

**Report of the Commissioner for
Human Rights on the activities of the
National Mechanism for the
Prevention of Torture and Inhuman
or Degrading Treatment or
Punishment in Poland in 2021**

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FOREWORD

I am pleased to present to you the 14th Annual Report of the National Mechanism for the Prevention of Torture (NMPT) concerning the NMPT Team’s activity in the reporting period from 1 January to 31 December 2021. The obligation to publish and disseminate the annual reports of the national preventive mechanisms arises out of Article 23 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in New York on 18 December 2002¹.

The emergency situation due to the spread of the COVID-19 pandemic and the occurrence of successive waves and record numbers of coronavirus infections in 2021 caused the NMPT Team to adjust its working methods on an ongoing basis, guided, inter alia, by the principle of *do no harm*. Despite the unstable pandemic circumstances, NMPT representatives conducted 76 on-site visits last year to places such as police stations, juvenile detention centres, social care homes, private long term care facilities, penitentiary establishments, guarded centres for

¹ Dz. U. [Journal of Laws] no. 30 of 2007, item 192.

foreigners and Border Guard stations, and sobering-up stations. However, it was not always possible for the NMPT experts to be present in person at a given place where people were deprived of their liberty. At times of highest increases in infections, remote monitoring was carried out with the use of online communicators. It involved interviews with persons deprived of their liberty and with staff members, as well as analyses of documents. The NMPT team held 16 meetings in this way, mainly in social care homes and youth care centres.

2021 was a year that presented many challenges in the field of protection of human rights, including the prevention of torture and inhuman or degrading treatment.

At the beginning of the year under review, an NMPT report describing violations by police officers against persons detained by the police was published. The violations took place during protests that took place between 22 October and 13 December 2020 following the Constitutional Tribunal's judgment of 22 October 2020 in case no. K1/20, which tightened the legislation on abortion. The publication of the report provided an opportunity for organising a debate in our Office on police responses to demonstrations of citizens and the need to implement, in law and in practice, minimum anti-torture guarantees.

At the end of March 2021, the NMPT thematic report *Foreigners in Administrative Detention*, containing the results of monitoring carried out at the guarded centres for foreigners, was published. It shows that among persons held in such centres, there are foreigners who have been victims of torture, inhuman or degrading treatment, rape or other types of violence. Due to the trauma through which they have been, they should never be placed in such facilities with a regime similar to that in prison. Their placement in closed facilities only increases their trauma, and in extreme cases poses a threat to their life and health.

The NMPT Team also monitored cases of deaths of persons detained by police officers, and expressed concern about the course of such interventions in the Mechanism's statements. It is worthwhile to emphasise that in 2021 the Commissioner of Human Rights (CHR) and the NMPT requested representatives of the authorities to disseminate, as widely as possible, the Mendez Principles developed by the UN, which promote effective, ethical and non-coercive interrogation centred on the principles of the presumption of innocence and the pursuit of truth.

The second half of 2021 was largely focused on monitoring the situation on Poland's border with Belarus in relation to the migration policy crisis, which in effect became a humanitarian crisis. Representatives of the NMPT, in cooperation with the Equal Treatment Department of the CHR Office, conducted periodic inspection visits from August 2021. The aim was to examine and assess the state of observance of the rights of foreigners apprehended and detained by the Border Guard after crossing the border of the Republic of Poland. This included the assessment of the conditions in which such foreigners stayed after detention, and of their access to the procedure of seeking international protection in Poland. The analysis covered, inter alia, the revealed cases of persons who experienced violence, who were in poor health, as well as minors placed in detention. The actions taken and conclusions from the monitoring visits will be presented in the thematic report which is currently under development and will soon be published.

Prevention of torture and inhuman or degrading treatment requires a holistic, long-term and interdisciplinary approach. The NMPT and CHR Office experts assess material conditions in places of detention on ongoing basis, listen to persons deprived of their liberty and staff, reveal areas of risk and recommend changes and improvements. Thanks to these activities, the risk of torture or other ill-treatment is reduced. However, in today's world there are many

challenges to protecting the rights and dignity of all persons deprived of their liberty. At present, more than ever, concerted efforts are needed to overcome these obstacles. Therefore, I do hope that this report will reach as wide an audience as possible, and that its reading will encourage reflection and provide an opportunity for further discussions on the condition of our humanity.

Marcin Wiącek

Commissioner for Human Rights

PART I – ORGANIZATION OF WORK OF THE NMPT

The National Mechanism for the Prevention of Torture (NMPT) constitutes one of the departments within the Office of the Commissioner for Human Rights. In 2021, the department's team consisted of 10 specialists and an employee working as a secretary. The Director of the NMPT is Przemysław Kazimirski and supervision over the activities of the Department is exercised by Deputy Commissioner for Human Rights Hanna Machińska, Ph.D. Pursuant to OPCAT provisions², employees of national preventive mechanisms should have relevant skills and diversified professional knowledge as well as constitute a representation of men and women. Staff members working for the Mechanism have relevant education in the fields of law, sociology, political sciences, rehabilitation, psychology and criminology. In the reported year, the NMPT Team was supported by employees of the Commissioner for Human Rights' regional representative offices in Wrocław, Gdańsk and Katowice who, in addition to their work there, took part in the NMPT preventive visits to establishments within the area of responsibility of their respective offices.

COMPOSITION OF THE NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE:

Przemysław Kazimirski – Director of the NMPT Department; lawyer;

Marcin Kusy – Deputy Director; lawyer;

² Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in New York on 18 December 2002

Justyna Józwiak, Ph.D. – sociologist;

Justyna Zarecka – political scientist, specialist in the field of internal security;

Klaudia Kamińska – lawyer;

Aleksandra Osińska – psychologist;

Aleksandra Nowicka – criminologist, internal security specialist;

Magdalena Dziedzic – lawyer;

Rafał Kulas – lawyer;

Michał Żłobecki – lawyer, specialist in international migrations;

Grażyna Kalisiewicz – employee of the NMPT office, lawyer;

EXPERT COMMITTEE

The scope of tasks and issues covered by the National Mechanism for the Prevention of Torture requires, in many cases, specialist knowledge and professional experience. Therefore, since 2016 the CHR's Expert Committee (EC) on the national preventive mechanism has been in operation.

Composition of the Expert Committee in 2021:

Maria Ejchart-Dubois – co-chair;

Justyna Józwiak, Ph.D. – co-chair;

Prof. Mirosław Wyrzykowski;

attorney Piotr Senddecki;

Prof. Witold Klaus;

Maria Załuska, M.D., Ph.D.;

Prof. Marek Konopczyński;

Marzena Ksel, Ph.D.;

Prof. Grażyna Barbara Szczygieł;

Janina Agnieszka Kłosowska;

Lt. Col. Lidia Olejnik;

attorney Paweł Knut;

attorney Mikołaj Pietrzak;

Jerzy Foerster, M.D.;

commander Bożena Szubińska;

Joanna Klara Żuchowska, M.D.;

Kama Katarasińska-Pierzgalska;

Agnieszka Aleksandra Sikora;

Maria Książak;

Aleksandra Chrzanowska;

Katarzyna Wiśniewska; Ph.D.;

Maria Niełaczna, Ph.D.;

Janina de Michelis.

FINANCING OF THE NMPT

Expenditures on the activities of the National Mechanism for the Prevention of Torture are covered from the state budget allocation to the CHR. According to the Annual Report on the Activity-Based Expenditures of the State Budget and of the European Funds Budget, in 2021 the CHR Office disbursed **2 699 115,03 PLN** for the activities of the National Mechanism for the Prevention of Torture.

The Polish authorities, despite the provisions of OPCAT and the Paris Principles³, from the very beginning of the performance of the tasks of the national preventive mechanism by the Commissioner have not been allocating sufficient resources for that purpose. The insufficient budget allocated to the operation of the NMPT has been mentioned in the *Concluding observations of the Committee against Torture*⁴ in which CAT recommended as follows:

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

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

The Subcommittee recommends that the State party allocate, as a matter of priority, the financial resources needed by the mechanism, as required by Article 18 (3) of the Optional Protocol and the Subcommittee's guidelines on national preventive mechanisms (...)⁵.

³ Adopted by the resolution of the UN General Assembly no. 48/134 of 23 December 1993. The Paris Principles are requirements to be met by human rights institutions. They were adopted by the UN in 1993. The main requirements to be met are independence and pluralism.

⁴ See: Committee against Torture; Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, Article 24(a).

⁵ Report on the SPT visit to Poland, CAT/OP/POL/ROSP/1, Article 20.

PART II – HOW DOES THE NMPT WORK?

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

METHODOLOGY OF THE VISITS

The National Mechanism for the Prevention of Torture may visit all places where people are deprived of their liberty in Poland⁶. Such places include all establishments (public or private ones) where persons are or may be deprived of their liberty either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence⁷.

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

During the visits, the Mechanism's representatives may record sound and image with the consent of individuals who are going to be recorded, as well as hold

⁶ Article 19 OPCAT.

⁷ Article 4 OPCAT.

meetings with persons deprived of their liberty without the presence of other parties and meet individuals who, at their discretion, may provide significant information⁸.

In all the establishments visited, the NMPT follows the same methodology. The first stage is to establish the composition of the visiting team⁹.

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

The duration of a specific visit depends on the size of the visited establishment, and lasts 1 to 3 days.

Every visit of the NMPT comprises the following stages:

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

⁸ See: Article 13(1a) of the Act on the CHR.

⁹ According to OPCAT provisions, experts of the national preventive mechanisms should have the required capabilities and professional knowledge.

If a person deprived of their liberty reports an unlawful event during the visit, and expresses the desire to have it investigated, they have the opportunity to lodge an official complaint. The complaint is then forwarded to the competent team within the Office of the Commissioner for Human Rights.

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

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

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

When the visit is completed, a report is drawn up which describes all the findings and conclusions, as well as recommendations for the body managing the visited establishment and for its supervisory authorities. If the establishment's

managers do not agree with the recommendations, the NMPT representatives request the supervisory body to issue their opinion and position on the matter. Such a dialogue is conducted to explain the merits of the NMPT's recommendations whose implementation will strengthen the protection of the rights of persons deprived of their liberty at the visited place.

During on-site visits conducted in person, NMPT employees used the following measuring and recording devices: CEM DT-8820 multimeters, Makita LD060P laser rangefinders and digital cameras. Also, the visiting team members had face masks, gloves, disinfectants and protective aprons.

VISITS BY NMPT

In 2021, representatives of the NMPT carried out a total of 92 preventive visits, 16 of which were held remotely due to the epidemic.

Most of the visits were carried out ad hoc, with the aim to assess the conditions of detention and treatment of persons deprived of their liberty at Border Guard-operated facilities. The visits were carried out in connection with the visible increase in the number of foreigners crossing the border between the Republic of Belarus and the Republic of Poland, in some cases in an irregular manner.

Moreover, in connection with the detention of protesters after the publication of the Constitutional Tribunal's judgment regarding abortion, representatives of the NMPT carried out ad hoc visits to police detention facilities. The purpose was to conduct one-to-one interviews with detainees and assess their situation and detention conditions in the context of the fulfilment of so-called minimum anti-torture guarantees.

The NMPT also continued thematic visits that started in 2020. They assess the implementation of recommendations of the UN Subcommittee on Prevention of

Torture (SPT) and the European Committee for the Prevention of Torture (CPT), issued by them for the Polish authorities after visits to places of detention.

In 2021, the National Mechanism for the Prevention of Torture carried out monitoring visits to: 2 prisons, 2 remand prisons, 13 police rooms for detained persons, 1 police station, 1 police establishment for children, 6 youth care centres, 2 juvenile detention centers with shelters for juveniles, 1 juvenile detention centre, 12 social care homes, 7 private long term care facilities, 1 residential medical care facility, 2 sobering-up stations and 1 post-penal detention facility (National Centre for the Prevention of Dissocial Behaviour).

Separately, attention should be paid to facilities operated by the Border Guard. Due to the humanitarian crisis on the Polish-Belarusian border, that has been lasting since August 2021, and the dramatic situation of persons crossing the border irregularly, representatives of the Mechanism visited certain places several times. The places included: guarded centres for foreigners (11 visits, 7 facilities), Border Guard rooms for detained persons (8 visits, 5 facilities) and Border Guard stations (22 visits, 9 facilities). In total, 41 visits to those places were held. In some of the visits, Polish Red Cross paramedics and medics took part. The visiting teams also provided in-kind support to persons deprived of their liberty, in the form of warm clothes, footwear, blankets and food products. The conclusions on the visits held in 2021 are presented in part IV hereof.

EDUCATIONAL ACTIVITIES

SOCIAL CAMPAIGN „STATE WITHOUT TORTURE”

In 2021, despite the COVID-19 pandemic, representatives of the NMPT continued the conducting of training activities within the campaign *State without Torture*. The aim of the campaign is to increase, among officers and other staff members

at establishments where persons deprived of their liberty are held, the awareness of the need to prevent torture and other forms of ill-treatment.

In 2021, in the city of Rzeszów, NMPT representatives conducted training for officers of the Podkarpackie regional unit of the police. The trainers presented systemic problems that had been diagnosed during visits to police-operated detention facilities, and discussed with the officers the difficulties encountered by them in performing their duties.

Within the framework of cooperation with the TZMO foundation *Razem Zmieniamy Świat* (Together We Change the World), in 2021 representatives of the NMPT conducted four training sessions for employees of long-term care establishments on the subject of the rights of residents of social care homes. They described the methodology of the NMPT's work and the key problems found during visits to such homes. The meetings attracted large interest.

The NMPT representatives also conducted training sessions for university students who, in their future professional work, may come into contact with persons deprived of liberty. In total, five meetings were held with students of: Faculty of Political Science and International Studies of the University of Warsaw; Institute for Social Prevention and Rehabilitation of the University of Warsaw; and members of the scientific group of students of Gdańsk University of Science and Technology.



Figure 1. Poster of the campaign „Poland without torture”

STATEMENTS OF THE NMPT AS A FORM OF BUILDING AN ATTITUDE OF NON-TOLERANCE TOWARDS TORTURE AND CRUEL OR DEGRADING TREATMENT

Since 2017, the National Mechanism for the Prevention of Torture has been using an educational tool in the form of NMPT statements. The statements present the NMPT's position on events significant from the point of view of torture prevention. Such events may include the passing of a ruling by a national court or the ECHR, media announcements or adoption of a legislative act.

In 2021, the NMPT issued statements with regard to¹⁰:

1. international standards regarding the rights of women in detention;
2. police intervention with regard to a participant of the protest held on 11 April 2021 in Głogów;
3. district court judgment issued in the case of Katarzyna Augustynek, a social activist accused of breaching personal inviolability of police officers and insulting them during a protest demonstration in front of the Supreme Court building. The NMPT statement was also caused by an announcement by Police Commander in Chief's press spokesman Mariusz Ciarka, Ph.D., who disagreed with the court judgment;
4. a man who was shot at by police officers in Poznań on 3 June 2021;
5. International Day in Support of Victims of Torture;
6. Mandela International Day;
7. ECtHR judgment of 2 September 2021 in the case of Kuchta and Mętel v. Poland, in which the Court found that Poland had violated Article 3 of the European Convention on Human Rights;
8. death of a Ukrainian citizen at the Wrocław Assistance Centre for People with the Alcoholism Problem on 30 July 2021;
9. police officers' intervention with regard to a 34-year-old resident of Lubin, carried out on 6 August 2021, as a result of which the arrested man died;
10. public statement by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) regarding the situation in Bulgaria.

¹⁰ <https://bip.brpo.gov.pl/tagi/o%C5%9Bwiadczenia-krajowego-mechanizmu-prewencji-tortur>

ADVISORY ACTIVITIES

GENERAL INTERVENTION LETTERS

According to Article 14(2) of the *Act on the Commissioner for Human Rights*, the Commissioner may send a general intervention letter to an agency, organization or institution whose activity has been found to have infringed the liberties or rights of an individual and a citizen. In 2021 the CHR, acting as the National Mechanism for the Prevention of Torture, sent general intervention letters regarding the issues presented below.

1. The situation of underage mothers at social rehabilitation facilities¹¹

The lack of legal solutions required for pregnant minors and underage mothers with children, who live at social rehabilitation facilities, is one of the systemic problems which have been raised by the National Mechanism for the Prevention of Torture for almost a decade. In the opinion of the Commissioner, social rehabilitation facilities should have separate buildings, wards or at least rooms in which underage mothers could live together with their children, in appropriate conditions. The legislative provisions on underage mothers living in social rehabilitation facilities should, first of all, be included in the *Act on Juvenile Delinquency Proceedings*, in provisions similar to those of Article 87(3) and (4) of the Executive Penal Code. The next step would then be to draft implementing provisions specifying, inter alia, facilities for underage mothers and the requirements to be met by them. According to the information collected¹¹ by the NMPT, in the years 2017-2021 the estimated number of underage mothers at

¹¹ General intervention letter of the CHR to the Prime Minister of 30 May 2021, no. KMP.573.52.2014.

youth care centres was about 290. The Commissioner points out that regardless of the scale of the problem, the current situation of each underage mother living in a youth care centre can lead to a violation of the provisions of the Constitution, i.e. of Articles 18, 47 and 71(2) insofar as they refer to the protection of the legally protected welfare of motherhood and family life. The current situation, without legal regulations on the situation of pregnant underage women and underage mothers, is a legislative omission from the point of view of the public authorities' obligation to provide special level of care to such women. This omission should be immediately rectified by the legislator. In view of the above, the Commissioner has requested the Prime Minister to take effective measures to solve the problem that has been highlighted for years and remains within the competence of three ministries: of Justice, of Education and Science and of Family and Social Policy.

2. Salaries of nurses employed at social care homes and the possibility to employ paramedics at such homes¹²

Remote monitoring of social care homes, carried out by NMPT representatives, made it possible to identify several systemic problems that hinder the employment of nurses, midwives and paramedics by such homes. According to the experience of the NMPT which has been visiting social care homes for many years, one of the basic needs of their residents is to have access to adequate medical and nursing care. Most residents suffer of various chronic diseases, either physical or mental ones, which are related to their old age or earlier injuries. It is therefore necessary to provide the residents with continuous

¹² General intervention letter of the CHR to the Minister of Family and Social Policy and the Minister of Health of 21 June 2021, KMP.575.9.2021.

nursing care and regular visits by a doctor. According to Article 4(2)(9) of the *Act on the Professions of Nurse and Midwife*, a nurse can be employed by a social care home indicated in the regulations on social welfare, and the nurse's rights related to the profession have to be fulfilled. However, the status of a nurse employed by a social care home is different than the status of a nurse employed by a health care facility. The main aspect is the difference between salaries of nurses employed by health care facilities (financed by the National Health Fund) and those employed by social care homes. Nurses employed by health care facilities receive much higher remuneration than those working at the homes. Social care homes operate within the social welfare system. The remuneration of a nurse employed by a social care home is paid from the budget of the relevant local government. The difference between the remuneration of nurses employed by social care homes (which offer no additional benefits, salary increase with time, overtime rates for working on Sundays and public holidays, etc.) and the remuneration of those working within the health care system translates, in practice, into enormous problems with finding nurses for social care homes, and their frequent resignations from employment there and transfers to health care entities. The same applies to persons with midwife education, employed by social care homes. A solution that would significantly help the homes would be the possibility to employ paramedics. However, the current *Act on Public Emergency Medical Services* does not provide for the possibility to practice the profession of a paramedic at a social care home. Moreover, the *Regulation of 15 May 2018 on remuneration of local government employees* contains a list of local government-remunerated positions at social welfare entities, social integration centres, family and foster care support units, and social services centres. Among those positions, the job of paramedic is not listed and thus paramedics may not be employed at social care homes. This situation definitely translates into lower standards of care and nursing services for the homes'

residents. In view of the above, the Commissioner requested the Minister for Family and Social Policy and the Minister of Health to comment on the above-mentioned problems.

3. The need to disseminate knowledge about the so-called Mendez Principles on the conduct of interrogation of detainees by officers of state services¹³

On 17 May 2021, a set of principles or international guidelines on interviews conducted for the purposes of investigations and information gathering by representatives of public authorities was published under the title *Principles on Effective Interviewing for Investigations and Information Gathering*, which comes from the name of the principles' originator.

The work on the document was initiated in 2016 by Prof. Juan E. Méndez, then UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The document is innovative and is of fundamental importance. It applies to officers and officials of all information-gathering services and institutions, i.e. not only to law enforcement bodies and justice institutions. The Mendez Principles prove that torture and psychological coercion used to make a person admit guilt is ineffective and may even bring an opposite effect of providing false information or confessing to a crime not committed. This can lead to convicting an innocent person and leaving the actual perpetrator without a penalty. Furthermore, coercive interrogation methods are frequently a consequence of poor interviewing techniques. The Mendez principles, based on the vast experience of practitioners, offer a specific alternative to interrogation and interviewing methods, and thus increase the effectiveness of work of public

¹³ General intervention letter of the CHR to the Prime Minister of 21 June 2021, ref. no. KMP.570.8.2021.

service officers while fully respecting human dignity and rights. In addition, they provide guidance on conducting non-coercive interviews based on a relationship-based interview. They emphasise the role of: the presumption of innocence; obtaining knowledge and evidence based on scientific knowledge; the use of new technologies (including audio and video recordings), and questioning strategy and tactics. The Mendez Principles can also encourage the authorities to develop appropriate crime policy, legislation, procedures, control and supervision mechanisms, as well as working standards for subordinate services and institutions. In the Commissioner's opinion, the principles constitute a fundamental document for the prevention of torture in Poland and should constitute a permanent element in the education of public services' officers and officials and a point of reference for the authorities. They should also be disseminated as widely as possible, in particular among representatives of legislative, executive and judicial authorities and the general public. The Commissioner has therefore requested the Prime Minister to disseminate the knowledge of the Mendez Principles among the ministries subordinate to him and the society, and to include the principles in the programme of training provided for officers and employees of all information-gathering institutions to which the principles could apply.

4. The need to develop guidelines for interrogations and interviews, based on the Mendez Rules and CPT standards¹⁴

Following the publication of the Mendez Principles referred to above, the Commissioner for Human Rights also requested the Police Commander-in-Chief to draw up special guidelines on conducting police interrogations and interviews.

¹⁴ General intervention letter of the CHR to the Police Commander-in-Chief of 30 June 2021.

The guidelines should set out detailed standards for such procedures, their duration, methods of their conducting, documenting and recording (including with the use of audio and video recording equipment), and procedural safeguards for interrogated persons. The guidelines should take into account the international standards for interrogations as set out in the Mendez Principles, the Twenty-eighth CPT General Report 2019¹⁵ as well as comments and recommendations for Poland by the Committee against Torture (CAT)¹⁶ and the Subcommittee on the Prevention of Torture (SPT)¹⁷.

5. Respect for human rights by the Police¹⁸

Over the years, the National Mechanism for the Prevention of Torture has defined areas which require changes, both in law and in practice, in order to increase the effectiveness of protecting the rights of persons deprived of liberty and to eliminate the risk of their torture and ill-treatment by police officers. All of these areas were subject of in-depth analysis contained in the CHR's intervention letters to the Prime Minister, the Minister of Justice, the Minister of Internal Affairs and Administration and the Police Commander-in-Chief. Unfortunately, despite the necessary changes in the existing legislation, highlighted by the

¹⁵ Twenty-eighth CPT General Report 2019, CPT/Inf (2019) 9, paras. 70 and 73-81.

¹⁶ Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, Article 20(d) and Article 28(d).

¹⁷ Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Visit to Poland undertaken from 9 to 18 July 2018: recommendations and observations addressed to the State party, Report of the Subcommittee, 21 January 2020, CAT/OP/POL/ROSP/1, Articles 45 and 47.

¹⁸ General intervention letter of the CHR to the Speaker of the Senate of the Republic of Poland of 29 June 2021, KMP.071.4.2021.

Commissioner, the letters were either left without a reply, or the content of the replies showed that the described problems were underestimated.

First of all, the Commissioner pointed out to the necessity to introduce a definition of torture and other cruel, inhuman or degrading treatment or punishment into the Polish legislation. Despite the Commissioner's intervention letters concerning the matter, torture is not provided for in the Polish criminal law as a separate crime. The Commissioner pointed out that due to the current wording of the provisions of the Code of Criminal Procedure, in practice, most detained persons have no access to a defence counsel from the outset of detention. The Polish legal order lacks appropriate regulations ensuring, to a detained person, the possibility of immediate and free-of-charge contact with a defence counsel (whose fee would be covered from the state budget). The situation is inconsistent with the applicable EU law. For years, the Commissioner has been calling for the development of conditions and legal measures to ensure action and protection of whistle-blowers, so as to implement the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Council of Europe. The current legislation lacks adequate procedures providing officers with a confidential and safe method of reporting incidents of detained persons' ill-treatment by other officers. According to the Commissioner, it is also necessary to introduce relevant changes in the law to guarantee that all detainees have access to a medical examination, and to introduce mandatory audio and video recording of interrogations. Furthermore, a detainee should, as a rule, be able to inform the selected person about his detention, and only in special situations justified by the specific nature of a given situation should the duty to inform be carried out by a police officer. The possibility of personal contact between the detained person and a related person enables the former to communicate possible information about ill-treatment, which may lead to appropriate

intervention. The Commissioner also forwarded comments regarding the following issues: preventive use of handcuffs, personal search of detainees, register of persons staying within the police station premises, or the use of irritant chemicals by uniformed services against protesters. Also, the Commissioner pointed to the need to ensure legal conditions and tools to enable the activities and protection of whistle-blowers. Their action may act as an early warning signal and may help in revealing irregularities which otherwise would remain undisclosed, and in identifying responsible individuals. Bearing in mind the need to protect the inherent dignity of every human being and the related values of human health and life, which can be violated in the performance of duties by police officers, the Commissioner requested¹⁹ the Speaker of the Senate of Poland to analyse the presented problems with a view to introducing necessary legal changes in the areas described.

6. Systemic problems concerning decisions to place minor detainees in youth care centres as well as the operation of such centres²⁰

The National Mechanism for the Prevention of Torture has found a number of systemic problems that strongly negatively impact the treatment of minors placed in youth care centres (YCCs). The data (e.g. contained in the Supreme Audit Office report for 2018) indicate that the diagnosed problems have a real impact on the juveniles' safety and the effectiveness of the centres' work. In view of these significant problems, it is necessary to verify the provisions on the

¹⁹ KMP.071.4.2021 of 29 June 2021.

²⁰ General intervention letter of the CHR to the Prime Minister of 19 July 2021, no. KMP.573.4.2021.

operation of YCCs and to introduce changes so as to effectively improve the system of social rehabilitation of juveniles in Poland.

As regards the basic rules of operation of YCCs, the Commissioner pointed out that placement in such a centre is, after supervision by a probation officer or parents, the second most frequently applied measure of those provided for in the *Act on Juvenile Delinquency Proceedings*. However, as a measure which is also most severe for juveniles, it should be applied primarily in situations where previous attempts of work with them have failed to produce the desired results. The confinement nature of the measure also entails the risk of ill-treatment and violation of the fundamental rights of juveniles placed in such facilities.

Furthermore, the facilities are divided only into two categories: rehabilitation and education centres, and rehabilitation and revalidation centres for juveniles with mild intellectual disabilities. Due to the lack of other specialist facilities, the centres' work has to be adjusted to the needs of the largest possible number of juveniles, which translates into poorer results of the facilities' work. The problem is also the lack of the lowest age limit for juveniles who can be placed in YCCs. The current wording of the said Act makes it possible to place children who are below ten, and juveniles just before reaching adulthood. This situation seems to create more risks than opportunities for developing positive behaviour patterns in the youngest residents of the centres. Moreover, younger children are particularly vulnerable to potential violence from older juveniles. The existing legislation contains no provision setting out the minimum period for which a juvenile can be placed in a YCC with the potential to achieve the aim of the placement there. Adoption of such a minimum period would make it possible to avoid situations in which juveniles are placed in YCCs so late that it is simply not possible to conduct any effective social rehabilitation work with them. In the context of the operation of YCCs, the need to protect mental health of the juveniles is also visible. For example, there are reasons to suspect that

pharmacotherapy is sometimes used to reduce problems with the behaviour of juveniles. It is necessary to develop a system for monitoring the use of pharmacotherapy in children and juveniles. Limited access to psychotherapy is another major problem. Due to the small number of psychotherapists providing psychotherapy to children and adolescents, the long waiting time for an appointment within the National Health Fund system, and the high cost of private appointments, psychiatrists' recommendations regarding the participation in psychotherapy by such juveniles remain non-fulfilled. The Commissioner has requested the Prime Minister to take a position on the issues described above and, in particular, to provide information on current and planned activities in this area.

7. Dramatic situation of people at the border near Usnarz Górny²¹

In view of contradictory information regarding the exact location of a group of foreigners attempting to cross the Polish border in the vicinity of the village of Usnarz Górny, NMPT representatives travelled to the site on 24 August 2021 in order to check the situation of those persons and determine the applicable national jurisdiction. The visiting team had the possibility to talk to 32 foreigners living in a makeshift camp surrounded by Polish and Belarusian uniformed services. According to the information obtained, the people (27 men and 5 women, of whom the youngest was 15) were in a very poor physical and mental condition. The representatives of the National Mechanism for the Prevention of Torture were informed that the foreigners had no access to any medical aid or medicines. Persons from the camp also reported that they had been prevented

²¹ General intervention letter of the CHR to the Minister of the Interior and Administration of 25 August 2021, KMP.572.1.2021.

from contacting Polish lawyers by whom they intended to be represented. In the Commissioner's opinion, the conditions in which the foreigners were staying, and the fact that they had no possibility to satisfy their basic physical needs and had no access to medical and legal aid and the refugee procedure, have features of inhuman and degrading treatment. The NMPT representatives found that the camp was almost certainly located on the Belarusian side of the border. This fact demonstrates, in principle, that the responsibility for the health and safety of the persons staying there lied with the authorities of the Republic of Belarus. However, in the Commissioner's opinion, attention should be paid to the persons' intention to seek the refugee status in Poland, which they mentioned several times to the Border Guard officers, also in the presence of the CHR Office staff members. The Commissioner pointed out that further non-fulfilment by the Border Guard of the obligation to accept the applications for refugee status and provide the foreigners with access to the procedure might expose Poland to the risk of liability before the European Court of Human Rights for violating, inter alia, the prohibition of torture included in Article 3 of the European Convention on Human Rights. Understanding the public authorities' obligation to secure the state border and their right to control the entry of foreigners into the territory of the Republic of Poland, the Commissioner called on the Minister of the Interior and Administration to cause the Border Guard provide the foreigners with access to the refugee procedure under the applicable national laws and international obligations resulting from international agreements concluded by Poland.

8. Ensuring that a detained person has access to a defence counsel from the outset of apprehension²²

The Commissioner for Human Rights has repeatedly requested the Minister of Justice to undertake a legislative initiative to guarantee that every person apprehension by the police or other authorised services has the right to contact a lawyer immediately upon apprehension. Despite the importance of the problem, the sending of subsequent letters to the Minister about the issue and engaging Prime Minister directly, the Commissioner has received no response regarding the matter.

Yet, the Commissioner still hopes for a dialogue and constructive cooperation with the aim to prevent torture in Poland. The Polish authorities' cooperation with the Commissioner who also plays the role of a national preventive mechanism should not consist mainly in enabling CHR Office representatives to carry out visits to places of detention. It should, first of all, consist in implementing the recommendations, also of legislative nature, issued as a result of such monitoring. The lack of response from the Minister of Justice to the Commissioner's intervention letters is not a cooperation standard expected of public authorities in this area. Particularly as the possibility of contacting a lawyer immediately after apprehension but before the first interrogation is a fundamental safeguard against torture, according to numerous international institutions and experts. It seems, therefore, that such a fundamental aspect relating to the prevention of torture should be treated as a priority. The Commissioner also emphasized that the effectiveness of the torture prevention system largely depends on the attitude of the authorities and their willingness to

²² General intervention letter of the CHR to the Prime Minister of 3 September 2021, no. KMP.570.3.2017.

engage in a dialogue. The Commissioner can only identify risk areas and propose appropriate changes in the law to eliminate the found gaps in the system of protection against torture. However, it is the responsibility of the public authorities to take further action. The cooperation with the National Mechanism for the Prevention of Torture makes it possible for the authorities to develop adequate standards applicable to persons deprived of their liberty, in line with relevant international standards, and to improve the protection of such persons against violence. In view of the above, the Commissioner requested the Prime Minister to take a position on the matter and present related actions taken.

9. Conducting information activities by Polish diplomatic missions with regard to risks connected with migration decisions by third-country nationals²³

In connection with the migration policy crisis, CHR Office employees monitored the situation at the Polish-Belarusian border on an ongoing basis and regularly visited border areas as well as Border Guard stations where migrants were entering Poland. In addition, media reports related to the situation at the border were monitored on a daily basis.

The Commissioner was concerned to find out that migrants trying to enter the territory of the European Union were deliberately misled by the Belarusian authorities as to how to cross the border. According to media reports, in the migrants' countries of origin information was disseminated that was contrary to the legal and factual situation. People trying to enter the territory of the European Union were encouraged to use the services of Belarusian travel agencies which were said to guarantee safe transfer to Poland and then to other

²³ General intervention letter of the CHR to the Minister of Foreign Affairs of 20 October 2021, no. KMP.071.6.2021.

European Union countries via the territory of Belarus. The travel agencies, within the purchased travel package, ensured only an air ticket to Minsk, a Belarusian visa and transport to a place close to the Polish-Belarusian border. Yet, some migrants believed that the Belarusian entities would provide direct transfer to Germany. Persons selecting this form of travel were not aware that their actions were against international law, and that the attempts to smuggle people across the border were offered at a high additional fee which many migrants could not afford. Those who initially planned to enter the European Union in this way were left alone in forests, meadows or marshland close to the border, without shelter, food, medications or appropriate clothing, in freezing temperatures typical for this season of the year. Those conditions threatened their lives or health and were against their dignity. In the Commissioner's view, all possible measures should be taken to prevent further development of the migration policy crisis and, at the same time, to protect migrants against Belarusian entities' actions that violate the migrants' dignity and put them at risk of losing their health or life. In view of the above, the Commissioner requested the Minister of Foreign Affairs to consider the possibility of taking information action by Polish diplomatic missions in the countries of origin of migrants arriving to the Polish-Belarusian border.

10. Dramatic situation in guarded centres for foreigners²⁴

Representatives of the National Mechanism for the Prevention of Torture visited the Guarded Centre for Foreigners (GCF) in Krosno Odrzańskie and the Temporary Guarded Centre for Foreigners (temporary GCF) in Wędrzyn. The

²⁴ General intervention letter of the CHR to the Commander-in-Chief of the Border Guard of 19 November 2021, no. KMP.572.1.2021.

facilities are located within the area of operation of the Nadodrzański Oddział Straży Granicznej (Nadodrzański unit of the Border Guard). The visits aimed, inter alia, to check the detention conditions and treatment of persons deprived of their liberty in the GCFs, and to assess the observance of the rights of migrants with regard to whom any action concerning their stay in Poland was taken by the Border Guard (including, in particular, proceedings concerning the obligation to return to the country of origin, or migrants' access at the visited centres to the procedure of seeking international protection). First of all, the Commissioner was concerned about the problem of overcrowding of the visited centres. On 21 October 2021, there were 99 persons in the GCF the maximum capacity of which was exceeded. The centre in Wędrzyn was also expected to be full within the few days. In view of the above, the CHR requested the competent Border Guard Commander to provide him with statistics on the number of migrants at the centres in Krosno Odrzańskie and Wędrzyn. Taking into account the fact that the centres, as the only such facilities are in Poland, are solely for men, the Commissioner also requested information about taken or planned decisions to increase their capacity or to establish a new guarded centre for men after 21 October 2021. The Commissioner also raised objections regarding the living conditions in the centres, which were described by the CHR Office representatives as poor in the case of the GCF and very poor in the case of the temporary GCF. The Commissioner understood the dynamic increase in the number of migrants placed by courts in the centres, and the related urgent need to ensure new places. Yet, it should be mentioned that the standards at the centres should not undermine the principle of respect for human dignity, set out in Article 30 of the Polish Constitution. In view of the situation, the Commissioner called on the Commander to take urgent steps aimed at improving the conditions in the centres in Krosno Odrzańskie and Wędrzyn and, in particular, to adopt solutions improving the safety of both foreigners and Border Guard

officers. Also, the Commissioner pointed out that, in the course of their visits, the visiting team received alarming information about staffing problems caused by the sudden increase in the number of foreigners at the centre in Krosno Odrzańskie and the related establishment of the temporary centre in Wędrzyn. Since the staffing situation always translates into the detention conditions and the manner in which detainees are treated, the Commissioner found it necessary to provide more support, also at the psychological level, to officers serving at the two GCFs. Therefore, the CHR requested the Commander-in-Chief of the Border Guard to take measures in this regard and to provide information on their implementation status.

11. Applying the principle of non-refoulement to women-victims of violence²⁵

The lasting migration policy crisis on the Polish-Belarusian border is undoubtedly a challenge for state institutions whose mission is to protect the borders of the Republic of Poland and to ensure the security of citizens as well as social order. However, the main task of institutions in a democratic state ruled by law is to protect human life, health and dignity, regardless of a person's origin, declared values or religion.

In the Commissioner's opinion, such protection should be provided in particular to migrants who have crossed the Polish border. These people often come from countries troubled by armed conflicts, where the political and social situation is unstable, violence and human rights violations are frequent, and torture is a daily phenomenon. Migrants who flee from danger in search of a better, stable and safe future for themselves and their families become, additionally, victims of

²⁵ General intervention letter of the CHR to the Commander-in-Chief of the Border Guard of 22 November 2021, no. KMP.071.7.2021.

the Belarusian authorities' misinformation campaign concerning cross-border traffic and methods of crossing the external border of the European Union (as the information given to them is against the facts and legal situation). Migrants trying to enter the territory of Poland and seeking international protection may also include women-victims of violence. The perpetrators of the violence may have stayed in their country of origin but some of them may accompany their victims on the journey. The Council of Europe's Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO) published, in September 2021, its first report regarding the progress of the Polish government in implementing the Istanbul Convention. According to the experts' observations, there are many areas in which Poland has not brought its national legislation in line with the requirements of the Convention, or the practice still deviates from the standards adopted by the Council of Europe in Istanbul. GREVIO called on the Polish party, *inter alia*, to comply with the obligation to respect the principle of non-refoulement of victims of violence against women, in particular at border crossing points with Belarus (Brześć-Terespol) and Ukraine (Medyka-Shegyni), as well as to ensure that women-victims of violence who are in need of protection are not returned to any country where their safety would be at risk. These recommendations are of particular interest to the Commissioner who performs the role of the National Mechanism for the Prevention of Torture and safeguards the principle of equal treatment. The Commissioner has, therefore, requested the Commander-in-Chief of the Border Guard to comment on the presented issue and to provide information on the actions taken with regard to it.

ISSUING OPINIONS ON LEGISLATIVE ACTS

Issuing opinions on existing and proposed legislative acts is a form of preventing torture and other cruel, inhuman or degrading treatment or punishment. The power of national preventive mechanisms to present their opinions and

comments on legislative solutions to the authorities is provided for in Article 19(c) of the OPCAT.

The Commissioner for Human Rights, acting as a national preventive mechanism, submitted to the Minister of Justice²⁶, in 2021, detailed comments on the draft *Act on support and social rehabilitation of juvenile delinquents* of 20 July 2021.

First of all, the Commissioner pointed out that juvenile delinquents, due to their young age, lack of life experience and living in dysfunctional or even pathological families are a group particularly vulnerable to all types of abuse, including violence in places of detention. This requires the state to develop an appropriate legislative framework respecting juveniles' fundamental rights and strengthening their protection against the risk of torture and other forms of ill-treatment, in line with applicable international standards. Since the assessed draft attempts to comprehensively regulate the matter of juveniles whose actions require intervention by public services, the document is of fundamental importance. The need for a thorough amendment of the *Act on Juvenile Delinquency Proceedings* has been raised for many years by practitioners, the Commissioner and the Supreme Audit Chamber whose reports have shown the ineffectiveness of minors' stay at youth care centres. However, the examined draft duplicates, to a large extent, the solutions which were proposed earlier, in the draft act on juveniles of 8 March 2019, which was not adopted. The CHR was, at the time, critical of a number of legislative solutions proposed in the draft. The opinion expressed by the Commissioner with regard to it was, however, disregarded to a large extent, although it contained objections as to the protection of human rights and freedoms and the obligation to prevent torture. Those objections are still

²⁶ General intervention letter of the CHR to the Minister of Justice of 25 August 2021, no. KMP.022.1.2021.

applicable to the current draft. The draft in many places also fails to comply with international standards regarding juveniles deprived of their liberty. In particular, it fails to take into account the observations and recommendations of international bodies monitoring detained juveniles' treatment and detention conditions. The scope of applicability of the draft Act, set out in Article 1(2)(2) thereof, has been significantly extended as compared to the Act currently in force. The proposed draft covers all offences, including fiscal offences, which results from a different definition of an offence contained therein (the currently applicable act covers only 12 offences enumerated in it). The new solution does not meet the requirement of compliance with the ultima ratio principle of applying penalties, which arises from the principle of state ruled by law and the principle of proportionality. The scope of applicability of the proposed act is too broad. It may result in excessive burden placed on family courts and in lengthiness of the proceedings and, consequently, may lead to violating the constitutional right to a court. The Commissioner has positively assessed, inter alia, the proposed Article 48(6) and (7) of the draft. Its wording reflects Article 245(1), first sentence of the Code of Criminal Procedure, according to which a detained person, upon their request, should be immediately permitted to contact their attorney or legal counsel by available means and to talk to them directly. However, the draft does not provide for ex officio legal aid throughout the proceedings before a court. The victim has not been not granted the status of a party to the proceedings (their interests may be represented only by a prosecutor representing the public interest). As a result, the victim has only limited possibility to file an appeal and the proceedings have lost their contradictory nature. The draft act defines persons whose presence is required when a juvenile is interviewed by the police. However, it does not provide that a juvenile may not be interviewed in the absence of those persons. Nor does it provide that statements or testimonies made by a juvenile during a police

interview, in the absence of the persons indicated in the said provision, may not constitute evidence. According to the CHR, such provisions are necessary to ensure proper practice, safeguard the rights of juveniles and protect them against potential violence from police officers.

According to the draft act, employees of district youth care centres, juvenile detention facilities and shelters for juveniles may use handcuffs on the hands of juveniles escorted outside the facility for the purpose of receiving health care, visiting a severely ill family member, attending a family member's funeral, or dealing with official formalities. Handcuffs may be used as a preventive measure in the case of a justified probability of an attempt to escape, or the signs of aggression or self-aggression. According to the Commissioner, the staff of establishments for juveniles should not have the power to use handcuffs. The Commissioner also had objections to the procedure of conducting a mandatory search of juveniles upon their admission to district youth care centres, juvenile detention centers and shelters for juveniles.

The Commissioner had doubts as to the acceptability of conducting personal search by the staff of youth care centres. As regards juvenile detention centers and shelters for juveniles, personal search should be permitted in specific cases, depending on their circumstances supported by individual risk assessment. In the remaining cases, the staff should carry out a general search. The draft act should not, therefore, provide for the obligation to conduct personal search but only give the staff of juvenile detention centers and shelters for juveniles the possibility to conduct it, indicate the reasons for conducting it and specify the procedure.

As regards coercive measures, the Commissioner was concerned about the lack of obligation to inform the court or a judge of applying such a measure and of the requirement to draw up a report on using it.

The Commissioner also raised doubts concerning medical examinations because the draft act does not introduce the requirement for every juvenile, apprehended by the police or other similar service, to undergo a medical examination. The Commissioner also suggested the unified applicability of the proposed rule concerning the presence of non-medical staff of juvenile facilities during such examinations.

The draft act stipulates that the police is required to immediately notify a given juvenile's parents, or parent holding the custody of the juvenile, or their legal guardian, of the fact and reason for the detention of the juvenile, or placement at a police establishments for children. In the Commissioner's opinion, the act should contain a provision requiring an officer to document in writing that such notification has taken place (by indicating the exact time of the notification and the data of the notified person). Also, the juvenile should be informed whether the information about their detention has been successfully communicated to their parents or other person.

The draft act does not contain a provision stating that evidence and statements of juveniles, obtained with the use of torture and other form of ill-treatment may not constitute admissible evidence. This is against the principle of exclusion of evidence, set out in Article 15 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The draft act does not provide either for mandatory video and audio recording of interrogations of juveniles. Audio and video recording is only required for victims who are under 15 years of age at the time of interrogation, and only for certain types of cases.

The draft act provides for a reduced amount of time spent by juveniles outdoors, as the outdoor time has been reduced from at least 2 hours per day to at least 1 hour per day. There is also a provision according to which a detained juvenile's contact with people from outside the facility can be limited if such contact can

pose a threat to the legal order, safety of people, or order within the establishment, or can negatively impact the course of the pending proceedings, the social rehabilitation process or the juvenile's medical treatment. The facility director and the authority conducting the proceedings would be authorised to limit or prohibit such contacts, and their limitation would have to be notified to the family court only at the request of the juvenile, which lowers the current standard and increases the risk of violation of juveniles' rights. The draft act provides that visits by non-family members and other persons close to the juvenile take place in a manner determined by the facility director or the head of the medical facility. This is a very general provision which, on the one hand, gives the facility director the freedom to decide about the practice of visits and to adjust it to current challenges and risks, but on the other hand, allows for the introduction of preventive measures which can constitute unjustified restrictions, such as visits without any direct contact. The draft provides for mandatory supervision of visits by a staff member of the establishment or a person authorised by the head of the medical facility, regardless of the type of detention establishment, the history of the juvenile's behaviour or the reason for which the placement in the facility has been ordered by the court. The draft does not provide for the possibility of unsupervised visits, which are possible even for sentenced people in prisons. The draft also provides for the possibility of reading a juvenile's correspondence in the case of a suspicion that its content undermines the legal order, the safety of the establishment or the principles of public morality, or can negatively affect the course of ongoing proceedings, the social rehabilitation process or the juvenile's medical treatment. Such a provision may lead to the practice of preventive inspection of correspondence in almost every case, since the only condition is a suspicion of the said content. Such a vague general provision can clearly lead to abuse. According to the

Commissioner, consideration should be given to the requirement to notify the court about inspecting a given juvenile's correspondence.

In the opinion of the Commissioner, the proposed provisions on conducting upon admission to the establishment of compulsory tests to detect the presence of alcohol or other psychoactive substances, using methods which do not require laboratory analysis, should be changed. The act should require such testing only in specific cases, depending on their circumstances supported by individual risk assessment. The list of persons authorised to perform such tests, as specified in the draft, should also be changed. Moreover, the draft does not provide the possibility for juveniles to appeal to court against the decision to conduct a test for the presence alcohol or other psychoactive substances.

The Commissioner has also mentioned his doubts concerning the permissibility of installing cameras at the establishments as well as of using straitjackets, incapacitating belts and safety helmets at district youth care centres, juvenile detention centres and shelters for juveniles.

The possibility of having and using adjustment rooms in youth care centres and district youth care centres, and the duration of placement in such rooms also caused concerns of the CHR who has mentioned the issue several times before.

The draft provides for the possibility of extending a juvenile's stay in a youth care centre in particularly justified cases, upon their written application, after the juvenile has reached 18 years of age. Decisions in this regard are taken by the establishment director not the court, which fact has caused doubts of the CHR. The same applies to juveniles released from a district youth care centre, juvenile detention centre or juvenile shelter. The supervision by a court over the stay at the place of deprivation of liberty is an important mechanism to prevent torture and inhuman or degrading treatment or punishment.

The draft act provides for the establishment of mother and child units in juvenile institutions, which step should be assessed positively. However, the draft introduces two different regulations applicable to mothers, depending on the type of establishment in which they are placed. In the opinion of the Commissioner, irrespective of the ministry which supervises a particular establishment, every female juvenile placed in a youth care centre has the same right to receive care, support and to prepare for the role of a mother as a female juvenile placed in different type of detention establishment.

The act provides that the facility director is required to inform certain persons and institutions about the juvenile's pregnancy and the birth of her child. The draft refers to: the family court or the authority conducting the proceedings, the custody court, the parents (or the parent under whose permanent custody the juvenile remains, or her legal guardian). It would be worth considering a provision notifying an underage male that he will be a father or that his child has been born, as this information can be important for the court, for example, for transferring the juvenile to an establishment closer to the child's place of residence.

The Commissioner has positively assessed the planned establishment by the Minister of Health of a committee on therapeutic measures for juveniles, similar to the psychiatric committee on preventive measures provided for under the Criminal Executive Code.

Moreover, the draft provides for obligatory discontinuation of a conditional suspension of a correctional measure and the placement of the juvenile in a correctional institution, which does not seem a correct procedure in the opinion of the CHR.

THEMATIC REPORTS

In 2021 the NMPT published two thematic reports.

The document *Foreigners in Administrative Detention. Results of NMPT monitoring of guarded centres for foreigners in Poland* presents conclusions from the visits to such facilities, as well as key systemic problems and irregularities found (which in many cases directly contribute to re-traumatising victims of torture²⁷).

In the report *The Crime of Torture in Poland*, the NMPT analysed final judgments issued in 2018 - 2019 with acts which constitute torture as defined in Article 1 of the UN Convention against Torture. The report provides, among others, examples of the use of torture by officers against citizens, the related recommendations and a brief guide for citizens²⁸.

INTERNATIONAL COOPERATION

Due to the introduced state of epidemic, international meetings were largely held online. The representatives of the National Mechanism for the Prevention of Torture participated, among others, in: a webinar "First hours of detention: Lessons from a 3-year prevention journey - Insights from Brazil, Madagascar and Thailand"; a regional meeting of representatives of torture prevention mechanisms and civil society organisations, devoted to the prevention of torture in OSCE countries; a discussion on the report "Gaps and Needs Analysis of the

²⁷ <https://bip.brpo.gov.pl/pl/content/obcokrajowcy-w-detencji-administracyjnej-wyniki-monitoringu-kmpt-w-strzezonych-osrodkach>

²⁸ <https://bip.brpo.gov.pl/pl/content/tortury-w-polsce-raport-krajowy-mechanizm-prewencji-tortur>

National Monitoring Systems in Twenty-Two European Union Member States and Schengen Associated Countries” drawn by the International Centre for Migration Policy Development (ICMPD); and an informal discussion on monitoring the treatment of persons with migration experience, organised by the Greek Ombudsman in Nafplio.

In addition to their participation in these meetings, the NMPT, together with 41 other bodies monitoring places of detention, issued a joint statement calling on state authorities to take continuous action to protect women in prison. The Swiss Association for the Prevention of Torture (APT) was the initiator of the action and the main signatory of the statement.

Also, we joined the motion of over 30 National Preventive Mechanisms from around the world, which expressed solidarity with the Afghan Torture Prevention Mechanism and called on the Afghan authorities to fulfil their international obligations and guarantee the safety of the members and staff of the Afghan Torture Prevention Mechanism.

PART III – DIFFICULTIES IN THE IMPLEMENTATION OF THE NMPT MANDATE

During the past year, we have recorded 7 violations of the OPCAT and of the mandate of the National Mechanism for the Prevention of Torture. They took place both during on-site visits and remote visits conducted via the Skype communicator.

The NMPT mandate was violated most often (4 cases) by police officers. The NMPT also recorded such violations when monitoring 24-hour care facilities (2 cases) and one penitentiary establishment.

POLICE

On 28 January 2021 Deputy Commissioner for Human Rights Hanna Machińska, together with a representative of the NMPT, visited the District Police Station Warsaw IV at ul. Żytnia 36 in Warsaw²⁹. The visit was an ad hoc one and its purpose was to check the treatment of persons detained by police officers during the protest that had been held in front of the Constitutional Tribunal's building. At that time, the police apprehended 14 persons, one of whom was taken to the said police station. During the visit, police officers made it difficult for the visiting team to interview the person in private, in the presence of their defence lawyer, arguing that a police officer must also be present. Eventually, the interview took place with the door half-open, behind which there were police officers.

On 11 April 2021 Deputy Commissioner for Human Rights visited the District Police Station Warsaw I at ul. Wilcza 21. After interviewing the detainee in a separate room normally used for personal search, the monitor's subsequent conversations with the detainee were filmed by a police officer and the sound was recorded. The officer, informed that his action makes it impossible for Deputy CHR to carry out the NMPT mandate, stated that he had been instructed to make the recording. The attitude of the police officer was supported by his superiors who, despite the intervention of Deputy CHR, upheld the order given to the officer.

The Commissioner for Human Rights reported the case to the Police Commander-in-Chief and stated that such practice constitutes a flagrant

²⁹ See: NMPT's press release of 28 January 2021, available at:

<https://bip.brpo.gov.pl/pl/content/kmp/1611836100-wizytacje-ad-hoc-jednostek-policji-podleg%C5%82ych-komendzie-sto%C5%82ecznej-policji-w-zwi%C4%85zku-z-protestami>

violation of the OPCAT, undermines the statutory powers of the Commissioner and constitutes a limitation of the CHR's independence³⁰. It is also contrary to the position of the Director of the National Police Headquarters' Department for Human Resources, Training and Legal Services, which had been disseminated among police units³¹. The CHR called for effective measures to be taken to prevent such situations in the future.

Further incidents involving police officers took place on 18 November and 3 December 2021 during the NMPT visits to the area adjacent to the border with Belarus, which were carried out in connection with the migration policy and humanitarian crisis.

On 18 November 2021, a joint delegation of representatives of the Polish Commissioner for Human Rights (including the NMPT) and the Commissioner for Human Rights of the Council of Europe (including Commissioner Dunija Mijatović) was stopped by a joint police and border guard patrol team on the trunk road no. 66, in the vicinity of the village of Czeremcha Wieś. Members of both delegations had their ID cards checked and were informed that they would not be able to continue their journey due to the fact that they were just in front of the state of emergency zone.

The police officer who stopped the delegation was not acting professionally: he was arrogant, did not want to accept the information that the delegation was not travelling to the state of emergency zone (and he did not want to explain where

³⁰ See: intervention letter of the CHR of 30 April 2021 no. KMP.071.1.2021.MK.

³¹ See: letter no. Kpp-5054/4583/2019 of 2 July 2019 to the Police Commander-in-Chief's Office Director. See also: letter no. Gpc-410/345/19 of 15 July 2019 by the Police Commander-in-Chief.

the zone started), and clearly ignored the Polish CHR delegation's letters of authorisation to carry out tasks in such a zone³².

After about 30 minutes, the visiting team members were informed that they could continue their journey. The police officer repeated that neither of the delegations was permitted to enter the state of emergency zone. A few minutes earlier, however, a female Border Guard officer had permitted the delegation to continue their journey.

The Commissioner informed the Police Commander-in-Chief about the incident³³. He expressed concern about the officer's attitude which deliberately emphasized that it was the police who had the powers there, and about the violation of the CHR's rights under national law and international agreements. He also expressed doubts as to the coordination of work within joint patrol teams of the border guard and the police. The delegations were permitted to continue their journey only after the consent of the police officer, despite the fact that earlier a consent was given by a border guard officer. The Commissioner called for in-depth analysis of the situation and effective measures to be taken to prevent such situations in the future.

On 3 December 2021, the CHR Office's car with a team planning to visit a Border Guard post was stopped while entering the town of Białowieża. The CHR Office

³² The authorisation was consistent with Article 2.1.2 of the Regulation of the Council of Ministers of 2 September 2021 on the restriction of freedoms and rights due to the introduction of the state of emergency (Dz. U. [Journal of Laws] of 2021, item 1613) and authorised the CH representatives to carry out their activities in the zone covered by the state of emergency. Also, regardless of the legislative changes restricting the movement within the border area, the CHR intended to exercise his statutory power to examine any case on-site without prior notice and to conduct activities as part of the NMPT's work.

³³ See: intervention letter of the CHR of 22 November 2021, no. KMP.071.8.2021.PK.

employees presented their CHR Office identification cards to the officer and stated that they had letters of authorisation (issued by the CHR) to conduct their official duties. However, they were asked to present also their personal identity cards for the purpose of verifying their identity (the documents were taken to the police car) and were asked to provide their place of residence, specific purpose of the journey, and permission to enter the area, issued by the competent Border Guard unit. The data of the CHR Office employees were checked in the police information system. The Deputy CHR attempted to explain the legal basis on which the CHR Office employees could carry out their official duties in that zone, but the officer stated that he *“was not required to have the knowledge of all the regulations”*.

The Police informed the Border Guard post in Białowieża that the CHR Office employees were checked on the road (which made it impossible for them to carry out an unannounced visit), and that they had to wait for the eventual permission to enter.

The Commissioner informed the Police Commander-in-Chief about the incident, and expressed his concern about the situation³⁴. He reminded of his powers and the effects of the officer’s behaviour. He also expressed the view that, in a democratic state, it is unacceptable that the conduct of monitoring activities by a constitutional body depends on a consent of the monitored entity. The Commissioner called once again to inform police officers (in particular, those on duty in the Belarussian border zone) about the rights of the CHR.

³⁴ See: intervention letter of the CHR of 6 December 2021, no. KMP.071.8.2021.MZ.

PRIVATE LONG TERM CARE FACILITIES

On 11 August 2021, representatives of the NMPT visited the private long term care facility called "Willa Chopina" at ul. Chopina 20 in Toruń. During the visit, the monitoring team had to discontinue the visit because of poor cooperation and the fact that the facility's owner made it impossible for the visiting team to work.

While entering the premises of the facility the visiting team encountered resistance from its director, despite the fact that, due to the pandemic situation, the visit had been announced in advance (the NMPT also indicated, via e-mail, the legal basis for its mandate and rights). The visiting team was informed that they would not be able to inspect all the rooms but only one selected room, and to conduct only one interview with a resident.

After subsequent discussions with the owner, the NMPT representatives received permission to see the whole facility. Yet, during the inspection the director made it difficult for the team to perform their duties: she rushed them and raised her voice, which created nervous atmosphere.

After inspecting the facility, the team members conducted simultaneous interviews with residents. During the interviews, the director entered the rooms and interrupted the conversations suggesting that the NMPT representatives were making the residents tired because of the need to answer questions during the interviews (which she called interrogations). Her behaviour was unkind and her voice was raised. As a result, two interviews, which, according to the OPCAT, should have been conducted in conditions ensuring confidentiality, had to be interrupted as the director made it impossible to continue them.

It should be stated at this point that the residents agreed to be interviewed by the NMPT representatives (as the participation in interviews is always voluntary and care is taken about the residents' health condition, based on the NMPT's

main principle of *do no harm*). The residents did not express any intention to end the interviews. The behaviour of the owner had therefore no legal basis and was contrary to the will of the residents.

The visiting team members were finally requested to stop the interviews and leave the facility. The leaving NMPT delegation heard the director's comments that they were "*making the sick people tired*" and that they "*had already spent enough time there*".

The NMPT were refused access to documentation necessary to assess the legality of the residents' placement in the facility and the care provided to them, including the residents' medical records and concluded contracts for care services. The director justified her refusal by the need to protect the residents' sensitive data, including personal data.

In view of the situation and preliminary observations regarding the conditions of stay and care at the facility, on 13 August 2021 the NMPT requested the Director of the Department of Social Policy of the Kujawsko-Pomorskie Voivodeship Office in Bydgoszcz to immediately conduct an inspection of the facility and to report on the results³⁵. The NMPT also requested the Patient Ombudsman to regularly monitor the situation at the facility.

The NMPT also encountered one case of failure to ensure confidentiality during a video interview with a resident of "Willa Milanówek Rezydencja Seniora"³⁶. Before starting video interviews, the NMPT representative had sent to the facility's director written rules for holding such interviews, which had been accepted and

³⁵ See: letter of 13 August 2021, no. KMP.573.8.2021.AO.

³⁶ See: Report on the online monitoring visit to the 24-hour care facility called "Willa Milanówek Rezydencja Seniora", conducted on 26, 28 and 29 July 2021, ref. no. KMP.573.7.2021.MZ, point. 3: violation of the NMPT's mandate.

signed by her. The rules require cooperation between the two institutions during remote monitoring. Among others, managers of monitored facilities undertake to ensure holding remote interviews in confidence (i.e. without the presence of third parties), not to record the conversations in any form, not to ask interviewed residents about the course of the interviews, and to comply with the prohibition of reprisals, referred to in Article 21(1) of the OPCAT.

During one of the video interviews, apart from the resident there was a female staff member in the room, which violated the confidentiality of the interview and was against the work standards of the NMPT. The situation also raised suspicion as to the maintenance of confidentiality of the preceding interviews with other residents. If there was a staff member present during the other interviews, it could influence the opinion of next interviewees, and, consequently, the NMPT's conclusions and recommendations. The NMPT representatives contacted the facility director and informed her about the situation. During subsequent interviews the residents informed that they were in the room by themselves.

PRISONS

During the video interviews conducted at the prison in Ława, a representative of the NMPT was refused the possibility to hold confidential interviews with inmates with the status of remand prisoners³⁷. The decision of the head of the establishment was caused by the guidelines issued by the superior units of the Prison Service, according to which in order to have interviews with remand prisoners via the Skype communicator, a consent of the detaining authority was required.

³⁷ See: Report on the online monitoring visits to the prison in Ława, ref. no. KMP.571.6.2021.AN, point 1: Introduction.

The problem had been reported before, already in 2020, to the Director General of the Prison Service³⁸. The Deputy CHR pointed out at that time that the provisions of Article 20 of the OPCAT and Article 13(1a)(2) of the *Act on the Commissioner for Human Rights* do not make the possibility to hold individual interviews with detained persons (including remand prisoners) dependent on the consent of the detaining authority, regardless of the form in which such interviews are held. Such an understanding of the said provisions arises from their interpretation which should be made in light of the purpose of work of the NMPT³⁹.

The Director General of the Prison Service did not share the view of the Deputy CHR and pointed out that the NMPT representatives had the right to enter penitentiary facilities and speak in person with remand prisoners. He added that the NMPT's change of the method of performing its statutory tasks, and the limitation of in-person contacts with prisoners at penitentiary establishments, did not entail the obligation for the prison administrators to provide access to the Skype communicator to remand prisoners⁴⁰. The issue was raised in the NMPT's Annual Report for 2020⁴¹. The described case shows that the problem still exists and is systemic in nature.

³⁸ See: intervention letter of Deputy CHR of 15 June 2020, no. KMP.571.9.2020.AN.

³⁹ Such an interpretation of the NMPTs mandate had been made by directors of other prisons at which NMPT representatives held monitoring interviews with remand prisoners via Skype. The interviews were conducted without any interruptions.

⁴⁰ See: Letter by Deputy Director General of the Prison Service of 21 July 2020, ref. no. BP.414.193.2020.EP.

⁴¹ See: CHR's report on the activities of the National Mechanism for the Prevention of Torture in Poland in 2020, p. 40.

The above-mentioned situations show that there is a need for information action among the staff of places of detention and officers of state services, in order to make them aware of what the OPCAT is, what its goals are, how the NMPT works and what powers it has. As regards penitentiary establishments, systemic measures are needed to make it possible to hold video interviews with remand prisoners in the conditions ensuring confidentiality, in accordance with the SPT recommendations. The NMPT hopes that the Prison Service and the Ministry of Justice will take steps to this end to ensure effective cooperation in the field of preventing torture.

PART IV – SITUATION IN PLACES OF DETENTION

BORDER GUARD UNITS

NTPM ACTIVITIES ON THE POLISH-BELARUSIAN BORDER

In connection with the humanitarian crisis on the Polish-Belarusian border and the accompanying dynamic increase in the number of foreign citizens detained due to crossing the Polish border illegally, in 2021 the National Mechanism for the Prevention of Torture conducted the following ad hoc in-person visits:

- 8 visits to the Border Guard detention facilities⁴²;

⁴² In: Szudziałowo (on 24 August and 15 September), Narewka (on 31 August and 8 October), Kuźnica (on 1 September), Bobrowniki (on 16 September and 8 October) and Terespol (on 17 September).

- 22 visits to Border Guard posts⁴³.

For the first time, NMPT representatives arrived at the Polish-Belarusian border on 24 August 2021. At that time, the media and non-governmental organisations reported that a group of approximately 30 persons had been staying for over 2 weeks at the border near Usnarz Górny. In view of contradictory information regarding the exact location of the group, NMPT representatives travelled to the site in order to determine the precise border line and the applicable national jurisdiction.

A National Preventive Mechanism may visit any place under the state's jurisdiction and control, where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence⁴⁴.

⁴³ Including: Foreigners' Registration Centre at the Border Guard post in Dubicze Cerkiewne (on: 31 August, 22 October, 30 September and 26 November); Foreigners' Registration Centre at the closed border crossing point in Połowce, which is subordinate to the Border Guard post in Czeremcha (on: 31 August, 22 October and 16-17 November); Border Guard post in Michałowo (on: 30 September, 22 October and 16-17 November); Border Guard post in Białowieża (on: 17 September, 29 October, 9-10 November and 3-12 November); Border Guard post in Białystok (on: 17 October, 29 October, 9-10 November and 3-12 November) and 16-17 November), in the Border Guard post in Białowieża (on 17 September, 29 October, 9-10 November and 3 December), Border Guard post in Bobrowniki (on 22 October), Border Guard post in Narewka (on 22 October, 9-10 November, 16-17 November and 3 December), Border Guard post in Nowy Dwór (on 9-10 November), Border Guard post in Lipsko (on 9-10 November) and Border Guard post in Kuźnica (on 9-10 November).

⁴⁴ Article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in New York on 18 December 2002 (OJ of 2007, No. 30, item 192).

In the opinion of the NMPT representatives, the group of 32 persons of Afghan origin (including 27 men and 5 women, of whom the youngest one was aged 15) were almost certainly staying within the territory of the Republic of Belarus. However, those persons informed the Polish Border Guard officers several times (also in the presence of the NMPT representatives) of their intention to seek the refugee status in Poland. The issue of non-acceptance of applications for international protection from the members of that group, as well as the conditions in which they were staying, were mentioned in the CHR's general intervention letter to the Minister of the Interior and Administration⁴⁵.

During a conversation with the NMPT representatives, which took place in the presence of armed officers of the Polish Border Guard, soldiers and officers of the Belarusian services, the foreigners informed that for about last 10 days they had been living outdoor without any roofing or protection against weather conditions. At the time of the visit, however, they had 7 tents but had no access to toilets and had to satisfy their physiological needs in the vicinity of the camp. That was a situation particularly difficult for women due to the culture-related habits. The people had no access to drinking water and had to drink water from a nearby water stream. The NMPT interviewees reported they had received small amounts of food from the Belarusian services. They also informed that their health was deteriorating. The oldest person, a 53-year-old woman, had serious kidney problems and suffered from depression. The foreigners had no access to medical assistance or medications. They complained of poor psychological condition. They also reported that they had no possibility to contact Polish lawyers by whom they intended to be represented.

⁴⁵ General intervention letter of 25 August 2021, no. KMP.572.1.2021.MZ. See chapter *General intervention letters*.

In the Commissioner's opinion, the conditions in which the foreigners were staying, and the fact that they had no possibility to satisfy their basic physical needs and had no access to medical and legal aid or the refugee procedure, constituted inhuman and degrading treatment.

The day after the NMPT's visit, on 25 August 2021, the European Court of Human Rights issued a decision on the application of an interim measure in the cases R.A. and Others v. Poland (application no. 42120/21) and H.M.M. and Others v. Latvia (application no. 42165/21). The measure applied for a period of three weeks, until 15 September 2021 inclusive. The ECHR requested that the Polish and Latvian authorities provide all the applicants with food, water, clothing, adequate medical care and, if possible, temporary shelter. It clarified, at the same time, that this measure should not be understood as requiring that Poland or Latvia let the applicants enter their territories⁴⁶.

Meanwhile, on 2 September 2021 the President of the Republic of Poland, at the request of the Council of Ministers, issued a regulation introducing a state of emergency in a part of the Podlaskie Voivodeship and a part of the Lubelskie Voivodeship⁴⁷. In this connection, the Commissioner for Human Rights requested the Minister of the Interior and Administration to inform the subordinate state services that the Commissioner and authorised employees of the CHR Office would continue to perform the Office's tasks during the state of emergency in the area indicated in the regulation. The Commissioner pointed out that these

⁴⁶ See: Court indicates interim measures in respect of Iraqi and Afghan nationals at Belarusian border with Latvia and Poland; Press Release issued by the Registrar of the Court, ECHR 244 (2021).

⁴⁷ Regulation of the President of the Republic of Poland of 2 September 2021 introducing the state of emergency in parts of the Podlaskie Voivodeship and the Lubelskie Voivodeship (Journal of Laws of 2021, item 1612).

competencies would be carried out within the framework provided for in law, with limitations on making information available to the public and the prohibition to record, with the use of technology, the image or other features of places, objects or areas comprising border infrastructure⁴⁸.

On 1 October 2021, the state of emergency was extended by the President of Poland for subsequent 60 days⁴⁹. The Sejm, one day before, had adopted a resolution consenting to do so⁵⁰. The Constitution however contains no provision allowing to extend state of emergency. Due to this, a decision was taken to amend the *Act on State Border Protection*⁵¹. Based on the amended provisions, on 30 November 2021 the Minister of the Interior and Administration introduced a prohibition to stay in certain parts of the border zone, adjacent to Poland's border with the Republic of Belarus, until 1 March 2022⁵².

As it had initially been announced by the CHR, in the described period the NMPT representatives continued visiting the areas under the state of emergency and fulfilled their mandate based on the OPCAT. On 15 September, they revisited the

⁴⁸ General intervention letter of the CHR to the Minister of the Interior and Administration of 6 September 2021, ref. no. VII.604.20.2021.MW.

⁴⁹ Regulation of the President of the Republic of Poland of 1 October 2021 extending the state of emergency in parts of the Podlaskie Voivodeship and the Lubelskie Voivodeship (Journal of Laws of 2021, item 1788).

⁵⁰ Resolution of the Sejm of the Republic of Poland of 30 September 2021 consenting to the extension of the state of emergency (Dz. U. [Journal of Laws] of 2021, item 1787).

⁵¹ Act of 17 November 2021 amending the Act on State Border Protection and certain other acts (Dz. U. [Journal of Laws] of 2021, item 2191).

⁵² Regulation of the Minister of the Interior and Administration of 30 November 2021 introducing a prohibition to stay in certain parts of the border zone, adjacent to Poland's border with the Republic of Belarus (Dz. U. [Journal of Laws] of 2021, item 2193).

area near the camp in Usnarz Górny. The information from the Border Guard, received later, stated that the foreigners left the camp only on 23 October 2021⁵³.

The NMPT visits to the border zone were, as a rule, based on the standard methodology. The NMPT representatives interviewed the managers of a given unit and the officers on duty, inspected the selected rooms, analysed documentation available on-site and spoke to foreign migrants among whom, in many cases, there were families with children and pregnant women. In some of the visits, Polish Red Cross paramedics and medics took part. The teams visiting the units, in particular the foreigners' registration centres, also provided in-kind assistance in the form of warm clothes, footwear, blankets and food products.⁵⁴

On numerous occasions, due to the specificity of a given situation and the information received from activists working in the border area, the NMPT representatives observed the work performed by the Border Guard in the field. This was done e.g. in the cases which concerned:

- four Syrian people and an Iraqi family with two children (a one-year-old boy and a three-year-old girl), all of whom were found in a forest. The foreigners declared their intention to stay in Poland and seek international protection⁵⁵;

⁵³ See: <https://www.strazgraniczna.pl/pl/aktualnosci/9500.Migranci-podjeli-probe-silowego-przedarcia-sie-do-Polski.html>

⁵⁴ E.g. the visit on 21-22 October 2021: <https://bip.brpo.gov.pl/pl/content/RPO-wizytacja-granica-polsko-bialoruska>; and the visit on 8 October 2021: <https://bip.brpo.gov.pl/pl/content/kolejna-wizytacja-rpo-na-granicy-rozmowy-z-cudzoziemcami-i-z-sg-przekazanie-zebranych-darow>

⁵⁵ The visit on 29 October 2021: <https://bip.brpo.gov.pl/pl/content/RPO-wizytacja-na-granicy-polsko-bialoruskiej>

- two brothers from Syria, forced to leave Belarus and enter Poland, who were lost in a forest along the border line and were extremely cold and exhausted⁵⁶;
- sixteen people from Iraq (including nine children) and a Syrian-Lebanese family with four children, who, after crossing the border, declared their intention to stay in Poland and seek international protection⁵⁷;
- four people from Cuba and a family with two children from Syria, who informed volunteers from aid providing organisations that they intended to stay in Poland and seek international protection. As a result of the actions taken in that case, the family with children was taken to a hospital⁵⁸.

In such situations, the NMPT representatives observed how the Border Guard officers recorded the foreigners' intention to seek international protection in Poland, both during the Border Guard's activities in the field and during foreigners' stay in Border Guard-operated facilities.

Many foreigners found by the Border Guard or activists were extremely tired and in a poor health condition. Such persons were taken to the hospital in Hajnówka. Therefore, the NMPT representatives visited the medical facility twice. During one of the visits, attention was paid to two women staying in the paediatric ward together with four children. Two of them, Kurdish boys, had cerebral palsy⁵⁹.

⁵⁶ The visits on 3 December 2021. See: <https://bip.brpo.gov.pl/pl/content/wizyta-przedstawicieli-brpo-na-granicy-polsko-bialoruskiej-3-grudnia-2021-r>

⁵⁷ The visits on 9-10 November 2021. See: <https://bip.brpo.gov.pl/pl/content/rpo-brpo-na-na-granicy-polsko-bialoruskiej>

⁵⁸ The visit on 22 October 2021: <https://bip.brpo.gov.pl/pl/content/RPO-wizytacja-granica-polsko-bialoruska>

⁵⁹ The visit on 8 October 2021: <https://bip.brpo.gov.pl/pl/content/kolejna-wizytacja-rpo-na-granicy-rozmowy-z-cudzoziemcami-i-z-sg-przekazanie-zebranych-darow>

During the visits to the hospital, interviews were also held with its managers and staff. The discussions related to their problems encountered when providing medical aid to migrants. The employees of the hospital pointed, among others, to the lack of general guidelines for medical institutions on how to proceed with foreigners brought from the border zone⁶⁰.

The critical time in the crisis on the Polish-Belarusian border was the middle of November 2021, when groups of several hundred migrants started to gather near the closed border crossing point in Kuźnica. During the visit which took place on 10 November 2021, the situation was observed by representatives of the NMPT. At that time, there were about 1500 people, including families with children, staying in a makeshift camp on the Belarusian side of the border⁶¹.

During all the conducted visits, the NMPT paid attention to the living conditions at the visited places of detention and the issue of the fulfilment of minimum anti-torture guarantees, including: the right to information (also about the refugee procedure), access to medical and legal aid, the possibilities of contact with the outside world and of filing complaints. Also, the visiting teams paid attention to the conduct by the Border Guard of the procedure of returning foreigners to the state border (which procedure was introduced by the regulation of the Ministry of the Interior and Administration of 20 August 2021⁶²) and of the new procedure of issuing orders to leave the territory of the Republic of Poland, which was

⁶⁰ The visit on 29 October 2021: <https://bip.brpo.gov.pl/pl/content/RPO-wizytacja-na-granicy-polsko-bialoruskiej>

⁶¹ The visits conducted on 9-10 November 2021. See: <https://bip.brpo.gov.pl/pl/content/rpo-brpo-na-na-granicy-polsko-bialoruskiej>

⁶² Regulation of the Minister of the Interior and Administration of 20 August 2021 amending the Regulation on temporary suspension or restriction of border traffic at specific border crossing points (Dz. U. [Journal of Laws] of 2021, item 1536).

introduced by way of an amendment to the *Act on Foreigners*, dated 14 October 2021⁶³. In the light of these regulations, the NMPT's task was to assess the situation and fulfilment of rights of persons who were, in fact, deprived of liberty and remaining under the supervision of the Border Guard who, however, emphasised that these persons were, formally, not detained but only "stopped".

A report containing detailed conclusions from the visits conducted between the end of August and December 2021 near the Polish-Belarusian border was submitted by the Commissioner for Human Rights to the Prime Minister on 16 December 2021. Because of the restrictions on making information public, which were related to the state of emergency, the report has the status of a classified document⁶⁴.

The situation on the border and the situation of persons seeking international protection in Poland constituted subjects of the NMPT's general intervention letters⁶⁵:

- to the Minister of Foreign Affairs on taking appropriate information measures by Polish diplomatic representations in migrants' countries of origin⁶⁶;
- to the Border Guard Commander-in-Chief reminding him to apply the principle of non-refoulement, with special attention paid to female victims of violence⁶⁷.

⁶³ Act of 14 October 2021 amending the Act on Foreigners and certain other acts (Journal of Laws of 2021, item 1918).

⁶⁴ See: <https://bip.brpo.gov.pl/pl/content/rpo-premier-raport-wizytacje-granica>

⁶⁵ General intervention letters of the NMPT are discussed in detail in a separate chapter hereof.

⁶⁶ General intervention letter of 20 October 2021, ref. no. KMP.071.6.2021.

⁶⁷ General intervention letter of 22 November 2021, ref. no. KMP.071.7.2021.

GUARDED CENTRES FOR FOREIGNERS

In 2021, the NMPT conducted 11 visits to guarded centres for foreigners, including:

- 10 visits to check the conditions of detention and treatment of foreigners in the period of the sudden increase in the number of persons crossing the state border illegally⁶⁸;
- 1 re-visit⁶⁹ aimed at verifying the implementation of the NMPT's recommendations issued after the 2018 visit⁷⁰ and the CPT's recommendations issued after the 2017 visit⁷¹.

⁶⁸ Full conclusions on the visits to: the Guarded Centre for Foreigners in Białystok on 30 August 2021, the Temporary Guarded Centre for Foreigners in Czerwony Bór on 1 September and 3 December 2021, the Guarded Centre for Foreigners in Biała Podlaska on 2 September 2021, the Guarded Centre for Foreigners in Krosno Odrzańskie and the Temporary Guarded Centre for Foreigners in Wędrzyn on 18-21 October and 14-16 December 2021, the Guarded Centre for Foreigners in Lesznowola on 9-10 November 2021 and the Guarded Centre for Foreigners in Kętrzyn on 7-9 December 2021, will be presented in a thematic report.

⁶⁹ See chapter *Thematic visits*.

⁷⁰ See: KMP.572.4.2018.KK.

⁷¹ See: CPT report on the visit to Poland in 2017 [CPT/Inf (2018)39], paras. 34-55.

SYSTEMIC PROBLEMS

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

Since August 2021, a new regulation has been in force⁷² permitting the placement of foreigners in rooms with less than 2 m² of floor area per person. A situation of such a limitation⁷³ of living space should not last longer than 12 months.

The new standard flagrantly violates the right to dignity of persons placed in the guarded centres, and placement of foreigners based on the amended regulation may be considered a sign of inhuman or cruel treatment⁷⁴.

In this context, it should be emphasized that even at penitentiary establishments the minimum living space per prisoner may not be less than 6 m² in single-person cells and 4 m² in multi-person cells⁷⁵.

During the visits, the NMPT found that due to the amendment of the regulations, the maximum capacity of the visited establishments was increased. At one of the

⁷² Article 11(1a) of the Regulation of the Minister of the Interior and Administration of 13 August 2021 amending the Regulation on guarded centres and detention centres for foreigners (Dz. U. [Journal of Laws] of 2021, item 1482.

⁷³ In standard conditions, it is, respectively, 3 m² per man and 4 m² per woman or child.

⁷⁴ See: ECtHR judgment of 13 July 2019 in the case *Sh.D. and Others v Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, application No 14165/1613.

⁷⁵ See: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Living space per prisoner in prison establishments: CPT standards*, [CPT/Inf (2015) 44].

centres⁷⁶ operating temporarily due then-existing migration situation, the visitors found that the living space per person was even less than 2 m².

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

2. Failure to effectively identify victims of torture

The National Mechanism for the Prevention of Torture has pointed out for many years that the existing system of identifying foreigners who are victims of torture and violence in Poland cannot be considered effective. In practice, there is no mechanism under which people with experience of violence are identified after their detention but before their placement in a guarded centre for foreigners. All activities aimed at identifying victims of torture take place after foreigners' placement in a centre. In this context, it should be remembered that in the light of the law, no decision on a foreigner's arrest or placement in a guarded centre should be taken if their psychological or physical condition suggests the use of violence against them⁷⁷.

⁷⁶ In connection with the irregularities found during the visit to the guarded centre for foreigners in Krosno Odrzańskie and the Temporary Guarded Centre for Foreigners in Wędrzyn, ofn19 November 2021 the CHR sent a letter of intervention to the Commander-in-Chief of the Border Guard (letter ref. KMP.572.1.2021.MZ).

⁷⁷ See: Article 400(2) of the *Act on Foreigners* of 12 December 2013 (Journal of Laws of 2021, item 2354).

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

The problem has become particularly important in view of the current migration situation in Poland and the change of the profile of foreigners coming to our country as compared to previous years. During the monitoring visits, the NMPT representatives heard dozens of reports by foreigners staying in the guarded centres about the violence they have experienced in their countries of origin or during their trips to Europe. Some of such people with the experience of torture or other forms of violence were placed in a temporary guarded centre for foreigners located within a military training area⁷⁸. The shooting they heard there decreased their mental condition and could lead to re-traumatization.

3. Detention of children

Detention of minor-age foreigners, as a measure negatively impacting their psychological and physical condition, should be used as a last resort. The permissibility of placing foreigners under the age of 18 at the guarded centres has been questioned many times by non-governmental organizations⁷⁹,

⁷⁸ Temporary Guarded Centre for Foreigners in Wędrzyn.

⁷⁹ See: Position statement of the Association for Legal Intervention of 30 March 2015: <http://interwencjaprawna.pl/stanowisko-sip-w-sprawie-detencja-dzieci-cudziemskich/> .

international institutions⁸⁰, the Ombudsman for Children⁸¹ and the Commissioner for Human Rights⁸².

The CPT considers that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor.⁶ Following the principle of the “best interests of the child”, as formulated in Article 3 of the United Nations Convention on the Rights of the Child, detention of children, including unaccompanied and separated children,⁷ is rarely justified and, in the Committee’s view, can certainly not be motivated solely by the absence of residence status.

When, exceptionally, a child is detained, the deprivation of liberty should be for the shortest possible period of time; all efforts should be made to allow the immediate release of unaccompanied or separated children from a detention facility and their placement in more appropriate care. Further, owing to the vulnerable nature of a child, additional safeguards should apply whenever a child is detained, particularly in those cases where the children are separated from their parents or other carers, or are unaccompanied, without parents, carers or relatives⁸³.

⁸⁰ See: Committee on the Rights of the Child, Report of the 2012: Day of general discussion on the rights of all children in the context of international migration, p. 78-79.

⁸¹ See: General intervention letter of the Ombudsman for Children to the Prime Minister of 3 December 2018 (GA8.422.10.2018.BS).

⁸² See: CHR's report *Observance of the rights of foreign migrants in Poland*, Warsaw, 2012, pp. 53-61.

⁸³ See: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, [CPT/Inf/E(2002)1 - Rev. 2011], p. 97.

In 2021, the NMPT noted with concern that, in response to the rapid increase in the number of foreigners crossing the state border illegally, the authorities decided to convert almost all guarded centres for foreigners into centres adjusted for families⁸⁴, instead of seeking to strengthen measures alternative to detention⁸⁵.

Particular concern was raised by situations, found by the NMPT, in which young migrants, supposedly unaccompanied minors, were placed in centres intended for adult men. In this context, it should be noted that the assessment of such migrants' age was based on a chronological age examination (in most cases an X-ray of a wrist⁸⁶). The photographs of identity documents issued in their countries

⁸⁴ At the time when the NMPT visits were carried out, the only establishments for adult men were: the Guarded Centre for Foreigners in Krosno Odrzańskie and the Temporary Guarded Centre for Foreigners in Wędrzyn.

⁸⁵ According to the letter of the Director of the Office for Foreigners to the CHR of 7 February 2022 (ref. no. BSZ.WKSI.0731.1.2022/RW), in 2021 the overall capacity of the open centres was increased by 315 places. In the same period, the overall capacity of the guarded centres adjusted for families was increased by 874 places.

⁸⁶ Chronological age determination based on a wrist X-ray is one of the most common methods. Nevertheless, it is argued in the literature that skeletal development may vary from race to race. A study evaluating the reliability of the Greulich-Pyle method of determining bone age of healthy American children of European and African origin, born after 1980, was conducted at the Department of Radiology of the Children's Hospital of Los Angeles. X-ray images of hands and wrists of 534 children (265 boys and 269 girls) from birth to 19 years of age were analysed. The analysis was carried out by two experienced paediatricians-radiologists who did not know the chronological age of the examined persons. It has been proven that the skeletal system development in American children of European origin is significantly delayed in relation to the skeletal system development in children of African origin. The researchers confirmed that new standards of bone age assessment are necessary, to make it possible to take most correct clinical

of origin and recorded in their mobile phones were not taken into account. As a result of the analysis of the documentation of selected foreigners, the NMPT found that, except for one case, the age assessment examination results did not contain information about the error margin⁸⁷. In several cases, the documentation lacked information about the conducted examination despite the fact that, according to the migrant's statements, they were unaccompanied minors.

4. Bars in room windows

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

Conditions in places of detention of foreign migrants should reflect their legal status. Given that foreign migrants placed in guarded centres for foreigners are not prisoners, any analogies to penitentiary establishments should be avoided⁸⁸.

The representatives of the NMPT welcomed the information that, as a result of renovation works in one of the guarded centres, window bars were removed and other technical solutions were introduced to ensure the safety of foreigners⁸⁹. At the same time, the visiting team found that in one of the temporary centres,

decisions. [as in: T. Matthews-Brzozowska, R. Flieger; *Methods of bone age assessment and their importance in medicine and dentistry - literature review*; *Nowiny Lekarskie* 2009, 78, 2, pp. 165–167].

⁸⁷ The information should be included in the documentation pursuant to Article 398(4) of the Act on Foreigners.

⁸⁸ See: CPT Report on the visit to Malta in 2008, CPT/Inf (2011)5, para. 51.

⁸⁹ Guarded Centre for Foreigners in Biała Podlaska.

temporary bar panels were installed on the windows⁹⁰ which enhanced the penitentiary image of the centre without improving security (a representative of the head of the facility informed of cases of the bar panels being broken by the foreigners).

PENITENTIARY ESTABLISHMENTS

In 2021, the National Mechanism for the Prevention of Torture conducted monitoring visits to four penitentiary establishments⁹¹: two prisons and two remand prisons.

One of the visits⁹² was a thematic visit and was aimed at verifying the fulfilment of the recommendations of the European Committee for the Prevention of Torture (CPT), issued during the visit carried out in 2017. The other visit⁹³ was a re-visit. The conclusions regarding the implementation status of the NMPT and the CPT recommendations are discussed in other parts of this report⁹⁴.

This chapter presents conclusions based on the on-line interview at the prison in Ława and on-site visit in the remand prison in Starogard Gdański.

⁹⁰ Temporary Guarded Centre for Foreigners in Wędrzyn.

⁹¹ The remand prison in Starogard Gdański (KMP.571.4.2021), the remand prison in Warszawa-Grochów (KMP.571.5.2018), prison No. 2 in Strzelce Opolskie (KMP.571.5.2021) and the prison in Ława (KMP. 571.6. 2021).

⁹² Prison No. 2 in Strzelce Opolskie (KMP.571.5.2021).

⁹³ Warszawa-Grochów remand prison (KMP.571.5.2018).

⁹⁴ See chapters *Re-visits* and *Thematic visits*.

GOOD PRACTICES

- the work of a support group for inmates who have completed therapy in the therapeutic ward, and who are getting further therapeutic support when serving their sentence in a regular ward;
- the organisation of so-called family meetings for inmates serving their sentence in the therapeutic ward. The meetings are attended by inmates, their families and ward staff members. The meetings start with short presentations for the inmates' families on various aspects of the therapy. Therapists also participate in individual inmates' meetings with their relatives, in order to provide support and answer any questions and doubts regarding the conducted therapy;
- external supervision over staff members of the therapeutic ward;
- the possibility for inmates to use outdoor sports facilities.

SYSTEMIC PROBLEMS

1. **Medical examinations of persons placed in penitentiary establishment; lack of procedures to be followed in case of reported torture; and incorrect documentation of injuries.**

Pursuant to the regulations defining rules for enforcing a penalty of imprisonment⁹⁵ and the regulations defining rules for enforcing a penalty of pre-trial detention⁹⁶, a detainee should undergo a medical examination immediately

⁹⁵ See: Article 9(1) of the Regulation of the Minister of Justice of 21 December 2016 defining rules for enforcing a penalty of imprisonment (Dz. U. [Journal of Laws], item 2231).

⁹⁶ See: Article 9(3) of the Regulation of the Minister of Justice of 22 December 2016 defining rules for enforcing a penalty of pre-trial detention (Dz. U. [Journal of Laws], item 2290).

after their placement in a penitentiary establishment. In practice, in most cases the examinations are conducted mostly for prisoners remaining at large before admitting to prison. Prisoners who have been transferred from another prison or remand prison most often do not undergo such examinations. Usually, the procedure is limited to a medical interview conducted by a nurse, sometimes followed by a visit to a doctor. There is no requirement for a medical examination with a body search for all newly placed prisoners.

There are still no adopted procedures to be followed when a prisoner reports that they have been a victim of torture or violence or when there is a suspicion that a prisoner has been a victim of torture or violence. The lack of such procedures leads to violations that are revealed during subsequent visits of the National Mechanism for the Prevention of Torture in penitentiary establishments.

During one of the visits, an inmate informed the visiting team that he had reported skin abrasions and signs of too tight handcuffs locked by police officers on his hands. In response, he informed, the nurse said: "They have treated you not too well". A psychologist who held the initial interview with the inmate called the nurse's room and said that the man had signs of dried blood on his face and complained about bruises on his rib. This information, however, was not included in the official records in the Central Database of Persons Deprived of Liberty. In the database, however, there is an entry by a correctional officer, made on the man's admission date, stating: "the prisoner has reported a body injury – skin scratches on the left temple". The medical records contained only a

description of the injury, without any photographic documentation or marking the injury on the body map⁹⁷.

The National Mechanism for the Prevention of Torture notes with concern that the documentation of injuries is still not drawn up correctly, and that medical staff's awareness of the Istanbul Protocol is limited. In 2019, the Commissioner for Human Rights reported this issue to the Director General of the Prison Service. The exchange of information with the Deputy Director did not, however, bring the results expected by the NMPT⁹⁸.

For years, the NMPT has reminded that the results of medical examinations conducted should be described in a special questionnaire containing so-called body maps, i.e. outlines of the human body as seen from the front and the back, on which any injuries can be marked. Photographic documentation of injuries, with the face of the prisoner visible on each photography, also should be made.

2. Small living space in a prison cell

For years, the National Mechanism for the Prevention of Torture has been calling on the authorities to introduce relevant legislative changes with the aim to increase the cell space per prisoner⁹⁹. Despite numerous signals from both the NMPT and international organizations, the minimum living space per prisoner in a cell in Poland is still 3 m². Moreover, there are exceptions to this rule,

⁹⁷ See: Report on the NMPT visit to prison no. 2 in Strzelce Opolskie (KMP.571.5.2021).

⁹⁸ See: Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2019.

⁹⁹ See: Annual Reports on the Activities of the National Mechanism for the Prevention of Torture for 2017, 2018, 2019 and 2020.

permitting a prisoner to be placed in a cell with less than 3 m² per person¹⁰⁰. In such conditions, an individual is unable to function normally. The Polish standard is contrary to international standards and practices of most of the European countries¹⁰¹. Ensuring appropriate material conditions, an integral part of which is sufficient living space in a cell, is always taken into consideration when assessing whether a person deprived of liberty has not been subjected to inhuman or degrading treatment or punishment¹⁰². International organizations such as the European Committee for the Prevention of Torture (CPT), the UN Committee against Torture (CAT) and the UN Subcommittee against Torture (SPT) have been calling on the Polish authorities since 1996 to ensure living space of at least 4 m² per prisoner in a cell.

The minimum living space for each person recommended by the CPT for the Council of Europe member states is 6 m² in a single cell and 4 m² in a multi-person cell, excluding sanitary facilities¹⁰³.

¹⁰⁰ According to Article 110 of the Executive Penal Code, such situations may include, inter alia, the announcement or the occurrence of an epidemiological risk or state of epidemic in the establishment. See Act of 6 June 1997: Executive Penal Code (Dz. U. [Journal of Laws] of 2021, item 53, as amended).

¹⁰¹ See: Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in 2018, pp. 134-135.

¹⁰² Judgment in the case *Muršić v. Croatia* of 20 October 2016 [Grand Chamber], application no. 7334/13.

¹⁰³ See: Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015)44; Twenty-Sixth General Report of the CPT, CPT/Inf (2017) 5, para. 56.

According to the CAT, Poland should take measures, also by increasing the capacity of prisons, in order to ensure compliance with the European standard of at least four square meters of living space per prisoner¹⁰⁴.

The SPT recommends that the State party increase the minimum standard of living space per prisoner to at least four square meters in a multi-person cell (excluding sanitary facilities) and six square meters in a single cell, and then recalculate the formally existing number of places in cells in penitentiary establishments¹⁰⁵.

The change of the current regulations is necessary because:

- the small living space per prisoner in a cell, currently guaranteed by the Polish regulations, does not ensure even minimum privacy, causes frustration, mental suffering, conflicts and violence;
- such conditions make it difficult for officers to maintain order, and consequently to ensure the safety of inmates;
- in a small living space, the risk of infection increases, which is particularly important during the COVID-19 pandemic;
- placing a person in such a small space constitutes inhuman or degrading treatment, and consequently leads to the potential liability of the state for damage to the person deprived of liberty;
- the necessity to introduce a changed living space standard has been raised for years by international organizations operating in the area of human rights protection.

¹⁰⁴ Committee Against Torture, Concluding observations on the combined fifth and sixth periodic reports of Poland, 23 December 2013, CAT/C/POL/CO/5-6, para 19.

¹⁰⁵ See: SPT report on the visit to Poland in 2018, CAT/OP/POL/ROSP/1, para. 81.

3. No possibility to appeal against a decision to conduct body search

Directors of penitentiary establishments are not required to issue a written decision to conduct body search of a prisoner, which decision could be appealed to the court under Article 7 of the Executive Penal Code¹⁰⁶.

However, the European Court of Human Rights in Strasbourg has pointed, in its numerous judgments regarding Poland, to repetitive abuses in the form of conducting invasive body search of prisoners. The Court issued such judgments also last year. The Court also stated that the domestic law did not, in practice, provide inmates with an effective remedy to challenge the decision to conduct a body search.

The practice of conducting, on daily basis, body search combined with the requirement to strip naked, without any specific security-related reasons or suspicious behaviour of the prisoner, constitutes a violation of Article 3 of the Convention¹⁰⁷.

¹⁰⁶ In 2016, the Commissioner for Human Rights called on the Constitutional Tribunal to declare Article 116(6) of the Executive Penal Code in conjunction with Article 7(1) thereof inconsistent with the Constitution, to the extent that it does not provide for issuing a decision to conduct body search of a person sentenced to imprisonment. The proceedings were discontinued by way of the decision ref. no. K 5/16 of 26 November 2019.

¹⁰⁷ See: Judgments of the ECHR in the cases of: Świdorski v. Poland of 16 February 2016 (application no. 5532/10), Filas v. Poland of 15 April 2021 (application no. 31806/17), Leńczuk v. Poland of 15 April 2021 (application no. 47800/17), and Bechta v. Poland of 20 May 2021 (application no. 39496/17).

4. Standards applicable to the numbers of forensic psychologists

In accordance with the currently applicable standard, one psychologist may conduct psychological examinations, provide psychological support and conduct correctional activities with regard to maximum 200 prisoners. In the opinion of the National Mechanism for the Prevention of Torture, the number is too large to permit the provision of adequate support to persons deprived of their liberty.

The described problem has been reported many times to the Director General of the Prison Service¹⁰⁸. He shared the view of the NMPT that a change in the provision of psychological support to prisoners is needed. However, he pointed out that without new job positions made available to the penitentiary system, any changes in this area would only be gradual and conditional on the availability of funding. Unfortunately, the actions taken so far have not brought any tangible results. The problem of too much burden on forensic psychologists is still monitored by the NMPT.

It should be noted that similar conclusions have been included in the Report of the Supreme Audit Office regarding the safety of prisoners¹⁰⁹. Doubts of the expert in the field of psychiatry, appointed by the Supreme Audit Office, were raised not only by the fact that in three out of eight inspected penitentiary establishments the number of inmates per forensic psychologist was significantly

¹⁰⁸ See: General intervention letters of the Commissioner for Human Rights to the Director General of the Prison Service of 17 May 2016, 19 February 2019 and 10 November 2020 (ref. no. KMP.571.8.2016).

¹⁰⁹ Supreme Audit Office, Information on inspection results: safety of prisoners, KPB.430.002.2020, ref. no. 52/2020/P/19/040/KPB.

above the required standard, but also by the excessively high standard adopted¹¹⁰.

The very large number of prisoners per psychologist results in a limited possibility of conducting examinations, even on urgent basis, of persons who have suicidal thoughts. It also causes problems relating to the provision of psychological support and drawing up recommendations for prisoners with registered suicidal attempts. Doubts are also raised with regard to the possibility to provide actual assistance to prisoners who require it, even within the system of crisis intervention¹¹¹.

For this reason, the Supreme Audit Office recommended re-consideration of the adopted number of prisoners per psychologist. The process should ensure optimal division of duties between psychologists and correctional officers, with account taken of the different types of prisons, as well as other related conditions (e.g. the proportion of prisoners who have employment)¹¹².

In his response of 26 November 2020 the Director General of the Prison Service assured that, *taking into account the recommendations of the Supreme Audit Office, work is underway to determine the possibility of reducing the number of prisoners per psychologist, e.g. in strict regime prisons or in first-level regime prison*. However, no new solutions were adopted in 2021.

¹¹⁰ Ibid., p. 63.

¹¹¹ Ibid., p. 58.

¹¹² Ibid., p. 63.

5. The situation of prisoners suffering from physical disorders ¹¹³

Inmates with reduced physical abilities are a group at risk of torture or inhuman or degrading treatment. Despite the fact that inmates who are dependent on other persons do not receive adequate support at penitentiary establishments, the establishments are formally required to admit as inmates even individuals who require immediate hospitalization due to direct risk to their life or health, or women pregnant for 28 weeks or more weeks¹¹⁴.

Within the Polish prison system, there is only one prison hospital ward for such inmates, i.e. the Ward for Chronically Ill Prisoners in the prison in Czarne. As a result of a limited number of places in that facility, inmates sometimes wait for admission for more than a year.

The representatives of the National Mechanism draw specific attention to the situation of prisoners who undergo medical treatment during imprisonment, have no formal status of a disabled person, but due to their health condition require regular assistance by other inmates. The issue has been raised by the European Court of Human Rights:

The participation of other prisoners in a prisoner's hygiene and sanitary activities, getting dressed and undressed must cause concern of the prisoner and place him in a position inferior to other prisoners¹¹⁵.

¹¹³ See also the point: *Adaptation of penitentiary establishments to the needs of persons with disabilities*.

¹¹⁴ Regulation of the Minister of Justice of 23 June 2015 on administrative activities connected with executing remand imprisonment and penalties and coercive measures that result in deprivation of liberty, and with documenting such activities (Dz. U. [Journal of Laws] of 2020, item 869).

¹¹⁵ Judgment in the case *Farbtuhs v. Latvia* of 2 December 2004, application no. 4672/02.

Detaining persons suffering from a serious physical disability in conditions inappropriate to their state of health, or leaving such persons in the hands of their cellmates for help with relieving themselves, bathing and getting dressed or undressed, is unacceptable as it amounts to degrading treatment¹¹⁶.

POLICE DETENTION FACILITIES

In 2021, the NMPT visited 14 police detention facilities (13 police rooms for detained persons (RDPs) or persons brought for sobering-up¹¹⁷ and 1 police station¹¹⁸). Eight visits were *ad hoc* and their purpose was to check the treatment of persons detained by the Police in connection with:

- residents' protest in front of the Poviast Police Headquarters in Lubin, opposing the brutality of the police¹¹⁹;

¹¹⁶ Judgment in the case D. G. v. Poland of 12 February 2013, application no. 45705/07.

¹¹⁷ RDP at the Municipal Police Station in Grodzisk Mazowiecki (KMP.570.3.2021); RDP at the Municipal Police Station in Legionowo (KMP.570.7.2021); RDP at the Municipal Police Station in Wołomin (KMP.570.5.2021); RDP at the Municipal Police Station in Piastów (KMP.570.6.2021); RDP at the Municipal Police Station in Skarżysko-Kamienna (KMP.570.10.2021); RDP at the Municipal Police Station in Busko-Zdrój (KMP. 570.11.2021); RDP at the Municipal Police Station in Wrocław (KMP.570.13.2021); RDP at the Municipal Police Station in Garwolin (KMP.570.12.2021); RDP at the Municipal Police Station in Grójec (KMP.570.14.2021); RDP at the Municipal Police Station in Lubin (KMP.570.16.2021); RDP at the Voivodeship Police Headquarters in Wrocław (KMP.570.16.2021); RDP at the Municipal Police Station in Opole (KMP.570.17.2021); RDP at the Warsaw Police Headquarters.

¹¹⁸ District Police Headquarters Warsaw VI (KMP.570.4.2021).

¹¹⁹ RDP at the Municipal Police Station in Lubin, PDF at the Voivodeship Police Headquarters in Wrocław.

- detentions during the Independence March¹²⁰;
- protests taking place in Warsaw after the tightening of the abortion law in Poland¹²¹.

The visit to the RDP at the Municipal Police Station in in Opole was a thematic visit to check the implementation of the recommendations of the UN Subcommittee on the Prevention of Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (SPT) from the 2018 visit to Poland¹²².

SYSTEMIC PROBLEMS

During the visits in 2021, representatives of the National Mechanism for the Prevention of Torture identified the following systemic problems (referred to also in the previous years¹²³):

1. Lack of access to a lawyer from the beginning of detention

The possibility of access to a lawyer immediately upon detention is a fundamental safeguard for persons deprived of their liberty. The presence of a professional lawyer during activities carried out with regard to detained persons makes it possible for them to better understand their situation and rights. Moreover, access to a lawyer effectively minimizes the risk of torture or other

¹²⁰ RDP at the Warsaw Police Headquarters.

¹²¹ RDP at the Municipal Police Station in Legionowo, RDP at the Municipal Police Station in Grodzisk Mazowiecki, PDF at the Municipal Police Station in Wołomin, RDP at the Municipal Police Station in Piastów, District Headquarters of the Municipal Police Warsaw IV.

¹²² See section *Thematic visits*.

¹²³ See e.g. Reports of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2018, 2019 and 2020.

forms of violence, which risk, as shown by the experience of the National Mechanism for the Prevention of Torture, is the greatest immediately after detention. The currently binding provisions of the Code of Criminal Procedure¹²⁴ lead to a situation in which most detainees do not, in practice, have access to a lawyer from the beginning of detention. In the Polish legal system, there are no relevant regulations ensuring that a detained person has immediate and free-of-charge access to a defence counsel (financed from the state budget).

The situation is inconsistent with the applicable European Union legislation. According to Directive 2016/1919 of the European Parliament and of the Council of 26 October 2016 into the national law. Pursuant to the directive, suspects who lack sufficient resources to pay for the assistance of a lawyer are to have the right to legal aid when the interests of justice so require. Legal aid should be provided without undue delay and at the latest before questioning of the person concerned, by another law enforcement authority or by a judicial authority, or before the specific investigative or evidence-gathering acts¹²⁵.

Moreover, according to Directive 2013/48/EU, suspects and accused persons shall have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively. They shall have access to a lawyer without undue delay: before they are questioned by the police or by another law enforcement or judicial authority; at the time of carrying out, by investigating or other competent authorities, of an investigative or other evidence-gathering act; without undue delay after

¹²⁴ Act of 6 June 1997 - Code of Criminal Procedure (consolidated text: Dz. U. [Journal of Laws] of 2021, item 534).

¹²⁵ See: Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L. 2016.297.1).

deprivation of liberty; and where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court¹²⁶.

The CPT, in its report published on 28 October 2020 stated, inter alia, that access of detained persons (including juveniles) to a lawyer should still be considered as exceptionally rare. In practice, among the detainees who CHR representatives interviewed, only those who could afford legal aid and who knew the name and telephone number of their lawyers were allowed to make contact with their barrister or attorney at law. Despite the earlier recommendations, detainees still could not count on the assistance of an ex officio lawyer before the commencement of the court proceedings.¹²⁷

The problem has already been reported by the Commissioner for Human Rights to the Minister of Justice¹²⁸. Because of the lack of response to the intervention letter regarding the need to take legislative initiative with the aim to ensure access to a lawyer from the outset of detention to every person apprehended by the Police or other competent services, the Commissioner once again addressed the Prime Minister with regard to the matter¹²⁹.

¹²⁶ See: Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L.2013.294.1).

¹²⁷ CPT report on the ad hoc visit to Poland, CPT/Inf (2020), para. 21.

¹²⁸ See: General intervention letters of the CHR to the Minister of Justice of 18 April 2017 and 27 September 2018, no. KMP.570.3.2017.RK

¹²⁹ See chapter *General intervention letters*.

2. Failure to conduct medical examinations of all detainees

The Commissioner for Human Rights has repeatedly pointed out the need to introduce the obligation to carry out medical examinations of every person detained by Police officers ¹³⁰. Independent medical examination of detainees and proper documentation of injuries found during the examination is considered to be the fundamental and minimum safeguards for these persons against torture and violence, which is strongly emphasised by international institutions monitoring the treatment of persons deprived of their liberty.¹³¹

According to the recommendations of the CAT (Committee against Torture), Poland should take effective measures to ensure that apprehended individuals are subjected to a confidential medical examination by an independent doctor within 24 hours from their arrival to the detention place. They should also be entitled to request an independent medical examination at any time.¹³²

The SPT recommends that Poland should take adequate steps in order to ensure that all arrested persons are subject to a free examination performed by a medical specialist who can work independently without the presence of a police officer. In compliance with the Istanbul Protocol such medical specialists should

¹³⁰ See e.g. CHR's annual reports on the activities of the National Mechanism for the Prevention of Torture in Poland in 2019 and 2020.

¹³¹ See: SPT report on the visit to Ukraine, CAT/OP/UKR 1, paras. 45-48; SPT report on the visit to Ukraine, CAT/OP/UKR/3, paras. 57-61; SPT report on the visit to Peru, CAT/O/PER 1, para 20; SPT report on the visit to Sweden, CAT OP/SWE 1, paras. 62-64; CPR Second General Report, CPT/Inf (92)3, paras. 36-38; CPT report on the visit to Poland, CPT Inf (2014)21, paras. 26, and 30; Report on the visit to Poland, 25 July 2018, CPT/Inf(2018)39, para. 27.

¹³² Committee Against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, para. 16.

be trained in the field of examining persons who could have been subjected to torture or ill-treatment and in registering such cases¹³³.

The CPT is of the same opinion. In the view of the Committee, persons deprived of their liberty by the Police should be guaranteed the right of access to a doctor (including a doctor of their choice, but the examination by such a doctor may be carried out at the expense of the detained person) from the outset of detention. A relevant provision should clearly state that a detained person's request for access to a doctor should always be met; neither a Police officer nor any other authority can assess the reasonability of such requests.

However, in Poland there is no requirement to conduct a medical examination of every detained person. Situations in which a medical examination is mandatory for detained persons are set out in the relevant regulation of the Minister of the Interior¹³⁴.

3. Shifting the duty to take care of intoxicated people to the police

The NMPT experience shows that most persons who are brought to police rooms for detained persons (RDPs) are persons detained for sobering up. The situation is caused by the lack of sobering-up stations in individual municipalities, or the lack of agreements concluded between local governments and sobering-up stations in their area. Due to the lack of appropriate systemic solutions there is a need to place such persons in RDPs.

It should be emphasized that there is no requirement at present to ensure permanent regular medical care for persons detained at RDPs. Therefore, there

¹³³ Report on the SPT visit to Poland, CAT/OP/POL/ROSP/1, para. 55.

¹³⁴ Regulation of the Minister of the Interior of 13 September 2012 on medical examinations for persons detained by the Police (Dz.U. (Journal of Laws) of 2012, item 1102), point 1(3).

are no doctors to supervise people brought to police stations for sobering up and people brought in the state of intoxication but in connection with a suspicion of committing an offence. Police officers have been, as a result, made responsible for health problems of people placed at RDPs for sobering up (e.g. epilepsy), and for their potential physiological reactions (e.g. vomiting). The police are, however, able to provide only first aid and call an ambulance, and may only hope that medical interventions will be quick and effective.

4. Insufficient number of staff at RDPs

Under the current regulations, the head of the unit needs to organize work in such a way so as to make sure that there is at least one police officer on duty in the RDP¹³⁵. In the visited police units¹³⁶ supervision over detained persons was exercised by one officer, irrespective of the number of persons detained there.

The experience of the NMPT shows, however, that one person is not able to carry out procedural duties (completing documentation) and control tasks and at the same time make sure that detainees can exercise their rights (e.g. use a toilet). Under such circumstances it may also be particularly difficult to respond to extraordinary incidents, including suicide attempts. The current work organization may result in restricted exercise of detainees' rights and their ill-treatment. Therefore, the NMPT has consistently been calling for amending applicable regulations¹³⁷.

¹³⁵ See: Regulation of the Minister of the Interior of 13 September 2012 on medical examinations for persons detained by the Police (Dz.U. (Journal of Laws) of 2012, item 1102), point 1(3).

¹³⁶ RDPs in: Skarżysko Kamienna, Busko-Zdrój, Grójec and Garwolin.

¹³⁷ See: Reports of the Commissioner for Human Rights on the Activities of the National Mechanism for the Prevention of Torture in 2018 and in 2019.

The CPT points out that there are many advantages to establishing a specialized group of officers solely responsible for the care of persons detained by the police. This, among others, would lead to greater specialization, professionalism and efficiency of officers and would increase the sense of responsibility for persons in police custody. The practice could also contribute to prevent the misunderstood solidarity among police officers in cases of ill-treatment of detainees, and would strengthen the procedural safeguards against it. An officer could, for example, check on a person's admission to the RDP whether they have been informed about all their rights and whether it has been done in a manner understandable to them. The presence of such officers would also provide an opportunity for a detained person to file a formal complaint against the detaining officers, for example in the event of the use of excessive force in the process of detention.¹³⁸

DETENTION OF JUVENILES

In 2021, the National Mechanism for the Prevention of Torture carried out visits to nine facilities for juveniles: two juvenile correctional facilities¹³⁹, one juvenile correctional facility with a shelter for juveniles¹⁴⁰ and six youth care centres (YCC)¹⁴¹. A visit to one of the youth care centres was a re-visit, and is described in

¹³⁸ See: 28th General Report of the CPT, CPT/Inf (2019) 9, paras. 83-85.

¹³⁹ YCC in Sadowice (BPW.573.1.2021); YCC in Jerzmanice Zdrój (KMP.573.19.2021).

¹⁴⁰ Juvenile detention centre with a shelter for juveniles in Pszczyna-Łąka (KMP.573.14.2021).

¹⁴¹ YCC in Debrzno and Pozdamcze (KMP.573.2.2021): during the visit to the latter, the Director of the facility informed the NMPT representative of its planned closure by the managing authority, scheduled for 31 August 2021. On 21 January 2021, a relevant resolution no. 172/20/2021 was

a separate chapter¹⁴². The visits in some cases had the form of online monitoring and consisted in interviewing juveniles and staff of these establishments via an Internet communicator, which was caused by the COVID-19 epidemic.

The NMPT also carried out a visit to the juvenile correctional facility in Białystok. Its aim was to verify the degree of implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), forwarded to the Polish authorities in the report on the visit held in 2017¹⁴³.

GOOD PRACTICES

- conducting health condition assessment of juveniles, usually within 24 hours of their admission to the facility, and documenting any identified injuries with the use of so-called body maps¹⁴⁴,
- functioning of adjustment groups for juveniles who, due to their personal characteristics, have experienced or could experience difficulties in traditional rehabilitation groups¹⁴⁵,
- participation of juveniles in international youth exchanges within the ERASMUS+ educational programme of the European Commission and other bilateral programmes¹⁴⁶,

passed by the Kielce Poviát Managing Board. Visits were also carried out to the juvenile correctional facilities in Kraków Górka Narodowa (KMP.573.13.2021), Szczecin (Janusz Korczak Correctional facility) (KMP.573.16.2021), and Trzebież (KMP.573.17.2021).

¹⁴² YCC in Augustów (KMP.573.18.2019); see chapter *Re-visits*.

¹⁴³ Police establishment for children in Białystok (KMP.573.12.2021), see chapter *Thematic visits*.

¹⁴⁴ YCCs in Debrzno and in Szczecin.

¹⁴⁵ YCC in Debrzno.

¹⁴⁶ YCC in Trzebież.

- organization of self-empowering activities for juveniles before leaving the facility, including paternity workshops explaining the importance of father's role, and workshops with National Labour Inspectorate staff¹⁴⁷,
- an individual support programme for juveniles showing or reporting addiction to psychoactive substances¹⁴⁸,
- a support programme for newly admitted juveniles and the system of individual support providers to them¹⁴⁹,
- a specialist programme called *I will be a father one day, too*, teaching the participants how to care for young children¹⁵⁰,
- regular visits by a psychiatrist to the facility¹⁵¹,
- use of radio devices and pagers for security purposes¹⁵².

SYSTEMIC PROBLEMS¹⁵³

1. Lack of specialized juvenile educational centres

In the current legal system, YCCs are divided into ones providing social rehabilitation and ones for social rehabilitation of minors with low degree of intellectual disability. There are no specialized facilities dedicated for juveniles

¹⁴⁷ YCC in Trzebież.

¹⁴⁸ YCC in Trzebież.

¹⁴⁹ YCC in Szczecin.

¹⁵⁰ Juvenile detention centre in Sadowice.

¹⁵¹ YCC in Podzamcze.

¹⁵² YCC in Podzamcze.

¹⁵³ Most of the systemic problems discussed herein were presented in the comments on the draft *Act on support and social rehabilitation of juvenile delinquents* of 20 July 2021.

with mental disorders, developmental disorders, alcohol or drug addiction (as in the case of juvenile correctional facilities). This causes a serious problem because juveniles with addictions or mental disorders require specialist attention and care. Staff members of juvenile educational centres are often not prepared to work with such juveniles and instead of focusing on strictly therapeutic interactions they refer them to occupational therapy.

2. Lack of systemic measures concerning the situation of pregnant minors and minor mothers and their new-born babies

Minor mothers who are detained should be able to constantly stay with their babies and to build emotional and family bonds with them rather than be allowed to occasionally see their babies remaining under a custody of other persons.

Unfortunately, despite the CHR's regular reporting of the issue in the NMPT annual reports since 2012, the general intervention letters sent to the Ministry of National Education and the Ministry of Justice and the highlighting of the need to introduce appropriate legislation in the opinions drawn up by the CHR on draft parliamentary acts, the problem still remains unresolved¹⁵⁴.

3. Conducting tests detecting psychoactive substances, breathalyser tests and pregnancy tests

Juvenile educational centres, despite having no powers to conduct tests for juveniles to detect alcohol and drugs in their bodies, still permit the conduct of such tests by their staff members.

¹⁵⁴ See: Reports of the Commissioner for Human Rights on the Activities of the National Mechanism for the Prevention of Torture for the years 2012-2019.

The Act of 26 October 1982 on juvenile delinquency proceedings¹⁵⁵ does not grant to any person other than the probation officer supervising a given juvenile delinquent the right to require them to undergo a test in order to detect the presence of alcohol or other substance causing intoxication.

The Commissioner for Human Rights, in his opinion on the draft amendment to the Act on Juvenile Delinquents, which introduced changes to the provisions on the operation of detention facilities for juveniles e.g. as youth care centres¹⁵⁶, highlighted the issue of preventive testing of juveniles upon their admission to the facility, in order to detect the presence of alcohol or other psychoactive substances in their bodies, using methods that do not require laboratory tests.

Similar objections were raised with regard to pregnancy tests conducted for juveniles. Only a doctor has the right to carry out an objective medical examination of a juvenile's health to determine whether the patient is pregnant and for how long.

A pregnancy test conducted at a facility can significantly interfere with the intimacy of a young woman. It can also be a strong emotional experience for her, which may be connected with the circumstances in which she got pregnant, her fears concerning the future and the lack of maternal instinct.

4. CCTV monitoring

The issue of the use of CCTV monitoring in juvenile educational centres and juvenile correctional facilities is not regulated in the *Act on juvenile delinquency*

¹⁵⁵ Dz. U. [Journal of Laws] of 2018, item 969.

¹⁵⁶ See chapter *Issuing opinions on legislative acts*.

proceedings, and therefore has been monitored by the Commissioner for Human Rights Defender for several years.

Monitoring of juvenile educational centres is partially regulated in the *Act of 14 December 2016 - Education Law*¹⁵⁷. However, in the opinion of the NMPT, the regulation fails to meet the standards of protection of respect for privacy and intimacy of juveniles. Moreover, it fails to regulate such important issues as monitoring of juveniles' bedrooms, masking intimate body parts in sanitary facilities, the methods of storing the recordings or access to recordings from the CCTV monitoring systems. There are no statutory regulations either on the use of cameras in correctional facilities.

The issue of installation of CCTV monitoring systems in juvenile educational centres and other facilities for juveniles has been taken into account in draft *Act on support and social rehabilitation of juvenile delinquents* of 20 July 2021, on which the Commissioner presented his comments¹⁵⁸.

5. No lower age limit for juveniles placed in YCCs

The provisions of the *Act on juvenile delinquency proceedings* do not determine the lower age limit for juveniles who may be placed at youth care centres in connection with being at risk of demoralization. The upper age limit is 18.

Placing a 10-year-old child in a facility for juveniles, together with 17-year-old youth, seems to entail more risks than opportunities for developing positive behaviour patterns in the child. First of all, even in the presence of behaviours that may be considered signs of demoralization, there are many possibilities to

¹⁵⁷ Article 108a thereof.

¹⁵⁸ See chapter *Issuing opinions on legislative acts*.

shape the personality of a young child, and the chances for success are much greater than in the case of adolescents.

6. Too late referrals to youth care centres

Under the current legislation, there are no provisions regulating the minimum period for which a juvenile may be placed in a juvenile educational centre in order to achieve the purpose for which they are placed there.

In one case a juvenile was placed in a JEC 12 days before his 18th birthday, and thus his stay there lasted less than two weeks.

Setting the minimum period necessary to carry out an effective social rehabilitation process or to achieve at least partial improvement in social functioning would help avoid situations in which juveniles are placed in YCCs for periods too short to conduct any work with them.

7. Psychiatric care and pharmacotherapy

The NMPT visits have shown that the diagnostics of psychiatric diseases and disorders in young people admitted to juvenile educational centres is sometimes incomplete, superficial and limited only to the description of symptoms, without analysing their possible causes.

In the opinion of the NMPT, the identification of the sources of problems is of particular importance in the case of juveniles from juvenile educational centres and correctional centres. Such juveniles most often come from dysfunctional families and often have been through traumatic situations. A significant problem in this field is also the fact during visits to psychiatrists, which often last below twenty minutes, information on the patient is provided by a staff member of the

facility at which the juvenile causes problems. In such a situation, a correct diagnosis of the juvenile may be difficult, given that the relationship between them and the staff member is dominated by the latter. The conduct of only a brief interview and the identification of the symptoms (e.g. behavioural disorders) may, in such a situation, result in the application of only pharmacological and symptomatic treatment which does not address the causes of the juvenile's behaviour.

The National Mechanism has received information that some juveniles admitted to the facilities with the recommendation to take large doses of psychotropic drugs have difficulties in proper functioning in the school community, and educational work with them is also difficult.

At one of the facilities¹⁵⁹ the visiting team had doubts regarding the following situations:

- The documentation of one of the juveniles who, at the time of diagnosis, was under the care of a juvenile educational centre, contained the following description: based on the information received, the boy is disobedient, imposes his opinions, is stubborn in discussions and demonstrates impulsive behaviour. The description suggests that the information was provided by a guardian from the previous facility (in this case, orphanage from which the juvenile was transferred to the YCC. The used statements such as "imposes his opinions, is stubborn in discussions, demonstrates impulsive behaviour" may suggest communication problems between the juvenile and the facility's staff, which should be solved at the educational rather than medical level. The medical records also showed that juveniles who had undergone treatment in a psychiatric hospital were taking from a few to a dozen tablets per day. In

¹⁵⁹ YCC in Debrzno.

the context of the dosage of the drugs, it should be pointed out that polypharmacotherapy in children and youth is not recommended due to possible side effects and the related risk of cognitive disorders and learning difficulties. The staff of the facility also confirmed in the interviews with the NMPT representatives that juveniles placed in the facility with a recommendation to take large doses of psychotropic drugs had difficulties in proper functioning in the school community and that work with them was difficult.

- Another example of inappropriate psychiatric treatment was the case of a nine-year-old boy treated with doses that could limit his cognitive processes. In that case, diagnosis was difficult as the boy had been under institutional care since the age of 3. The boy's reactions at the facility were related to him being teased by his peers. His behaviour was positively assessed by the hospital. The negative assessment by the juvenile facility could be caused by the boy's conflicts with other children and the inability to solve them. The boy was treated with sedatives (at too high doses) although the source of his problems was different. In such cases it would be desirable to focus on prevention of violent behaviour in the facility, and not to use pharmacotherapy.

The NMPT would like to emphasize that pharmacotherapy without psychotherapeutic support cannot prevent or "cure" the demoralization processes in children and adolescents, which processes are counteracted by juvenile facilities. In most of the analysed cases juveniles were diagnosed with activity and attention disorders as well as behavioural disorders. Those juveniles came from dysfunctional, violent and neglectful families. Their behaviour resulted from post-traumatic stress, mood disorders (caused by ill treatment), adjustment disorders and relationship disorders. This fact should be a basis of

the decision-making process aimed at using various forms of psychotherapy and individualised pharmacotherapy.

8. Insufficient access to psychotherapists

Juvenile educational centres employ psychologists but often in numbers too low to provide adequate support to every juvenile. Juveniles often have traumatic experiences or serious emotional deficits and thus require psychotherapeutic support.

Access to psychotherapists for children and adolescents is also difficult outside juvenile educational centres. Centres far from large cities are most strongly affected. Therefore the recommendations of psychiatrists often remain unfulfilled there.

9. Lack of a family therapy system

The multiannual experience of the National Mechanism for the Prevention of Torture shows that JECs most often do not provide systemic support in the community from which a given juvenile comes. Work is limited to educational and psychological support for the juveniles but not for their families and other close persons. Employees of juvenile institutions report that juveniles who want to show their achievements, new skills and successes to their parents or other family members often come across criticism or disregard.

Conducting educational and therapeutic activities only with the juvenile, in isolation from the community, is ineffective. A minor placed in a juvenile educational centre will, after leaving the facility, return to the community which made him placed in the centre. He or she may also come across traumatic memories causing the recurrence of the problems that seemed to be resolved at the facility.

10. Body search of juveniles and room searching

The applicable provisions of law do not grant YCC personnel the right to conduct room or baggage searching or body search of juveniles. In correctional facilities, body search is carried out based on a regulation, not a parliamentary act¹⁶⁰. Moreover, the regulation does not state who is authorized to carry out body search, for what reasons it can be carried out and if there are any appeal measures.

It has to be borne in mind that body search is an invasive and potentially humiliating measure which strongly undermines juveniles' sense of dignity. The application of such a measure does not contribute to the achievement of educational goals, makes it difficult to build positive relationships and makes the facility thought about as having a strict regime similar to a prison.

NURSING HOMES AND OTHER LONG-TERM CARE AND TREATMENT FACILITIES

In 2021, the National Mechanism for the Prevention of Torture carried out:

- 6 on-site monitoring visits and 1 on-line monitoring visit to **private long term care facilities**¹⁶¹;

¹⁶⁰ Regulation of the Minister of Justice of 17 October 2001 on juvenile correctional facilities and shelters for juveniles (Dz. U. [Journal of Laws] of 2017, item 487).

¹⁶¹ Nursing Home „Słoneczny Parasol” in Sulbiny (KMP.573.5.2021), Nursing Home Willa Chopina in Toruń (KMP.573.8.2021), Family Nursing Home „Staś” in Gnojnik (KMP.573.10.2021), Nursing Home “Jurajskie Centrum Seniora Jak w Domu” in Ogrodzieniec (KMP.573.11.2021), Family Nursing Home “Rodzinny Dom Pomocy Siedlisko” in Landzmiery (KMP.573.15.2021), Private Nursing Home for the Elderly „Maria” in Skokowa (KMP.573.18.2021) and Nursing Home “Willa

- 2 on-site monitoring visits and 10 on-line monitoring visits to **social care homes** ¹⁶²;
- 1 on-site monitoring visit to a **residential medical care facility**¹⁶³.

At each of these facilities, the NMPT team monitored the pandemic-related situation and the restrictions limiting the rights of residents. It should be borne in mind that they were introduced with the aim to ensure safety during the pandemic, in connection with the fact that nursing homes and other long-term care facilities have residents most at risk of coronavirus infections: elderly, ill persons and people with disabilities.

Milanówek Rezydencja Seniora” in Milanówek (the interviews were held via the *Skype* communicator) (KMP.573.7.2021).

¹⁶² Social Care Home „Anna” in Krapkowice (KMP.575.14.2021), Social Care Home „Kraft Haus” in Toruń (KMP.573.9.2021), Social Care Home in Gdynia (the interviews were held via the *Skype* communicator) (KMP.575.1.2021); Social Care Home for Veterans „Bohaterów Westerplatte” in Rzeszów (the interviews were held via the *Skype* communicator) (KMP.575.2.2021), Social Care Home in Kozuchów (the interviews were held via the *Skype* communicator) (KMP.575.4.2021), Social Care Home „Dom Kombatanta” in Mocieszce (the interviews were held via the *Skype* communicator) (KMP.575.3.2021), Social Care Home in Sandomierz (the interviews were held via the *Skype* communicator) (KMP.575.6.2021), Social Care Home in Wrocław (the interviews were held via the *Skype* communicator) (KMP.575.7.2021), Social Care Home „Kombatant” in Olsztyn (the interviews were held via the *Skype* communicator) (KMP.575.10.2021), Social Care Home „Dom Kombatanta i Pioniera Ziemi Szczecińskiej” in Szczecin (the interviews were held via the *Skype* communicator) (KMP.575.8.2021), Social Care Home “Kardynała Józefa Glempa” in Bramki (the interviews were held via the *Skype* communicator) (KMP.575.11.2021) and Social Care Home of the Polish Association for the Blind (the interviews were held via the *Skype* communicator) (KMP.575.12.2021).

¹⁶³ Private Long-Term Care Facility "Jaśmin" in Stary Gózd (KMP.573.6.2021).

SYSTEMIC PROBLEMS

Despite the multiannual efforts of the NMPT, not all systemic problems have yet been solved. The NMPT is still awaiting appropriate legislative measures to be taken by the legislator with regard to:

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

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

The lack of appropriate systemic solutions leads to a situation where the service provision agreement is signed by the resident's carer who is not formally authorized to sign the document on behalf of the resident. The lack of the party's signature under the agreement makes it incomplete as it does not contain all elements required by Article 78(1) of the Civil Code, i.e. the party's signature constituting a basis for placing the resident in a care home.

It would be desirable, therefore, to regulate the issue in the generally applicable regulations, e.g. by introducing solutions similar to the consent of a custody court for the provision of a health service, specified in the *Act on the professions of physician and dentist*¹⁶⁴, or consent for the placement in a psychiatric hospital¹⁶⁵. The decision of a competent custody court would significantly

¹⁶⁴ See: Article 32 of the *Act of 5 December 1996 on the professions of physician and dentist* (Dz. U. of 2020, item 514).

¹⁶⁵ See: Articles 22 and 23 of the *Act of 19 August 1994 on mental health protection* (Dz. U. of 2020, item 685).

strengthen the protection of people admitted to such institutions, who at present in many cases cannot decide about their future.

This has been pointed out also by the CPT. In its report issued after the visit to Poland, the CPT called on the authorities to ensure that residents who are unable to express their valid consent to the placement in the facility, have no carer and have no possibility to leave the facility at any point are reported to the court¹⁶⁶.

2. CCTV monitoring

Installing cameras in nursing homes and other long-term care facilities may constitute intrusion into the privacy of residents, employees and other persons on the premises of the monitored facility. To ensure that the application of this type of supervision is legal, it is vital for it to meet the criteria specified in Article 31(3) of the Constitution, including the required statutory restrictions. This is especially important in the context of respecting the right to privacy defined in Article 47 of the Constitution. However, the issue of video monitoring in private care facilities has not yet been regulated at the statutory level although in some facilities there are cameras in corridors or common rooms.

3. Use of non-standard forms of protecting residents against falling down

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

¹⁶⁶ See: CPT report on the visit to Poland, CPT/Inf (2011)20, para. 166.

There are situations in the process of care provision where the use of security measures is necessary to protect the health of residents. However, their use has to be based on a number of procedural and material safeguards. From the point of view of Article 31(3) of the Constitution, these safeguards should be set out in an act of Parliament. The application of security procedures without a sufficient legal basis would constitute illegal activity that may be considered prohibited action (violation of bodily integrity or illegal deprivation of freedom). The use of non-standard security measures by untrained employees may also pose a risk to the health or life of a nursing home resident and may violate their dignity.

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

Residents with the alcoholism problem live in a majority of social care homes for the elderly or for physically ill persons (where they make up about 10% of the overall number of residents). At those institutions they have no access to appropriate therapy. They often disorganise the work of such facilities by posing a threat to other residents and staff members. Despite the changes in the legislation which provide the possibility to establish social care homes for people with the alcoholism problem, the number of such facilities is still insufficient throughout Poland¹⁶⁷.

5. The staff of nursing homes acting as legal guardians of incapacitated persons

A legal guardian should monitor whether the person under their guardianship receives appropriate care and whether their dignity is not violated. Personnel of care homes may have difficulties in maintaining objective approach when

¹⁶⁷ Ibid.

performing the role of legal guardians of the home's residents¹⁶⁸. Moreover, the fact that the staff of social welfare homes act as legal guardians of their residents imposes additional duties on the staff members at the expense of their free private time. This may, consequently, decrease their motivation to properly and reliably perform the guardianship duties.

6. Cooperation of social care homes with psychologists

The regulations in force do not require social care homes to employ a psychologist but only to provide access to a psychologist to their residents. In the opinion of the NMPT, a condition of appropriate care provision to social care homes' residents is regular and unrestricted access to a psychologist¹⁶⁹. This aspect was particularly visible during the coronavirus pandemic¹⁷⁰.

7. Insufficient supervision over social care homes by custody court judges

The obligation to conduct a judicial review of the legality of admission and stay of people with mental disorders at social care homes, and to monitor the observance of their rights and the living conditions at the facility applies only to social care homes for people who are mentally ill or have intellectual

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ See: Report of the Commissioner of Human Rights on the activities of the National Mechanism for the Prevention of Torture in 2020.

disabilities¹⁷¹. However, such people may also be placed at other types of homes which are excluded from the said monitoring despite having such residents¹⁷².

8. Employment of nurses and paramedics by social care homes

The regulations in force provide that the status of a nurse employed by a social care home is different than the status of a nurse employed by a health care facility. The regulations also do not provide for the possibility to employ paramedics at social care homes on positions corresponding to their education. These problems were reported to the Minister of Family and Social Policy and the Minister of Health in the Commissioner of Human Rights' general intervention letter discussed herein in the chapter *General intervention letters*.

PRIVATE LONG TERM CARE FACILITIES

IMPACT OF THE PANDEMIC ON THE FUNCTIONING OF THE FACILITIES

In the first half of 2021, on-site visits were not allowed. Contacts with the outside world were maintained via telephone or video calls. In two establishments, the possibility to meet with visitors in a room with a transparent partition was introduced, and residents could speak with visitors on the telephone¹⁷³. In-

¹⁷¹ See: Article 43(1) of the *Act of 19 August 1994 on mental health protection* (Journal of Laws of 2020, item 685).

¹⁷² See: Report of the Commissioner of Human Rights on the activities of the National Mechanism for the Prevention of Torture in 2018.

¹⁷³ Nursing Home „Słoneczny Parasol” in Sulbiny (KMP.573.5.2021) and Nursing Home „Jurajskie Centrum Seniora Jak w Domu” in Ogrodzieniec (KMP.573.11.2021).

person meetings with relatives were made available again in summer, with the sanitary rigour (masks, disinfection and spacing) observed. Such meetings usually took place outdoors. The visitors could also show a certificate of vaccination against COVID-19 or a negative test result.

Earlier in the year, at the time of the restrictions, new residents or those coming back from a stay at another place, including from a hospital, underwent a several-day quarantine in a separate part of the building in order to undergo a test for the presence of coronavirus¹⁷⁴. After the partial lifting of restrictions and the start of the vaccination programme, showing a negative test result was sufficient on admission or when returning to the facility¹⁷⁵.

The care homes reported no difficulties in access to personal protective equipment or disinfectants in 2021. They had sufficient amounts of them. One care home also had ozone-generating equipment and bactericidal and virucidal luminaires¹⁷⁶.

Residents of the care homes visited were vaccinated against coronavirus. There were exceptional situations in which residents refused to be vaccinated or could not be vaccinated for medical reasons. Vaccination was voluntary; residents were vaccinated in the facilities. Consent for vaccination of incapacitated persons had to be granted by their legal guardians.

The KMPT would like to remind that according to the law, vaccination against SARS-CoV-2 is subject to informed consent of the patient. If a patient is incapable

¹⁷⁴ Nursing Home „Jurajskie Centrum Seniora Jak w Domu” in Ogrodzieniec (KMP.573.11.2021), Nursing Home “Willa Milanówek Rezydencja Seniora” in Milanówek (KMP.573.7.2021).

¹⁷⁵ Nursing Home “Jurajskie Centrum Seniora Jak w Domu” in Ogrodzieniec (KMP.573.11.2021) and Family Nursing Home “Rodzinny Dom Pomocy Siedlisko” in Landzmiery (KMP.573.15.2021).

¹⁷⁶ Nursing Home “Jurajskie Centrum Seniora Jak w Domu” in Ogrodzieniec (KMP.573.11.2021).

of granting such consent, the consent of their statutory representative is required. If the patient does not have such a representative or is impossible to communicate with them, a substitute consent of the custody court is required pursuant to Article 32 of the Act on the professions of physician and dentist¹⁷⁷. Jurisdiction should be ascertained based on the district in which said medical service will be provided¹⁷⁸.

SOCIAL CARE HOMES

GOOD PRACTICES

- carrying out a survey as part of the Individual Support Plan immediately after admission in order to find out the resident's capabilities and expectations and to define an effective occupational therapy plan¹⁷⁹;
- employment of a psychologist¹⁸⁰ and a psychiatrist¹⁸¹;
- a rich cultural and educational offer including e.g.: choreography-based therapy, film-based therapy, theatre-based therapy, music-based therapy,

¹⁷⁷ See: Article 32 of the *Act of 5 December 1996 on the professions of physician and dentist* (Dz. U. of 2020, item 514).

¹⁷⁸ Ibid, Article 32(10).

¹⁷⁹ Social Care Home in Wrocław (KMP.575.7.2021).

¹⁸⁰ Social Care Home in Wrocław (KMP.575.7.2021), Social Care Home „Dom Kombatanta” in Olsztyn (KMP.575.10.2021), Social Care Home „Dom Kombatanta i Pioniera Ziemi Szczecińskiej” in Szczecin (KMP.575.8.2021), Social Care Home “Kardynała Józefa Glempa” in Bramki (KMP.575.11.2021) and Social Care Home of the Polish Association for the Blind (KMP.575.12.2021).

¹⁸¹ Social Care Home „Dom Kombatanta i Pioniera Ziemi Szczecińskiej” in Szczecin (KMP.575.8.2021).

nature and ecology-devoted meetings, visits to animal shelters¹⁸²;
participation in lectures given by representatives of the Pomeranian Bar Association as part of the "Lawyers Are Helpful in Life" programme,
participation in "virtual trips" organised by the Regional Centre on International Debates in Gdańsk, participation in English language classes, meetings of a support group "Nadzieja" ["Hope"] for people with the alcohol problem¹⁸³;

- development of individual adaptation plans for new residents, in cooperation with their relatives¹⁸⁴;
- a wide range of therapies and physiotherapies, e.g. handicraft workshops, functional training workshops, sensory stimulation workshops, massage workshops¹⁸⁵; participation in Zumba lessons¹⁸⁶;
- assignment of permanent carers to perform hygiene routine for dependent residents¹⁸⁷;
- establishment of foundations and associations aimed at supporting the work of Social Care Homes¹⁸⁸.

¹⁸² Social Care Home „Dom Kombatant” in Olsztyn (KMP.575.10.2021), Social Care Home in Koźuchów (KMP.575.4.201).

¹⁸³ Social Care Home in Gdynia (KMP.575.1.2021).

¹⁸⁴ Ibid.

¹⁸⁵ Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021) and Social Care Home in Koźuchów (KMP.575.4.2021).

¹⁸⁶ Social Care Home in Gdynia (KMP.575.1.2021).

¹⁸⁷ Ibid.

¹⁸⁸ Ibid, Social Care Home „Anna” in Krapkowice (KMP.575.14.2021).

IMPACT OF THE PANDEMIC ON THE WORK OF SOCIAL CARE HOMES

In line with the recommendations of the Minister of Family, Labour and Social Policy¹⁸⁹, in March 2021 the restrictions applicable to care facilities in connection with the ongoing coronavirus pandemic were partially lifted.

Until March 2021, residents were not allowed to leave the social care homes to stay overnight elsewhere, or to meet in person with relatives in some cases. Contacts with families and friends were mainly maintained via mobile phones, landline telephones and telephone or computer applications¹⁹⁰. Some of the facilities allowed “balcony meetings”¹⁹¹, “meetings across the doors”¹⁹², or

¹⁸⁹ Stanisław Szwed, Secretary of State at the Ministry of Family and Social Policy, informed in his letter dated 4 March 2021, no. DPS.V.070.54.2021.JS, that it was possible again to carry out activities for residents also outside the premises of the facilities. Among others, the meetings with visitors from outside the institutions were also restored; residents could leave to stay at other places, and group activities were restarted for the residents. The deputy minister emphasised that any decisions in this respect should, however, depend on the epidemic situation in a given area as well as the assessment of the situation with regard to the vaccination of residents and employees in a given facility.

¹⁹⁰ Social Care Home for Veterans „Bohaterów Westerplatte” in Rzeszów (KMP.575.2.2021), Social Care Home in Wrocław (KMP.575.7.2021), Social Care Home in Sandomierz (KMP.575.6.2021), Social Care Home „Anna” in Krapkowice (KMP.575.14.2021), Social Care Home in Gdynia (KMP.575.1.2021), Social Care Home of the Polish Association for the Blind in Olsztyn (KMP.575.12.2021), Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021) and Social Care Home in Koźuchów (KMP.575.4.2021). In the latter two facilities, residents did not use Skype calls.

¹⁹¹ At the Social Care Home for Veterans „Bohaterów Westerplatte” in Rzeszów (KMP.575.2.2021), where every bedroom for residents has a balcony, meetings with relatives were held on the balconies.

¹⁹² Social Care Home in Koźuchów (KMP.575.4.2021).

“meetings across a window” with the use of mobile phones¹⁹³. There were also meetings within social care homes, held in a separate room where the visitor and the resident had a transparent partition sheet between them to prevent direct contact. Such meetings took place with the sanitary rigour maintained and the rooms were regularly disinfected¹⁹⁴.

Residents left social care homes in connection with important matters such as seeing a doctor, going to a court or a bank. Such meetings were organised for small groups and residents were usually accompanied by an employee of the institution maintaining the sanitary rigour¹⁹⁵.

Residents also received parcels from their relatives. The parcels were disinfected and quarantined for 24 hours before being delivered to a given resident. Staff members also went shopping for small items for the residents¹⁹⁶.

After the restrictions were partly lifted in March, meetings with relatives were held in special visiting rooms with the sanitary rigour maintained (e.g. so-called decontamination chambers were used in some facilities¹⁹⁷), and the number of visitors present in the visiting room at one time was limited, similarly as the

¹⁹³ Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021).

¹⁹⁴ Social Care Home in Gdynia (KMP.575.1.2021) and Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021).

¹⁹⁵ Social Care Home in Gdynia (KMP.575.1.2021), Social Care Home in Wrocław (KMP.575.7.2021), Social Care Home „Dom Kombatanta i Pioniera Ziemi Szczecińskiej” in Szczecin (KMP.575.8.2021) and Social Care Home in Koźuchów (KMP.575.4.2021).

¹⁹⁶ Social Care Home „Dom Kombatanta” in Mocieszce (KMP.575.3.2021), Social Care Home in Gdynia (KMP.575.1.2021), Social Care Home „Anna” in Krapkowice (KMP.575.14.2021) and Social Care Home in Koźuchów (KMP.575.4.2021).

¹⁹⁷ Social Care Home „Dom Kombatanta” in Mocieszce (KMP.575.3.2021).

duration of the visits. The planned visits to residents were announced in advance. In good weather conditions, visits took place in gardens or on terraces, also with the sanitary rigour maintained ¹⁹⁸.

Residents again could leave the facilities on their own as well as stay overnight for leaves¹⁹⁹. In one facility, unvaccinated persons could leave the nursing home when accompanied by a staff member²⁰⁰.

At the time of the strictest restrictions most of the homes decided to limit activities for residents, especially those conducted in large groups²⁰¹. Activities conducted by volunteers or persons from outside the facility were also stopped temporarily²⁰². Religious services were suspended in some facilities²⁰³ and

¹⁹⁸ Social Care Home „Dom Kombatanta i Pioniera Ziemi Szczecińskiej” in Szczecin (KMP.575.8.2021), Social Care Home “Kardynała Józefa Glempa” in Bramki (KMP.575.11.2021), Social Care Home for veterans, called „Bohaterów Westerplatte” in Rzeszów (KMP.575.2.2021), Social Care Home in Wrocław (KMP.575.7.2021), Social Care Home in Sandomierz (KMP.575.6.2021), Social Care Home „Anna” in Krapkowice (KMP.575.14.2021), Social Care Home of the Polish Association for the Blind in Olsztyn (KMP.575.12.2021), Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021) and Social Care Home in Koźuchów (KMP.575.4.2021).

¹⁹⁹ Social Care Home in Sandomierz (KMP.575.6.2021), Social Care Home of the Polish Association for the Blind in Olsztyn (KMP.575.12.2021) and Social Care Home “Kardynała Józefa Glempa” in Bramki (KMP.575.11.2021).

²⁰⁰ Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021).

²⁰¹ Social Care Home in Wrocław (KMP.575.7.2021).

²⁰² Social Care Home for veterans, called „Bohaterów Westerplatte” in Rzeszów (KMP.575.2.2021) and Social Care Home in Gdynia (KMP.575.1.2021).

²⁰³ Social Care Home in Koźuchów (KMP.575.4.2021), Social Care Home for veterans, called „Bohaterów Westerplatte” in Rzeszów (KMP.575.2.2021) and Social Care Home in Gdynia (KMP.575.1.2021).

contacts with priests were maintained on the telephone²⁰⁴. In one institution, the mass was conducted by a priest in the chapel and was broadcasted on the internal radio²⁰⁵.

Due to the introduced limitations, in particular the prohibitions regarding visits or leaving the facility for a leave, staff members of social welfare homes tried to carry out activities for residents by themselves, where possible with maintaining epidemiological safety, e.g. by:

- organising online meetings with the use of social communicators and with entities from outside; organisation of meetings outdoors (fitness activities, mental fitness activities and “relaxation through music” activities); organising meetings/concerts in front of the residents’ buildings; increasing the intensity of individual therapies, also using an interactive animal, a seal named “PARO”²⁰⁶;
- organising remotely held workshops and consultations with a psychologist²⁰⁷;
- encouraging residents to spend time outdoors and enjoy walking in the garden²⁰⁸;
- organising occupational therapy activities in small groups and increasing the amount of bedside therapy²⁰⁹;

²⁰⁴ Social Care Home in Gdynia (KMP.575.1.2021).

²⁰⁵ Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021).

²⁰⁶ Social Care Home in Wrocław (KMP.575.7.2021).

²⁰⁷ Social Care Home in Gdynia (KMP.575.1.2021).

²⁰⁸ Social Care Home of the Polish Association for the Blind in Olsztyn (KMP.575.12.2021) and Social Care Home „Dom Kombatanta” in Mocieszce (KMP.575.3.2021),

²⁰⁹ Social Care Home of the Polish Association for the Blind in Olsztyn (KMP.575.12.2021) and Social Care Home „Dom Kombatanta” in Mocieszce (KMP.575.3.2021).

- common watching of artistic performances broadcasts by other social care homes²¹⁰.

At the beginning of the year, in social care homes, when a new resident was admitted or returned from a hospital he or she was quarantined for about 10-14 days. The homes tried to assign separate wings/floors or specific rooms in their buildings for this purpose, together with assigned staff²¹¹. New residents or those returning from a hospital were not allowed to leave the quarantine area of the facility²¹². As a preventive measure, coronavirus testing was also performed during quarantine²¹³.

In the middle of the year, after the vaccination programme was started and the restrictions were eased, a negative coronavirus test was required for admission to a social care home²¹⁴. At one facility, only unvaccinated persons were quarantined²¹⁵. At some other social care homes people returning from a

²¹⁰ Social Care Home „Dom Kombatanta” in Mociesze (KMP.575.3.2021).

²¹¹ Social Care Home „Anna” in Krapkowice (KMP.575.14.2021), Social Care Home in Wrocław (KMP.575.7.2021) and Social Care Home in Gdynia (KMP.575.1.2021).

²¹² Social Care Home „Dom Kombatanta i Pioniera Ziemi Szczecińskiej” in Szczecin (KMP.575.8.2021).

²¹³ Social Care Home in Koźuchów (KMP.575.4.2021).

²¹⁴ Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021), Social Care Home „Anna” in Krapkowice (KMP.575.14.2021), Social Care Home „Dom Kombatanta” in Mociesze (KMP.575.3.2021), Social Care Home „Dom Kombatanta i Pioniera Ziemi Szczecińskiej” in Szczecin (KMP.575.8.2021) and Social Care Home “Kardynała Józefa Glempa” in Bramki (KMP.575.11.2021).

²¹⁵ Social Care Home “Kardynała Józefa Glempa” in Bramki (KMP.575.11.2021).

hospital or a leave were quarantined²¹⁶. At one facility, the tests were required for unvaccinated persons returning from a leave²¹⁷.

The visited establishments reported no difficulties in access to personal protective equipment in 2021²¹⁸. They had also adequate supplies of masks, gloves, aprons and disinfectants. Some of the social care homes were granted EU financial support for purchasing such products²¹⁹ and thus had decontaminators, ozone disinfectors, steam equipment, germicidal lamps, disinfectant mats, air purifiers, pulse oximeters, autoclaves, oxygen concentrators and other devices. The facilities also had additional funds for cash allowances paid to employees for

²¹⁶ Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021) and Social Care Home „Dom Kombatanta” in Mocieszce (KMP.575.3.2021) which also required a test before returning to the establishment.

²¹⁷ Social Care Home of the Polish Association for the Blind in Olsztyn (KMP.575.12.2021).

²¹⁸ Social Care Home in Wrocław (KMP.575.7.2021), Social Care Home „Kraft Haus” in Toruń (KMP.573.9.2021), Social Care Home „Dom Kombatanta i Pioniera Ziemi Szczecińskiej” in Szczecin (KMP.575.8.2021), Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021), Social Care Home in Koźuchów (KMP.575.4.2021) and Social Care Home in Gdynia (KMP.575.1.2021).

²¹⁹ Social Care Home for veterans, called „Bohaterów Westerplatte” in Rzeszów (KMP.575.2.2021) implemented a project entitled “Better tomorrow” (co-financed by the European Union under the European Social Fund, Priority Axis II: Effective public policies for the labour market, economy and education, Measure 2.8 Development of social services provided in the local environment, and the Operational Programme Knowledge, Education and Development 2014 - 2020); Social Care Home „Dom Kombatanta” in Mocieszce (KMP.575.3.2021) implemented a project entitled “Implementation of measures aimed at improving the epidemiological situation in the Podlaskie Voivodeship within the social care system, in connection with the SARS-CoV 2 coronavirus the project was co-financed by the European Union under the ESF; the home also implemented a project entitled “Safe future - support for social care homes in the Podlaskie Voivodeship”, co-financed by the European Union under the ESF; and Social Care Home in Koźuchów (KMP.575.4.2021) implemented a project entitled “Social Remedy” financed from the EU funds.

work in the extraordinary circumstances. As regards access to personal protective equipment, the facilities could also count on the support of voivodeship (province) authorities or powiat (county) authorities²²⁰. One of the social care homes purchased personal protective equipment thanks to funding from an association operating in support of the home²²¹.

According to the received information, for most residents of social care homes the source of knowledge about the coronavirus pandemic and the restrictions in place was mainly television, radio and the press. They also spoke about the pandemic with the staff and managers of their institutions²²².

Residents and staff of social care homes were one of the priority groups in terms of vaccination against coronavirus. Vaccination was voluntary. In the visited establishments, residents were vaccinated in the facilities. Consent for vaccination of incapacitated persons had to be granted by their legal guardians. The establishments also informed the factual guardians of the residents (i.e. their relatives) about the vaccination campaigns in the facilities. Persons who

²²⁰ Social Care Home „Anna” in Krapkowice (KMP.575.14.2021), Social Care Home „Dom Kombatanta” in Mocieszce (KMP.575.3.2021) and Social Care Home in Koźuchów (KMP.575.4.2021).

²²¹ Social Care Home „Anna” in Krapkowice (KMP.575.14.2021).

²²² Social Care Home „Dom Kombatanta” in Mocieszce (KMP.575.3.2021), Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021), Social Care Home in Wrocław (KMP.575.7.2021), Social Care Home in Koźuchów (KMP.575.4.2021) and Social Care Home in Gdynia (KMP.575.1.2021).

refused to be vaccinated or who had medical contraindications were not vaccinated²²³.

As regards residents who were not incapacitated but whose medical condition made it impossible for them to grant informed consent to the vaccination, various facilities followed various practices. At one home, such residents were vaccinated after receiving verbal consent (by telephone) of their closest family members. In cases where consent was not granted the persons could not be vaccinated²²⁴. There was one home where the vaccination recommendation was issued by a general practitioner; then, the facility representatives contacted the family members informing them of the possibility to get vaccinated. At one facility the decision was taken by a doctor from an external medical practice who was present on-site when residents were vaccinated²²⁵. Some social care homes applied to competent custody courts for the consent, and attached relevant medical documentation to the application²²⁶.

In the opinion of the NMPT this is currently the best solution as it guarantees the transparency of the decision-making process in such cases and is in line with the solutions adopted in Article 32 of the Act of 5 December 1996 on the professions

²²³ Social Care Home in Koźuchów (KMP.575.4.2021), Social Care Home „Anna” in Krapkowice (KMP.575.14.2021), Social Care Home „Kardynała Józefa Glempa” in Bramki (KMP.575.11.2021) and Social Care Home „Kraft Haus” in Toruń (KMP.573.9.2021).

²²⁴ Social Care Home for veterans, called „Bohaterów Westerplatte” in Rzeszów (KMP.575.2.2021).

²²⁵ Social Care Home „Dom Kombatanta i Pioniera Ziemi Szczecińskiej” in Szczecin (KMP.575.8.2021).

²²⁶ Social Care Home in Wrocław (KMP.575.7.2021), Social Care Home in Gdynia (KMP.575.1.2021), Social Care Home of the Polish Association for the Blind in Olsztyn (KMP.575.12.2021), Social Care Home „Kombatant” in Olsztyn (KMP.575.10.2021) and Social Care Home „Dom Kombatanta” in Mocieszce (KMP.575.3.2021).

of physician and dentist. The NMPT therefore recommends that a custody court's consent be sought for the provision of health care services, including vaccinations, to residents who are not incapacitated but with whom it is impossible to communicate.

At one facility, the NMPT representatives heard reports that the residents had not been examined by a doctor who should have approved the procedure, and that the doctor was not present during the vaccination process. This raises doubts due to the failure to assess whether there had been any contraindications to the vaccination²²⁷.

RESIDENTIAL MEDICAL CARE FACILITY

THE IMPACT OF THE PANDEMIC ON THE WORK OF THE CARE AND TREATMENT FACILITY

Starting from 1 July 2021, regular on-site visits at the facility were resumed. Before, contacts were maintained via residents' mobile phones and the home's telephone. In exceptional situations such as a resident's serious illness or terminal condition, family members could visit the resident with the sanitary rigour maintained (wearing an apron, a mask and gloves).

All newly admitted or unvaccinated patients or patients returning from a hospital were quarantined for 14 days in separate monitoring rooms. New or unvaccinated patients placed in those rooms were tested for COVID-19 and informed of the possibility to get vaccinated.

²²⁷ Social Care Home „Kraft Haus“ in Toruń (KMP.573.9.2021).

The facility reported that there had been no problems with access to personal protection equipment and disinfectants in 2021. The facility had sufficient amounts of them.

Vaccinations were available within the facility. The consent was required of the patient or their legal guardian in the case of incapacitated persons. The patients' legal guardians were also informed of the date of vaccination.

SOBERING-UP STATIONS

In 2021, the National Mechanism for the Prevention of Torture conducted monitoring visits to two sobering-up stations: at the Municipal Assistance Centre for People with the Alcoholism Problem in Kraków²²⁸ and Assistance Centre for People with the Alcoholism Problem in Wrocław²²⁹.

GOOD PRACTICES

- employing a therapy coordinator who can provide advice and support in the field of solving alcoholism-related problems;
- 24-hour helpline answered by an addiction therapist;
- providing clothing and footwear to people leaving a sobering-up station support and having no appropriate clothes;
- keeping an IT register of patients referred to hospitals, together with reasons for their referral, and of persons transferred to police officers (including the details of the police station).

²²⁸ See: Report on the NMPT visit to the Municipal Assistance Centre for People with the Alcoholism Problem in Kraków, carried out on 6 October 2021 (KMP.574.1.2021).

²²⁹ See: Report on the NMPT visit to the Assistance Centre for People with the Alcoholism Problem in Wrocław, carried out on 1 December 2021 (KMP.574.2.2021).

SYSTEMIC PROBLEMS

1. Employment of paramedics²³⁰

Pursuant to the Regulation on sobering-up stations and similar facilities contracted or run by local governments (hereinafter: the Regulation on sobering-up stations)²³¹, at a sobering-up station during every shift there has to be a doctor or a feldsher present. Because of the discontinuation of training in the profession, feldshers are now rarely met and it is necessary to employ a doctor at such stations.

The National Mechanism for the Prevention of Torture takes the view that the regulation should provide for the possibility of either a doctor or a paramedic being present during every shift. Given the specificity of work in sobering-up stations, it would be more reasonable to employ paramedics than doctors there. In most cases, work in a sobering-up station consists in emergency procedures (for which paramedics are most often trained) at a basic level. Also, employment of paramedics requires smaller financial resources. It should also be emphasized that work in a sobering-up station is specific, psychologically demanding and often unpredictable. Paramedics have more experience in dealing with aggressive persons, persons under the influence of alcohol or drugs, and are therefore better prepared to provide aid to such people in a sobering-up station.

²³⁰ The problem has already been reported to the Minister of Health. In 2016, the Commissioner for Human Rights sent a general intervention letter to then Minister of Health Konstanty Radziwiłł, requesting that a legislative initiative be taken to permit employment of paramedics in sobering-up stations, in order for them to perform duties currently performed by doctors or feldshers.

²³¹ See: Article 8(1) of the Regulation on sobering-up stations and similar facilities contracted or run by local governments.

Moreover, because of the shortage of doctors in Poland a sobering-up station is the last place chosen by doctors to work in. Due to the low number of feldshers there staff shortages and, as a consequence, too small number of sobering-up stations. Intoxicated persons are taken instead to police stations. If there is a risk to their health or life, an ambulance is called and medical aid is provided by paramedics²³².

RE-VISITS

In 2021, representatives of the NMPT conducted 4 re-visits to the following establishments: National Centre for the Prevention of Dissocial Behaviour in Gostynin, Juvenile Education Centre No. 4 in Augustów, Guarded Centre for Foreigners in Białystok and Remand Prison Warszawa - Grochów.

THEMATIC VISITS

In 2021 the NMPT continued the thematic visits started in 2020, checking the implementation of the recommendations made by the UN Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT) for the Polish authorities following visits to places of detention.

The observations of the NMPT indicate that most of the recommendations of the CPT and the SPT have not been implemented and that the lack of progress is persistent and is of systemic nature. In view of the above, persons deprived of

²³² Such a situation took place in Wrocław in November. Due to the vacancy in the doctor's position the sobering-up station operated only as a night shelter for homeless people. See: Report on the NMPT visit to the Assistance Centre for People with the Alcoholism Problem, in Wrocław (KMP.574.2.2021).

their liberty are at serious risk of ill-treatment (including acts of torture) and effective systemic measures are needed to eliminate the risk. Also, the fact that there is no separate crime of torture referred to in the regulations. This, in turn, may make it difficult to monitor the problem, impact the criminalization, of torture, the size of the penalties and the awareness of state officials and society in general.

In the opinion of the NMPT, the implementation of the recommendations of the CPT and the SPT requires coordinated systemic action of relevant institutions, including changes in the state's penal policy and in the applicable legislation. Effective prevention of torture does not consist only in visits by the monitoring bodies to places where people are deprived of their liberty, or in providing the necessary information. These are very important elements but not sufficient for effective prevention. For it to be effective, the recommendations and standards set out by these bodies must be fully implemented. Otherwise it would be difficult to speak of a coherent system aimed at eliminating the risk of torture or other cruel, inhuman or degrading treatment or punishment. Therefore, the recommendations of the CPT and the SPT should be taken into account by the authorities to the greatest possible extent.

The NMPT is also concerned that further lack of decisive action towards implementing the CPT recommendations may lead to a public statement being issued with regard to Poland, in connection with the Committee's powers under Article 10(2) of the European Convention for the Prevention of Torture of 26 November 1987. Such a possibility was mentioned by the CPT after its visits to Poland in 2013, 2017 and 2019.

A public statement issued with regard to Poland would be an official expression of disapproval by the CPT of the extent of their co-operation with the government to prevent torture and all forms of ill-treatment of persons deprived

of their liberty. It could also have legal implications, for example during court proceedings, including before the European Court of Human Rights in Strasbourg (which, in its judgements, explicitly refers to the CPT standards, comments and recommendations).

Conclusions on the visits were presented in detail in a thematic report on the implementation of the recommendations of the SPT and the CPT, presented to the Polish Government after the visits to Poland in 2017 and 2018. The report was published on the website of the Office of the Commissioner for Human Rights in January 2022²³³.

Recommendations of the NMPT:

1. The Government, the Parliament and other State institutions should recognise that the standards and recommendations of the CPT and the SPT constitute important achievements of our civilisation and a key element in the fight against torture. Therefore, the solutions developed by these institutions should be a permanent reference point for the state policy, and should always be taken into account when drafting legislation, strategies, policies, guidelines and regulations.
2. It is necessary to review the recommendations of the CPT and the SPT in terms of the possibility of amending the law accordingly. To this end, the government should enter into dialogue with the legislature, professional association bodies and civil society in order to find optimal solutions.
3. The relevant institutions should receive financial support to enable them to put into practice the recommendations of the CPT and the SPT.

²³³ <https://bip.brpo.gov.pl/pl/content/rpo-kmpt-miejsc-izolacji-implementacja-zalecen>

4. It is necessary to change the practice of the uniformed services and staff at places of detention. This requires a strong message from top managers of the different types of establishments, and systematic training which takes into account the standards and recommendations of the CPT and the SPT.
5. A separate crime of torture should be introduced into the Penal Code so as to meet the standards provided for in the UN Convention against Torture. The recommendations of international bodies (CAT, SPT, HRC) and the opinion of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) of 22 May 2018, No. CRIM-POL/325/2018 [TO] should be taken into account during the related legislative works.
6. Effective coordinated action is needed to disseminate the Istanbul Protocol among professional groups likely to come into contact with persons deprived of their liberty or with victims of violence. All acts of torture and other forms of ill-treatment should be diagnosed, documented, reported and prosecuted in line with the recommendations contained in the Istanbul Protocol. The document should also constitute a key subject in the training of the said professional groups.
7. The Polish Government should adopt the procedure of automatic publication of CPT reports and responses to the reports.