the view of the NPM and reported that in result of his actions the Director of YSC in Piaseczno implemented the recommendations of the Mechanism, and informed that female juveniles participated in prayers voluntarily. Education Officer of Małopolskie Voivodship also agreed with the observations of the NPM and informed that he would take into account the right to freedom of conscience when carrying out pedagogical supervision over establishments for juveniles. Finally, Education Officer of Wielkopolskie Voivodship informed that the Director of YCC in Kalisz explained that issues related to ensuring freedom of conscience and religion are regulated pursuant to the provisions of Polish Constitution and of Convention on the Rights of the Child, which say that parents are given priority when assisting the child in executing his/her right to freedom of thought, conscience and denomination.

The National Preventive Mechanism recommended to:

- **Ensure freedom of conscience and religion to all juveniles, including the freedom to profess or to accept a religion by personal choice, the possibility to participate in religious practices, and a ban to compel anybody to participate or not to participate in religious practices.**

i) Staff

Personnel of all the visited establishments had adequate qualifications: those working with the juveniles held M.A. degrees and participated in numerous trainings and courses. **In the opinion of the National Preventive Mechanism, personnel of the establishments should participate in trainings on the protection of rights of the child as stipulated in international and national law**, as provided for in Rule 85 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹⁷¹: *the personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present rules.*

The National Preventive Mechanism recommended to:

- **Organise trainings on the protection of rights of the child in international and national law for the personnel.**

j) Living conditions

It should be stressed that in most establishments residents were given very good living conditions. The Mechanism recommended to refurbish the YSC in Wilga, YSC No 3 in Łódź, and YCC in Cracow. In the opinion of the visitors, the living conditions in certain establishments were unsatisfactory. The buildings were in a pitiful state, with plaster falling

¹⁷¹ Resolution of the United Nations General Assembly 45/113.



off the walls, the premises neglected, rooms equipped with old furniture and old windows, equipment worn out, and shattered tiles in toilets and shower rooms.

The CPT indicates that *a well-designed juvenile detention centre will provide positive and personalised conditions of detention for young persons deprived of their liberty. . In addition to being of an adequate size, well lit and ventilated, juveniles' sleeping and living areas should be properly furnished, well-decorated and offer appropriate visual stimuli. Unless there are compelling security reasons to the contrary, juveniles should be allowed to keep a reasonable quantity of personal items*¹⁷².

In many of the visited establishments, the conditions in sanitary rooms, not ensuring privacy to juveniles, caused concern of the NPM – there were no curtains/doors in showers, and the toilet area was separated only by a low wall. This violates the provisions of Rule 65.2 of the Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures¹⁷³ which states that: *Juveniles shall have ready access to sanitary facilities that are hygienic and respect privacy. In the opinion of the NPM, the management of an establishment is responsible for ensuring that sanitary facilities are hygienic and respect privacy*, thus the Mechanism recommended that curtains/doors are installed in toilets and showers in some establishments (YSC No 5 in Warsaw, YCC in Wielkie Drogi, YCC in Kamionek Wielki, YSC in Ustka, YCC in Łęka, YSC No 3 in Łódź, YCC No 2 in Warsaw, YCC in Rzepczyn).

Directors of these establishments accepted the NPM's recommendations on living conditions, pointing out, however, that some establishments lacked funds for recommended repairs. Nonetheless, they all took efforts to improve the situation. It is worth pointing out that the Director of YSC No 3 in Łódź developed cooperation with hotels in Łódź and receives from them bed linen, tablecloth and beds as donation. He also signed an agreement with the President of District Court in Łódź that works benefiting the community (cleaning, repairs, renovation on the centre's premises) may be performed as a part of punishment consisting in the deprivation of liberty.

It is worth mentioning at this point that on 15 February 2011, the Human Rights Defender directed a general address¹⁷⁴ to the President of Extraordinary Committee concerning the proposed amendments to the Act on supporting the family and on the system of substitute care¹⁷⁵. In the above-mentioned address the Defender pointed out that during the visits of the National Prevention Mechanism, the directors of youth care centres and youth sociotherapy centres expressed their concern about the provision stipulating that if a court, pursuant to the provisions on proceedings in juvenile cases, decides to place in a youth care centre or a juvenile detention centre a child, who is under institutional substitute care, the decision to place this child under institutional substitute care is repealed. The

¹⁷² See: § 29 and 30 of the 9th General Report [CPT/Inf (99) 12].

¹⁷³ CM/Rec(2008)11.

¹⁷⁴ RPO-637047-VII-110064/09.

¹⁷⁵ See: Letter No 3378.



Defender explained that provisions on the functioning of youth care centres and youth sociotherapy centres do not impose on their directors an obligation take on responsibilities of a family or a guardian of a juvenile. The Defender also stressed that the educational grant is divided among specific local government units, taking into account the scope of educational tasks carried out by these entities, i.e. it covers first and foremost the cost of education and the cost of implementing preventive, educational and sociotherapeutic measures. Juveniles staying in such establishments receive financial support from their parents, whereas children placed in an orphanage should be financially supported by the establishment, which in turn receives funds for this purpose from a relevant poviát. The Defender was informed that the provision stipulating that if a court, pursuant to the provisions on proceedings in juvenile cases, decides to place in a youth care centre or a juvenile detention centre a child, who is under institutional substitute care, the decision to place this child under institutional substitute care is repealed, was deleted from the draft.

National Prevention Mechanism recommended to:

- **Renovate the building, especially the living rooms and bathrooms for juveniles;**
- **Ensure that sanitary facilities in the establishments function properly; this includes equipping the showers with shower curtains which give the users a feeling of privacy.**

2.5. Juvenile detention centres and juvenile shelters

In 2011, the Human Rights Defender, acting in the capacity of the National Preventive Mechanism¹⁷⁶, visited two juvenile detention centres¹⁷⁷, two juvenile detention centres functioning together with juvenile shelters¹⁷⁸ and two juvenile shelters¹⁷⁹.

The visit in Juvenile Detention Centre and Juvenile Shelter in Zawiercie was aimed at evaluating the implementation of recommendations formulated after the visit paid between 2 and 4 April 2009. The National Preventive Mechanism stated that the majority of its recommendations had been implemented. However, a number of issues still required improvement, as presented in more detail below.

a) Protection against degrading treatment and the use of coercive measures

In one of the visited establishments, residents interviewed by the National Preventive Mechanism negatively assessed the atmosphere in the establishment (JDC and JS in Konstancynów Łódzki). They indicated that some teachers and tutors behaved aggressively, both verbally and physically. Some juveniles stated that they did not feel safe in the

¹⁷⁶ Hereinafter: NPM or Mechanism.

¹⁷⁷ Świecie, Nowe nad Wisłą.

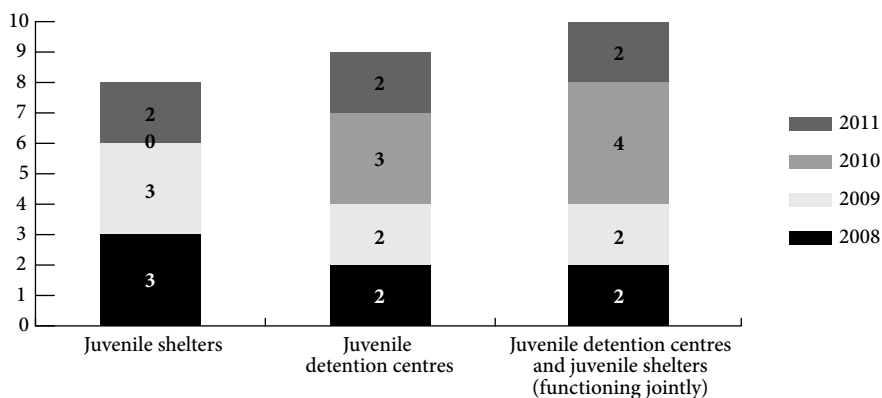
¹⁷⁸ Zawiercie, Konstancynów Łódzki.

¹⁷⁹ Dominowo, Chojnice.



establishment. Moreover, during their talks with the juveniles, the NPM representatives noted some disturbing signals proving that the staff treated juveniles in an unacceptable manner; this included punching (a blow to the neck), pulling, verbal abuse and aggressive behaviour. None of the residents was willing to submit an official complaint to the visiting team. The National Preventive Mechanism recommended the director of the establishment and its supervising authorities to thoroughly investigate this problem, to conduct explanatory proceedings and to eliminate practices of this kind. **The Mechanism reminds that using physical violence against juveniles is inhuman treatment and as such it is unacceptable.**

Figure 6. The number of visits of the National Preventive Mechanism in Juvenile Detention Centres and Juvenile Shelters between 2008-2011



In the same establishment, the NPM acquainted itself with the *Rules for juveniles detained in the transitory room of JDC and JS*. A provision stipulating that when the Centre's employee enters a room, a juvenile is obliged to stand up and introduce himself/herself: "I (name and surname) am a resident of Juvenile Detention Centre (Juvenile Shelter) in Konstantnów Łódzki", raised doubts of the Mechanism. **In the opinion of the visiting team, such command serves no educational purpose. Its aim is neither to teach juveniles good manners nor to teach them to greet staff members out of their own will. It is rather a form of showing a juvenile's submission towards the staff.**

In other establishments no cases were reported of degrading treatment of residents by staff members, including the use of physical force.

The NPM noted some irregularities in the use of direct coercive measures.

In one of the establishments it was reported that boys were forcibly escorted to individual rooms, which should be regarded as applying a direct coercive measure, not recorded in a relevant register (JDC in Nowe).



The director of this establishment did not agree with these accusations, noting that every case of applying a direct coercive measure was entered into relevant records, and announced that in 2010 there 2 such cases.

There were also cases of extending the catalogue of misbehaviour, specified in regulations of the establishment and entitling the staff to apply a direct coercive measure, such as placing a juvenile in an isolation room or restraining him/her with belts or a straightjacket (JDC and JS in Konstaktyńów Łódzki), . Moreover, there was no information for how long the coercive measure of placing a juvenile in an isolation room, specified in Article 95a(7) of the Act on j.d.p., was applied

The documentation related to putting juveniles in individual rooms and in transitory rooms lacked any entries about whether or not juveniles exercised their right to an one hour walk. The visiting team also noted that the information was incomplete on whether or not a juvenile contacted his/her family; and there was no annotation of a physician confirming that juveniles were examined after having notified their ailments (JDC in Nowe, JDC and JS in Konstaktyńów Łódzki). **In the opinion of the National Preventive Mechanism all the information about juveniles staying in such rooms should be registered, and juveniles should be able to maintain telephone, letter and personal contact (visits) with their families.**

The director of JDC in Nowe informed the NPM that staff members were obliged to indicate in the juvenile's stay records whether or not juveniles exercised their right to a walk.

Based on conclusions made after the visit in juvenile detention centre in Zawiercie, the NPM representatives stated that placing juveniles in transitory rooms was still applied there as a penalty. This was evidenced by entries in the juvenile record book, in particular by entries on the length and reasons of placing the juveniles in such room. Some cases were reported of placing girls in a transition room due to: disrupting the classes, ignoring teacher's instructions, verbal abuse and autoaggressive behaviour. The reasons for placing a juvenile in a transition room were described too generally. Moreover, the files of juveniles placed in transition rooms lacked any information about their complying with the school duty. Providing such information is essential as showing that juveniles' fundamental rights are respected. Also Article 7 of the Ordinance of the Minister of Justice of 26 August 2004 on the organization of the school year in schools in juvenile detention centres and juvenile shelters¹⁸⁰ provides for the need to respect these rights .

The National Preventive Mechanism noticed the problem of aggressive behaviour among the residents. Several juveniles detained in Juvenile Shelter in Dominowo reported incidents of violent acts committed by stronger detainees. Juvenile residents in Nowe establishment pointed to the same problem. Boys added that security staff usually did not react in such cases. **The National Preventive Mechanism stresses that the main task of the visited establishment is not only to carry out resocialization and education tasks, but**

¹⁸⁰ Dz. U., No 188, item 1947.



also to guarantee safety of juveniles during their stay there. In response to the NPM's recommendations, the director of the JDC in Nowe explained that the behaviour of juveniles is systematically discussed at the meetings of the Discipline Committee. Juveniles who tend to behave improperly or who commit to violence are excluded from group activities. They participate in individual sessions until the moment when positive changes in their behaviour can be spotted. The director of JS in Dominowo also informed about extensive efforts taken to solve the problem. One of measures applied should be mentioned here, namely placing a two-way mirror in a room next to the gym allowing the director to supervise behaviour of boys during sport activities. This was meant to ensure that boys who are potentially exposed to aggressive acts are protected. Possible conflicts related to the so-called „second life” in the establishments are often solved during sport activities, which serve as an opportunity to throw punches (JS Dominów).

In Juvenile Shelter in Chojnice each new resident was examined to check whether he/she suffered from injuries (beatings). The examination was performed by a nurse, or – when the clinic was closed – by a guard. The list of injuries, after it has been signed by person who performed the examination, was attached to the juvenile's files. When it could be reasonably suspected that a crime has been committed, the head of the dormitory or the director of the establishment took further steps. **The National Preventive Mechanism evaluated this practise very positively.**

The National Prevention Mechanism recommended:

- **To eliminate practices of maltreatment of residents,**
- **To give up the obligation of a juvenile to introduce himself/herself Chile staying in a transition room,**
- **To apply coercive measures only based on the provisions of the Act on j.d.p.**
- **That the staff of the establishment always reacts when safety of juveniles may be endangered.**

b) Disciplining

In JDT and JS in Zawiercie, the Mechanism found some situations which may suggest that collective sanctions are applied in the establishment. It must be stressed that, pursuant to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹⁸¹: *collective sanctions should be prohibited* (Rule 67). In response to the recommendations issued by the Mechanism, the director of the establishment explained that he came across neither of instances of such sanctions being applied nor other disciplinary measures which would be contrary to the binding law.

The reports of juveniles about sanctions in the form of a ban on phone conversations with their parents (JDT in Świecie) also raised concerns of the National Preventive

¹⁸¹ UN General Assembly Resolution 45/113.



Mechanism. **In the opinion of the NPM, sanctions in the form of a ban on contacts with the family are unacceptable**, as stipulated in Rule 61 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹⁸²: *Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence. The Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures*¹⁸³ also states that punishment restricting family contacts cannot be applied unless the disciplinary offence relates to such contacts. *Disciplinary punishment shall not include a restriction on family contacts or visits unless the disciplinary offence relates to such contacts or visits* (Rule 95.6). In response to the recommendations issued by the NPM, the director of the establishment stated that no disciplinary measures had been applied that could restrict contacts of juveniles with their families.

The Regulations on *Rules of conduct governing the use of disciplinary measures* (hereinafter the Rules) of JDT in Świecie did not specify who can request the punishment to be inflicted. Before any disciplinary measures are applied, the director of the Centre conducts an investigation which includes a hearing of the juvenile involved. The procedure only partly complies with the relevant international standards, since it remains unclear whether the juvenile has the right to appeal against the measure inflicted. It must be emphasized that pursuant to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹⁸⁴, *legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:*

- (a) *Conduct constituting a disciplinary offence;*
- (b) *Type and duration of disciplinary sanctions that may be inflicted;*
- (c) *The authority competent to impose such sanctions;*
- (d) *The authority competent to consider appeals* (Rule 68).

Another problem with the Rules is the lack of a requirement to consult the Board of the establishment on certain disciplinary measures listed in the Regulations, such as the denial of a pass or holiday to a juvenile resident or submitting a request in another establishment of the same type or of another type, which is incompliant with § 71(2) of the Ordinance on juvenile detention centres and juvenile shelters¹⁸⁵. The director of the establishment informed that the relevant recommendations of the NPM had been implemented.

Furthermore, the catalogue of disciplinary measures of visited establishments includes a punishment in the form of transfer of a juvenile to another establishment (JDT in Świecie,

¹⁸² Ibidem.

¹⁸³ CM/Rec(2008)11.

¹⁸⁴ UN General Assembly Resolution 45/113.

¹⁸⁵ Dz. U. of 2001 No 124, item 1359, as amended.



JS in Dominów, JS in Chojnice). Despite the provisions of § 71(1)(12) and (13) of the Ordinance, a punishment in the form of “transfer to another establishment” should not be used, as stated in the Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures¹⁸⁶: *Juveniles shall not be transferred as a disciplinary measure* (Recommendation 97). **The National Preventive Mechanism is of the opinion that transfer to another centre should not be listed among punishments imposed by the staff of the establishment.** In response to the relevant recommendations of the Mechanism, the directors of visited establishments argued that the exclusion of transfer to another establishment from among the possible sanctions is not the competence of the establishment, and such punishment is compliant with the national legislation.

In view of international standards, the NPM’s findings and positions presented by the directors of visited establishments, on 23 September 2011 the Human Rights Defender asked¹⁸⁷ the Minister of Justice to address the issue of transfer of juveniles to other establishments as a means of punishment used in some juvenile detention centres. The Defender was also concerned about the fact that punishments applied in juvenile detention centres were not based on the provisions of the Act on juvenile delinquency proceedings, but on the Ordinance on juvenile detention centres and juvenile shelters. Thus, the Defender requested the Minister of Justice to take position on regulating in an act the juvenile delinquency cases, which go beyond the statutory authorisation as defined in the Act on juvenile delinquency proceedings, and adjusting them to the Recommendation of the Committee of Ministers of the Council of Europe.

In reply to the request of the Human Rights Defender, the Minister of Justice (in a letter of 21 October 2011) agreed that the provisions of the Act on juvenile delinquency proceedings needed to be further adjusted to the Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures and to other international standards. The Minister also informed the Defender that the procedure for transferring a juvenile to another establishment prevented arbitrary decisions of the director of the establishment and ensured the observance of juvenile’s rights. On 28 February 2012, the Human Rights Defender filed a request¹⁸⁸ to the Constitutional Tribunal to declare §65, §66, §70, §71, §72, §73, §74, §90, §91, §93, §94, §95 of the Ordinance of the Minister of Justice of 17 September 2001 on juvenile detention centres and juvenile shelters to be incompliant with Article 95§3 of the Act of 26 October 1982 on juvenile delinquency proceedings and with the first sentence of Article 92(1) of the Constitution of the Republic of Poland¹⁸⁹.

¹⁸⁶ CM/Rec(2008)11.

¹⁸⁷ RPO-672825-VII/11.

¹⁸⁸ RPO-672825-VII-12.

¹⁸⁹ More on the request in the next Annual Report of the National Preventive Mechanism and in Report on the Activity of the NPM in the First Quarter of 2012.

The National Preventive Mechanism recommended:

- **Eliminating collective responsibility;**
- **Eliminating the possibility to transfer a juvenile to another establishment from the catalogue of sanctions;**
- **Eliminating from the catalogue of sanctions the disciplinary measures not justified by safety reasons but limiting the contacts of juveniles with their families and their participation in school classes;**
- **Eliminating the use of transition rooms as a punishment.**

c) Right to contact with the outside world

The visiting team always checks if juveniles can exercise their right to contact their families and persons close to them. The majority of establishments attempted to contact parents or guardians of juveniles upon their admission to allow the former to participate in the educational process (JS in Dominów, JS in Chojnice, JDT in Świecie, JDT and JS in Konstancin-Jeziorna Łódzki). However, some irregularities were found in JDT in Nowe. Juveniles at the Centre were not allowed to call their parents upon arrival. Furthermore, in line with the “*Regulations on using the phone in Juvenile Detention Centre in Nowe*” all phone conversations were monitored – they took place in the presence of a tutor and the information whom the juveniles called was recorded. **In the opinion of the National Preventive Mechanism, the said provision of the Regulations and the practice followed by the staff found no ground in the Act on juvenile delinquency proceedings.** In response to the recommendation of the Mechanism, the director of the Centre stated that in his opinion the practice was justified by educational reasons, since juveniles sometimes talked to unauthorised persons, used vulgarisms and extortions towards their parents, which required the intervention of the staff. The director argued that the practice used in the Centre did not violate the Act on juvenile delinquency proceedings. He also explained that the amendment suggested by the NPM and concerning the ban on calling parents or legal guardians upon arrival was introduced to the Regulations.

From the interviews with juveniles, the visiting team learnt that in some establishments letters sent and received by juveniles were always controlled by the staff (JDT in Nowe, JDT in Świecie, JS in Chojnice, JDT and JS in Konstancin-Jeziorna Łódzki). Such practices violate Article 66(3) of the Act on juvenile delinquency proceedings¹⁹⁰. **According to the National Preventive Mechanism, permanent control of juveniles’ correspondence is unjustified, except for situations when it is required to ensure safety of juveniles or of other persons.** It is also contrary to the Convention on the Rights of the Child adopted by the United Nations on 20 November 1989¹⁹¹ which stipulates that every child deprived of liberty shall have the right to maintain contact with his or her family through correspondence and visits, save in

¹⁹⁰ Dz. U. of 2010, No 33, item 178, as amended.

¹⁹¹ Dz. U. of 1991, No 120, item 526, as amended.



exceptional circumstances¹⁹². Correspondence of juveniles may be controlled by the director of the establishment, centre or shelter or by an authorised pedagogical staff member only in case of justified suspicion that its contents undermines legal order, compromises safety of the establishment, centre or shelter, stands in contrast to public morals or may have an adverse impact on the pending proceedings or rehabilitation of juveniles. If such content is found, correspondence is not delivered and the fact, along with its justification, is notified to the juvenile and the family court executing the decision. The juvenile is also advised about the right to file a complaint referred to in Article 38 of the Act on juvenile delinquency proceedings. The said correspondence is transferred to the personal file of the juvenile. The director of the Shelter in Chojnice informed the Mechanism that correspondence of all juveniles was subject to control, since the administration found it difficult to meet the requirements of the Act. In reply the National Preventive Mechanism reiterated its position on the issue. The directors of other centres accepted the recommendations of the Mechanism.

Furthermore, in two establishments the Regulations specifying the rules governing the contacts of juveniles with persons from outside the centre did not provide for a possibility of direct contact of juveniles with persons other than their parents, siblings or guardians (JDT in Świecie, JDT in Nowe). Article 66(4) of the Act on juvenile delinquency proceedings grants the director of establishment the right to restrict or prohibit the contact of juveniles with the persons from outside the establishment, but only if such contact undermines legal order, compromises safety of the establishment, centre or shelter or has an adverse impact on the pending proceedings or rehabilitation of the juvenile. Furthermore, every time the director prohibits the contact of a juvenile with the persons from outside the juvenile establishment, centre or shelter he/she must immediately notify this decision and its justification to the juvenile and the family court executing the decision. The family court may overrule the decision of the director.

The director of the JDT in Świecie and the director of the JDT in Nowe accepted the recommendation to amend the said documentation.

The National Preventive Mechanism recommended:

- **Eliminating the excessive control of correspondence of juveniles and adjusting the relevant provisions of the regulations to the Act on juvenile delinquency proceedings;**
- **Providing the possibility of direct contact of juveniles with persons other than their parents and legal guardians.**

d) Right to health care

Juvenile residents of Juvenile Detention Centre in Nowe, interviewed by the representatives of the NPM, complained about health care, i.a. about the lack of specialist medical

¹⁹² Article 37 of the Convention on the Rights of a Child.

treatment and the application of ointments and “lozenges” for all afflictions. In order to use health care services, the boys have to notify the need for a visit to an outpatient clinic to a pedagogical staff member. The said staff member decides whether a visit to the nurse is necessary, pursuant to the *procedure for referring juveniles to a nurse or a doctor in the establishment and outside (placing them in hospital)*. The National Preventive Mechanism found that medical examination of juveniles took place in the presence of a security officer, staying in the room along with the doctor and the patient or waiting in the corridor – then the door to the consulting room is open. It must be emphasized that a person standing in the corridor can hear the conversation between the patient and the doctor. **The National Preventive Mechanism is of the opinion that the presence of non-medical staff during the provision of health care services to juveniles should be exceptional and take place only when it is required to ensure safety of person providing the health care services. Otherwise, the juveniles’ right to intimacy, right to respect their dignity and right to keep medical secret are violated.** The CPT draws attention to this problem in its 9th General Report, stating that *it is axiomatic that all juveniles deprived of their liberty should be able to have confidential access to a doctor at any time, regardless of the regime to which they may be subjected*¹⁹³. Furthermore, in the opinion of the National Preventive Mechanism, the *Procedure for referring juveniles to a nurse or a doctor in the establishment and outside (placing them in hospital)* did not regulate the grounds for making, or refusing to make, a decision to refer a juvenile to a nurse or a doctor. It must be emphasized that the list of employees and their education presented by the Juvenile Detention Centre proves that none of pedagogical staff was additionally trained in health care. In reply, the director of the establishment informed the NPM that the relevant recommendations had been implemented.

The NPM found that in all but one establishment (JDT in Nowe) the obligations related to proper health care of juveniles had been fulfilled appropriately. The establishments ensured both basic and specialist medical care to juveniles. The widely understood preventive health care also must be praised. In the opinion of the NPM, such activities are particularly important for juveniles who, for various reasons, usually are more prone to take risks.

The National Preventive Mechanism recommended:

- **Providing health care services to juveniles out of sight and hearing range of non-medical staff.**

e) Living conditions

Generally, the technical condition of visited establishments was in very good or good. Good conditions were ensured both in boarding houses and in schools. The condition of the building housing the workshops of the JS in Dominów, however, was poor. The visiting team was also concerned about the conditions in bedrooms used by the therapeutic

¹⁹³ See: § 40 CPT/Inf (99)12.



and treatment group of JDT in Świecie. The bedrooms had only two beds and a mattress on the floor, with no bedside tables or other furniture or decor which would make the juveniles feel more at home. The practice of placing boys on mattresses lying on the floor met with the greatest criticism. The head of the boarding house explained that the reason for such practice was bed-wetting of some juveniles, but this argument was rejected by the representatives of the National Preventive Mechanism who noted that it was possible to efficiently protect the beds and their surroundings against bodily fluids without reducing the furnishings. It must be stressed that according to the CPT *in addition to being of an adequate size, well lit and ventilated, juveniles' sleeping and living areas should be properly furnished, well-decorated and offer appropriate visual stimuli. Unless there are compelling security reasons to the contrary, juveniles should be allowed to keep a reasonable quantity of personal items*¹⁹⁴. The said bedrooms were also used as transition rooms, patient's rooms and isolation rooms. Due to the fact that the rooms were used for different purposes, the NPM found it difficult to assess whether they were appropriately furnished and used. The NPM also found it unlikely that juveniles in transition rooms could i.a. listen to the radio and watch TV, as provided for in the "*Regulations on the functioning of the therapeutic and treatment group and the transition room*". On the day of the visit the rooms were not furnished with appropriate devices for this purpose and the records of the transition rooms did not prove that juveniles could use the equipment in one of entertainment rooms.

Isolation rooms in Juvenile Detention Centre in Nowe and in Juvenile Shelter in Chojnice did not meet the requirements laid down in § 5(1) of the Ordinance of the Council of Ministers of 22 February 2011 on detailed conditions and method of using coercive measures with respect to juveniles in juvenile detention centres, juvenile shelters, youth care centres and youth sociotherapy centres¹⁹⁵. In the first establishment, the room was not furnished with a floor fixed chair, table and bed, while in the latter the difficulties with meeting the requirements of the said Ordinance resulted from architectural design of the building. In response to the recommendation of the Mechanism, the directors of both establishments informed that isolation rooms were adjusted to the requirements of the Ordinance.

The visiting team was also concerned about furnishing of transition rooms in the JDT and the JS in Konstantynów Łódzki which looked the same as isolation rooms and lacked any furnishing or decor that would make children feel at home. Therefore, juveniles in this establishment often confused those two types of rooms and believed they are placed in an isolation room, not in a transition room. Pursuant to § 44(4) of the Ordinance¹⁹⁶, *a transition room is a separate room furnished as a dwelling*. The National Preventive Mechanism recommended adjusting isolation rooms and transition rooms to the requirements of the aforementioned Ordinances.

¹⁹⁴ See: § 29 of the 9th General Report (CPT, Inf (99) 12).

¹⁹⁵ Dz. U. of 2011, No 124, item 1359, as amended.

¹⁹⁶ *Ibidem*.



In some of the visited establishments, the visiting team was concerned about conditions in sanitary facilities (JDT in Świecie, JDT in Nowe, JS in Dominów, JDT in Zawiercie). Shower cubicles lacked curtains ensuring intimacy to juveniles. In the JDT in Nowe, the wall separating a urinal from washbasins was too low to ensure privacy and the camera surveillance system did not have a function allowing to blur intimate body parts. The Recommendation¹⁹⁷ of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures states that *juveniles shall have ready access to sanitary facilities that are hygienic and respect privacy* (Recommendation 65.2). Rule 34 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹⁹⁸ states that *sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner*. The directors of the establishments accepted the recommendations of the NPM in this regard.

Juvenile residents could keep their personal belongings in the bedrooms and had an impact on the decor of their rooms, which resulted in an aesthetic variety of their bedrooms.

None of the visited establishments was adjusted to the needs of disabled persons. The National Preventive Mechanism emphasizes that such establishments may also have to accommodate e.g. a person on a wheel-chair. If the conditions in those establishments do not change, such persons will not be able to use sanitary facilities or move around the premises on their own.

In response to the recommendations of the NPM, the director of the JDT in Świecie undertook to appropriately mark the individual rooms and furnish them to turn them into a proper dwelling and, if the funds permit, to purchase mattresses with impermeable coating and place them on beds. He also explained that the current financial standing did not allow to adjust the Centre to the needs of the disabled, adding that the need for such adjustment would be reported to the supervisory authorities in the new budgetary year. The director of Nowe establishment informed the NPM that he had applied to the Budget and Investment Department for funds for designing and implementing adjustments of the premises to the needs of the disabled. The director of Juvenile Shelter in Chojnice informed the Mechanism that the works on adjusting the isolation room to the requirements of the Ordinance would have been finished by the end of 2011. He added that the provisions of the Ordinance of the Minister of Infrastructure of 12 April 2002 on technical requirements for buildings and their location¹⁹⁹ exempt juvenile shelters from the obligation to be adjusted to the needs of the disabled. The issue is monitored by the NPM.

¹⁹⁷ CM/Rec(2008)11.

¹⁹⁸ Adopted by the Resolution 45/113 of the UN General Assembly in December 1990.

¹⁹⁹ Dz. U. of 2002, No 75, item 690, as amended.



The National Preventive Mechanism recommended:

- Determining the purpose of patient's rooms, as well as of transition and isolation rooms, and furnishing them in line with the assigned purpose;
- Adjusting the isolation room to the requirements laid down in the Ordinance of 22 February 2011 on detailed conditions and method of using coercive measures with respect to juveniles in juvenile detention centres, juvenile shelters, youth care centres and youth sociotherapy centres²⁰⁰;
- Adjusting the transition rooms to the requirements laid down in the Ordinance of 17 October 2001 on juvenile detention centres and juvenile shelters²⁰¹;
- Furnishing shower cubicles and toilets with curtains or doors ensuring intimacy of users;
- Adjusting the establishments to the needs of disabled persons.

f) Staff

In the opinion of the National Preventive Mechanism, the staff selection criteria used in juvenile detention centres and juvenile shelters are of utmost importance for ensuring appropriate treatment of juveniles. The participation of pedagogical staff in additional trainings, extending their knowledge in various fields and peaceful cooperation, also reduce the probability of ill-treatment of juveniles.

All employees having direct contact with juveniles in the visited establishments had completed appropriate specialist education. They participated in numerous trainings upgrading their professional qualifications. The need for additional training was particularly visible in JDT in Nowe. **In the opinion of the National Preventive Mechanism, the staff of the establishment should undergo training on the protection of the rights of the child in international and national law**, as stated in Rule 85 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty²⁰²: *the personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present rules.*

From an analysis of gender balance of the staff in visited establishments it appears that the majority of staff are men. However, women also directly participated in teaching and educational activities in the establishments. The only establishment with male tutors only was Juvenile Shelter in Chojnice. The director of the Shelter explained that this situation was motivated by inability to ensure safety for women at the establishment.

According to the CPT, mixed gender staffing is another safeguard against ill-treatment in places of detention, in particular where juveniles are concerned. *The presence of both*

²⁰⁰ Dz.U. of 2011 No 48, item 248.

²⁰¹ Dz. U. of 2001, No 124, item 1359, as amended.

²⁰² UN General Assembly Resolution 45/113.



*male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention*²⁰³.

The National Preventive Mechanism recommended:

- **Organising training for the staff on the protection of the rights of the child in international and national law;**
- **Providing training for pedagogical staff and security personnel to upgrade their qualifications and professional skills.**

g) Right to religious practice

The information provided by interviewed juveniles and staff of the establishments proved that the right to religious practice was respected. The visiting team did not find any evidence of juveniles being forced to participate in religious practices, and considered this to be an appropriate practice.

The irregularities in this respect were found only in the establishment in Chojnice. The juveniles classified into the transition group and the intervention shelter group did not participate in a Holy Mass. Pursuant to Article 66a(1) of the Act on juvenile delinquency proceedings²⁰⁴, *a juvenile has the right to directly participate in religious services held in juvenile detention centres and juvenile shelters on holidays*. The provision refers to all juvenile residents in the said establishments. Therefore, in the opinion of the NPM the provision must be implemented by enabling the juveniles classified into the transition group and the intervention shelter group to participate in religious services.

In response to the relevant recommendation, the director of Juvenile Shelter in Chojnice informed the Mechanism that for safety reasons the newly admitted juveniles placed in the transition room would be able to participate in a Holy Mass broadcast on TV. A separate Mass will be held for juveniles placed in the intervention shelter.

The National Preventive Mechanism recommended:

- **Enabling the juveniles placed in the transition room and in the intervention shelter to directly participate in religious services held in the Shelter.**

h) Right of access to information

The right of access to information about one's rights and obligations is one essential rights of a person deprived of liberty. The appropriate exercise of this right not only allows to adapt faster to being under increased scrutiny, but also contributes to adopting appropriate attitudes and feeling secure.

²⁰³ See: §26 of the 9th General Report [CPT/Inf (99) 12].

²⁰⁴ Dz. U. of 2010, No 33, item 178, as amended.



Juveniles admitted to the visited establishments were informed about the binding rules in place. They stated that they had a good knowledge about their rights and obligations in the establishments. The NPM found a special guide to JDT in Zawiercie, addressed to juveniles and their parents, and written in a simple and friendly language, to be a commendable initiative which should be taken up also by other establishments. The information in the guide concern mainly the functioning of the establishment, rights and obligations of juveniles, rewards and disciplinary measures, rules governing the visits, telephone numbers to important institutions, etc. The guide was drawn up by the “Życ na nowo” [New Life] Foundation operating at the establishment, with the participation of the staff and the juveniles. The NPM believes that staying in such establishments is stressful for juveniles and raises their concerns about the future. During the first few days after admission, the juveniles should be thoroughly familiarized with the nature of the establishment. A negative attitude of juveniles at the beginning of their stay may result in reluctance to talk with the personnel. Therefore, the above-mentioned guide seems to be the best solution in such situations.

In one of the juvenile shelters, the NPM recommended drawing up a guide for juveniles, which would describe their rights and obligations (JS in Dominów). A specimen guide is available at the website of the Ministry of Justice. The director of the establishment informed the NPM that the recommendation had been implemented.

The National Preventive Mechanism verified each time whether the list of persons and institutions to which the juveniles may apply in cases concerning the regulations and rules in place at the centre/shelter, is available in the establishments. No such information was available in Juvenile Detention Centre in Świecie, nor in Juvenile Detention Centre and Juvenile Shelter in Konstantynów Łódzki, whereas in Juvenile Shelter in Dominów made available only the list of persons and institutions of appeal.

The director of the establishment in Świecie explained that rights and obligations, as well as the list of institutions to which juveniles can apply, are displayed in the tutors' rooms and in the psychologist's room. **However, in the opinion of the NPM, the addresses of institutions protecting human rights should be displayed in a place the access to which does not depend upon consent of third persons.**

On 6 May 2011, the Defender addressed²⁰⁵ the Minister of Justice asking for a guide for juveniles in juvenile detention centres and in juvenile shelters to be developed, which would contain information about the legal status of juveniles, their rights and obligations, as well as the institutions to which juveniles may apply if their rights are violated. In the reply of 7 June 2011, the Minister of Justice informed that actions taken to publish a special brochure for all juvenile establishments had not brought the expected results due to the lack of funds. Therefore, the Ministry of Justice published on its website examples of guides for juveniles drawn up at Juvenile Detention Centre and Juvenile Shelter in Racibórz.

²⁰⁵ RPO-603898-VII-09.

The National Preventive Mechanism recommended:

- **Displaying addresses of institutions protecting the rights of juveniles, in particular: the Human Rights Defender, the Ombudsman for Children, the Helsinki Foundation for Human Rights and a family court judge, in an easily accessible place.**

i) Right to education

In all visited establishments the right of juveniles to education was respected. Schools and workshops where juveniles learned various professions in practice (e.g. locksmith, welder, mason assistant, carpenter, cook, automotive technicians) were furnished appropriately. The vocational courses allowed juveniles to obtain basic professional skills, thus increasing their opportunities on the labour market. The situation was different in Juvenile Detention Centre in Świecie, due to the specificity of this establishment²⁰⁶. According to the information obtained during the visit, the Ministry of Justice, which supervises the functioning of juvenile detention centres, does not take into account the fact that comprehensive vocational training in such an establishment is impossible. Due to the intellectual abilities of the boys, they can only be trained for a job.

Juveniles stated that tutors willingly helped them in doing their homework or catching up with their studies. They could also use a library with books suitable for their age.

j) Educational and therapeutic measures

The juveniles in visited establishments could benefit from an extensive offer of extra-curricular activities, including sports. In the opinion of the NPM, a varied and diversified offer of extra-curricular activities helps form appropriate attitudes among juveniles and allows to better adjust them to life in the society. In the visited establishments, juveniles who wanted to expand their knowledge and improve their skills could participate in scientific and sports activity clubs. The boys could participate not only in various workshops, but also in competitions and contests. They also participated in socio-therapeutic activities, occupational therapy, and group workshops. Moreover, they received psychological and pedagogical assistance adjusted to their individual needs. In addition, the diagnostic and corrective team of Juvenile Detention Centre in Nowe offers group therapies and workshops, such as vocational orientation (original project aimed at helping juveniles become independent, in the end the juveniles receive “*A guide for juveniles released from the Juvenile Detention Centre in Nowe*”) and psychoprophylaxis of addictions. The re-adaptation group could also participate in personal development workshops, workshops on concentration improvement (pilot project), and individual classes based mainly on individual rehabilitation programmes. The National Preventive Mechanism considers the wide offer of such activities to be a good practice.

²⁰⁶ JDT in Świecie is a rehabilitation and therapeutic establishment. Its residents include juveniles with mild and moderate intellectual disabilities and with personality disorders caused by an organic damage to the central nervous system.



The movement of juveniles on the premises of the JS in Dominów was restricted following an extraordinary event, i.e. an escape of a juvenile during outdoor activities in May 2011. Several boys interviewed by the employees of the National Preventive Mechanism complained that they did not go for walks due to restrictions imposed by the director of the Shelter. Juveniles in Juvenile Shelter and Juvenile Detention Centre in Konstantynów Łódzki also complained that they could only spend time outdoors, on a terrace, during a 15-minute school break. **In the opinion of the National Preventive Mechanism, daily outdoor activities have a positive impact on psychophysical development of socially maladjusted youth residing in closed establishments, i.e. in establishment where their freedom is restricted.**

The National Preventive Mechanism reminds that according to Rule 81 of the Recommendation of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures *all juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air, if the weather permits*²⁰⁷.

In reply, the director of Juvenile Shelter in Dominów informed that, in order to guarantee daily outdoor activities for every juvenile (taking into account weather conditions), additional individual walks were introduced to the schedule as well as additional walks of one group outside the schedule with an obligatory supervision of a guard.

The Human Rights Defender addressed the Minister of Justice for the first time on 12 May 2009 on the lack of legal regulations which would guarantee the access of juveniles to outdoor activities every day.²⁰⁸ In replies to subsequent motions of the Human Rights Defender, the Minister of Justice informed about work on developing uniform procedures for all juvenile detention centres and juvenile shelters which would include the rules governing outdoor activities of juveniles. However, despite the existence of such internal procedures, restrictions in the access of juveniles to such activities still exist in practice. **Therefore, in the opinion of the National Preventive Mechanism, systemic measures must be undertaken to amend legislation regulating this area (Act on juvenile delinquency proceedings or implementing regulations to the Act) to guarantee the juveniles the right to daily access to outdoor activities.**

The National Preventive Mechanism recommended:

- **Providing a possibility for juveniles to participate in outdoor activities for at least one hour every day.**

²⁰⁷ CM/Rec(2008)11.

²⁰⁸ RPO-597667-VII/10.

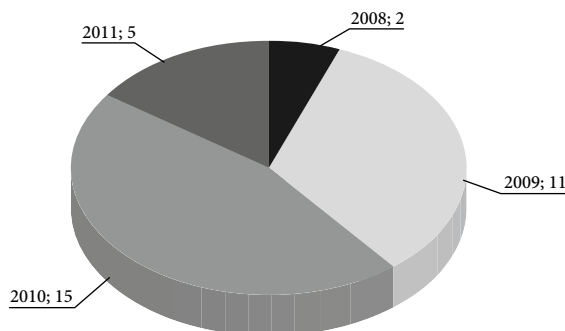
2.6. Sobering-up stations

In 2011, five visits to sobering-up stations were carried out by the Human Right Defender within the framework of tasks of the National Preventive Mechanism²⁰⁹: Tarnów, Elbląg, Grudziądz, Zabrze sobering-up stations and Emergency Room for Controlled Sobering-up in Gorzów Wielkopolski.

During their visits, representatives of the Mechanism noted irregularities in certain areas, the details of which are presented below, which make it impossible to describe the situation in these establishments as anything better than adequate.

Due to repeated cases of deaths of drunk persons in places of deprivation of liberty, Professor Irena Lipowicz announced that the number of NPM's visits to sobering-up stations and to organisational units of the Police, where apprehended drunk persons are also detained, will be increased. The Defender is also considering whether or not systemic changes should be introduced with the aim to properly care for the health of a detained drunk person in the place where such person is being held.

Figure 7. The number of visits of the National Preventive Mechanism in sobering-up stations in the years 2008–2011



a) Treatment

Representatives of the Mechanism did not discover in the visited establishments any instances of treatment that could be described as torture. However, they did come across instances of degrading treatment of patients.

During each visit to a sobering-up station, the NPM's representatives check whether the detainees are forced (by physical intervention or by oral command) to change into substitute clothes provided by the facility. In three of the visited establishments, after randomly

²⁰⁹ Hereinafter referred to as: "NPM" or "Mechanism."



choosing recorded monitoring videos, the NPM found that such practices were employed (Tarnów, Grudziądz and Gorzów Wielkopolski).

Article 10 of the Ordinance of the Minister of Health of 10 February 4 on the methods of escorting, accepting and discharging inebriated individuals and on organization of detoxification centres and other establishments created or indicated by a local government unit stipulates²¹⁰ reads: “Persons admitted to sobering stations or similar establishment may be given a set of substitute clothes for the duration of their stay”. This does not mean, however, that such person is obliged to accept and change into the said clothes. This provision does not form a legal basis for forcing a person who refuses to change his/her clothes to do so.

Using force against a human being only to make him/her change into substitute clothing violates his/her rights and personal dignity. In such cases, the European Court of Human Rights reminds that – similarly to the provisions applicable in the case of strip searches – the order to undress should be justified by the necessity to ensure safety²¹¹. In its judgment, the Court stated that *whilst strip searches may be necessary on occasion to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner and must be justified. They should be carried out in an appropriate manner with due respect for human dignity and for a legitimate purpose (Yankov v. Bulgaria, no. 39084/97, § 166-176, ECHR 2003-XII (extracts); Wainwright v. the United Kingdom, no. 12350/04, § 42, ECHR 2006-...).* *Even single instances of strip-searching have been found to amount to degrading treatment in view of the manner in which the strip search was carried out, the possibility that its aim was to humiliate and debase and the lack of justification (see Valašinas v. Lithuania, no. 44558/98, § 117, ECHR 2001-VIII).* *The Court has also held that where an order to undress with a view to a search had no established connection with the preservation of security and prevention of crime or disorder, Article 3 may be engaged (Wainwright, cited above, § 42; Wieser v. Austria, no. 2293/03, § 40, 22 February 2007 where the applicant was undressed by police officers).*

In their written responses to the NPM’s recommendations, persons managing the visited establishments declared to abandon the practice of obligatory stripping of patients in cases which are not justified by reasons of security or by the requirement to perform a medical check on an admitted person.

During their visit to a sobering-up station in Zabrze, the NPM’s representatives were informed by one of the patients that when he asked for a drink to quench his thirst, he was only given a chance to drink tap water when visiting the bathroom. Having regard to § 20(2) of the Ordinance, which stipulates that persons detained in sobering-up stations are entitled to receive non-alcoholic drinks in disposable glasses, the Mechanism views this practice in a negative light. In response to the NPM’s recommendations in this case, the

²¹⁰ Dz.U. of 2004 No 20, item 192, as amended.

²¹¹ See: Final judgment of the European Court of Human Rights in the case of Wiktoro v. Poland (application no. 141612/02).

director of Zabrze facility ensured that in line with to the cited provision, a patient, upon his/her request, is offered tea by the shift manager at a place designated for the purpose.

When analysing the procedure for admitting patients to sobering-up stations in the visited establishments, the Mechanism's representatives came to conclusion that the complaints about ill-treatment should also be sent to the relevant Police station, since – as discovered by the NPM – there were cases of mistreatment of drunk persons by Police officers who detained and transported such persons to the facilities visited by the NPM representatives. This problem is evidenced by a recording from the monitoring system a sobering-up station in Grudziądz, presenting a man being delivered to the sobering-up station following a police intervention at his home. The NPM observed that the man was wearing only underwear and a vest. He had shoes (here it should be noted that the distance between his home and the facility was ca. 50 km).. In the opinion of the Mechanism, apprehending and delivering to the station a man wearing only underwear (despite the fact that Police officers intervened in the man's home) is an example of negligence of Police officers who should have enabled the man to at least take the most basic things with him. According to the Mechanism, this situation should be considered as a case of **degrading treatment**.

The National Preventive Mechanism recommended to:

- **Treat patients in sobering-up stations which respect to their dignity,**
- **Abandon the practice of forcefully stripping patients of their clothes;**
- **Provide beverages to persons detained in sobering-up stations.**

b) Application of direct coercive measures

In the case of persons who after having been admitted to a sobering-up station pose a threat to their own life or health or to the life and health of others, or who destroy equipment in their immediate surroundings, it is permitted to use direct coercive measures, namely holding or immobilising.

Holding is a temporary, short-term immobilisation of person with the use of physical force, whereas immobilisation consists in longer overpowering of person with the use of straps, holds, sheets or a straitjacket²¹². A physician may order application of a direct coercive measure, consisting in immobilisation, for not longer than 4 hours. If needed, the physician, after personal examination, may extend immobilisation for subsequent periods of 6 hours, however immobilisation may not be applied for longer than 24 hours²¹³.

Based on results of visits that have been carried out, it can be concluded that in some cases coercive measures in sobering-up stations have been applied improperly. In two facilities representatives of the Mechanism noted irregularities in their application.

²¹² See: Article 42 of the Act on the upbringing in sobriety and counteracting alcoholism (Dz. U. of 2007, No. 70, item 473, as amended).

²¹³ See: § 11 of the Ordinance of the Minister of Health of 4 February 2004 on the methods of escorting, accepting and discharging inebriated individuals and on organization of detoxification centres and other establishments created or indicated by a local government unit (Dz.U. of 2004, No 20, item 192, as amended).



During the visit in Elbląg, it was noted that although the staff did control the condition of immobilised persons every 15 minutes, this was done only through a peephole. As a rule, the fact of conducting such controls was not recorded and entries in the book of reports were made only when the state of the immobilised person raised concerns. Moreover, a fragment of a recording from the monitoring system, showing how a direct coercive measure is used against a patient, revealed that this patient was immobilised with straps from 10.20 p.m. until 6.00 a.m., yet a staff member recorded in the book of records that the application of this measure ended at 2.10 p.m.

Pursuant to § 11(1c) of the Ordinance, *a staff member designated by the director of the sobering-up station shall check the physical status of the immobilised person at least every 15 minutes, also when that person is asleep.* § 11(1d) stipulates that *during the check referred to in paragraph 1c, the staff shall:*

- assess if immobilisation is correct, and in particular if straps, holds, sheets or straitjacket are not too loose or too tight;*
- ensure a short release from immobilisation to allow the immobilised person to change position or to alleviate his/her physiological or hygienic needs, at least every 4 hours.*

When the patient was immobilised, which lasted for almost 8 hours, a staff member personally checked his state only once by entering into the room. In the morning, the patient unbuckled his lower straps, which also was not noticed on time by the staff member. In the situation described above, the requirement that a physician performs medical examination of the patient was not complied with, which is necessary before extending the application of direct coercive measure for over 4 hours, as stipulated in § 11(1b) of the Ordinance. In his response, the director of Elbląg facility informed the Mechanism that its recommendations were implemented by drafting regulations specifying the procedures for applying direct coercive measures, and notifying personnel of the facility, including physicians on duty, about the need to observe the rules for reliable recording of the applied direct coercive measure and physical examination when a patients is go be immobilised for over 4 hours.

The information gathered during the visit in Grudziądz establishment has shown that direct coercive measure was applied against one of the patients, namely he was put in a straitjacket and strapped to bed in an unprofessional and sloppy manner. Pursuant to § 19 of the Ordinance, every sobering-up station should have a separate room for persons whose behaviour poses a serious threat to their health or life, or to health or life of other persons staying in the room. The Mechanism considered the fact of strapping a patient to bed in a room not suited for the purpose as ill-treatment, not grounded in the applicable law provisions. This situation should be viewed as unacceptable and leading to cruel, inhumane or degrading treatment. The director of the facility did not have any reservations regarding this position.



The National Preventive Mechanism recommended:

- **Using coercive measures in compliance with the provisions of law, in a manner which is not degrading for intoxicated persons, and to thoroughly document all cases when such measure is applied;**
- **conducting additional training for the staff on the use of direct coercion.**

c) Informing patients of sobering-up stations about their rights

As regards the right of patients to information where they have been detained, what are the rules applicable in a given facility, and where they may submit their complaints or requests for intervention, the situation looks rather alarming.

In all of the visited establishments, the visiting team noted a lack of regulations for the detainees, who were not able to learn about their rights. On the walls in the visited rooms there was no information about institutions to which patients can turn when their rights are being violated (e.g. the Human Rights Defender).

Pursuant to the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment of the UN²¹⁴: *any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.* Similar position was adopted by the CPT, which stresses that *rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence*²¹⁵.

The recommendations of the Mechanism on informing patients about their rights were taken into account by persons who manage the visited establishments.

The National Preventive Mechanism recommended to:

- **Place in an accessible and visible place the regulations of the sobering-up station and the information about institutions dealing with the protection of human rights and freedoms to which the patients can turn for help;**
- **Introduce a procedure for orally notifying about the rules applicable at the station – in case of persons who are capable of comprehending the information communicated to them – upon their admission to the facility, and in case of persons who when being admitted were too intoxicated to comprehend, when it is possible to establish contact with them.**

d) Right to health care

Medical care over patients in the visited establishments is performed by physicians who are on duty during each shift (in each facility there is a physician on duty 24/7). It

²¹⁴ Rule 13 of the Resolution of UN General Assembly No 43/173 of 9 December 1988.

²¹⁵ See: §44 of the 12th General Report [CPT/Inf (2002) 15].



should be stressed that physicians are employed by all of the facilities. Medical examinations were carried out in clean and separate rooms.

Most of the visited establishments were sufficiently equipped with medications and life-saving medical equipment. Only one physician (station in Gorzów Wielkopolski) notified the visiting team that more first aid drugs in the emergency room would be desirable. The visiting team also noticed the lack of life-saving equipment. In the opinion of the National Preventive Mechanism, a facility of this kind should have such equipment. Moreover, the emergency room should be equipped with medical products, medical equipment and diagnostics apparatus listed in the Annex to the Ordinance. Based on the feedback from the emergency room in Gorzów Wielkopolski, the medications specified by the physician were delivered to the emergency room.

The National Preventive Mechanism recommended to:

- **Purchase additional medications and life-saving devices.**

e) Right to intimacy and privacy

All the visited sobering-up stations, except for the one in Gorzów Wielkopolski, were monitored. In some of them monitoring also extended to rooms which were used for changing clothes and for admitting patients (Zabrze, Tarnów, Grudziądz). In the opinion of the National Preventive Mechanism, the installed video cameras, without a function of covering the patients' private parts and which monitored the whole room, may lead to violating the intimacy and privacy of persons who are changing their clothes.

Also in the station in Zabrze, medical services were provided without respecting the intimacy and personal dignity of patients. The emergency room in this station was located in a connecting room with no doors, in fact it was a part of a passageway. Moreover, members of the staff were "taking shortcuts" through this room when walked between corridors, social room and admission room. Consequently patients were forced to tolerate the presence of persons other than the medical personnel.

In response to the Mechanism's recommendations, the changing room at the station in Grudziądz was equipped with a screen; in Tarnów the door was fixed to ensure that the patients' intimacy is respected. On the other hand, the Director of the station in Zabrze informed the NPM that the video recorder in the admission room is placed in such a manner so as not to film a patient when he is changing his clothes and that the consulting room is equipped with a screen which may be used by the staff in order to ensure that patients' intimacy and privacy is respected.

The National Preventive Mechanism recommended to:

- **Ensure that patients' right to privacy and personal dignity is respected when they change clothes, take a bath or receive medical treatment – by performing all of the**



above-mentioned actions in separate, non-communicating rooms, which are not under surveillance and are equipped with a screen or a curtain.

- **Designate and train staff members responsible for operating the CCTV.**

f) Living conditions

The visiting team evaluated living conditions in the rooms as good. The technical condition of rooms for detainees and of sanitary facilities was evaluated as proper, except for the rooms and the equipment which needed to be renovated (sanitary facilities excluded) at the station in Gorzów Wielkopolski. On the day of the visit the temperature in the rooms was adequate to the season of the year. Also, the stations were clean. Rooms in all of the stations were equipped with a call-over installation which enables to call a staff member in case of emergency.

The visiting team also noticed that only stations in Elbląg and in Grudziądz were fully adjusted to the needs of the disabled. In all other aspects the situation was evaluated as bad. The director of the station in Tarnów did not react to the NPM's remark concerning the lack sleeping rooms adjusted to the needs of the disabled, and the director of the station in Gorzów Wielkopolski announced that the renovation works recommended by the Mechanism would be carried out.

At the station in Tarnów, the visiting team established that, unlike in other similar establishments, this particular one did not provide sanitary and hygienic services (such as a bath) when admitting patients. According to the information acquired from a member of the staff, a patient who looks scruffy, before being released, is informed about a possibility to take a bath, but such proposals are usually rejected. In the opinion of the NPM, in justified cases the physician employed at a station should decide to carry out hygienic and sanitary procedures when admitting a patient, as stipulated in § 4.1(3) of the Ordinance. The response which the NPM received stated that hygienic and sanitary services were provided to patients, who, however, were not willing to make use of them, even if recommended to do so by the physician.

The National Preventive Mechanism recommended to:

- **Provide necessary hygienic and sanitary services to intoxicated persons;**
- **Adapt rooms and equipment at the stations to the needs of the disabled;**
- **Renovate rooms and equip them properly.**

g) Staff

Representatives of the NPM did not report any problems with finding employees.

The Mechanism found out that only in the station in Tarnów neither psychologist nor therapist was employed. Consequently, the NPM decided that the objectives set out in §18(5) of the Ordinance are implemented in a limited scope, and recommended to hire a psychologist or a therapist specialising in treatment of addictions whose activities would



focus on prophylactic and motivational conversations with the patients. The Mechanism was informed in a written response that the recommendation was being implemented.

The National Preventive Mechanism recommended to:

- **Ensure appropriate staffing, including employing a psychologist/therapist.**

2.7. Social care centres

In 2011, the representatives of the National Preventive Mechanism carried out visits to social care centres in Zakrzewo and Gołuszyce. Unlike in 2010, when the Mazowieckie Voivode expressed doubts as to the legal basis for visits by the Human Rights Defender acting in the capacity of the National Preventive Mechanism²¹⁶, this year there no such reservations were voiced. Both centres house persons with chronic mental diseases. The establishment in Zakrzew is a facility for both men and women, the one in Gołuszyce – only for men.

a) Treatment of residents

The relations between the staff and the residents of both establishments should be assessed as proper. Both, the directors and members of the Staff, were well aware of the needs and preferences of their residents. When addressing the residents, the proper polite form (Mr./Ms) was used, except for cases when both parties agreed to use a more colloquial form of address. None of the residents at SCC in Zakrzew complained about any improper behaviour of the staff, whereas residents of SCC in Gołuszyce raised some complaints related to the practice of hitting the residents on their heads, pulling them by their clothes or insulting them verbally. The management of this establishment was recommended to monitor the issue.

In the Centre in Gołuszyce, the residents pointed out that they had to clean their rooms, sanitary facilities and corridors themselves. When analysing this issue, the visiting team viewed the monitoring recordings which showed a resident cleaning staircases and smoking rooms in one of the buildings. The director of the establishment was reminded that cleaning services should be provided by the facility and residents should not be engaged in the process. In his response, the director explained that residents cleaned the premises out of good will without being forced to do so. According to the National Preventive Mechanism, due to the fact that persons placed in an SCC may have problems with making conscious decisions and with expressing their will, it would be reasonable to draft general guidelines, specifying the rules for carrying out such activities.

The National Preventive Mechanism recommended:

- **To monitor all cases of improper treatment the staff which are reported by residents,**
- **Clean the premises without engaging the residents in these activities.**

²¹⁶ Hereinafter referred to as: “NPM” or “Mechanism.”

b) Direct coercive measures

Conversations with staff members in Gołuszycze and in Zakrzew revealed that they lacked knowledge of the provisions on the application of direct coercive measures. Despite the fact that during the last two years there was no need to apply such measures, in the opinion of the visiting team a proper training in this area is necessary.

In result of the above-mentioned discoveries, the Directors of both SCCs were informed about the entitlements of the staff to apply direct coercive measures, such as holding a resident down, administering medication by force, immobilisation and isolation. They were also informed and about the need to properly document all such cases. The directors were also informed about the legal acts regulating the said area, i.e. the Act of 19 August 1994 on the protection of mental health²¹⁷, and the Ordinance of the Minister of Health and Social Welfare of 23 August 1995 on the method of applying direct coercive measures²¹⁸. In their responses to the NPM's reports, the directors noted that proper training had been conducted by psychiatrists.

It was also noted that the establishment in Gołuszycze lacked an isolation room. The director argued that during the whole period of the establishment's operation there was no need to apply the coercive measure in form of isolation. According to the Mechanism, having such room is necessary not only due to the need to adjust the facility to the requirements stipulated in the Ordinance of the Minister of Health and Social Welfare of 13 August 1995 on the method of applying direct coercive measures²¹⁹, but also due to the fact that it cannot be ruled out that such room would be needed in the future. It was also pointed out that members of the staff should be trained in the said area. In response to the Report, the director informed that actions aimed at designating an isolation room were undertaken.

The National Preventive Mechanism recommended:

- **To train the staff of the centres in the application of direct coercion, in compliance with the Act of 19 August 1994 on the protection of mental health²²⁰ and with the Ordinance of the Minister of Health and Social Welfare of 13 August 1995 on the method of applying direct coercive measures²²¹;**
- **To designate an isolation room, in compliance with the requirements defined in the Ordinance of the Minister of Health and Social Welfare of 23 August 1995 on the method of applying direct coercive measures²²².**

²¹⁷ Dz. U. of 2011, No 231, item 1375, as amended.

²¹⁸ Dz. U. of 1995 r. No 103 item 514 – Ordinance repealed on 12.02.2012.

²¹⁹ Ibidem.

²²⁰ Dz. U. of 2011, No 231, item 1375, as amended.

²²¹ Dz. U. of 1995, No 103, item 514 – Ordinance repealed on 12.02.2012.

²²² Ibidem.



c) Living conditions

After carrying out visits in the said establishments, the visiting team assessed that living conditions therein complied with the requirements of the law. The residents were offered well equipped and aesthetically furnished rooms, and could decide on their own about the look of their room by, for example, choosing the colour of the walls (SCC in Zakrzew). In both cases they were given an opportunity to use living rooms. The only negative remark in this area concerned lacking toilet paper in sanitary facilities in SCC in Gołuszyce.

Also the rules for using tobacco products in this establishment were negatively assessed, for example the fact that there was no smoking room in the residential pavilions and that smoking areas were designated on landings between the floors. Such practice significantly restricts the possibility to properly ventilate the rooms, and as such violates Article 3(1) of the Act of 9 November 1995 on the protection of health against the consequences of the use of tobacco and tobacco products²²³. The Mechanism also stressed that designating smoking areas on the landings creates a risk of an accident, especially when one considers the fact that residents are administered psychotropic medications, which very often limit their physical and mental ability.

Pursuant to § 6(1)(6) of the Ordinance of the Minister of Social Policy of 19 October 2005 on social care centres²²⁴, basic food products and beverages should be made available around the clock. During the visit in SCC in Gołuszyce it was noted that its residents were offered a very limited choice of food between meals. Talks with the residents revealed that in the so-called “therapeutic kitchens”, at 2.30 p.m, coffee or tea was available, and at 3 p.m. – some bread. The visiting team noted that the choice of drinks/snacks, which on the day of the visit consisted only of the above-mentioned beverages and bread, was not sufficient to prepare a nutritious meal. Certain reservations were also raised by strict time limits set for consuming meals. In result a recommendation to improve the situation in this area was made. The director of the Centre in Gołuszyce denied the above-mentioned facts and stated in his answer that SCC ensured that its residents had proper access to food products.

The National Preventive Mechanism recommended to:

- **Create proper conditions for using tobacco products in the pavilion, and to make sure that non-smokers’ right to live in tobacco smoke free environment is respected and safety of residents is guaranteed;**
- **Ensure that residents have proper access to basic food products between the meals;**
- **To ensure access to basic personal hygiene products.**

²²³ Dz. U. of 1996 No 10, item 55, as amended.

²²⁴ Dz.U. of 2005 No 217, item 1837.



d) Right to health care

In the visited establishments residents were provided with proper level of medical care. Physicians and nurses were employed in both establishments. Specialist consultations were conducted outside the premises, and were financed from the National Health Fund. Residents were provided with constant psychiatric and psychological care and with rehabilitation services.

The inspection of physician's room did not reveal any irregularities. It was noted that these are well equipped and ensure a proper level of intimacy necessary when performing a medical examination or some other treatment.

e) Right to complain

As far as this area is concerned, the visiting team reported that almost nothing has changed since the 2010 visit. Even though in both of the visited Centres books of complaints were kept, the practice to make entries in them was abandoned in 2007 (Gołuszyce) and in 2009 (Zakrzew). The alleged reason for doing so was the insignificance of entries and the prompt reaction to complaints. In the opinion of the NPM, reintroducing the good practice of making entries in the book should be viewed as justified, as providing a possibility to objectively assess their reviewing and handling. It should also be noted that the Ordinance of the Minister of Labour and Social Policy of 19 October 2005 on social care centres²²⁵ stipulates in § 5(1) that establishments are required to provide assisting services, which consist in efficient lodging of complaints and requests by the residents.

The director of the SCC in Zakrzew announced that he talked with the residents about the issue and that he began to draft a procedure for reviewing and accepting complaints and requests. The residents of the Centre in Zakrzew were reminded about the possibility to lodge complaints and requests pursuant to applicable instructions. Also, a meeting was organised during which the director reminded staff members responsible for registering complaints and requests about the residents' Regulations and about applicable internal procedures.

The National Preventive Mechanism recommended to:

- **Introduce a practice of registering each complaint and request submitted by the SCC's residents in the book of complaints.**

f) Admitting residents without their consent

Pursuant to Article 39 in conjunction with Article 38 of the Act of 19 August 1994 on the protection of mental health²²⁶, if a person is unable to provide for his/her basic needs due to a mental illness or mental retardation, and such person cannot rely on help of others

²²⁵ Dz.U. of 2005 No 217, item 1837.

²²⁶ Dz. U. of 2011, No 231, item 1375, as amended.



and requires constant care and nursing since without such care his/her life is endangered, but does not require hospitalisation, and such person or his/her statutory representative does not consent for such person to be admitted to a social care centre, the decision to place such person in an establishment is made by a family court, upon a motion of the authority competent of social care or by a director of a psychiatric hospital. On the other hand, pursuant to Article 41 of the cited Act, a person who was admitted to a social care centre on the basis of a court decision, as well as this person's statutory representative and other entities listed in the said Article, may appeal to a family court against this decision.

The documents that were analysed did not reveal any breach of the above-mentioned provisions in the visited establishments.

2.8. Detention Centres of Military Gendarmerie

In 2011, employees of the National Preventive Mechanism carried out visits in 4 Detention Centres of Military Gendarmerie²²⁷ (hereinafter: DCMG).

As of the day of drafting this Report, the Human Rights Defender, acting in the capacity of the National Preventive Mechanism²²⁸, has not received any response to the recommendations issued to the management of DCMG in Cracow. It should be stressed, however, that at the time of visits there were no detained persons in the Centres, so the conclusions presented herein below result from viewing the premises and analysing documents.

a) Informing soldiers about their rights

During the visit to DCMG in Elbląg and in Ustka it was established that the right to information was observed. When admitted to the Centre, each soldier is orally informed about his rights and duties during his stay in the Centre. Moreover, in every room for detainees the Regulations and the Day Schedule were displayed in a visible place, so that every detained soldier had access to the information about his rights and duties when at the DCMG. Displaying both the Regulations and the Day Schedule was compliant with the applicable law.

However, in DCMG in Cracow and in Lublin soldiers were informed about their rights and duties during their stay at the establishment only orally. In the opinion of the National Preventive Mechanism, such practice does not guarantee that a detainee is able to thoroughly acquaint himself with his rights and duties during his stay in DCMG. For many of these soldiers being detained in DCMG is a new experience, doubtless a highly stressful one, which makes it impossible for them to fully comprehend the meaning of the Regulations with which they can acquaint themselves only in the manner described above (i.e. they receive oral instructions). The Regulations in the Detention Centre in Lublin contain

²²⁷ Detention Centre of Military Gendarmerie in Elbląg, Cracow, Lublin and Ustka.

²²⁸ Hereinafter referred to as: "NPM" or "Mechanism."

a provision pursuant to which a soldier detained in the Centre is entitled to demand that a person closest to him, or some other person indicated by him instead of, or additionally to the closest person, is informed. Soldiers detained in the Centre were not able to personally inform about their detention. This was done by a soldier who was on duty at the Centre. The CPT attaches particular importance to the right of a person detained by police to notify about the fact a third person of his choice²²⁹. This is one of the three basic guarantees against ill treatment of detained persons, which was listed by the CPT. **In the opinion of the NPM, an officer should not replace a detainee in executing this right.** In his response, the Chief of Military Gendarmerie in Lublin pointed out that he officially informed his superiors about the issue related to the possibility of executing this right directly by a detained person, asking them to analyse whether it would be possible to amend the applicable legislation.

The National Preventive Mechanism recommended to:

- **Introduce to the Regulations and to the practices employed in Detention Centres a provision pursuant to which a detained soldier would be entitled to demand that the person closest to him, or some other person indicated by him instead of, or additionally to the closest person, is informed**

b) Right to medical care

Information obtained from Commanders of the Centres has revealed that every soldier, before being admitted to the Centre, is examined by a physician who issues an appropriate certificate that there are no contraindications to place him in the Centre.

c) Treatment

During its visits to the DCMGs, the NPM reported no instances of improper treatment. However, at that time there were no detainees who could be interviewed. The analysis of the book of complaints revealed no complaints lodged by soldiers detained in the Centres. No direct coercive measures were applied.

d) Living conditions

In all of the visited establishments general living conditions were evaluated as good. However, in the Centre in Ustka, floors need to be renovated immediately due to the fact that large parts are missing and this causes the whole construction to be unstable. In order to minimise the negative effects of such situation, the floor was covered with rubber lining, but such solution is only temporary. Moreover, the NPM reported that an adequate level of intimacy was not ensured for soldiers using the toilets and bathrooms due to the lack of curtains (Centres in Ustka and in Cracow), that the number of bunks in the rooms for

²²⁹ See: §36 of the 2nd General Report [CPT/Inf (1992) 3].



detainees was insufficient (Centre in Elbląg), that there were no personal lockers (Centre in Elbląg and Lublin), and that detainees were not provided with toiletries (Centre in Lublin).

Except for DCMG in Ustka, all of the visited Centres had difficulties with complying with the provisions of the Ordinance of the Minister of National Defence of 11 March 2010 on detention centres²³⁰. The doors to detention rooms did not have any opening to deliver meals and to handcuff detainees²³¹. Moreover, the entrance door and windows in the detention rooms were not equipped with devices indicating that they were opened²³².

In response to the recommendations, the Commander of Military Gendarmerie Division in Ustka informed the Mechanism that the Centre would be refurbished in 2012-2013. The Commander of the Military Gendarmerie Division in Lublin, on the other hand, informed the Mechanism that as of January 2012 all rooms would be equipped with personal lockers. He also promised to ensure that the Centre in Lublin is equipped with products of personal hygiene. The Commander also informed that the alarm system in the Centre was checked and it was established that it operated properly. The Commander of Military Gendarmerie Division in Elbląg was positive about the requests and remarks of the National Preventive Mechanism, and informed that the room in question was changed into a single room. The Commander promised to carry out renovation and construction works to adjust the Centre to the requirements of the above-mentioned Ordinance.

The National Preventive Mechanism recommended to:

- Promptly equip the storage room with the necessary products of personal hygiene;
- Change the capacity of the room with a double bunk so that it contains a single bunk, until the Centre is renovated;
- Equip the doors to detention rooms with an opening to deliver meals and to handcuff detainees;
- Equip toilets and bathrooms with curtains to ensure intimacy;
- Fit the rooms with the missing equipment.

e) Staff

Soldiers in all of the visited Centres completed a specialist training preparing them to be on duty in a DCMG, and also participated in cyclical pre-medical first aid courses. Moreover, DCMG in Lublin and in Ustka organised seasonal additional trainings for soldiers who were on duty. Soldiers in Centres in Elbląg and Cracow underwent only a single training on service in a DCMG.

In the opinion of the Mechanism, only one training is not sufficient and involves a risk that the abilities acquired during would be lost. A proper training of Military

²³⁰ Dz.U. of 2010 No 63, item 394.

²³¹ This obligation results from § 8(2) of the Ordinance of the Minister of National Defence of 11 March 2010 on detention centres.

²³² This obligation results from § 8(2)(4) of the Ordinance of the Minister of National Defence of 11 March 2010 on detention centres.



Gendarmerie officers who have direct contact with detainees lowers the probability of ill treatment. The staff of a Centre should know how to work with difficult detainees without harming them, how to provide first aid to persons in various physical or mental states, how to cope with stress and aggression, how to systematically update this knowledge and, finally, how to improve their skills In the CPT standards²³³ it is pointed out that there is no better guarantee against ill-treatment of a person deprived of liberty than a properly trained police or prison officer. CPT emphasizes in particular the need to develop interpersonal communication skills. According to the information submitted by Commanders of the visited DCMGs, when a female soldier is detained in a Centre, the admissions related actions are performed by a properly trained female officer.

The National Preventive Mechanism recommended:

- **To conduct regular trainings of soldiers who have been assigned to a Centre.**

2.9. Centres for Foreigners

In 2011, the Human Rights Defender, acting in the capacity of the National Preventive Mechanism, did not carry out any visits in detention centres for foreigners chiefly due to the difficult financial situation and the insufficient number of employees. However, the situation of persons detained in remand centres in order to be returned to their country of origin, as well as of persons in guarded detention centres for foreigners, still remains within the sphere of interest of the Human Rights Defender.

The Human Rights Defender has on many occasions called for debate on the issue of legalising foreigners' stay in Poland. Supporting yet another abolition scheme for foreigners, in her letter of 17 May 2011 to the Director of Migration Policy Department²³⁴, as well as in her address of 21 June 2011 to the Minister of the Interior and Administration²³⁵, the Human Rights Defender presented her proposal regarding the said abolition. In the opinion of the Defender, the number of requirements that foreigners have to comply with to be granted a residence permit to stay in Poland should be limited to two, i.e. the required length of stay, and establishing that a foreigner does not pose a threat to defensive capacity, security and public order. Thanks to, among others, the Defender's involvement, on 28 July 2011 the Act on the legalisation of stay of certain foreigners in the territory of the Republic of Poland, amending the Act on granting protection to foreigners in the territory of the Republic of Poland and amending the Act on foreigners²³⁶, was adopted.

In 2011, the Human Rights Defender, acting within the framework of the Group for Administrative Law and Economic Law, launched a study devoted to the implementation

²³³ See: §59 and 60 of the 2nd General Report [CPT/Inf (92) 3].

²³⁴ RPO-667500-V/11/MS.

²³⁵ RPO-R-071-27/11.

²³⁶ Dz. U. No 191, item 1133.



of right to education of juvenile foreigners' staying in the guarded centres for foreigners. To this end, Chief Commanders of the Border Guard were asked to provide relevant information, and visits were carried out in schools attended by children staying in Centres for Foreigners Applying for Refugee Status. Already in 2012 the Human Rights Defender addressed the Minister of Interior²³⁷ asking him to consider the possibility to take a legislative initiative aimed at introducing a ban to place children and their guardians in guarded centres for foreigners.

Issues related to respecting the rights of foreigners placed in detention centres were also discussed by the Association for Legal Intervention (hereinafter: ALI) and by the Helsinki Foundation for Human Rights (hereinafter: HFHR).

Last year, the Association, same as the Human Rights Defender, highlighted the problems resulting from placing juveniles in guarded centres. Detained juveniles are not able to fulfil their schooling obligation, whereas the rules they have to obey while staying in a centre are virtually the same as for adults. Another problem pinpointed by ALI is related to the lack of mechanisms and adequately trained staff to identify foreigners – victims of torture, detained even though such practice is against the applicable law²³⁸. Another issue is related to the regime applied in detention facilities, based chiefly on the provisions of Executive Penal Code, which in practice leads to a situation where foreigners have to observe even stricter rules than those enforced against some categories of prisoners (e.g. rules related to the access to fresh air, or to the possibility to move around the premises).

The problem of placing juveniles in guarded centres for foreigners was also noted by the Helsinki Foundation for Human Rights. The conditions in these centres do not meet the norms which should be obeyed taking account of the needs of juveniles, which can mean that placing a juvenile in such an establishment may have a negative effect on his/her physical and psychological development. Due to the above, HFHR has suggested that detaining juveniles in guarded centres – without custody or staying with their families – should be prohibited, and that some alternative preventive measures should be applied, which do not involve depriving a juvenile of his/her liberty. Moreover, the representatives of the Foundation have pointed out certain problems related to the restricted access of foreigners to physicians, including specialists, as well as to the impossibility to communicate with physicians due to the lack of interpreters, and the lack of constant and sufficient psychological assistance, as well as of posttraumatic stress disorder therapists.

In the opinion of the National Preventive Mechanism, the issues investigated by the Group for Administrative Law and Economic Law at the Defender's Office and by the HFHR are extremely important for protecting the rights of foreigners placed in detention facilities. The situation of persons detained in remand centres in order to be returned to

²³⁷ RPO-695531-V/12/MS of 4 April 2012.

²³⁸ Article 88(2) of the Act of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland (Dz. U. No 128, item 1176, as amended); Article 103 of the Act of 13 June 2003 on foreigners (Dz. U. No 128, item 1175, as amended).



their country of origin and persons remaining in guarded detention centres for foreigners needs to be constantly monitored.

3. Recommendations of the National Preventive Mechanism

Having carried out preventive visits in 2011, the Human Rights Defender, acting in the capacity of the National Preventive Mechanism²³⁹, issued recommendations which are aimed at the proper implementation of standards stipulated in international and national legislation. Below, the most important and most frequent recommendations issued for specific types of establishments have been presented, broken down into recommendations issued due to the fact that the Polish legal system lacks proper guarantees for observing the rights of persons deprived of their liberty or due to insufficient funding from the State's budget (systemic recommendations), and recommendations whose implementation lies within competencies of the management of individual establishments.

3.1. Prisons and pre-trial detention centres

Systemic recommendations

- ✓ Changing penal policy so that the judges would more often adjudicate alternative means of punishment than custodial sentences;
- ✓ Ensuring appropriate sanitary and hygienic conditions in cells housing more than a dozen persons;
- ✓ Ensuring without delay appropriate living conditions for prisoners, in accordance with national legal provisions and with accepted international standards or abandon the practice of placing detainees in pavilions which do not meet requirements related to proper standard of living;
- ✓ Providing health care services out of sight and hearing range of Prison Service officers;
- ✓ Restoring the original function of recreation rooms which are used as cells;
- ✓ Using medical rooms in accordance with their purpose, and excluding them from the list of rooms accounted for in assessing whether or not the facility is overpopulated;
- ✓ Informing detainees, e.g. as a part of cultural and educational activities or via the radio broadcasting system, about legal and practical consequences of judgments of the Constitutional Tribunal and of the European Court of Human Rights in cases which directly concern the detainees;
- ✓ Adapting some living cells to the needs of disabled prisoners;
- ✓ Equipping bunk beds with ladders and safety rails or exchange them for other beds whose design ensures safety for prisoners.

²³⁹ Hereinafter referred to as: "NPM" or "Mechanism."



Recommendations for specific establishments

- ✓ Undertaking actions aimed at eliminating provocative and degrading treatment of detainees by the staff;
- ✓ Eliminating irregularities in the treatment of prisoners, in particular prisoners against whom direct coercive measures are applied;
- ✓ Including in the internal Regulations a provision granting to the detainees the right to call their attorney or legal representative;
- ✓ Eliminating collective responsibility of detainees;
- ✓ Assessing whether there are no abuses consisting in unfounded requests by prison officers to impose disciplinary punishment on detainees;
- ✓ Allowing persons detained on remand and those qualified as dangerous to participate directly in a Mass;
- ✓ Providing preventive health care services to persons deprived of their liberty;
- ✓ Extending the offer of cultural and educational activities;
- ✓ Ensuring that complaints procedure exists and is observed;
- ✓ Ensuring appropriate staffing, depending on the needs of a given facility;
- ✓ Ensuring sufficient and permanent access to information about the patients' rights, e.g. by placing the "Charter of Patients' Rights" (adjusted to persons placed in penitentiary establishments) in a visible place in the rooms for patients;
- ✓ Ensuring that libraries have the latest versions of the Executive Penal Code and copies of "Compendium for Foreigners";
- ✓ Posting the addresses of institutions protecting the rights of prisoners in a visible place, accessible to all;
- ✓ To stop reprimanding detainees incessantly and stop threatening them with disciplinary action;
- ✓ Limiting the time of prisoners' stay in transition cells to the necessary period not exceeding 14 days;
- ✓ Increasing the frequency of baths;
- ✓ Providing rooms for visits without a supervising person;
- ✓ Including in the staff training programme a course on international human rights instruments and standards.

3.2. Rooms within Police organisational units for detained persons or persons brought to sober up

Systemic recommendations

- ✓ Subjecting all persons detained or brought to sober up to medical examination before placing them in PDRs;
- ✓ Limiting the presence of Police officers when medical services are provided to detainees to situations when there is a justified concern about the safety of medical personnel,



or when due to the nature of the place where medical services are provided there is a justified concern that a detainee might escape due to the lack of appropriate technical safeguards;

- ✓ Changing the manner of presenting the Regulations to persons placed in PDRs;
- ✓ Ensuring that the right of a detainee to personally notify a third person about his/her detention is observed, and limiting the agency of Police officers to exceptional situations;
- ✓ Complete renovation of rooms within Police premises for persons detained or brought to sober up;
- ✓ Creating a register of direct coercive measures used in PDRs.

Recommendations for specific establishments

- ✓ Superior bodies of Police units, where PDRs operate, should remind Police officers on duty in PDRs about their absolute obligation to respect the dignity of persons detained or brought to sober up;
- ✓ Unconditional compliance of Police officers who detain a person with their obligation to inform the said person about their rights in such situation;
- ✓ Unconditional compliance of Police officers on duty in PDRs with the obligation to inform persons detained and placed in PDRs about the rights they have while staying there;
- ✓ Police officers on duty in PDRs should inform persons who are detained and placed in PDRs and who are under the influence of alcohol about their rights in such situation;
- ✓ Providing to detainees, who expressed their willingness to exercise their right to inform third persons about their apprehension, some feedback about the realisation of this right by Police officers;
- ✓ Unconditional compliance of Police officers on duty in PDRs with the requirement that strip searches are carried out by persons of the same gender as those who are being searched;
- ✓ Making strip searches of persons detained and held in PDRs in unmonitored rooms guaranteeing that no third persons are present during the procedure;
- ✓ Unconditional compliance of Police officers on duty in PDRs with the requirement to regularly control the behaviour of persons held in PDRs – at least once in 30 minutes or – if a PDR is equipped with a monitoring system – at least once in an hour;
- ✓ Abandoning the practice of forced undressing of persons brought to PDRs to sober up;
- ✓ Supplementing the missing accommodation equipment;
- ✓ Handing out sleeping sets to all persons detained and placed in a PDR;
- ✓ Creating conditions ensuring that the intimacy of detainees when they use toilets and showers is respected;
- ✓ Equipping toilets for detainees with soaps and paper towels;
- ✓ Designating an area where detainees could use tobacco products;



- ✓ Police officers on duty in PDRs should pay attention that medical services provided to detainees are diligently documented by physicians;
- ✓ Allowing persons detained and placed in PDRs to exercise their right to purchase tobacco products, toiletries and newspapers with their own money;
- ✓ Participation of PDR staff in premedical first aid trainings and in interpersonal communication trainings.

3.3. Police emergency centres for children

Systemic recommendations

- ✓ Eliminating cases when juveniles are detained in Police emergency centres for children for a period exceeding that stipulated in Article 40 of the Act on j.d.p.;
- ✓ Allowing juveniles to have phone contact with parents or legal guardians;
- ✓ Carrying out medical examinations of newly admitted juveniles, where possible;
- ✓ Providing health care services to juveniles out of sight and hearing range of non-medical staff.

Recommendations for specific establishments

- ✓ Ensuring that detained juveniles are searched only by persons of the same gender;
- ✓ Eliminating the practice of gathering information from juveniles, which is a duty of relevant Police departments and units operating within the Police;
- ✓ Abandoning the practice of producing operational and investigation materials obtained from juveniles detained in an ECC;
- ✓ Eliminating the practice of placing juveniles under the influence of alcohol in Police emergency centres for children;
- ✓ Formally notifying the competent family court about the lack of interest in the child on the part of its legal guardian and about the lack of legal measures taken on his/her behalf;
- ✓ Eliminating the practice of using punishments and rewards incompliant with the Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in Police emergency centres for children;
- ✓ Visits are to take place without the presence of a Police officer, unless specific circumstances justify such presence;
- ✓ Undertaking measures to offer constructive activities to detained children, with particular emphasis on education;
- ✓ Increasing the offer of sport and recreation activities;
- ✓ Reducing to the minimum the period of time when juveniles have nothing to do;
- ✓ Displaying in an easily accessible place the addresses of institutions protecting the rights of juveniles, in particular: the Human Rights Defender, the Ombudsman for Children, the Helsinki Foundation for Human Rights, and a family court judge;



- ✓ Regular training for the staff of the Centre to ensure that they are constantly developing their professional skills and that they are prepared to work with juveniles;

3.4. Youth care centres and youth sociotherapy centres

Systemic recommendations

- ✓ Eliminating the sanction in the form of transfer to another establishment;
- ✓ Specifying the duration of disciplinary sanctions and applying such sanctions with taking account for individual characteristics of a juvenile;
- ✓ Providing health care services out of sight and hearing range of non-medical staff.

Recommendations for specific establishments

- ✓ Eliminating physical and psychological violence used by the staff;
- ✓ Eliminating the sanction in the form of deprivation of the juvenile of his/her rights or suspension of such rights;
- ✓ Ceasing to apply disciplinary measures which are not provided for in the Regulations;
- ✓ Eliminating all stigmatizing sanctions;
- ✓ To stop applying collective responsibility;
- ✓ Eliminating the sanction which consists in providing services for the Centre;
- ✓ Eliminating the sanction in the form of physical exercise;
- ✓ Defining more precisely the rules for isolating juveniles from the group, and ensuring that they are staying in the presence of an adult;
- ✓ Ensuring the freedom of conscience and religion to all juveniles, which includes the freedom to profess or to accept a religion by personal choice, the possibility to participate in religious practices, and the ban to compel anyone to participate in religious practices;
- ✓ Ensuring appropriate organisation of and access to health care for juveniles;
- ✓ Taking steps aimed at finding and employing a nurse;
- ✓ Providing preventive health care to juveniles;
- ✓ Creating a procedure for applying coercive measures which is adjusted to the applicable legislation, and diligently documenting the use of such coercive measures;
- ✓ Enabling detained juveniles to contact their siblings, relatives or other people from outside the establishment, and applying restrictions in this area only in line with the provisions of the law;
- ✓ Increasing the number of visits which juvenile residents are allowed to receive, and allowing them to hold telephone conversations;
- ✓ Increasing the number of leaves granted to juveniles and enabling juvenile residents to visit their homes during their first months at the establishment;
- ✓ Handling the correspondence of residents as provided for in the Act on j.d.p.;
- ✓ Abandoning the practice of monitoring telephone conversations of juvenile residents as well as visits they receive;



- ✓ Abandoning the practice of conditioning the length of telephone conversations of juveniles with their families upon the degree of their resocialization;
- ✓ Adding to the Regulations the rules for visiting juvenile residents;
- ✓ Organising regular meetings to inform juveniles about their rights and about the ways of executing these rights;
- ✓ Organising workshops dedicated to the activity of institutions protecting human rights;
- ✓ Placing Regulations/ Statute of the establishment on boards in entertainment rooms;
- ✓ Displaying in a visible place contact details to institutions where the juveniles can turn for help when their rights are being infringed upon, namely the Human Rights Defender, the Ombudsman for Children, the Helsinki Foundation for Human Rights, and family court judges;
- ✓ Taking actions intended to prevent the influence of any subculture groups;
- ✓ Renovating and refurbishing buildings, especially the living premises and the bathrooms for juveniles;
- ✓ Organising trainings for the staff on the protection of the rights of children in international and national law.

3.5. Juvenile detention centres and juvenile shelters

Systemic recommendations

- ✓ Eliminating from the catalogue of sanctions the one which consists in transferring a juvenile to another establishment;
- ✓ Providing health care services to juveniles out of sight and hearing range of non-medical staff;
- ✓ Ensuring that every juvenile may participate in outdoor activities for at least one hour a day;
- ✓ Adjusting establishments to the needs of disabled persons.

Recommendations for specific establishments

- ✓ Applying direct coercive measures pursuant to the provisions of the Act on j.d.p.;
- ✓ Eliminating collective responsibility;
- ✓ Eliminating the instances of stay in transition rooms as a sanction;
- ✓ Eliminating disciplinary measures not justified by safety reasons which limit a juvenile's contact with his/hre family and restrict his/her participation in school activities;
- ✓ Staff of a facility should always react when safety of the juveniles detained therein might be in danger;
- ✓ Accounting for a possibility for juveniles to have direct contact with persons other than their parents and legal guardians;



- ✓ Eliminating excessive control of correspondence of juveniles and adjusting relevant provisions of the Regulations so that they comply with the Act on juvenile delinquency proceedings;
- ✓ Enabling juveniles accommodated in the transition room and in a group of intervention shelter to attend religious services held in the shelter;
- ✓ Determining precisely the purpose of patient, transition and isolation rooms, and furnishing them in a way compliant with its purpose;
- ✓ Adjusting the isolation room to the requirements laid down in the Ordinance of 22 February 2011 on detailed conditions and method of using coercive measures with respect to juveniles in juvenile detention centres, juvenile shelters, youth care centres, and youth sociotherapy centres;
- ✓ Adjusting the transition rooms to the requirements laid down in the Ordinance of 17 October 2001 on juvenile detention centres and juvenile shelters;
- ✓ Placing in a visible area the addresses of institutions protecting the rights of juveniles, including the Human Rights Defender, the Ombudsman for Children, the Helsinki Foundation for Human Rights, and a family court judge
- ✓ Furnishing showers and toilets with curtains or doors to ensure a proper level of intimacy to the users;
- ✓ Organising training of the staff on the protection of the rights of the child in international and national law.

3.6. Sobering-up stations

Systemic recommendations

- ✓ Conducting additional trainings on the use of direct coercion;
- ✓ Adapting rooms and equipment at the stations to the needs of disabled persons.

Recommendations for specific centres

- ✓ Treating patients in sobering-up stations respecting their dignity;
- ✓ Applying coercive measures as provided for in the law and in a manner which is not degrading for intoxicated persons; thoroughly documenting all instances of applying such measure;
- ✓ Abandoning the practice of forceful stripping patients of their clothes;
- ✓ Introducing a procedure for orally informing admitted persons, capable of comprehending the information communicated to them, as well as persons who were admitted to the station but the contact with whom had been previously impossible due to their intoxication, about the rules applicable at the station;
- ✓ Ensuring that the rights of patients to intimacy and personal dignity is respected when they change their clothes, take a bath or receive medical treatment. This shall be



achieved by performing all of the above-mentioned actions in separate rooms with no communicating doors, not under surveillance, and equipped with a screen or a curtain;

- ✓ Providing non-alcoholic beverages to persons detained in a station;
- ✓ Providing necessary hygienic and sanitary services to intoxicated persons;
- ✓ Displaying in an accessible and visible place the Regulations of the sobering-up station and the information about institutions which protect human rights and freedoms and to which the patients can turn for help;
- ✓ Ensuring appropriate staffing, including hiring a psychologist/therapist;
- ✓ Renovating rooms and equipping them properly.

3.7. Detention Centres of Military Gendarmerie

Systemic recommendations

- ✓ Introducing to the Regulations and to the practices employed in Detention Centres a provision allowing detained soldiers to inform persons closest to them about the detention.

Recommendations for specific establishments

- ✓ Equipping promptly the storage room with the necessary products of personal hygiene;
- ✓ Until the Centre is renovated, changing the capacity of the room with a double bunk so that it contains a single bunk;
- ✓ Equipping the doors to detention rooms with an opening to deliver meals and to handcuff detainees;
- ✓ Equipping toilets and bathrooms with curtains to ensure intimacy;
- ✓ Fitting the rooms with the missing equipment;
- ✓ Conducting regular trainings of soldiers who have been assigned to a Centre.

3.8. Social care centres

Systemic recommendations

- ✓ Conducting trainings for the staff employed in the centres on the application of direct coercion pursuant to the Act of 19 August 1994 on the protection of mental health and to the Ordinance of the Minister of Health and Social Welfare of 13 August 1995 on the method of applying direct coercive measures.

Recommendations for specific establishments

- ✓ Monitoring all cases of improper treatment by the staff which are reported by residents;
- ✓ Introducing a practice of registering each complaint and request submitted by the SCC's residents in the book of complaints;
- ✓ Cleaning the premises without engaging the residents in these activities;



- ✓ Designating an isolation room, in compliance with the requirements defined in the Ordinance of the Minister of Health and Social Welfare of 23 August 1995 on the method of applying direct coercive measures;
- ✓ Creating proper conditions for using tobacco products in the pavilion, making sure that non-smokers' right to live in a tobacco smoke free environment is respected and safety of residents is guaranteed;
- ✓ Ensuring that residents have proper access to basic food products between the meals;
- ✓ Ensuring access to basic personal hygiene products.

4. Good practices

The Human Rights Defender, acting in the capacity of the National Preventive Mechanism²⁴⁰, presents below some ideas and good practices, observed during the 2011 visits in penitentiary establishments, which, in her opinion, are worth implementing in other establishments of similar type:

4.1. Youth sociotherapy centres and youth care centres

- Designating the so-called “psychologist house”, i.e. establishing a consulting-room of psychologist and counsellor outside the Centre premises, which fosters trust and results in a situation when these specialist are not perceived by juveniles as members of the staff (YCC in Łęka);
- Reporting to the Police every incident involving violence or vandalism occurring in the Centre; this restrains the aggressive behaviour of juveniles and is conducive to the feeling of security in the establishment (YCC in Łęka);
- Conducting once a year a survey for juveniles concerning their feeling of safety and general atmosphere in the Centre (YCC in Łęka);
- Enabling juveniles unrestricted and frequent contact with their families by allowing them to make daily phone calls to their closest relatives, and by allowing parents to visit their children on the day of their choice (YCC in Łęka);
- Activity of “Ad Rem” – Association for Prophylactic and Resocialisation in Youth Sociotherapy Centre in Łódź. The main task of the Association is to help a young person to find his/her place in the society, to live according to his/her conscience and to observe moral standards. This is realised by activating young people, by encouraging them to take up challenges and to become independent, as well as by organising workshops and therapy. According to the information provided by the Director of YCC, the

²⁴⁰ Hereinafter referred to as: “NPM” or “Mechanism.”



Association allows the Centre to carry out its work without having to deal with bureaucratic barriers (YCC No 3 in Łódź);

- An agreement between the Director of YCC and the President of Regional Court for undertaking work for the community as a part of serving detention sentence. The agreement provides for a possibility of 3 persons doing maintenance, repair and renovation jobs (YCC No 3 in Łódź).

4.2. Juvenile shelters

- Detailed and clear regulations and procedures governing all the aspects of handling juvenile residents, which specify both, formal requirements to undertake certain actions, and persons responsible for their proper implementation (JS in Chojnice);
- Comprehensive system of exchanging information on juveniles, making it possible for the staff to react promptly, both to positive and negative behaviour and attitudes (JS in Chojnice);
- Information booklet for residents entitled “Practical Advice”, placed in corridors of the centre. The booklet, written in plain and legible language, accessible to all who are interested throughout their stay in the establishment, furnishes juvenile residents with the information which is essential in everyday life in the shelter, such as the time when physician is on duty in the emergency room or when it is possible to talk with individual members of the staff (JS in Chojnice).
- Police emergency centres for children
- Shortening the length of stay juveniles in a centre by the time of exchanging official correspondence between a court and District Educational Supervision Team (DEST). Should a court issue a decision to detain a juvenile in a juvenile detention centre or in a juvenile shelter, and should a DEST receive a written request for designating an establishment where a juvenile may be placed, the head of ECC contacts by telephone the relevant DEST and asks them to specify the establishment which can accept the juvenile. The acquired information about a free place in the said establishment is then sent to a competent court (ECC in Lublin);
- Employing in ECC an officer who holds a degree in psychology. The presence of a psychologist is crucial in minimising the stress suffered by detained juveniles and in restoring their feeling of safety – thanks to appropriate psychological measures. Moreover, providing juveniles detained in ECC with psychological care contributes to minimising the number of extraordinary incidents (ECC in Poznań);
- Organising a competition for juveniles detained in ECC to design a logo of the establishment. In the opinion of the National Preventive Mechanism, this initiative extends the scope of cultural and educational activities aimed at juveniles, it activates them to engage in healthy competition, and makes their stay more attractive (ECC in Ostrów Wlkp.).



4.3. Penitentiary establishments

- Setting-up a play corner for children who visit the establishment. The idea behind this is to change children's negative image of penitentiary establishments, and to create the best possible conditions for a child staying in the company of both parents. Such image preserved in children's memory should encourage them to frequently visit their parents and to maintain the parent-child bond, disturbed by the fact that a parent is serving time in a penitentiary establishment (Prison in Kluczbork, External Ward of PDC in Opole, PDC in Grójec, PDC in Radom, Prison in Płock);
- Training the detainees in providing premedical first aid (Prison in Jasło);
- Designating cells "with increased level of inmates self-help". The task of prisoners who voluntarily consent to be placed in such cells is to pay special attention to inmates who in depressed mood. Employing such practice prevents suicidal attempts (prison in Jasło);
- Acquiring European Union subsidies for modernisation of the establishment (Prison in Jasło);
- Granting prisoners a possibility to use TV sets owned by a given establishment. The schedule for placing these TV sets in individual cells is approved by the Director of the establishment, and is displayed in a generally accessible place. The TV sets may be used by prisoners in cells where none of the inmates owns their private TV set (PDC in Giżycko).

4.4. Rooms for detained persons or persons brought to sober up

- Employing a physician who would be on duty daily from 4 p.m. to 6 a.m. Pursuant to the agreement between the Municipal Police Chief in Kalisz and the Kalisz City Council, compensation of the physician is to be financed by the city. Additionally, the Council proposed to cover all expenditure related to maintaining the rooms in an adequate sanitary condition. According to the employees of the National Preventive Mechanism, the observed practice is recommended mostly for the reasons of safety of persons brought to sober up and placed in Police rooms (Police unit in Kalisz).

5. Assessment of legal acts

Activities of the Human Rights Defender, acting as the National Preventive Mechanism²⁴¹, are not limited to preventive visits, but also include issuing opinions about drafted legislation and about applicable legal acts. Pursuant to Article 19(c) of the OPCAT, the

²⁴¹ Hereinafter referred to as: "NPM" or "Mechanism."



National Preventive Mechanism is entitled to submit proposals and observations concerning existing or draft legislation which concerns persons deprived of their liberty.

In 2011, the NPM put forward an opinion about the draft Ordinance of the Minister of Justice on the conditions and the method for carrying out tests to determine the concentration of alcohol or some other intoxicating substance in the organism of a juvenile, and on the procedures for recording such tests and for verifying its results. The Mechanism's doubts were raised by the fact that the draft did not determine the authority which would be competent to instruct juveniles, their parents or legal guardians about their right to a blood test in order to verify the breathalyzer test results and saliva testing. In the opinion of the Mechanism, it would be also recommendable to include in the testing protocol a statement (signed by a juvenile, a parent or a guardian) in which a signee declares that he/she acquainted himself/herself with the test results and that he/she was instructed by the guardian about the right to demand verification of the conducted tests.

The National Preventive Mechanism expressed its opinion about the draft Act on amending the Act on juvenile delinquency proceedings and the Law on the Organisation of Common Courts. The NPM's doubts were raised by the fact that the age limit for being legally recognized as a juvenile has been lowered (to 10 years old), which will allow to detain in care and educational establishments children aged 10. According to the NPM, this raises some serious doubts in the context of resocialisation and therapeutic guidelines set out by modern science. In the opinion of the NPM, the decision to delete the provision which allows to apply a conditional suspension of a juvenile's detention in a facility was not justified.

Moreover, the Mechanism submitted no remarks or proposals regarding the draft Ordinance of the Minister of National Education on the detailed rules for referring, admitting, transferring, releasing and holding juveniles in a youth care centre, nor any remarks on the draft Ordinance of the Minister of Justice on the detailed specification of the amount of a scholarship for juveniles participating in vocational training in the form of vocational internship at school workshops run by a school or a complex of schools within a juvenile detention centre or a juvenile shelter.

6. Members of the Team who in 2011 visited the establishments in the capacity of the National Preventive Mechanism (in alphabetical order)

Ewelina Brzostymowska – a lawyer, graduate of the Lazarski University's Faculty of Law in Warsaw, currently a doctoral student at the Institute of Legal Sciences of the Polish Academy of Sciences. Since 2009, she has been dealing with the issues of executive criminal law in the Human Rights Defender's Office.



Magdalena Chmielak – deputy Director of the Team “National Preventive Mechanism” in the Human Rights Defender Office. A lawyer, graduate of the Cardinal Stefan Wyszyński University in Warsaw and post-graduate in “Social rehabilitation” at the Department of Rehabilitation Psychopedagogy of the Maria Grzegorzewska Academy of Special Education in Warsaw. A trainee solicitor since 2012. Since 2009, she has been an employee of the National Preventive Mechanism in the Human Rights Defender’s Office.

Karolina Chyła – a social pedagogue, graduate of the Maria Grzegorzewska Academy of Special Education in Warsaw. Since 2010, employed in the Human Rights Defender’s Office, an employee of the National Preventive Mechanism.

Janina de Michelis – a lawyer, graduate of the University of Warsaw. She has been dealing with executive criminal law since 1975. Employed in the Human Rights Defender’s Office since 1988, member of the Executive Criminal Law Unit since 1989.

Kinga Dękiejowska – a lawyer, employee of the Human Rights Defender Office since 1997. She deals with the issues of social security, including those concerning nursing homes, in the Labour Law and Social Security Unit.

Bogumił Furche - a lawyer, trainee solicitor, graduate of the University of Gdańsk. Since 2008, employee of the Human Rights Defender’s Office. He participates in the visits of the National Preventive Mechanism within the jurisdiction of the Regional Agent of the Human Rights Defender in Gdańsk.

Zenobia Glac-Ściebura – a social pedagogue, graduate of the Ateneum-University in Gdańsk. Since 2007, employee in the Human Rights Defender’s Office. Since 2011, she has participated in the visits of the National Preventive Mechanism within jurisdiction of the Regional Agent of the Human Rights Defender in Gdańsk.

Justyna Józwik – a graduate of the Institute of Social Prevention and Rehabilitation at the University of Warsaw, currently a doctoral student at the Institute of Sociology at the University of Warsaw. Since 2008, she has been an employee of the National Preventive Mechanism in the Human Rights Defender’s Office.

Przemysław Kazimirski – a lawyer, graduate of the Catholic University of Lublin. Since 2002, he has been working in the Human Rights Defender’s Office – initially at the Executive Criminal Law Unit, later, since 2008, has been employed by the National Preventive Mechanism. He represents the NPM in the EU Eastern Partnership Countries Human Rights Defenders Cooperation Programme 2009-2013.

Michał Kleszcz – a lawyer, graduate of the University of Silesia and of Post-graduate Studies of Economic and Commercial Law. A trainee solicitor since 2012. Employed in the Office since 2007. Since 2008, he has participated in the visits of the National Preventive Mechanism within jurisdiction of the Regional Agent of the Human Rights Defender in Katowice.

Natalia Kłaczyńska – a doctor of legal sciences of the University of Wrocław, university teacher. Employed in the Office since 2005. She participates in the visits of the National



Preventive Mechanism within jurisdiction of the Regional Agent of the Human Rights Defender in Wrocław.

Dorota Krzysztoń – a criminologist, graduate of the University of Warsaw. A longtime civil servant, involved in the protection of the civil rights and a mediator in criminal cases. Currently employed by the National Preventive Mechanism.

Marcin Kusy – a lawyer, graduate of the Catholic University of Lublin and of the School of Human Rights and Freedoms at the Institute of Legal Sciences of the Polish Academy of Sciences. He has extensive knowledge of American law, holder of a certificate of Chicago Kent College of Law. Since 2008, employee of the National Preventive Mechanism, he acts as a contact person between the Mechanism and the Council of Europe.

Zbigniew Kuźma – a lawyer, long-time employee of the Prison Service. While working in the penitentiary system, he implemented innovations in fighting addictions (the Atlantis Programme), focusing on “dangerous” prisoners and social rehabilitation work. He participated in committees creating a new model of penitentiary system, drafting legal acts and implementing legislation related to the functioning of penitentiary system and to executing penalty of imprisonment. Since 1998, he has been an employee of the Human Rights Defender’s Office.

Justyna Lewandowska – Director of the “National Preventive Mechanism” in the Human Rights Defender’s Office. A lawyer, graduate of the University of Warsaw. In 2007, she completed the prosecutor’s apprenticeship in Warsaw, and since 2010 is a member of the Warsaw Bar Association. A long-time employee of the Helsinki Foundation for Human Rights. When at the Foundation, she focused on the rights of persons deprived of their liberty, of persons using psychoactive drugs, and of those living with HIV virus / suffering from AIDS. In 2007 and 2008, she was a member of the team working to amend the Act on prevention of drug abuse and certain other acts. The team was designated by the Minister of Justice.

Przemysław Możejko – a graduate of politics and law faculty at the University of Gdańsk. In the years 1992-1994, he worked directly with persons deprived of their liberty, then as an inspector of penitentiary establishments. Since 2009, employed by the Human Rights Defender’s Office, dealing with the issues of criminal executive law.

Jolanta Nowakowska – a political scientist, graduate of the University of Warsaw. A long-time employee of a pre-trial detention centre. Participated in the “Atlantis” project to open therapeutic units for convicted persons addicted to alcohol. While employed in Polish consulates in Germany, she helped Polish citizens temporarily deprived of freedom. Since 2009, she has been dealing with the issues of executive criminal law in the Human Rights Defender’s Office.

Wojciech Sadownik – a lawyer, graduate of the Maria Curie-Skłodowska University in Lublin. He worked, inter alia, at the Ministry of Science and Higher Education. Employed in the Human Rights Defender’s Office since 2010. Employee of the National Preventive Mechanism.



Estera Tarnowska – a lawyer, psychologist, graduate of the University of Gdańsk. In 2011, she completed her solicitor's apprenticeship in Gdańsk. Employed in the Human Rights Defender's Office since 2007. Since 2008, she has participated in the visits of the National Preventive Mechanism within jurisdiction of the Regional Agent of the Human Rights Defender in Gdańsk.

Aleksandra Wentkowska – Regional Agent of the Human Rights Defender in Katowice since 2007. She holds a PhD in legal sciences and specialises in European law. She completed her legal training to become a judge. Lecturer at the Jagiellonian University and at the "Humanitas" School of Higher Education in Sosnowiec. Since 2009, she has participated in the visits of the National Preventive Mechanism within jurisdiction of the Regional Agent of the Human Rights Defender in Katowice.

7. Visits under the National Preventive Mechanism in 2011 by date

No	Visited unit and visiting team	Place	Date	Participation of members of other teams within the HRDO	Participation of employees of Local Representative Offices (LRO)
1	Youth Socioterapy Centre No 7 – Przemysław Kazimirski – Marcin Kusy – Karolina Chyła – Justyna Lewandowska	Warsaw	11.01.2011		
2	Youth Socioterapy Centre "Good Shepherd Mother's House" – Wojciech Sadownik – Marcin Kusy – Jolanta Nowakowska – Justyna Lewandowska	Piaseczno	18.01.2011	Jolanta Nowakowska Team II	
3	Nursing home – Przemysław Kazimirski – Kinga Dękiejowska – Marcin Kusy	Zakrzew	19-21.01.2011	Kinga Dękiejowska Team III	
4	Police Emergency Centre for Children – Justyna Józwiak – Magdalena Chmielak – Karolina Chyła – Marcin Mazur	Poznań	25.01.2011	Marcin Mazur Team II	



5	Youth Care Centre – Justyna Józwiak – Magdalena Chmielak – Karolina Chyła – Marcin Mazur	Antoniewo	26-27.01.2011	Marcin Mazur Team II	
6	Rooms for Detained Persons Within The Po- lice Headquarters – Justyna Józwiak – Magdalena Chmielak – Karolina Chyła – Marcin Mazur	Poznań-Stare Miasto	28.01.2011	Marcin Mazur Team II	
7	Social care centre – Kinga Dękiejowska – Justyna Józwiak – Magdalena Chmielak	Gołuszyce	02-04.02.2011	Kinga Dękiejowska Team III	
8	Rooms for Detained Per- sons Within the Powiat Police Headquarters – Przemysław Kazimirski – Justyna Lewandowska – Natalia Kłaczyńska – Ewelina Brzostymowska – Zbigniew Kuźma	Olesno	08.02.2011	Ewelina Brzostymowska Zbigniew Kuźma Team II	Natalia Kłaczyńska LRO in Wrocław
9	Youth Care Centre – Przemysław Kazimirski – Justyna Lewandowska – Natalia Kłaczyńska – Ewelina Brzostymowska – Zbigniew Kuźma	Julianpol	09.02.2011	Ewelina Brzostymowska Zbigniew Kuźma Team II	Natalia Kłaczyńska LRO in Wrocław
10	Prison – Przemysław Kazimirski – Justyna Lewandowska – Natalia Kłaczyńska – Ewelina Brzostymowska – Zbigniew Kuźma	Kluczbork	10-11.02.2011	Ewelina Brzostymowska Zbigniew Kuźma Team II	Natalia Kłaczyńska LRO in Wrocław
11	Police Emergency Centre for Children – Justyna Józwiak – Marcin Kusy – Karolina Chyła – Dorota Krzysztoń	Radom	16.02.2011		



12	Rooms for Detained Persons within Police Headquarters – Justyna Józwiak – Marcin Kusy – Karolina Chyła – Dorota Krzysztoń	Zwoleń	16.02.2011		
13	Remand Centre – Justyna Józwiak – Marcin Kusy – Karolina Chyła – Dorota Krzysztoń	Grójec	17-18.02.2011		
14	Rooms for Detained Persons within Police Headquarters – Przemysław Kazimirski – Magdalena Chmielak	Grodzisk Mazowiecki	18.02.2011		
15	Rooms for Detained Persons within Police Headquarters – Przemysław Kazimirski – Magdalena Chmielak	Żyrardów	18.02.2011		
16	Rooms for Detained Persons Within the Municipal Police Headquarters – Justyna Lewandowska – Marcin Kusy – Karolina Chyła – Michał Kleszcz	Tarnów	28.02.2011		Michał Kleszcz LRO in Katowice
17	Prison – Justyna Lewandowska – Marcin Kusy – Karolina Chyła – Michał Kleszcz	Tarnów- Mościce	01-03.03.2011		Michał Kleszcz LRO in Katowice
18	Police Emergency Centre for Children – Justyna Lewandowska – Marcin Kusy – Karolina Chyła – Michał Kleszcz	Tarnów	03.03.2011		Michał Kleszcz LRO in Katowice
19	Sobering Station – Justyna Lewandowska – Marcin Kusy – Karolina Chyła – Michał Kleszcz	Tarnów	04.03.2011		Michał Kleszcz LRO in Katowice



20	Rooms for Detained Persons within Police Headquarters – Natalia Kłaczyńska	Oleśnica	07.03.2011		Natalia Kłaczyńska LRO in Wrocław
21	Rooms for Detained Persons within Police Headquarters – Dorota Krzysztoń – Przemysław Kazimirski – Janina de Michelis	Sochaczew	09.03.2011	Janina de Michelis Team II	
22	Rooms for Detained Persons Within the Municipal Police Headquarters – Dorota Krzysztoń – Karolina Chyła – Justyna Józwiak – Marcin Kusy	Kalisz	15.03.2011		
23	Rooms for Detained Persons within Police Headquarters – Dorota Krzysztoń – Karolina Chyła – Justyna Józwiak – Marcin Kusy	Ostrów Wielkopolski	16.03.2011		
24	Police Emergency Centre for Children – Dorota Krzysztoń – Karolina Chyła – Justyna Józwiak – Marcin Kusy	Ostrów Wielkopolski	16.03.2011		
25	Youth Care Centre “Saint Joseph Mercy House” – Dorota Krzysztoń – Karolina Chyła – Justyna Józwiak – Marcin Kusy	Kalisz	17-18.03.2011		
26	Prison – Przemysław Kazimirski – Janina de Michelis – Wojciech Sadownik	Płock	23-24.03.2011	Janina de Michelis Team II	
27	Rooms for Detained Persons within Police Headquarters – Dorota Krzysztoń – Magdalena Chmielak – Justyna Józwiak – Michał Kleszcz	Zawiercie	29.03.2011		Michał Kleszcz LRO in Katowice



28	Juvenile Centre and Juvenile Detention Centre – Dorota Krzysztoń – Magdalena Chmielak – Justyna Józwiak – Michał Kleszcz	Zawiercie	30.03.2011		Michał Kleszcz LRO in Katowice
29	Youth Care Centre – Dorota Krzysztoń – Magdalena Chmielak – Justyna Józwiak – Michał Kleszcz	Kalety	31.03.2011		Michał Kleszcz LRO in Katowice
30	Rooms for Detained Persons within Police Headquarters – Natalia Kłaczyńska	Oława	04.04.2011		Natalia Kłaczyńska LRO in Wrocław
31	Police Emergency Centre for Children – Magdalena Chmielak – Przemysław Kazimirski – Marcin Kusy	Elbląg	04.04.2011		
32	Youth Care Centre – Magdalena Chmielak – Przemysław Kazimirski – Marcin Kusy	Kamionek Wielki	05-06.04.2011		
33	Social Emergency Station – Sobering Station – Magdalena Chmielak – Przemysław Kazimirski – Marcin Kusy – Bogumił Furche	Elbląg	07.04.2011		Bogumił Furche LRO in Gdańsk
34	Military Gendarmerie Detention Centre – Magdalena Chmielak – Przemysław Kazimirski – Marcin Kusy – Bogumił Furche	Elbląg	07.04.2011		Bogumił Furche LRO in Gdańsk
35	Rooms for Detained Persons Within the Municipal Police Headquarters – Magdalena Chmielak – Przemysław Kazimirski – Marcin Kusy	Elbląg	08.04.2011		
36	Remand Centre – Michał Kleszcz – Aleksandra Wentkowska	Mysłowice	14-15.04.2011		Michał Kleszcz Aleksandra Wentkowska LRO in Katowice



37	Youth Sociotherapy Centre No 7 – Przemysław Kazimirski – Marcin Kusy – Dorota Krzysztoń	Warszawa	18.04.2011		
38	Youth Sociotherapy Centre “House near the Market Square” (“Dom przy Rynku”) – Przemysław Kazimirski – Karolina Chyła – Magdalena Chmielak	Warszawa	19.04.2011		
39	Rooms for Detained Persons Within the Municipal Police Headquarters – Michał Kleszcz – Aleksandra Wentkowska	Katowice	27.04.2011		Michał Kleszcz Aleksandra Wentkowska LRO in Katowice
40	Police Emergency Centre for Children – Michał Kleszcz – Aleksandra Wentkowska	Kielce	05.05.2011		Michał Kleszcz Aleksandra Wentkowska LRO in Katowice
41	Rooms for Detained Persons Within the Municipal Police Headquarters – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Janina de Michelis	Bydgoszcz	10.05.2011	Janina de Michelis Team II	
42	Police Emergency Centre for Children – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Janina de Michelis	Bydgoszcz	10.05.2011	Janina de Michelis Team II	
43	Prison – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Janina de Michelis	Koronowo	11-13.05.2011	Janina de Michelis Team II	
44	Prison – Magdalena Chmielak – Marcin Kusy – Zbigniew Kuźma – Michał Kleszcz	Nowy Wiśnicz	17-19.05.2011	Zbigniew Kuźma Team II	Michał Kleszcz LRO in Katowice



45	“Tatra Couriers” Youth Care Centre – Magdalena Chmielak – Marcin Kusy – Zbigniew Kuźma – Michał Kleszcz	Wielkie Drogi	19-20.05.2011	Zbigniew Kuźma Team II	Michał Kleszcz LRO in Katowice
46	Rooms for Detained Per- sons Within the Municipal Police Headquarters – Wojciech Sadownik – Dorota Krzysztoń – Justyna Józwiak – Zenobia Glac-Ściebura	Grudziądz	24.05.2011		Zenobia Glac- Ściebura LRO in Gdańsk
47	Juvenile Detention Centre – Wojciech Sadownik – Dorota Krzysztoń – Justyna Józwiak – Zenobia Glac-Ściebura	Świecie n/ Wisłą	25.05.2011		Zenobia Glac- Ściebura LRO in Gdańsk
48	Juvenile Detention Centre – Wojciech Sadownik – Dorota Krzysztoń – Justyna Józwiak – Zenobia Glac-Ściebura	Nowe n/ Wisłą	26.05.2011		Zenobia Glac- Ściebura LRO in Gdańsk
49	Addiction Prevention and Crisis Intervention Centre – Sobering Station – Wojciech Sadownik – Dorota Krzysztoń – Justyna Józwiak – Zenobia Glac-Ściebura	Grudziądz	27.05.2011		Zenobia Glac- Ściebura LRO in Gdańsk
50	Rooms for Detained Persons within Police Headquarters – Przemysław Kazimirski – Marcin Kusy – Magdalena Chmielak – Justyna Józwiak	Sławno	31.05.2011		
51	Rooms for Detained Per- sons within Municipal Police Headquarters – Przemysław Kazimirski – Marcin Kusy – Magdalena Chmielak – Justyna Józwiak	Słupsk	01.06.2011		



52	Military Gendarmerie Detention Centre – Przemysław Kazimirski – Marcin Kusy – Magdalena Chmielak – Justyna Józwiak	Ustka	01.06.2011		
53	Youth Sociotherapy Centre – Przemysław Kazimirski – Marcin Kusy – Magdalena Chmielak – Justyna Józwiak	Ustka	02.06.2011		
54	Prison – Magdalena Chmielak – Zenobia Glac-Ściebura – Justyna Józwiak – Przemysław Możejko	Nowogard	14-15.06.2011	Przemysław Możejko Team II	Zenobia Glac-Ściebura LRO in Gdańsk
55	Rooms for Detained Persons Within the Poviats Police Headquarters – Magdalena Chmielak – Zenobia Glac-Ściebura – Justyna Józwiak – Przemysław Możejko	Drawsko Pomorskie	16.06.2011	Przemysław Możejko Team II	Zenobia Glac-Ściebura LRO in Gdańsk
56	“Pope John Paul II” Youth Care Centre – Magdalena Chmielak – Zenobia Glac-Ściebura – Justyna Józwiak – Przemysław Możejko	Rzeczycyno	16.06.2011	Przemysław Możejko Team II	Zenobia Glac-Ściebura LRO in Gdańsk
57	Rooms for Detained Persons Within the Municipal Police Headquarters – Przemysław Kazimirski – Marcin Kusy – Dorota Krzysztoń – Natalia Kłaczyńska	Gorzów Wielkopolski	27.06.2011		Natalia Kłaczyńska LRO in Wrocław
58	Police Emergency Centre for Children – Przemysław Kazimirski – Marcin Kusy – Dorota Krzysztoń – Natalia Kłaczyńska	Gorzów Wielkopolski	28.06.2011		Natalia Kłaczyńska LRO in Wrocław



59	Sobering Station – Przemysław Kazimirski – Marcin Kusy – Dorota Krzysztoń – Natalia Kłaczyńska	Gorzów Wielkopolski	28.06.2011		Natalia Kłaczyńska LRO in Wrocław
60	Remand Centre – Bogumił Furche – Zenobia Glac-Ściebura – Estera Tarnowska	Giżycko	14.07.2011		Zenobia Glac-Ściebura Bogumił Furche Estera Tarnowska LRO in Gdańsk
61	Rooms for Detained Persons within Police Headquarters – Bogumił Furche – Zenobia Glac-Ściebura – Estera Tarnowska	Kętrzyn	15.07.2011		Zenobia Glac-Ściebura Bogumił Furche Estera Tarnowska LRO in Gdańsk
62	Prison – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Łupków	26-27.07.2011		
63	Prison – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Jasło	27-28.07.2011		
64	Sobering Station – Michał Kleszcz – Aleksandra Wentkowska	Zabrze	02.08.2011		Michał Kleszcz Aleksandra Wentkowska LRO in Katowice
65	Prison – Wojciech Sadownik – Marcin Kusy – Dorota Krzysztoń – Michał Kleszcz	Wadowice	23-24.08.2011		Michał Kleszcz LRO in Katowice
66	Prison – Wojciech Sadownik – Marcin Kusy – Dorota Krzysztoń – Michał Kleszcz	Trzebinia	24-25.08.2011		Michał Kleszcz LRO in Katowice
67	Juvenile Shelter – Bogumił Furche – Zenobia Glac-Ściebura – Estera Tarnowska	Chojnice	08.09.2011		Zenobia Glac-Ściebura Bogumił Furche Estera Tarnowska LRO in Gdańsk



68	Rooms for Detained Persons within Police Headquarters – Bogumił Furche – Zenobia Glac-Ściebura – Estera Tarnowska	Chojnice	09.09.2011		Zenobia Glac-Ściebura Bogumił Furche Estera Tarnowska LRO in Gdańsk
69	Military Gendarmerie Detention Centre – Dorota Krzysztoń – Wojciech Sadownik – Karolina Chyła – Michał Kleszcz	Kraków	19.09.2011		Michał Kleszcz LRO in Katowice
70	“Saint Faustina” Youth Care Centre – Dorota Krzysztoń – Wojciech Sadownik – Karolina Chyła – Michał Kleszcz	Kraków	20-21.09.2011		Michał Kleszcz LRO in Katowice
71	Youth Care Centre – Dorota Krzysztoń – Wojciech Sadownik – Karolina Chyła – Michał Kleszcz	Kraków – Górka Narodowa	22.09.2011		Michał Kleszcz LRO in Katowice
72	Prison – Karolina Chyła – Wojciech Sadownik – Justyna Józwiak – Magdalena Chmielak	Uherce Mineralne	04-05.10.2011		
73	Rooms for Detained Persons within Powiat Police Headquarters – Karolina Chyła – Wojciech Sadownik – Justyna Józwiak – Magdalena Chmielak	Ustrzyki Dolne	05.10.2011		
74	Rooms for Detained Persons within Powiat Police Headquarters – Karolina Chyła – Wojciech Sadownik – Justyna Józwiak – Magdalena Chmielak	Sanok	06.10.2011		



75	Police Emergency Centre for Children – Przemysław Kazimirski – Karolina Chyła – Zenobia Glac-Ściebura – Dorota Krzysztoń	Olsztyn	18.10.2011		Zenobia Glac-Ściebura LRO in Gdańsk
76	Remand Centre and External Ward – Przemysław Kazimirski – Karolina Chyła – Zenobia Glac-Ściebura – Dorota Krzysztoń	Olsztyn	19-21.10.2011		Zenobia Glac-Ściebura LRO in Gdańsk
77	Prison – Karolina Chyła – Wojciech Sadownik – Justyna Józwiak – Marcin Kusy	Sieradz	26-28.10.2011		
78	Youth Socioterapy Centre “Common House” – Karolina Chyła – Wojciech Sadownik – Justyna Józwiak	Wilga	07.11.2011		
79	Police Emergency Centre for Children – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Lublin	15-16.11.2011		
80	Rooms for Detained Persons Within the Municipal Police Headquarters – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Lublin	15-16.11.2011		
81	Military Gendarmerie Detention Centre – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Lublin	16.11.2011		



82	Juvenile Shelter – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Dominów	17-18.11.2011		
83	Rooms for Detained Persons at Regional Police Headquarters –Warsaw VI – Przemysław Kazimirski – Wojciech Sadownik – Karolina Chyła – Magdalena Chmielak	Warszawa	22.11.2011		
84	Youth Care Centre No 2 – Magdalena Chmielak – Marcin Kusy – Justyna Józwiak – Dorota Krzysztoń	Warszawa	23.11.2011		
85	Youth Care Centre – Marcin Kusy – Wojciech Sadownik – Justyna Józwiak – Magdalena Chmielak	Przysucha	02.12.2011		
86	Rooms for Detained Persons within Municipal Police Headquarters – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Łódź	06.12.2011		
87	Juvenile Shelter and Juvenile Detention Centre – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Konstantynów Łódzki	07.12.2011		
88	Youth Sociotherapy Centre No 3 – Przemysław Kazimirski – Wojciech Sadownik – Justyna Józwiak – Dorota Krzysztoń	Łódź	08.12.2011		
89	Youth Care Centre – Karolina Chyła – Wojciech Sadownik – Marcin Kusy	Łęka	19-20.12.2011		



8. Visits under the National Preventive Mechanism in 2011 – table by units

No	Prisons		Remand centres		External Ward of a Penitentiary Establishment		Rooms within the Police organisational units	
	Place	Date	Place	Date	Place	Date	Place	Date
1	Kluczbork	10-11.02.2011	Grójec	17-18.02.2011	EW of the Remand Centre in Olisztyn	20.10.2011	Stare Miasto Police Headquarters in Poznań	28.01.2011
2	Tarnów-Moście	01-03.03.2011	Myslowice	14-15.04.2011			Poviat Police Headquarters in Olesno	08.02.2011
3	Płock	23-24.03.2011	Gizycko	14.07.2011			Poviat Police Headquarters in Zwoleń	16.02.2011
4	Koronowo	11-13.05.2011	Olsztyn	19-21.10.2011			Poviat Police Headquarters in Grodzisk Mazowiecki	18.02.2011
5	Nowy Wiśnicz	17-19.05.2011					Poviat Police Headquarters in Żyrardów	18.02.2011
6	Nowogard	14-15.06.2011					Municipal Police Headquarters in Tarnów	28.02.2011
7	Łupków	26-27.07.2011					Poviat Police Headquarters in Olesnica	07.03.2011
8	Jasło	27-28.07.2011					Poviat Police Headquarters in Sochaczew	09.03.2011
9	Wadowice	23-24.08.2011					Municipal Police Headquarters in Kalisz	15.03.2011
10	Trzebinia	24-25.08.2011					Poviat Police Headquarters in Ostrów Wielkopolski	16.03.2011
11	Uherce Mineralne	04-05.10.2011					Poviat Police Headquarters in Zawiercie	29.03.2011
12	Sieradz	26-28.10.2011					Poviat Police Headquarters in Oława	04.04.2011
13							Municipal Police Headquarters in Elbląg	08.04.2011



14								Municipal Police Headquarters in Katowice	27.04.2011
15								Municipal Police Headquarters in Bydgoszcz	10.05.2011
16								Municipal Police Headquarters in Grudziądz	24.05.2011
17								Powiat Police Headquarters in Sławno	31.05.2011
18								Municipal Police Headquarters in Słupsk	01.06.2011
19								Powiat Police Headquarters in Drawsko Pomorskie	16.06.2011
20								Municipal Police Headquarters in Gorzów Wielkopolski	27.06.2011
21								Powiat Police Headquarters in Kętrzyn	15.07.2011
22								Powiat Police Headquarters in Chojnice	09.09.2011
23								Powiat Police Headquarters in Ustrzyki Dolne	05.10.2011
24								Powiat Police Headquarters in Sanok	06.10.2011
25								Municipal Police Headquarters in Lublin	15-16.11.2011
26								VI Regional Police Headquarters Warszawa	22.11.2011
27								Municipal Police Headquarters in Łódź	06.12.2011
Total	12	4	1	1	4	1	27		



No	Youth Care Centres		Youth Sociotherapy Centres		Juvenile Shelters		Juvenile Detention Centres	
	Place	Date	Place	Date	Place	Date	Place	Date
1	Antoniewo	26-27.01.2011	Warszawa	11.01.2011	Chojnice	08.09.2011	Świecie n/Wisłą	25.05.2011
2	Julianopol	09.02.2011	Piaseczno	18.01.2011	Dominów	17-18.11.2011	Nowe n/Wisłą	26.05.2011
3	Kalisz	17-18.03.2011	Warszawa No 4	18.04.2011				
4	Kalety	31.03.2011	Warszawa No 5 "House near the Market Square"	19.04.2011				
5	Kamionek Wielki	05-06.04.2011	Ustka	02.06.2011				
6	Wielkie Drogi	19-20.05.2011	Wilga	07.11.2011				
7	Rzepczyno	16.06.2011	Łódź No 3	08.12.2011				
8	Kraków	20-21.09.2011						
9	Kraków Górka Narodowa	22.09.2011						
10	Warszawa	23.11.2011						
11	Przysucha	02.12.2011						
12	Łęka	19-20.12.2011						
Total	12		7		2		2	



No	Sobering Stations		Police Emergency Centres for children		Psychiatric Hospitals		Nursing Homes	
	Place	Date	Place	Date	Place	Date	Place	Date
1	Tarnów	04.03.2011	Poznań	25.01.2011			Zakrzewo	19-21.01.2011
2	Elbląg	07.04.2011	Radom	16.02.2011			Goluszyce	02-04.02.2011
3	Grudziądz	27.05.2011	Tarnów	03.03.2011				
4	Gorzów Wielkopolski	28.06.2011	Ostrów Wielkopolski	16.03.2011				
5	Zabrze	02.08.2011	Elbląg	04.04.2011				
6			Kielce	05.05.2011				
7			Bydgoszcz	10.05.2011				
8			Gorzów Wielkopolski	28.06.2011				
9			Olsztyn	18.10.2011				
10			Lublin	15-16.11.2011				
Total	5		10		0		2	

No	Detention Centres of Military Gendarmerie	
	Place	Date
1	Elbląg	07.04.2011
2	Ustka	01.06.2011
3	Kraków	19.09.2011
4	Lublin	16.11.2011
Total	4	

No	Juvenile detention centres and juvenile shelters (operating together)	
	Place	Date
1	Zawiercie	30.03.2011
2	Konstantynów Łódzki	07.12.2011
Total	2	

9. Photos (examples)



Room for detained persons in Zawiercie



Wall writings in a room for detained persons in Zawiercie



A Police Room for Detained Persons in Zawiercie



Juvenile Detention Centre in Dominowo – room for juvenile residents



Exercise yard
in the Prison in
Nowogard



A single cell in the Prison in Nowogard



A prison cell in the Prison in Nowogard



A gym for prisoners in the Prison in Nowy Wiśnicz



A multiperson cell in the Prison in Nowy Wiśnicz



An open sanitary area in the Prison in Sieradz



Room equipment in the Prison in Sieradz



A prison cell in the Prison in Sieradz

Sanitary facilities in the Prison in Łupków



Sanitary facilities in the Prison in Łupków





Sanitary facilities in the Prison in Uherce Mineralne



Toilet in the Prison in Uherce Mineralne