

COMMISSIONER FOR
HUMAN RIGHTS

Situation of foreigners in guarded centres during the Poland-Belarus border crisis

REPORT ON MONITORING VISITS
OF THE NATIONAL MECHANISM
FOR THE PREVENTION OF TORTURE

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Foreword

Migration pressures brought on by the Belarusian regime in mid-2021 have led to a rapid increase in the number of migrants crossing the state border in an irregular manner. Thousands of people, some of whom were fleeing war and persecution, while others were trying to fulfil their and their families' dreams of a better life, were treated instrumentally and forced into a trek that often threatened their lives and health.

The situation has forced public authorities to take measures aimed at securing the state border on the one hand, and on the other, at ensuring security and guaranteeing respect for the fundamental rights of migrants who have become victims of the political games of the Belarusian regime, including children, the elderly, people with often serious health problems or with experience of torture and other forms of violence.

Acting in haste triggered by extraordinary circumstances is always fraught with a high risk of violation of the rights of individuals. However, I would like to point out that the principle of respect for inherent and inalienable human dignity and the resulting prohibition of inhumane treatment leave no space for compromise as they are absolute in nature. This means that, regardless of circumstances, they cannot be restricted or suspended in any way. Respect for the dignity of every human being, regardless of his or her origin, legal status or motivations accompanying migration decisions, is a kind of guidepost that sets certain minimal standards which must be observed by state authorities and must not be overlooked when taking actions impacting the foreigners. That standard is a common foundation for the civilized world.

In my opinion, the need to protect human dignity takes on particular importance in the context of people in administrative detention, whose lives are controlled by the state administration. For this reason, isolation measures, the immanent

feature of which is the deprivation of basic human needs, should always be a last resort and used only in situations where alternative solutions cannot be adjudicated. It should also be borne in mind that the referral of foreigners to guarded centres does not involve suspicion of a crime, so the conditions and regime in the facilities should in no way mirror the situation observed in prisons.

The presence of independent observers in detention facilities is essential to ensure that the rights of persons deprived of their liberty are respected and to identify potential risks of mistreatment. The visits conducted by the National Mechanism for the Prevention of Torture (NMPT) to all guarded centres for foreigners, including those temporarily established due to the migration situation, were therefore a natural consequence of the observed increase in the number of migrants in detention. At the same time, they provided an opportunity for checking the level of implementation of the recommendations made by the NMPT in recent years, which were described e.g. in the previous thematic report on foreigners in administrative detention¹.

This Report summarizes months of observations by NMPT representatives, conducted in administrative detention centres for foreigners. In addition to identifying specific aspects for improvement, it presents an assessment of the systemic measures taken by state authorities through the prism of their impact on the situation of foreigners detained in guarded centres and the possibility of exercising their rights. The actions taken by the Commissioner for Human Rights with regard to the issue are also discussed.

This report is problem-oriented, with individual sections devoted to the implementation of specific rights of foreigners in detention. To this end, selected international standards and national legal frameworks are cited; systemic

¹ See: NMPT Report, *Obcokrajowcy w detencji administracyjnej* [Foreigners in Administrative Detention]. Results of NMPT monitoring in guarded centres for foreigners in Poland, 2021.

problems are identified and areas requiring corrective action in the opinion of the NMPT are pointed out. Therefore, I hope that, despite the sharp decline in the number of foreigners staying in guarded centres, recorded in the first half of 2022², the conclusions and recommendations presented in this report will trigger positive changes.

Marcin Wiącek

Commissioner for Human Rights

² According to information provided by the Border Guard, as of 2 June 2022, a total of 694 foreigners were in detention, including: at the GCF in Krosno Odrzańskie - 80; at the temporary GCF in Wędrzyn - 98; at the GCF and Detention Centre in Przemyśl - 136; at the GCF in Lesznowola - 176; at the GCF in Biała Podlaska - 37; at the GCF in Białystok - 71; at the temporary GCF in Czerwony Bór - 60; at the GCF in Kętrzyn - 36. This represents an almost threefold decrease compared to the state as of 31 December 2021 (a total of 1,755 people in guarded centres).

1. Methodology of NMPT visits

Acting based on Articles 4, 19 and 20 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 December 18, 2002³ (hereinafter: OPCAT), between 30 August 2021 and 29 April 2022 the National Mechanism for the Prevention of Torture (hereinafter: NMPT) conducted visits to the following guarded centres for foreigners (hereinafter: GCFs), temporary guarded centres for foreigners⁴ (hereinafter: temporary GCFs) arrests for foreigners (hereinafter: arrests):

- *ad hoc* visit⁵ to the GCF in Białystok on 30 August 2021;
- *ad hoc* visit to the temporary GCF in Czerwony Bór on 1 September 2021;
- *ad hoc* visit to the temporary GCF in Biała Podlaska on 2 September 2021;
- visit to the GCF in Krosno Odrzańskie on 18-19 October 2021;
- visit to the temporary GCF in Wędrzyn on 20-21 October 2021;
- visit to the GCF in Lesznowola on 9-10 November 2021;
- *ad hoc* visit to the temporary GCF in Czerwony Bór on 3 December 2021;
- visit to the GCF in Kętrzyn on 7-9 December 2021;
- visit to the GCF in Krosno Odrzańskie on 14-16 December 2021;
- visit to the temporary GCF in Wędrzyn on 14-16 December 2021;
- *ad hoc* visit to the GCF in Biała Pdlaska on 19 January 2022;
- *ad hoc* visit to the temporary GCF in Wędrzyn on 20-21 January 2022;
- visit to the GCF and arrest in Przemyśl on 31 January - 3 February 2022;
- *ad hoc* visit to the GCF in Lesznowola on 16 February 2022;

³ Dz.U. [Journal of Laws] 2007 no 30, item 192.

⁴ Due to the need to increase accommodation capacity, a decision was made to establish three temporary facilities that are branches of the Guarded Centres for Foreigners in Białystok, Biała Podlaska and Krosno Odrzańskie.

⁵ Ad hoc visits had not been included in the schedule prepared earlier.

- *ad hoc* visit to the GCF in Lesznowola on 29 April 2022.

The purpose of the visits was to check the conditions of detention and the treatment of foreigners deprived of their liberty, and in particular to assess the impact of the dynamic increase in the number of irregular migrants crossing the Polish-Belarusian border on the situation of foreigners placed in GCFs and on the observance of their fundamental rights. Of particular interest to the NMPT were issues concerning living conditions in the facilities as well as the provision of the so-called minimum anti-torture guarantees: the right to information, access to healthcare and mental health support, access to legal aid, the possibility to file a complaint or contact with the outside world. The NMPT visits were also focused on an assessment of effectiveness of identifying vulnerable individuals, i.e. those who require special treatment, including those who are victims of tortures and other forms of violence, and support provided to them.

Within the scope of their visits, the NMPT representatives inspected the rooms they had selected as well as the recreational, sports and walking areas, they conducted confidential interviews with foreigners placed in the centres concerned and with the staff thereof, they also reviewed documentation, took measurements of selected rooms and studied video surveillance recordings. The NMPT also requested the provision of additional written information to the authorities, in accordance with their jurisdiction. The foreigners interviewed by the NMPT representatives were informed about the prohibition under Article 21(1) of the OPCAT on reprisals against informants as well as the possibility of reporting such situations to the CHR Office.

Three visits of the NMPT were conducted with the participation of Hanna Machińska, Ph.D., Deputy Commissioner for Human Rights. During three other visits, the NMPT benefited from the support of two external experts in

psychology and identification of torture victims. Their observations and conclusions are reflected to the necessary extent further in this report⁶.

The visiting team did not experience any obstacles in exercising their NMPT mandate. Meetings with the Commanders-in-Chief of the Border Guard divisions within which the visited GCFs operate, as well as with the management and officers on duty at the facilities, were held in an atmosphere of constructive dialogue. The NMPT representatives were given access to all requested information, statistics and documents.

2. Actions taken by the Commissioner for Human Rights

Since the beginning of the crisis on the border between Poland and Belarus, the CHR has taken measures aimed at protecting the fundamental rights of foreigners who have arrived on the territory of the Republic of Poland, including those placed in guarded centres for foreigners.

Parallel to the visits conducted by representatives of the National Mechanism for the Prevention of Torture, independent inspections were carried out in detention facilities by staff of the Migrants' Rights and National Minorities Division of the Equal Treatment Department operating in the Office of the CHR. Their actions focused on assessing the observance of the rights of foreigners with regard to whom the Border Guard took any actions related to their stay on the territory of Poland, especially proceedings to impose on them the obligation to return to their country and the access of foreigners in the visited GCFs to procedures for granting international protection. The Division's staff also collected information necessary for the analysis of individual complaints of foreigners from GCFs, received by the CHR Office.

⁶ The NMPT visits to: the GCF in Krosno Odrzańskie on 18-19 October 2021; the temporary GCF in Wędrzyn on 20-21 October 2021; the GCF in Lesznowola on 9-10 November 2021.

On the occasion of their activities, the CHR and his Deputy, as well as representatives of the National Mechanism for the Prevention of Torture and the Equal Treatment Department, donated in-kind aid originating from donations to support foreigners staying in GCFs. In this regard, the CHR Office has liaised e.g. with the Polish Red Cross. The donations included winter clothing and footwear, hygiene products, toys and school supplies for children.

General intervention letters and other important letters⁷

The CHR paid particular attention to the situation of foreigners placed in the temporary Guarded Centre for Foreigners in Wędrzyn, located within a the military training ground. As a result of the first visit there, the CHR addressed comments to the Commander-in-Chief of the Border Guard and informed him of a difficult staffing situation and overcrowding of the GCF⁸. The CHR also pointed to the high risk of situations that constitute a violation of the fundamental rights of the foreigners as well as a possible threat to their safety and the safety of the Border Guard officers on duty at the facility. He also recalled that regardless of the observed migration situation and the related dynamic increase in the number of migrants resulting in the need to increase the accommodation capacities on the GCFs, the conditions therein cannot compromise the principle of respect for human dignity set forth in Article 30 of the Polish Constitution. At the same time, he conveyed his appreciation to the management and to the officers of the Border Guard, whose commitment and professionalism were particularly important at this difficult time.

⁷ See: [https://bip.brpo.gov.pl/sprawy-wazne-dla-](https://bip.brpo.gov.pl/sprawy-wazne-dla-obywateli?term_node_tid_depth=All&term_node_tid_depth_1=1022&term_node_tid_depth_2=1326)

[obywateli?term_node_tid_depth=All&term_node_tid_depth_1=1022&term_node_tid_depth_2=1326](https://bip.brpo.gov.pl/sprawy-wazne-dla-obywateli?term_node_tid_depth=All&term_node_tid_depth_1=1022&term_node_tid_depth_2=1326)

⁸ See: General Intervention Letter of the CHR to the Commander-in-Chief of the Border Guard of 19 November 2021, (KMP.572.1.2021.MZ).

Once again, the CHR turned to the Commander-in-Chief of the Border Guard⁹ in connection with the visit of his representatives to the temporary GCF in Wędrzyn, caused by a riot of the foreign migrants. The CHR addressed e.g. the placement of migrants in rooms which housed as many as 24 individuals, which made it impossible for them to have even minimal privacy, as well as proper supervision by officers of the foreign migrants' safety. Another problem noticed by the CHR was the lack of an offer of recreational and sports activities that could relieve the prevailing tension in a safe manner for both the foreigners themselves and the officers on duty at the centre. This factor compounded the bad atmosphere among the foreign migrants. Overcrowding at the facility remained an unresolved issue.

"In my opinion, the referral of more foreigners to the above-mentioned facility, in spite of space limitations and the prevailing overcrowding, means that the security threat to both the foreign migrants and the Border Guard officers on duty there remains at a consistently high level. I would like to emphasize that the severely limited living space in GCF in Wędrzyn, combined with procrastinated procedures related to the granting of international protection, result in a constantly deteriorating mood among the foreigners detained there. In my opinion, the threat of a renewed riot is very real."

In his response¹⁰ the Commander-in-Chief of the Border Guard thanked the CHR for interest in the situation in the GCF in Wędrzyn and for diagnosing the areas of potential risk. He also assured that issues related to the administrative detention of foreigners are a matter of constant interest, and that any comments provided regarding the needs of the foreigners in the GCF have been analysed in detail, providing important and valuable material necessary for the detention management process.

⁹ See: general intervention letter of 11 January 2022, (KMP.572.1.2021.MZ).

¹⁰ See general intervention letter of 18 January 2022, (KG-CU-III-1.072.8.2022).

The Commander-in-Chief also pointed to the urgent need to extend the capacity of administrative detention facilities for foreigners, which should enable the security of migrants for the duration of administrative procedures pending against them, in connection with the resulting migration pressure on the Polish-Belarusian section of the state border. He also assured that measures are being taken based on the need to ensure safety of both Border Guard officers and foreign migrants in the GCF.

Regarding the issue of the Wędrzyn branch, the Commander-in-Chief of the Border Guard informed that measures had been taken to reduce the level of admissions of foreigners to these facilities by restoring the possibility of admitting single males to an additional guarded centre. However, given the number of foreigners referred by competent courts to GCFs and the accommodation capacity of administrative detention facilities, it was impossible to implement the CHR's demand that representatives of the same ethnic, national and religious groups be placed in a single facility.

In connection with the observed phenomenon of mass referral of detained foreigners to GCFs by the courts issuing decisions on the subject, the CHR sent a letter to the presidents of 22 district courts which have jurisdiction over border areas and the capital city¹¹. In it, he reported on the preliminary conclusions of visits to GCFs while expressing serious concerns in the context of possible violations of the principle of respect for human dignity of the foreign migrants. At the same time, the CHR noted that the detention of migrants should be an extraordinarily coordinated measure to be adjudicated after taking account of the individual nature of each and every case and based on the principle of proportionality. Unfortunately, despite there are alternatives to detaining

¹¹ See a letter of 25 January 2022, (KMP.572.1.2021.PK).

foreigners seeking international protection, which exist in the Polish law, it is this ultima ratio measure that is adjudicated as a rule.

Of particular concern to the CHR were the cases revealed by the visiting team of foreign migrants who experienced violence and trauma, as well as those in poor mental and physical condition. At the same time, he stressed that the observed level of healthcare and mental health support provided in the GCFs was far from sufficient and, as such, could lead to foreign migrants' health deterioration through secondary victimization. Importantly, he also pointed out examples of case law of the European Court of Human Rights in cases against Poland in which violations of the Convention were found in connection with the detention of foreigners.

With this in mind, and in full respect for the principle of judicial independence, the CHR asked that judges be sensitized to the possibility of adjudicating alternative measures to detention, especially for families with children and unaccompanied minors, as well as for adults after experiences of torture in their countries of origin. He also asked that the letter be forwarded to the presidents of subordinate regional courts, which, as courts of first instance, issue decisions to place foreigners in GCFs.

3. Legality of stay at GCFs and arrests for foreigners

Under domestic law, the prerequisites for placing a foreigner in a GCF are listed in Article 398a of the Foreigners' Act of 12 December, 2013¹² (hereinafter: the Foreigners' Act) and Article 88a(1) of the Act of 13 June, 2003 on granting protection to foreigners on the territory of the Republic of Poland (hereinafter: the Act on granting protection to foreigners). The legislature has provided a non-

¹² Consolidated text: Dz.U. [Journal of Laws] 2021 item 2354.

final list the circumstances which may be the basis for the court's issuing an order for detention:

- the likelihood of issuing a deportation decision without specifying a deadline for voluntary return;
- issuing a deportation decision without without specifying a deadline for voluntary return and there is a need to secure its implementation;
- the need to secure the transfer of a foreigner to a third country on the basis of an international agreement on the transfer and reception of persons, when their immediate transfer to that country is not possible;
- failure of the foreigner to leave the territory of the Republic of Poland within the period specified in the deportation decision, and immediate execution of the decision is not possible.

In addition, foreigners applying for international protection in Poland can be sent to a GCF:

- in order to establish or verify their identity;
- in order to collect - with their participation - information on which the application for international protection is based, and which would be impossible to obtain without detention - in case there is a substantial likelihood of their escape;
- when there is a reasonable suspicion that the application for international protection has been submitted only to delay the issuance of, or to delay or prevent the implementation of, a deportation decision;
- when required for defence or state security or the protection of public safety and order;
- where there is a substantial likelihood that the applicant or a person on whose behalf the applicant is acting will abscond, and immediate transfer to

another Member State under the so-called Dublin procedure is impossible¹³.

Irrespective of the above the NMPT points out that in the light of international standards, referring irregular border crossers to detention facilities should be an extraordinary measure to be used only in cases where it is impossible to apply non-detention measures such as: regular reporting to a Border Guard authority, payment of bail, depositing a travel document or living at a place indicated by a court¹⁴.

The decision to detain a foreigner should be made in concreto, based on the principles of legality, finality and proportionality¹⁵.

- According to the assessment of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), automatic detention under administrative law carries the risk of incompatibility with e.g. the case law of the European Court of Human Rights. In exercising their power to deprive irregular migrants of their liberty, states should act selectively; detention should be used only after careful examination of each individual case¹⁶.

¹³ See Article 28 of Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180/31.

¹⁴ See Article 398(2) of the Foreigners' Act.

¹⁵ See SPT report on the 2019 visit to Macedonia, CAT/OP/MKD/1, para. 62; SPT report on the 2018 visit to Panama, CAT/OP/PAN/1, para. 121; UNHCR recommendations on criteria and standards applicable to the detention of asylum-seekers and alternatives to detention, Recommendation No. 4.2 para. 34; UN Special Rapporteur on the Human Rights of Migrants report, 25 April, 2017, Thirty-fifth session 6-23 June 2017 Agenda item 3, A/HRC/35/25/Add.1.

¹⁶ See CPT Nineteenth General Report, CPT/Inf (2009) 27, para. 80.

In accordance with Article 398 (1) of the Act on Foreigners and Article 88a (1) of the Act on Granting Protection to Foreigners, courts ruling on the placement of migrants in GCFs or in arrest for foreigners should examine the possibility of alternative measures to detention in each case.

It is also worth pointing out that foreigners deprived of their liberty should enjoy an effective remedy that allows them to receive a prompt decision on the legality of their detention issued by a judicial authority. The judicial review should include an oral hearing with legal assistance, free of charge for those who cannot cover its costs and with translation (when required). In addition, irregular migrants who are detained should be clearly informed of this legal remedy. The need for further detention should be examined periodically by an independent body¹⁷.

In this context, it should be noted that during their visits, the NMPT visiting team were repeatedly informed by foreign migrants at the GCF that they did not understand the applicable procedures and their legal situation due to a language barrier or lack of access to legal assistance. Some of the foreigners also pointed out that the court orders issued to extend their stay at the GCF were delivered to them with delay, which in practice made it impossible to file a complaint¹⁸.

In this regard, the NMPT recommends that efforts be made to ensure that each and every foreigner detained has an effective means of challenging a decision issued in their case. However, this will be impossible without reliable information on their rights, which the Border Guard is obliged to provide.

Response of Polish authorities to the border crisis

In addition to the existing legal framework which defines the prerequisites for detaining irregular migrants, decisions of a political nature have had a significant

¹⁷ Ibid, para. 86.

¹⁸ This topic is elaborated on in Section 6 of this Report.

impact on their situation. In view of the dynamic increase in the number of irregular migrants crossing the border between the Republic of Belarus and the Republic of Poland, observed since mid-2021, the authorities of Poland were forced to adjust the tools of their migration policy to the current situation.

The National Mechanism for the Prevention of Torture noted that **between 30 June and 31 December, 2021, the accommodation capacity available in detention facilities more than quadrupled, from 513 to 2103 beds**¹⁹. In this regard, it should be noted that in response to the current migration situation, a total of only 315 additional beds were offered in open-type facilities across the country, bringing their total number to 1,534²⁰. **According to the NMPT, the data presented clearly testify to the systemic preference for increasing the capacity of detention facilities at the expense of liberty measures** (for it should be noted that in connection with the migration situation in Poland, the Head of the Office for Foreigners has temporarily offered a building at the premises of the Biała Podlaska facility and part of the premises of the Czerwony Bór facility to the Border Guard for the purpose of creating a temporary GCF). It has to be underlined, however, that the process of increasing the capacity of detention facilities has not taken into account the need to proportionately increase access to e.g. healthcare or mental health support. **The NMPT therefore believes that the effect of the measures taken has been to reduce the GCFs to fulfil an isolation function only, which should not be the case given the legal status and special situation of foreign migrants.** At the same time, it should be emphasized that a large part of the irregularities in the operation of GCFs had already been identified by the NMPT in previous years and described in post-visit reports. This

¹⁹ According to the statistical data provided by the Commanders-in-Chief of Divisions and Facilities, within the jurisdiction of which the GCFs are located.

²⁰ See a letter from the Director of the Office of the Head of the Office for Foreigners to the Deputy Director of the Equal Treatment Team at the CHR's Office, of 7 February, 2022, BSZ.WKSI.0731.1.2022/RW.

fact leads to the belief that proper implementation of the NMPT's previous recommendations would have prevented at least some of the problems currently observed.

In the course of their visits, representatives of the NMPT had contact with foreign migrants, including families with minor children, whose physical and mental condition and other circumstances justified the belief that these persons should not be detained. Bearing in mind that the assessment of each individual case and a final decision on detention at a GCF belongs to courts, the Commissioner for Human Rights asked²¹ the presidents of 22 regional courts²² to sensitise judges to adjudicating measures which are alternative to detention, especially in case of families with minor children and unattended minors, as well as in case of adults with a history of tortures undergone in their countries of origin.

During one visit²³ an NMPT representative received information about placing six Afghan nationals at an arrest or foreigners. The men were detained two days earlier. The foreigners were not at a GCF prior to being arrested. In this situation, the court not only decided on the ultimate measure of deprivation of liberty, but chose its most stringent form.

The personal documentation of the foreigners implied that the Border Guard officers had detained them in connection with the illegal crossing of the Slovak-Polish border. The men were discovered in the cargo compartment of a truck trailer; they had no travel documents or documents authorizing them to enter and stay in the Republic of Poland. In the opinion of the arresting officers, there was also a reasonable suspicion of a crime under Article 264 para.2, i.e.:

²¹ See: general intervention letter of 25 January 2022, KMP.572.1.2021.PK.

²² A letter to presidents of regional courts in: Białystok, Bielsko-Biała, Gdańsk, Gliwice, Jelenia Góra, Koszalin, Krosno, Legnica, Lublin, Nowy Sącz, Olsztyn, Opole, Przemyśl, Rzeszów, Słupsk, Suwałki, Szczecin, Świdnica, Warsaw, Warsaw-Praga, Zamość and Zielona Góra.

²³ A visit to the GCF and Arrest for foreigners in Przemyśl between 31 January - 3 February 2022;

"Whoever crosses the border of the Republic of Poland in violation of the law, using violence, threats, deception or in cooperation with other persons, shall be punished by imprisonment for up to 3 years," as well as the risk of the foreigners' fleeing. At the same time, the detention reports of the aforementioned foreigners lacked information on any resistance they were to put up during the inspection and detention. Direct coercive measures were not used against detainees.

Regardless of the circumstances indicated, the Commander of the Border Guard Station requested the court to detain all six men directly at the arrest for foreigners for a period of three months. According to the grounds of the court's decision to put the Afghan nationals in detention at the arrest for foreigners (the grounds are identical in each decision): *"In the Court's opinion, in the case in question there are grounds for arresting the foreigner concerned, as the facts of the case show that he is not interested in complying with the legal order in force in the territory of the Republic of Poland, as he has crossed the border without any identity documents. Moreover, given the foreigner's attitude, namely providing false data and crossing the border while hiding in truck, as well as the fact that Poland was not his destination and he was headed for other Western European countries, it should be considered that he will not submit to the rules of a GCF."*

According to the NMPT, the facts of the case were not fundamentally different from the situations observed since the beginning of the crisis on the Polish-Belarusian border. This is because a vast majority of foreigners crossed the state border in violation of applicable laws, without having a residence title in the territory of the Republic of Poland. A significant number of foreigners detained also lacked identity documents, and the findings indicated that Poland was supposed to be only a transit country for them. However, these individuals were directed to GCFs rather than to arrests for foreigners.

According to the NMPT, the risk of disobeying the rules of stay at a GCF, which is a prerequisite for arresting a foreigner under Article 399(1) of the Act on Foreigners, should be examined on the basis of the specific attitude of the individual concerned. In particular, it seems that in order to make such an assessment, it is important to determine how the foreigner behaved during and immediately after his detention. According to the NMPT, direct detention of the aforementioned Afghan nationals was a measure grossly disproportionate to the acts they were accused of.

In this context, the court's assumption - that crossing the border illegally and not having documents should automatically indicate their disobedience to the rules of the GCFs - remains difficult to understand. In this situation, it should be borne in mind, in particular, that a stay in an arrest for foreigners, due to the rigor prevailing there, is a far greater inconvenience than a placement in a GCF. In view of the above, the decision concerning detention should be consequential and justified in each case by actual noncompliance with the rules and regulations of the GCF. Significantly, too, the information received shows that the designated Afghan nationals did not pose any problems since they had been taken into custody.

Detention of families with minor children

Placing a child in detention is a traumatic experience which exerts a devastating influence on the child's physical and mental development. Therefore, in any case, a decision to deprive a minor of his or her liberty must comply with the law, be a measure of last resort and be adjudicated for the shortest possible time.

Regardless of the legal situation and residence status or lack thereof, the EU Member States must be guided by the best interest of such a child when taking

any actions concerning the latter²⁴. And according to Article 37 of the UN Convention on the Rights of the Child²⁵:

States Parties shall ensure that:

no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

²⁴ See Article 24(2) of the EU Charter of Fundamental Rights.

²⁵ See Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November, 1989, Dz.U. [Journal of Laws] of 1991, No. 120, item 526.

Hence, in situations where the placement of minors in detention is necessary, the authorities should guarantee their special care and protection, including the implementation of all guarantees to minimize the risk of mistreatment²⁶.

- Places of detention in which children are held should be adapted to their needs and age, but above all, in no case can they have a punitive character²⁷. Importantly, children in GCFs should be provided with access to education, recreation and play.

In view of the right to respect for private and family life, set forth, among other things, in Article 17 of the International Covenant on Civil and Political Rights (hereinafter: ICCPR)²⁸ or in Article 8 of the European Convention on Human Rights (hereinafter: the Convention)²⁹, it is also the duty of the host state to ensure that a minor foreigner is not separated from his parents against his or her will. In view of the need to decide on a possible deprivation of liberty of the foreign minor's parents, the adjudicating authority should first seek alternative measures to detention³⁰.

The NMPT notes that contrary to the international standards cited above, according to which the detention of minors should be a measure of last resort, adjudicated in emergency situations, most of the GCFs in Poland were transformed into family-like facilities in the second half of 2021. The statistics

²⁶ See the ECHR judgment of 5 April, 2011 in *Rahimi v. Greece*, Application No. 8687/08.

²⁷ See Report of the UN Special Rapporteur on the Rights of Migrants to the Commission on Human Rights, 14 May, 2009, U.N. Doc. A/HRC/11/7; report to the UN General Assembly of 3 August, 2009, U.N. Doc. A/64/213.

²⁸ See International Covenant on Civil and Political Rights opened for signature in New York on 16 December, 1966, Dz.U. [Journal of Laws] 1977 no 38, item 167.

²⁹ European Convention on the Protection of Human Rights and Fundamental Freedoms made in Rome on 4 November 1950. Dz.U. [Journal of Laws] 1993 no 61, item 284., hereinafter: The Convention).

³⁰ See Report of the UN Special Rapporteur on the Rights of Migrants to the Commission on Human Rights, 4 August, 2010, para. 93.

provided also show that 456 attended minors were staying at the GCFs³¹. It is worth to underline here that the problem of child detention was pointed out by the National Mechanism in a previous thematic report³² concerning the situation at the GCFs.

The NMPT representatives visiting family-oriented GCFs encountered families with minor children who had been in detention for more than four months. At this point, it should be pointed out that lengthened deprivation of liberty may constitute a violation of the Convention and expose Poland to liability for damages.

With the above in mind, the NMPT recommends that a decision to place foreign minors in detention should always be the *ultima ratio* and should be preceded by a thorough analysis of a possibility to impose liberatory measures.

The above demand is reflected in the case law of the European Court of Human Rights, which in the past has accepted complaints against Poland brought by foreigners placed in GCFs.

In the judgment of April 10, 2018 in the case of *Bistieva and Others v. Poland*³³, the Court held that the placement of a family, a foreign woman with three minor children, in a GCF for almost 6 months involved a violation of their right to the protection of family life which is guaranteed by Article 8 of the Convention.

In the Court's view, the stay at the GCF and the resulting subjection of the family with children to living conditions typical of a penitentiary institution, constituted interference with the effective exercise of the right to family life. It was irrelevant to the finding of a violation that the family was not separated and all members of

³¹ Situation as at 31 December 2021.

³² See NMPT Report, *Obcokrajowcy w detencji administracyjnej* [Foreigners in Administrative Detention]. Results of NMPT monitoring in guarded centres for foreigners in Poland, 2021. Chapters 4.3. i 5.3.2.

³³ Application no 75157/14.

the family were living at the GCF concerned. According to the ECHR, the authorities adjudicating detention were obliged to take all necessary steps, limit the deprivation of liberty of the family with children and ensure that foreigners effectively exercise their right to family life.

The Court also held that the authorities did not treat detention as a measure of last resort, as they should have done, and did not properly assess the possibility of alternative measures to detention for foreigners, which raised doubts about due regard for the welfare of children.

The Court took an analogous view in *A.B. and Others v. Poland*³⁴, while stressing once again that the placement of a family, in this case a married couple with a minor child, in a GCF, and therefore in conditions typical of a penitentiary unit, constitutes an interference with the right to the protection of family life, regardless of the fact that the family is not separated in any way. Such interference may entail a violation of Article 8 of the Convention unless it can be justified on the basis of its para. 2, i.e. (-) the possibility of such interference arises from the domestic law, and (-) it is necessary in a democratic society for the protection of the values listed in Article 8(2) of the Convention (e.g. state security, public safety, the protection of order and the prevention of crime).

In the case in question, the ECHR did not negate the fact that there is a legal basis for placing families with minor children in a GCF. However, the judgment points out that it is incumbent on national authorities to balance the interests of an individual with those of society as a whole. In the Court's opinion, the facts of the case did not justify the family's referral to detention, as the possibility of alternative measures to detention and the welfare of the minor child were not properly considered.

³⁴ See the ECHR judgment of 4 April, 2020, Applications no. 15845/15 and 56300/15.

In *Bilalova and Others v. Poland*³⁵ the Court ruled a violation of the right to liberty and security of person guaranteed by Article 5(1) of the Convention against minor children placed in a GCF with their mother. Admittedly, among the exceptions justifying detention, the regulation lists e.g. lawful arrest or detention of a person to prevent their illegal entry into the territory of a state, or of a person against whom proceedings for expulsion or extradition are pending (Article 5(1)(f) of the Convention).

However, in cases where the person deprived of liberty is a minor, the ECHR additionally verifies whether the national authorities treated the detention measure as a measure of last resort, which could not be replaced by another, less severe for minors.

In doing so, the Court noted that even if the living conditions in a GCF are correct, this fact does not change the isolating nature of the facility. According to the ECHR, the authorities deciding on the detention of minors also failed to take the necessary steps to keep the duration of detention to a minimum³⁶.

Detention of unaccompanied minor foreigners

In light of international standards, unaccompanied minors should not, as a rule, be placed in detention facilities, and deprivation of liberty cannot, in any case, be justified solely by the fact of being unaccompanied or separated from adult guardians, as well as by their residence status or lack thereof³⁷. On a general basis, they should also have access to all the guarantees available to minors under the custody of their guardians. In particular, in all actions taken towards them, the authorities should be guided by their best interests. The Committee on

³⁵ See the ECHR judgment of 26 April, 2020, Application no 23685/14.

³⁶ The above mentioned ECHR's judgments were invoked by the CHR in a letter to the presidents of 22 regional court of 25 January 2022 (KMP.572.1.2021.PK).

³⁷ See Committee on the Rights of the Child, Treatment of Separated and Unaccompanied Children Residing Outside Their Country of Origin, General Comment No. 6, 1.09.2005, CRC/GC/2005/6, para. 61.

the Rights of the Child also called for all possible steps to be taken, including speeding up procedures, to release them from GCFs as soon as possible and send them to care facilities³⁸.

Significantly, it is incumbent on the authorities of the country where unaccompanied minors are staying to immediately provide them with care and accommodation in a place adapted to their needs. This obligation applies not only to unaccompanied minors seeking international protection, but also to those planning to lodge a relevant application in another country or wishing to join family members residing in another country³⁹.

Each unaccompanied minor foreigner should be assigned a guardian and/or legal representative. Evasion of the indicated obligations may lead to a violation of Article 3 of the Convention⁴⁰. The need to provide representation and care by a representative to an unaccompanied minor seeking international protection in EU Member States follows directly from the provisions of the so-called Reception Directive⁴¹.

Under domestic law, the situation of unaccompanied foreign minors in detention is regulated by Article 397 of the Act on Foreigners. In the case of detention on the territory of the Republic of Poland, the Border Guard applies to the court for placement in a foster care facility or in a GCF. Unaccompanied minors under the age of 15 and those applying for refugee status in Poland are not sent to GCFs. The court, when considering a request for placement in a GCF, guided by the welfare of the minor, is obliged to take into account, in particular: the degree of

³⁸ Ibid, in conclusion.

³⁹ See the ECHR judgment of 13, 2019 in *Khan v. France, Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, Application No. 14165/16.

⁴⁰ See the ECHR judgments in *Rahimi v. Greece*, paras. 90-95; *Khan v. France*, paras. 92-95.

⁴¹ See Article 24(1) of the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180/107.

physical and mental development, personality traits, circumstances of detention and personal conditions supporting placement in a GCF.

It should also be borne in mind that children, especially unaccompanied minors, are extremely vulnerable to violence and becoming victims of criminal acts, including human trafficking. In the event of their detention and actions taken against them thereafter, it is therefore necessary to carefully verify their family situation and any relationship with the adults with whom they travelled⁴².

In one of the family-oriented GCFs, the visiting team received information about two foreign minors residing there under the custody of an adult guardian who, during a conversation with an Education Team officer, expressed his unwillingness to continue to take care of one of the boys, while claiming that he had previously agreed to do so solely to improve his legal situation in Poland and avoid deportation.

According to the collected documentation the foreigners were detained together with 32 other people while attempting to illegally cross the Polish-German border in the cargo space of a vehicle. In the documentation compiled after the detention on the adult and the two minor Iraqi nationals, there was no information regarding any family ties between them. This subject was first mentioned in the justification for the motion to the court for sending the designated foreigners to a GCF. According to its wording, the adult foreigner *"travelled with the minors under his custody (...), (for whom he is the closest family member - an uncle) and 32 other persons (...)"* Significantly, the court, in deciding to place the man together with the boys in a family-oriented GCF, held that: *"(.). Also, the well-being of the minor detainees convinces that it is*

⁴² See OSCE Office for Democratic Institutions and Human Rights (ODIHR), National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons. A Practical Handbook - Second Edition, 2022, Chapter 5.8.

appropriate in this situation to place them in the GCF together with a person who is unrelated, however, known to them, as to whom they declare that they feel safer in his presence."

Regardless of the above, the guardian had already indicated during the initial interview at the GCF with the social worker that he was not related to the minors in any way and they had not known each other before. In turn, in connection with the incident at the GCF caused by one of the minors under his custody, the man was said to have reacted dismissively and trivialized the situation, making no attempt to talk with the minor to improve his behaviour. He also gave up his desire to continue providing care.

As a result, the Commander of the Border Guard Station, within which the GCF operates, asked the court to change the decision issued in such a way as to deprive the Iraqi citizen of custody of the minors, and then send them to an intervention-type care facility. The conduct of the Border Guard Commander should be considered correct, nevertheless, in the NMPT's opinion, at the stage of the motion for placement in the GCF and its judicial review, due diligence was not exercised in assessing the facts of the case. This had the effect of placing the minors in detention with a stranger who was not interested in taking proper care of them.

During a visit to Poland's only GCF where unaccompanied migrant minors are admitted, the NMPT representatives checked living conditions and the degree to which the facility was adapted to their needs⁴³. However, they did not have the opportunity to have one-on-one conversations with unaccompanied minors due to the disclosed case of SARS-CoV-2 corona virus infection and the associated isolation of the entire ward.

⁴³ A visit to the GCF in Kętrzyn on 7-9 December 2021;

Located on the ground floor of the building, the ward for unaccompanied foreign minors had a total of 20 beds. At the time of the activities, all beds were occupied. According to the statistics provided, a total of 50 unaccompanied minors were admitted to the GCF since 1 July to 31 December 2021. During the same period, 45 foreigners were released to foster care facilities.

As a result of its visits, the NMPT identified the following systemic problems with regard to the situation of unaccompanied foreign minors.

Providing representation to an unaccompanied minor foreigner

Under current national law, when an unaccompanied minor has declared to the Border Guard authority his or her intention to apply for international protection, the authority that accepted the declaration is obliged to immediately apply to the custody court having jurisdiction over the minor's place of stay for the appointment of a guardian to represent him or her in the proceedings for the granting of international protection, transfer to another Member State on the basis of Regulation 604/2013, the provision of social assistance and assistance in the voluntary return to his or her country of origin⁴⁴. The purpose of establishing a court-appointed guardian is primarily to provide the foreigner with support during the proceedings, which is dictated by their young age and limited ability to understand their legal situation and the ongoing procedures.

In this context, it should be noted that there is no analogous obligation in the Polish legal system to provide representation to an unaccompanied minor foreigner who is not seeking international protection. In the opinion of the NMPT, the differentiation of the legal situation of foreigners seeking protection and those in relation to whom deportation proceedings are pending (or a decision on this matter has been issued) is unjustified and aggravates the

⁴⁴ See Article 61(1)(3) of the Act on Granting Protection to Foreigners in the Territory of the Republic of Poland.

situation of unaccompanied minors who, for various reasons (including lack of understanding of the procedures in force in Poland), have not declared their willingness to apply for refugee status. **The NMPT takes the position that it is not the procedure that should determine the possibility of using a court-appointed guardian, but the young age of the migrant and the resulting limited ability to manage his or her affairs in the most favourable way.** The presence within the structure of the GCFs of the so-called "deportation caseworkers", i.e. Border Guard officers whose task is to handle the deportation administratively, as well as to provide the foreigner with information on the regulations and stages of the process, should be considered insufficient in this regard⁴⁵. In addition to the language barrier, as a result of which other foreign migrants are often the only real source of information, the NMPT also noted during that due to overcrowding in the GCFs and the multitude of cases handled by deportation caseworkers, foreigners have virtually no contact with them.

In view of the guiding principle of state authorities to be guided by the best interests of the child in all actions concerning him or her, any unaccompanied foreign minor in the territory of the Republic of Poland, especially those deprived of liberty, should have a person appointed to represent him or her before public authorities in proceedings pending with regard to him or her.

Lack of foster care facilities adapted to the special needs of unaccompanied foreign minors

Pursuant to Article 397(1)(2) of the Act on Foreigners, in the event of detention of a minor foreigner staying in the territory of the Republic of Poland, the court may place them in foster care facility. And according to Article 62(1) of the Act on

⁴⁵ See D. Niedźwiedzki, J. Schmidt, M. Stępka, P. Tacik, Strzeżone ośrodki dla cudzoziemców w Polsce jako kultura organizacyjna. [Guarded Centres for Foreigners in Poland as Organizational Culture] Legal, political, sociological and anthropological analysis. Expertise commissioned by the Committee for Migration Research of the Polish Academy of Sciences, Cracow-Poznań 2021, p. 53.

Granting Protection to Foreigners, the Border Guard authority that has accepted the declaration or application of an unaccompanied minor for international protection, or to whom another Member State has transferred an unaccompanied minor on the basis of the so-called Dublin procedure, shall bring the unaccompanied minor to a professional foster family performing the function of a family emergency shelter or an intervention-type care facility. According to information provided by the head of the GCF where unaccompanied minors are placed, in practice, foreigners are sent to intervention-type care facilities that have vacancies.

In the opinion of the NMPT, it is indisputable that, as a general rule, any alternative measure to detention is much more beneficial to the well-being of an unaccompanied foreign minor than placement at a GCF. Nonetheless, the regulations do not require employees of foster care facilities to obtain qualifications that are particularly relevant to the needs of an unaccompanied foreign minor, such as adequate language or intercultural communication skills⁴⁶.

It should also be borne in mind that foreign minors with experience of trauma may be placed in foster care facility. For this reason, it is particularly important that the employees there are able to provide them with adequate support.

Therefore, according to the NMPT, at least some of foster care facilities in Poland should be adapted to the special needs of unaccompanied foreign minors.

Determining the chronological age of unaccompanied foreigners

A significant number of foreigners held in GCFs at the time of the NMPT visits did not have identity documents issued in their country of origin at the time of

⁴⁶ See Article 98 of the Act of June 9, 2011 on Family Support and the Foster Care System, consolidated text: Dz.U. [Journal of Laws] 2022.447.

detention. As most of the foreigners interviewed by the NMPT indicated, their passports were taken away from them by people they paid to transport them to Europe, or by Belarusian officers.

Determining chronological age is crucial in the case of foreigners without an identity document who arrive in Poland alone and who, according to their declared date of birth, are under the age of 18. This is because the result of the survey determines the further fate of such minors and the care offered to them, especially the type of facility where they will be accommodated. And in the case of referral to a GCF, they are accommodated together with other unaccompanied minors. Confirmation that the foreigner is in fact a minor also dictates that his or her best interests, as a child, be taken into account in all actions taken against him or her and procedures underway.

- The reliability of the chronological age assessment procedure is enhanced by the use of several different testing methods, as the final decision is based on multiple pieces of evidence. Importantly, any evidence presented should be relevant to determining the age of the foreigner. The decision to choose specific means of age verification should be made taking into account the need to examine all factors, including: physical, psychological, developmental, environmental or cultural, aimed at achieving the greatest possible accuracy of results.

- It is also important that the examination be conducted by qualified professionals. Depending on the method chosen, they may be social workers, paediatricians, general practitioners, radiologists, (child) psychologists or other qualified professionals with experience in the study of child development⁴⁷.

With the above standard in mind, the NMPT is critical of the procedure set forth in the Act on Foreigners for determining a foreigner's chronological age, which consists solely of conducting a medical examination⁴⁸.

The NMPT representatives found that to assess the age of foreigners subjected to chronological age testing, in most cases a wrist X-ray was used, which is one of the most recognized and common methods. Nevertheless, the literature raises a possibility that skeletal development may vary from race to race⁴⁹, therefore, **in the opinion of the NMPT, the mode of verification of the age of foreigners should be comprehensive, also taking into account e.g. psychological, developmental or environmental factors.**

⁴⁷ See European Asylum Support Office (EASO), Age assessment practice in Europe, 2014, p. 26.

⁴⁸ See Article 397(4) of the Act on Foreigners.

⁴⁹ A study evaluating the value of the Greulich-Pylea method as a means of determining the bone age of healthy American children of European and African descent born after 1980 was conducted at the Department of Radiology at Los Angeles Children's Hospital. Radiograms of the hand and wrist of 534 children (265 boys, 269 girls) aged from birth to 19 years were analysed. The radiograms were analysed by two experienced paediatric radiologists who did not know the chronological age of the subjects. It has been proven that the maturation of the skeletal system of American children of European descent is significantly delayed compared to the maturation of the skeleton in children of African descent. The researchers confirmed the hypothesis that new standards for assessing bone age are needed to make the most accurate clinical decisions. See: T. Matthews-Brzozowska, R. Flieger; Metody oceny wieku kostnego i ich znaczenie w medycynie i stomatologii - przegląd piśmiennictwa [Methods of assessing bone age and their importance in medicine and dentistry - meta analysis; „Nowiny Lekarskie Journal” 2009, 78, 2, pp. 165-167.

The visiting team paid particular attention to the presence of male detainees whose date of birth was attributed to be 1 January, 2003 or 2004⁵⁰ who were accommodated at GCFs intended for adult males. According to the practice adopted by the Border Guard, such dates of birth are attributed to migrants who declare that they are minors. According to the letter provided by the Commander the Nadodrzański Border Guard Unit, as of December 31, 2021, there were 6 detainees at the GCF in Krosno Odrzanskie, and 23 detainees in the temporary GCF in Wędrzyn, whose date of birth was assumed to be 1 January, 2003.⁵¹ In case of 17 individuals, a survey was conducted to determine their actual age. The survey was ordered by the Commanders of the Border Guard stations that detained the foreigners. With regard to another 11 individuals, personal data was established by the detention officers based on the detainees' verbal statements, while 1 man held a passport issued by Iraqi authorities.

The NMPT representatives were approached by two foreigners transported from the GCF in Kętrzyn to the temporary GCF in Wędrzyn, who claimed to be minors. One of them, an Afghan citizen, showed the visiting team a printed photo of an identity document indicating birth on March 24, 2005. The unaccompanied foreigner was marked as a minor upon detention (due to the lack of documents, but only a photo of them, his date of birth was estimated at January 1, 2005) and by court decision was sent to the GCF in Kętrzyn to the ward for unaccompanied foreign minors. It was only after the following memo was submitted by the shift supervisor to the GCF: *"(...) in my opinion, the appearance of the foreigners may indicate that they are in fact older than the court's decisions would indicate (...)"* the young man was subjected to a bone examination, from which it was concluded *"without a doubt that the bone age of the above-mentioned foreigner*

⁵⁰ In case of the NMPT visits carried out in 2022.

⁵¹ Letter from the Commander-in-Chief of the Oder Branch of the Border Guard of 9 February, 2022.

according to standards corresponds to the image of an adult (bone age - equal to or above 18 years)."

The second foreigner, meanwhile, indicated that he had a photo of an identity document issued in Iraq stored in the memory of his cell phone, which he handed over for deposit. The man was taken to a GCF together with his older brother. He admitted that after being detained by Border Guard officers, out of fear of being separated from his brother, he gave a false date of birth indicating that he was of legal age (significantly, the foreigner's personal file included a printed photo of the first page of his passport indicating that he was born on September 12, 2004). After being transferred to a temporary GCF in Wędrzyn, the foreigner and his older brother were horrified by the conditions there; the boy was also afraid of violence from the foreigners with whom he was placed. Consequently, at the urging of his brother, he decided that he would do everything possible to be transferred to a facility for unaccompanied minors, according to his actual date of birth, even at the expense of separation from his immediate family.

In view of signals received concerning the possibility of unaccompanied foreign minors staying in adult male detention facilities, representatives of the NMPT analysed personal documentation of foreigners whose date of birth was determined as January 1, 2003. First of all, it should be emphasized that in the case of some of the foreigners, there was no information whatsoever about an examination conducted. The visiting team found only one description of the test with an indication of the margin of error, which the NMPT believes should be the minimum necessary in each case⁵²: *"Since there were doubts about the declared age of the foreigner, a dental examination, namely panoramic X-ray of teeth was*

⁵² Information on the margin of error for the survey conducted should be included under Article 397(4) of the Act on Foreigners.

conducted. The dentist (.) indicated, quote: "Full permanent dentition. Wisdom teeth fully developed. According to the literature, Harris and Nortje distinguish 5 phases of wisdom tooth development. The first features the development of 1/3 of the root of this tooth and is assigned an age of 15.8 +/- 1.4 years, and the last is defined as the convergence of the canal walls and corresponds to a chronological age of 19.2 +/- 1,2 years." Therefore, the foreigner should be considered an adult." In other cases, only terse information appeared, such as: "the result of the examination clearly indicates that the person examined is a person over the age of 18."

The NMPT representatives analysed personal records of two brothers residing in the GCF. In both cases, the date of birth was set at January 1, 2003, despite the fact that their files contained printed photos of identity documents showing that one of them was born on 20 April, 2004, and the other on 3 May, 2005.

Significantly, only one of the brothers underwent a wrist X-ray to determine his chronological age.

With the above in mind, the NMPT recommends that, in each case, any circumstances such as photographs of identity documents, be taken into account for the purposes of final assessment of chronological age, and any doubts be resolved in favour of the minor foreigner who makes the declaration. The NMPT also notes that when foreigners are subjected to an examination, the documentation should include a description of the examination along with the margin of error.

Detention of persons who experienced torture and other forms of violence

For many years, the NMPT has been pointing to the systemic problem of identifying foreigners who have experienced torture or any other form of

physical, mental or sexual violence⁵³. This is because proper identification makes it possible to avoid placing such people in closed institutions. Stressors such as, e.g. confined and restricted space; the need to conform to imposed rules and regulations; limited or no access to physical activities, sports, entertainment or cognitive activities; limited or no contact with the close persons while being forced to stay with strangers are immanent features of places of isolation. Their occurrence leads to deprivation of the basic needs of people deprived of liberty, making it impossible in practice to function properly in physical and mental aspects⁵⁴. It should be borne in mind that the fact of being placed in detention can in itself be a traumatizing factor, which is why it is so important that non-isolation measures be adjudicated against people with experience of violence in the broadest sense, thus reducing the risk of creating new traumas or aggravating existing ones⁵⁵.

In this regard, it should be noted that, in light of Article 400 of the Act on Foreigners, a decision to place a foreigner at a GCF or arrest shall not be issued if:

1. it could cause danger to the life or health of the foreigner;
2. the physical and mental condition of the foreigner may justify the presumption that the foreigner was subjected to violence.

In case of asylum seekers in Poland, the legislator has expanded the catalogue of subjects for whom detention is not applied to include applicants or the person

⁵³ See NMPT Report, *Obcokrajowcy w detencji administracyjnej* [Foreigners in Administrative Detention]. Results of NMPT monitoring in guarded centres for foreigners in Poland, 2021. Chapters 5.3.1.

⁵⁴ See Fundacja Różnosfera [Diversity Foundation], *Integrated System for Comprehensive Identification and Safeguarding of the Needs of Vulnerable Groups among Applicants for International Protection in Poland*, 2017, p. 75.

⁵⁵ See NMPT Report, *Obcokrajowcy w detencji administracyjnej* [Foreigners in Administrative Detention]. Results of NMPT monitoring in guarded centres for foreigners in Poland, 2021. Chapter 3.5.

on whose behalf the applicants are acting, if they are unaccompanied minors or persons with disabilities⁵⁶.

It should be emphasized that, as it stands, the indicated prerequisites are of a disjoint nature, so the court should refuse to issue a decision on placement in a GCF or arrest for foreigners whenever even one of them has been fulfilled.

Unfortunately, however, from the practice observed by the NMPT, it appears that in the case of persons already placed in an GCF, only the fulfilment of both prerequisites under Article 400 of the Act on Foreigners leads to the issuance of a decision on their release under Article 406(1)(2) of the said regulation.

However, it should be borne in mind that any case in which a decision was made to apply the release from the GCF on the basis of the cited regulation proves that the decision on placement in detention was made in violation of the law.

In the course of individual interviews conducted with foreigners staying in the facilities visited, the NMPT representatives received a lot of information on violence, sometimes escalating to torture, which migrants were said to have experienced in their country of origin or already after leaving the latter.

Moreover, some people reported acts of physical violence, the perpetrators of which were alleged to be officers of the Belarusian uniformed services who forced them to cross the state border with Poland in an unauthorised manner, often in places that posed a threat to their life and health. Some of those encountered with experience of torture or other forms of violence were placed in a temporary facility located on a working military training ground. As they indicated, the sounds of gunshots they heard significantly aggravated their mental state.

During a visit to the GCF in Krosno Odrzanskie, the NMPT representatives spoke with a young man, a Congolese national. After being referred to the GCF, he

⁵⁶ See Article 88a)(3)(2) of the Act on Granting Protection to Foreigners in the Territory of the Republic of Poland.

made a declaration of intent to apply for refugee status in Poland. Records reviewed showed that the man did not report any needs to officers regarding his mental or physical condition. The information raised doubts among the visiting team, as just 2 days after the conversation with an officer, the foreigner filed a complaint with the court against the decision on placement in the GCF, which was justified as follows: *"In my country of origin, I was brutally beaten and raped after being caught during sexual activities with a man. I was beaten by neighbours, then placed in the police station for a week, where I was beaten and raped by police officers because of my sexual orientation. After that, I was sent by my parents to a local church for exorcism and conversion therapy. I was held there for two weeks and was also raped. As a result, I have injuries to the anal area that were never properly treated."*

The foreigner also pointed out: *"My stay in the GCF also poses danger to my health, due to my injuries caused by the use of physical and sexual violence against me (...). I have been experiencing ailments as a result of sexual violence against me (including bleeding from the anal area), and I fear infection due to the fact that sanitation and medical care at the GCF are inadequate, especially with the increased number of foreigners currently accommodated there. The GCF is overcrowded, does not have constant, uninterrupted access to medical assistance, and due to the large number of foreign migrants, it is difficult to even consult [a doctor]"* Because the seven-day deadline was exceeded, the court refused to accept the complaint.

It should also be emphasized that after the interrogation in the international protection case, the psychologist present during the interrogation handed over the following staff note: *"I would like to kindly inform you that the patient is suffering from symptoms that may indicate that he is suffering from Post-Traumatic Stress Disorder F43.1., therefore it is necessary to enable him to consult a psychiatrist in the presence of a French interpreter. Due to the patient's*

mental state, it is advisable to release him from the GCF. A continued stay could cause mental deterioration and make treatment more difficult."

During a visit conducted at the Temporary GCF in Biała Podlaska, a one-on-one interview was conducted with a Somali citizen who stated that she had experienced physical violence in her country of origin. Both her mental state and the numerous injuries on her hands (including even circular scars indicating that they may have been caused by burns) made her version of events plausible. The woman also reported that she had similar injuries on her head.

In turn, the reviewed documentation showed that the woman told to Border Guard officers that she had been a victim of violence. In response to the visiting team's questions about her situation, Border Guard officers indicated that it was planned to place the woman under psychological observation.

What is particularly disturbing is that the Border Guard's internal document "Border Guard Rules for Handling Vulnerable Foreigners", the incompatibility of which with the Polish law and international standards has been pointed out by the CHR for many years, is still applicable at GCFs. In his 2017 General Intervention Letter to the Commander-in-Chief of the Border Guard the CHR pointed e.g. to the misconception, observed among Border Guard officers by both the NMPT and NGOs cooperating with the latter, that thanks to the solutions adopted in the document, they are able to provide adequate care at the GCF to foreigners who experienced torture or other forms of violence. At the same time, he recalled that such persons, regardless of the basis for their placement at the GCF, the type of violence suffered, or the place and circumstances in which they experienced it, should absolutely be released from detention as soon as there is probable suspicion of violence against them, as

explicitly stated in the relevant law. After all, placing victims of violence in GCFs is an unjustified prolongation of suffering for them, and in some cases can constitute a continuation of inhumane and degrading treatment and sometimes even torture⁵⁷.

At this point, it is worth noting that in the 2019 updated version of the document, some efforts have been made to align its content with current regulations.

In particular, in Part III, concerning a determination of the procedure for the identification of foreigners requiring special treatment at the stage of detention, it is stated that:

"A motion to the court for placement of a foreigner in the GCF shall be drawn up if:

1. the foreigner has been examined by a doctor and no circumstances have been found that would prevent a motion to the court for placement in the GCF (i.e., the circumstances referred to in Article 400 of the Act on Foreigners),
2. the aforementioned prerequisites for medical examinations do not exist, and based on the facts, the circumstances referred to in Article 400 of the Law on Foreigners cannot be confirmed."

It should be noted, however, that it is still not clear from the passage indicated that the occurrence of any of the statutory prerequisites should exclude submission of a motion for placement of a foreigner in a GCF. Moreover, the decision to conduct a medical examination is made by a Border Guard officer in cases where: there was a need to provide a foreigner with first medical aid during the detention; there is a fear that the foreigner is in a life or health-

⁵⁷ See: General Intervention Letter of the CHR to the Commander-in-Chief of the Border Guard of 17 June 2017, KMP.572.4.2016.AI.

threatening condition; the foreigner declares that he or she requires permanent or periodic medical treatment, the interruption of which would endanger his or her life or health; there is a suspicion of a contagious disease. Attention is drawn to the fact that missing among the above-mentioned prerequisites are situations in which an officer observed injuries on the foreigner's body or received information about violence used against the foreigner. This means that the decision to refer people who may have been victims of violence, including torture, for a medical examination is entirely up to the officer concerned.

Serious doubts have been raised about the preparation of officers and their actual ability to properly recognize signals indicating, among other things, that they are dealing with a foreigner who experienced torture. This provision is particularly worrisome because the need for medical knowledge on the part of the person in charge of detention is not indicated. There is also a lack of precise definition of the means and criteria by which the person conducting the activities is to assess whether a medical examination is necessary. Without being able to see the body, conducting auscultation, examine such basic parameters as blood pressure, glucose levels, saturation or body temperature, the person in charge of detention is unable to assess whether there is a risk of infectious disease or a life- or health-threatening condition. In addition, there is no requirement to ask a detainee about chronic illnesses and the use of medications, the omission of which may cause a threat to life or health. The document only provides for the situation in which the detainee reports it on his or her own initiative. This is fraught with a real risk of sudden deterioration of health, as a strong stress stimulus (and detention is one of these) causes a narrowing of the field of attention and fear, which can effectively eliminate initiative on the part of the detainee.

Particularly risky is a situation in which a detainee is experiencing negative consequences of past violence and/or trauma, or his or her cognitive, emotional,

social functions are temporarily or permanently reduced for other reasons. The risk is even greater for detainees who have been previously tortured, due to the presence of numerous stimuli similar to those in torture situations, which trigger re-traumatization (uniformed officers in charge of detention, restriction of movement, restriction of the space one is in and its appearance - such as the presence of bars, etc.). It is important to emphasize the conditional mode of the Act concerned and the fact that it indicates the likelihood of phenomena (danger to life or health; submission to violence) and refers to the future (risk of danger) and to the past (submission to violence) rather than to the present situation (i.e. apprehension). At the same time, evaluation of the condition of the detainee during the conduct of detention operations is the basis for assessing whether a medical examination should take place.

According to the NMPT, every person detained should undergo a mandatory medical examination before the Border Guard applies for placement in a GCF or an arrest for foreigners.

Given the above, it should be emphasized that the provisions describing identification duties from the moment of apprehension to the moment of a motion to the court contradict the provisions of the aforementioned law and the intention of the legislator. This is because with regard to the first prerequisite of Article 400 of the Act on Foreigners, the following are not subject to assessment:

- risk to life and health, i.e. the risk of deterioration of the current state of health, e.g. exacerbation of diseases under the influence of detention, the emergence or exacerbation of mental disorders due to re-traumatization and stress caused by detention;
- mental health status (neither a psychological nor psychiatric examination is required, with respect to the first prerequisite).

In the context of the second prerequisite, on the other hand, neither the mental state nor the physical state is verified in terms of the presumption of being subjected to violence (there is no directional psychological or psychiatric examination or medical evaluation of bodily injuries and their possible causes).

Regarding the determination of the procedure for identifying foreigners requiring special treatment after placement in a GCF (Part IV of the document), it should be noted that the Algorithm has been expanded, and subsequent verification stages have been specified. However, the updated version of the document still does not introduce a procedure providing for immediate release from the GCF of those who have experienced violence. Attention is drawn to the following passage in the document in particular:

"Actions taken after receiving the diagnosis of the above-mentioned specialists:

a) current psychophysical condition of a foreigner is stable and satisfactory, and there are no obvious symptoms indicating that he or she has been subjected to serious forms of violence - a note shall be made documenting the fact that the foreigner has been excluded from the group of vulnerable persons (...);

b) lack of obvious symptoms indicating that the foreigner has been subjected to serious forms of violence, however, the foreigner's current mental and physical state is well below normal, and requires therapeutic measures - the need for an in-house psychologist to assess whether appropriate therapy can be implemented under GCF conditions:

- if the start of the therapy is possible, the foreigner is subject to observation, using "observation sheets" and weekly notes, and the inclusion of therapy;

- if the therapy is not possible, an assessment is made of the appropriateness of releasing the foreigner in connection with Article 400(1) of the Act on Foreigners and placing him or her under the mechanism of institutional assistance;

c) there are obvious symptoms indicating that the foreigner has been subjected to serious forms of violence, and as a result, his or her current psychophysical condition is far below normal - a decision is issued to release the foreigner under Article 406(1)(2), in connection with the existence of the circumstances referred to in Article 400(2) of the Act on Foreigners, and in certain cases with simultaneous inclusion in the mechanism of institutional assistance. (...)"

The procedure cited above is inconsistent with the commonly applicable law for three reasons:

1. it is updated only when there are simultaneous symptoms of violence subjection and mental and physical condition is far below normal. In this case, it should be emphasized that according to the provision concerned, the basic circumstance that excludes the possibility of detention is the experience of violence, and the existence of a mental and physical condition that justifies the presumption of violence is not a sine qua non condition;
2. it narrows the level of violence to which a foreigner has been subjected, and which qualifies for GCF release, to "severe forms" thereof. Moreover, the glossary of definitions in Part II of the "Border Guard Rules for Handling Vulnerable Foreigners" only specifies the concept of violence, so that the specification of serious forms of violence is purely discretionary;
3. it mandates that "obvious symptoms indicating that the foreigner has been subjected to serious forms of violence" be taken into account when assessing

the situation, while under the Act a reasonable presumption of being subjected to violence is sufficient.

Taking into account the above-mentioned reasoning, as well as the fact that the updated Algorithm still does not correspond with the provisions of commonly applicable law or with international standards, including those arising from the Istanbul Protocol⁵⁸, **the NMPT recommends abandoning the procedure described in the document and creating a tool to effectively identify foreigners who have experienced torture or other forms of violence.**

According to the NMPT, it would be fair to replace the current internal document with two separate algorithms. The first should concern the early identification of victims of torture and violence, as a consequence of which those with suspected experience of violence would be immediately released from further detention and sent to open facilities. Similarly, alternatives to detention would be applied to non-applicants and those not declaring a desire to apply for international protection at this stage, for whom identification is possible. In particular, the algorithm should not include a complicated and drawn-out procedure for verifying violence, or an assessment of the impact of violence and torture on health, but should only state that the foreigner has been subjected to a change in the sentenced measure to freedom due to the allegation that the person has experienced violence, including torture. Such an action would be preventive with regard to the negative impact of detention on mental health.

The second Algorithm should address the assessment of health status (including the assessment of mental health status) in relation to the potential risk of its deterioration or threat to life in a situation of continued detention. In this context, it would be a good idea to create a catalogue of diseases and mental

⁵⁸ See Office of the United Nations Commissioner for Human Rights, Istanbul Protocol. Manual for Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Professional Training Series No. 8/Rev.1, 2004.

disorders that constitute a threat to life or deterioration of health in the event of further deprivation of freedom. This catalogue should not only be reduced to diseases or individual factors, but it should also include recommended actions if, in a particular situation, a facility does not have the capacity to provide adequate care and the detention of a person would involve the risk of deterioration of his or her health. Importantly, the two Algorithms should be used separately.

The NMPT also raised doubts about the standard statement appearing in the Health Service manager's responses to an inquiry from the head of one of the GCFs about the existence of grounds under Article 400 of the Act on Foreigners: *"We would like to inform you that the continued stay of the foreigner as of today does not pose a threat to his life or health. The above-mentioned foreigner was not diagnosed with PTSD (based on medical records)."* A fundamental concern of the NMPT is the use of only one of a number of mental disorders to justify the possibility of prolonging detention. Indeed, it should be emphasized that post-traumatic stress disorder is only one of many possible disorders that can be developed in response to traumatic experiences. In addition to PTSD, typical psychological reactions in such situations include affective disorders (depression of varying levels of severity) and anxiety disorders. **According to experts, when identifying the special needs of a foreigner, a whole spectrum of possible psychological reactions should be taken into account⁵⁹.**

4. Psychological services

The experience of migration, especially forced migration, is a factor that weighs heavily on the human mental system. Foreigners in detention facilities, in addition to the often difficult situations they have experienced in their countries

⁵⁹ See Fundacja Różnosfera [Diversity Foundation], Integrated System for Comprehensive Identification and Safeguarding of the Needs of Vulnerable Groups among Applicants for International Protection in Poland, 2017, p. 75.

of origin and during their migration, are exposed to additional stress caused by isolation and the associated deprivation of basic needs.

- As the CPT stresses, adequate psychological assistance and access to psychiatric care should be provided to foreigners deprived of liberty. Importantly, the procedures and training programs applicable at the facilities should include in their scope the effective prevention of self-harm and suicide⁶⁰.

During each of the visits, the NMPT representatives came into contact with people with depressed moods. Interviews with foreigners revealed that their problems were conditioned by a multi-level sequence of difficult and stressful events. Their complexity involved e.g.:

- traumatic events in the country of origin of a traumatic and violent nature, on a mental and often physical level, including the experience of torture;
- separation from family and other close persons;
- traumatic loss or the current threat of loss of life by close persons and the fears caused by this;
- difficult experiences as deceived victims of the Belarusian regime, which took advantage of their situation and used them instrumentally, forcing them into the role of an object of political pressure on Poland and European Union Member States;
- traumatic experiences in the Polish-Belarusian borderland;
- health problems.

The factors indicated above are further compounded by the acculturative stress of staying in a country whose language and culture the foreigners did not

⁶⁰ See CPT reports on the visits in: Finland in 2014, [CPT/Inf (2015) 25, para. 36. Greece in 2015, [CPT/Inf (2016) 4, para. 117.

understand, and which, according to their previous experience, was not friendly and accepting to them. It is also important to point out the stress associated with the psychological reaction to the current detention and the specific conditions in which detainees have to live, including:

- a sense of constant tension and often danger as a result of having to share their small immediate living space with people who speak different languages and use different concepts, which they associate with the awareness of the possibility of intergroup or interpersonal conflicts and further violence based on these differences;
- fear for both their own and their close persons' futures, strongly aroused by being in detention and the multiplicity of procedures and situations that foreigners do not understand and cannot foresee consequences thereof;
- alienation and lack of communication with individuals and organizations that could potentially help reduce their anxiety levels and perceived tension by listening carefully, explaining their individual situation, recognizing and communicating their individual needs, and enabling adequate support;
- an additional factor in the case of the men placed in the temporary GCF in Wędrzyn was the tensions and intrusions provoked by the sounds of gunfire and explosions heard from the training ground where the facility is located. They were particularly troublesome for foreigners and could be traumatizing.

In many ways, the detention itself was not only incomprehensible to foreigners, but additionally traumatizing. Those who found themselves in Poland as a result of the propaganda campaign of the Belarusian authorities were confronted with a situation they did not expect. At the same time, it is worth noting that the scale of the phenomenon in the minds of many Polish citizens, as well as public institutions, has shifted the blame to the migrants themselves, sometimes causing hostility towards them. The accumulation of factors that have a negative impact on the mental state of foreigners has resulted in cases of self-harm or

suicide attempts, among others. The NPMT representatives also received information on hunger protests held in some facilities⁶¹.

During an *ad hoc* visit conducted at the GCF in Lesznowola on 29 April, 2022, a representative of the NMPT inspected the conditions of detention and treatment of five Syrian nationals who held a hunger protest at the facility in the period from 19 to 28 April, 2022. In a letter to the Head of the Office for Foreigners and the Commander-in-Chief of the Border Guard⁶², the men indicated, among other things: *"Upon arrival in Poland, each of us immediately applied for a refugee status, but none of us ended up in a refugee centre. We are detained in conditions that are derogatory to human dignity. After each transfer from one place to another - armed Border Guard officers make us strip naked and do squats, no one talks to us, does not inform us of our further fate, does not even address us by name, they call us by the numbers that the Border Guard has assigned to us. Some of us have experienced heavy torture we went through in Syrian prisons, we need help, therapy, we can't sleep, we have anxiety, heavy past experiences, and now and here in Poland we are kept like some kind of criminals, behind high walls and barbed wire, in isolation from close persons, friends, from the whole world, in a place from which we can't go anywhere, we can't participate in any normal life. None of us knows how much longer we have to endure this, because every time the end of detention approaches, we receive another decision to extend it, decisions that the courts issue behind our backs, without our participation. We do not accept such treatment, we no longer see*

⁶¹ There were hunger protests at the temporary GCF in Wędrzyn and at the GCF in Lesznowola. At the temporary GCF in Biała Podlaska a 13-year-old Iraqi female refused eat and consume liquids: <https://wiadomosci.gazeta.pl/wiadomosci /7,114883,28045033,biala-podlaska-13-letnia-migrantka-w-szpitalu-glodowala-z.html>.

⁶² The letter of 19 April, 2022, was forwarded to e.g. the Commissioner for Human Rights.

any other chance to improve our situation. Therefore, today we decide to take the radical step of going on hunger protest. (...)"

The information provided to the NMPT showed that the foreigners conducted the protest in their rooms, and as part of the protest they refused to take meals, consuming only liquids. Due to this fact, medical staff representatives double-checked vital signs each day, including body temperature, pulse, saturation, and blood pressure. The foreigners' weight and blood glucose levels were also checked.

When asked how they felt after completing the hunger strike, the foreigners complained about general weakening of the body due to not taking in food.

The protesters did not report facing any negative consequences from the officers due to their hunger protest. As they indicated, they were visited in their rooms by library staff. They also had individual discussions with a psychologist employed at the GCF, but were supposed to report a desire to meet with an external psychologist, however, this request was not fulfilled.

The protest ended after a meeting of foreigners with a representative of the Head of the Office for Foreigners on 28 April, 2022 (the meeting was also attended by the Commander- of the Border Guard Station in Lesznowola).

Particular risks are associated with the detention of foreigners with diagnosed psychiatric problems.

At one of the GCFs visited, the NMPT representatives spoke with a Somali citizen detained there with his minor daughter. According to the documentation gathered in his case, an incident occurred during his stay at the GCF, on which a staff memo was drawn up that read: *"Between 10:00 p.m. and 02:20 a.m. he behaved peculiarly (sitting on the floor, making strange noises in different languages and talking to himself). During the interview, he was unable to give*

reasons for his behaviour. Around 01:50 a.m. he came with a lit cigarette from the smoking room to the common room. Only after a louder verbal intervention did he stop smoking. He spent the entire night outside his room, leaving the toilet, hallway and common room untidy. No logical contact with the foreigner". Due to the foreigner's behaviour, he was referred to a psychiatric hospital, where he stayed for 10 days. According to the medical certificate attached to the foreigner's file, the man was diagnosed with: *"acute multiple psychotic disorder with symptoms of schizophrenia. Patient under the influence of acute psychotic sensations, requires urgent treatment in a psychiatric unit."*

In turn, according to the hospital record *"for several days there has been a change in behaviour, he became agitated, aggressive towards officers. In the Admittance Room he was restless, communicating in English and Arabic, speaking illogically, not answering questions precisely while conducting self-conversations. He claimed he was the king of the world and someone wanted to kill him. He did not consent to hospitalization. Admitted based on Article 23 of the Act on the Protection of Mental Health⁶³. Mental state on admission: restless and bizarre behaviour, orientation disturbed, utterances illogical, mood neutral, affect maladjusted, psychomotor drive increased, under the influence of acute psychotic experiences, reveals aggressive behaviour, drive sphere disturbed, disease criticism abolished. In the ward, the patient was initially significantly psychomotor agitated, and posed a danger to himself and those around him with his behaviour - for this reason, he required temporary mechanical immobilization in the form of magnetic limb belts. Gradually, under the influence of the applied pharmacotherapy, the patient's mental state improved and stabilized. Currently, the patient is calm, remains in an even mood and psychomotor drive, affectively adjusted. He is in logical verbal contact*

⁶³ See the Mental Health Protection Act of 19 August, 1994, consolidated version: Dz.U. [Journal of Laws] 2020 item 685.

(communicates in English), oriented comprehensively correctly. He does not reveal acute psychotic symptoms. He does not exhibit aggressive behaviour or tendencies toward self-aggression. He denies having suicidal thoughts and behaviours. He was discharged from the Ward with recommendations in a levelled mental state and in good general condition. He left the Ward accompanied by Border Guard officers."

It should also be noted that the foreigner's behaviour had already indicated a possible mental disorder in the past. Indeed, as indicated in a staff note on the application of direct coercive measures, which was drawn up at the previous GCF where the man was held: *"towards the foreigners placed in the family and women's ward, he used verbal violence in the form of challenges and threats of 'tonight I will kill two people,' despite a call for compliant behaviour by an authorized GCF security officer." The [...] resident psychologist interviewed him[...] together with the social worker, as a result of which, at 1:30 p.m., the above-mentioned measure of direct coercion in the form of an isolation room was terminated, and as of 1:30 p.m., the detainee was subject to increased observation."*

In this context, it should be emphasized that the man's disorder could have posed a threat to the safety of himself and other foreign migrants at the GCF. In this regard, the NMPT is concerned about the continued detention. However, according to the head of the Health Service of the Border Guard Unit, in whose area the GCF operates, only the extension of the stay in the facility guaranteed the foreigner's continuation of treatment.

In view of the above, it is necessary to recall the opinion of experts, according to which one of the factors negatively affecting the recovery process of a person with mental disorders is staying in an inadequate environment (such as a detention facility) and the associated lack of opportunity to develop appropriate

family and social ties. Other factors holding this process back include exposure to extreme emotions, as well as a lack of specialized therapeutic interventions and provision of adequate follow-up. For the reasons indicated, measures aimed at mental health recovery cannot be effectively implemented in places where people are deprived of liberty⁶⁴.

Psychological support in detention facilities for foreigners - how should it look like?

With the multilevel conditioning of any disorder axially related to anxiety, a key element of the psychological support provided is the ability to build a trusting relationship and provide mental comfort to talk about often very difficult and intimate experiences. Under conditions of detention and with severely limited contact (due to time, language, cultural and situational constraints), this type of relationship is severely hampered, particularly because psychologists employed in detention facilities may be perceived by foreigners as part of a system that they perceive as oppressive.

At the same time, it should be pointed out that people who, in the course of psychological diagnosis, decided to talk about traumatic events, must be provided access to adequate assistance and support of a therapeutic, stabilizing, supportive nature, to promote healing and recovery. Failure to follow these rules can lead to secondary traumatization.

Given the nature of the population housed in GCFs, the use of professional, freelance interpreters is an indispensable part of the psychological support provided. It should therefore be unacceptable in this regard for psychologists to rely on the assistance of officers serving in the GCF or other foreigners. It should also be borne in mind that a prerequisite for providing reliable and effective

⁶⁴ See Royal College of Psychiatrists, Detention of people with mental disorders in immigration removal centres (IRCs), April 2021, PS02/21, p. 10.

psychological support, therapy or diagnosis is to ensure that the interpreter not only meets the criterion of being fluent in the languages between which he or she is interpreting, but should also be able to cooperate with a psychologist, so that with his or her tone of voice, choice of words, and body posture he or she can facilitate the process of support or diagnosis with the interpretation and avoid disrupting it. In this context, it should be emphasized that an interpreter should be bound by the same ethical rules as a psychologist, since he or she acquires the same information and is part of the supportive relationship. In particular, interpreters working with psychological professionals should be bound by interpreter-client secret and be perceived in this way by foreigners. This is because violation of the above mentioned principles will, in addition to ethical consequences, negatively affect the process of support, therapy or diagnosis. It can also result in a loss of trust in the interpreter and, in the next step, in the psychologist, and thus lead to abandonment of support.

The NMPT points out that the situation in which other migrants at the GCF act as interpreters during meetings of a psychologist with foreigners in need makes it impossible to give a reliable diagnosis and provide psychological support, so such cases should be limited to the necessary minimum. Such a system violates

the rules described above⁶⁵, which are necessary in order to talk about professional psychological support. In addition, the foreign migrants do not meet the requirements set out by the Polish Psychological Association⁶⁶. The meetings conducted with the participation of other foreigners cannot therefore be considered to result in professional psychological impact.

At the same time, it should be noted that it is the duty of the psychologist to communicate the purpose of each interview to a foreigner in a comprehensible way, to explain who the interpreter is, as well as to obtain the patient's consent for the examination. During the examination itself, the patient should always be given an opportunity to pause, answer or be silent about a particular question, as not everyone is ready to talk about all the difficult topics. After the examination, when the psychologist diagnoses a patient, it is appropriate to read the opinion to the patient, explain the diagnosed condition and give feedback on it. The patient should also be counselled on how to deal with anxiety and symptoms of stress and depression. To this end, adequate timeframes are indispensable, for psychological diagnosis conducted without taking the time to

⁶⁵ The situation described creates a conflict of roles and interests for all parties, which is inconsistent with work ethics. If the interpreter is a foreign migrant from the GCF, then: a.) the psychologist is both his or her co-worker and service provider (or, in the case of taking advantage of them - and this also took place, according to the documentation - the person taking advantage of the services); b.) the person using the interpreting services is both a client and an foreign migrant they may also be a friend or a disliked person, a perpetrator of violence, a sexual partner, etc.). In addition, the provision of services by foreigners in an unregulated manner (without a fee, oral or written contract which defines transparently and legally the relationship and mutual obligations of the parties), independent of the consent of the migrant-interpreter and the migrant receiving mental health support, is a form of exploitation and abuse of power on the part of the institution and the psychologist (with the psychologist at the same time also subject to exploitation on the part of the institution employing them, since it is the responsibility of the institution to provide interpreting services, and the lack of these services makes it impossible for the psychologist to providing services and fulfil his or her duties in a GCF).

⁶⁶ See Centrum Inicjatyw Międzykulturowych [Centre of Intercultural Initiatives], *Praca z tłumaczem w terapii i diagnozie psychologicznej* [Work with a translator in mental health therapy and diagnosis], 2014.

explain the examination process, without the role of the interpreter, building secure contact, obtaining consent for the examination and providing feedback on recommendations can expose foreigners to re-traumatization and deterioration of their mental state.

In the context of the diagnostic studies conducted, it should be emphasized that the main purpose of the note prepared by the psychologist should not be to answer the question "*can the foreign migrant examined continue to stay in detention?*". This is because the psychologist, with regard to detention, should rather focus on studying how detention affects the patient in question and how further detention may affect the patient's life and health. Particularly if detention is associated with the aggravation or perpetuation of negative symptoms and the risk of loss of health, the psychologist should include such wording in their opinion in writing. Indeed, the occurrence of such a circumstance leads to the occurrence of the statutory prerequisite of risk to health and life, which should result in release from detention under Article 406(1)(2) of the Act on Foreigners.

Also importantly, in the case of reported violence other than torture, the psychologist should investigate and describe the circumstances of the violence suffered by the foreign migrant, or alternatively, he or she may also describe the way the foreign migrant reported the violence and the symptoms he or she observes during the examination, such as: trembling hands, voice breaking down, crying, avoidance of response details, shortened breath, headache. This is because these are common psychosomatic reactions of survivors of violence, abuse, torture, and for whom these events are associated with continued suffering. Describing the observations in the context of the topics raised during the survey is then an important part of arriving at correct diagnosis.

The psychological opinions should take into account, in particular, relevant information regarding e.g. anamnesis, reported experiences, current symptoms and reported problems, as well as observations with regard to the patient made

during the various parts of the examination. If there are characteristic symptom associations, further research should be carried out to refine the diagnosis, based on an in-depth interview or psychological tests appropriate to the situation. For differential diagnosis, the doctor may also be advised to perform further tests and only then make a diagnosis or working diagnosis, according to the classification of disorders used in Poland (ICD-10).

Given that most of the facilities visited by the NMPT were family-oriented GCFs, one must take into account the specific needs of families as regards the psychological support provided. Significantly, in a family, usually more than one adult requires support⁶⁷, especially in the situation of migrants and forced migrants, where adjustment difficulties, experience of trauma or loss most often affect the whole family. Providing support to different family members by the same person, in addition to conflicts of interest, if there are family tensions, would clearly undermine trust and raise doubts about the psychologist's intentions, or cause the person seeking support to fear evaluation related to the notion of what information the psychologist is getting about the situation from the other family member.

An analogous situation occurs in case of people who belong to different families, but who know each other and have a friendly relationship or, on the contrary, are in conflict. Regardless of the supporting person's efforts to remain impartial, doubts on the part of the supported person may lead to fear of using assistance or, consequently, to abandon the assistance whatsoever. At the same time, it is important to be aware that people placed in detention, especially foreigners who have experienced violence or torture, feature low level of trust and easily withdraw their confidence. The standard, therefore, should be to provide

⁶⁷ In the systemic approach to a family, diagnosis, intervention and support should involve all the people who make up the family system - in this case, those who migrate together and are placed together in the GCF.

psychological support by various psychologists to individual adults within the family, to those close to them, as well as to each of the parties to the conflict. In turn, the adoption of solutions that do not comply with the indicated standard leads to situations in which the use of psychological support in the GCF by one of the adults in the family makes it practically impossible for the rest to receive the support.

According to the NMPT, in case of a family-oriented GCF, it is necessary to ensure the presence of at least two psychologists specialized in working with children and two specialized in working with adults. This requirement is due primarily to the human factor, which is an indispensable element of psychological support and independent of the psychologist's competence. The factor described applies to both children and adults. A patient who does not feel comfortable in the presence of a particular psychologist will not benefit from or will abandon the support. Regardless of competence, a particular psychologist may not be appropriate to provide support in a given case because of his or her age, gender, appearance or even the way he or she speaks. In addition, the psychologist working with a child should inspire confidence in the parents. As part of helping the child, psychological education of the parents is usually needed as well, so that they can interact with the child in a way that serves to improve his or her condition. The human factor plays a special role in working with multicultural populations, of which cultural, linguistic, religious, non-verbal communication differences are an indispensable part.

In this regard, it is of great importance to be able to receive mental health support from more than one psychologist, which applies to both services to children and adults. When there is no alternative in the GCF and a patient is unable to trust the psychologist, mental health support is no longer realistically available to the patient.

Identification by psychologists of victims of torture and other forms of ill-treatment in GCFs

Effective identification of foreign migrants who have experienced torture and other forms of violence can only take place if the entire staff of GCFs, including psychologists, healthcare professionals and educators are fully and comprehensively competent and cooperate with one another. In some of the facilities visited, the NMPT observed the existence of a number of guidelines setting out rules for dealing with people from vulnerable groups, which support the team in carrying out their tasks. In addition to the previously cited algorithm, guidelines were available in the GCF to determine the working hours and attire of social workers. The wearing of civilian clothes by the above-mentioned employees is extremely important when dealing with those traumatized, especially by torture, of which the use of violence by those in authority is an indispensable part.

During a visit to a family-oriented centre⁶⁸ the NMPT positively assessed the standard in effect since 2015, according to which the members of the educators team must have an appropriate degree in education. In the facility visited, the collection of documents used by the education section also included a printout of the Istanbul Protocol in Polish. This provided social workers with ongoing standards for identifying and documenting torture and inhumane treatment. Unfortunately, in the documentation analysed, there were no documents (e.g., case notes, body drawings, interview reports, etc.) that corresponded to the patterns, structure or content recommended by the Istanbul Protocol with manuals as a standard in the identification of torture documentation. In the GCF's outpatient clinic, the medical staff had the Istanbul Protocol available in

⁶⁸ A visit to the GCF in Lesznowola on 9-10 November 2021.

Polish, but without the dedicated manual (a supplement to the protocol created specifically for medical services).

In the context of the GCF concerned, the fact that the medical team was expanded to include people from an external entity due to the extension of the GCF and the change in its nature deserves a positive assessment. According to information provided by a nurse, the new medical staff members were introduced to the operation of the GCF on an ongoing basis, including procedures related to the identification of victims of torture and inhumane treatment. In addition, an experienced nurse is always present with new medical staff members during nurse duty. This allows faster transfer of information and compliance with the GCF-specific procedures, including those related to identification.

It should also be noted that the external psychologist hired by the GCF was not subject to training organized by the Border Guard or external training dedicated to the GCF employees. Also in the psychologist's consultation room there was neither a printout of the Protocol available nor a complementary manual dedicated to psychologists.

In the list of training provided by the GCF's management that were completed in 2021 by the GCF's staff there was no training on identifying and dealing with adults, adolescents and children who have experienced torture and inhumane treatment. There was also no specific training on how to identify and deal with people who have undergone traumatic experiences, including those who have experienced violence, or training dedicated to recognizing and responding to behaviours that may be symptoms of mental health risks in individuals in the aforementioned age groups.

However, taking into account the overall picture emerging from inspections conducted in all the GCFs in Poland, in the NMPT's opinion, the staff, including

psychologists, are not adequately prepared to identify victims of torture and inhumane treatment and are not familiar with or do not use the Istanbul Protocol in practice.

Evaluation of the operation of the internal Border Guard Algorithm and of actions taken against victims of torture and inhuman treatment

The document "Border Guard Rules for Handling Vulnerable Foreigners" was approved on 14 June, 2019. It should be noted that the practice of placing newly admitted foreigners under observation for belonging to vulnerable groups varied in the visited GCFs. In some cases, the observation included all families with minor children, while in others it included minor children (including unaccompanied) and pregnant women. Again, it must be emphasized that none of the foreigners admitted to GCFs or temporary GCFs⁶⁹ for males in the period 1 July - 31 December 2021 was not subject to observation, which is of particular concern to the NMPT. Due to the prevailing overcrowding of the facilities and a high turnover of foreigners in most of the cases analysed, the only current link in the identification effort was the health interviews conducted.

According to the interviews conducted with foreigners and the documentation analysed, as a rule, detainees' statements about the violence they experienced did not affect the Border Guard's handling of motions to courts for placement in GCFs. At the same time, in the vast majority of cases, the health status of foreigners who underwent a medical examination before being placed in detention was not reviewed for experiences of violence or risks to their health that might be associated with being in an isolation-type facility. From the portion of the analysed documentation of individuals who marked at least one item in their medical history (collected after placement in detention) that could suggest experience of torture, i.e., experience of physical violence, experience of mental

⁶⁹ GCF in Krosno Odrzańskie and temporary GCF in Wędrzyn.

violence, experience of another form of trauma, there was no evidence to indicate that prior to the submission of the motion, the doctor gave an opinion as to whether the person's current physical and mental health condition at the time of the examination allowed for his stay a GCF. There were also no documents indicating an assessment of the risk of deterioration of the subject's mental and physical condition after a possible referral to detention. In this context, the NMPT notes that the scope of the subject assessment of the mental and physical condition of foreigners against whom a motion for placement in GCF is planned should be much broader than in case of a possibility of placement in a room for detainees, especially in view of a much longer duration of detention and the associated risk of health deterioration.

In the NMPT's opinion, one of the few positive aspects of the updated document "Border Guard Rules for Handling Vulnerable Foreigners" is listing a psychologist as one of those to identify special needs and grounds for a dismissal of a psychologist from a GCF, with a distinction between an in-house and an external psychologist, as well as listing an additional healthcare professional as a staff member, namely a psychiatrist. However, observations show that these records did not translate into the reliability of identification activities or the real role of psychological diagnosis in the process concerned.

The rules of procedure at the initial verification stage basically only addressed the prerequisite of reasonable alleged subjection to violence and were based only on medical history (marking or not surviving violence and/or trauma) and an assessment by a social worker from the education section. The required actions thus amounted to nothing more than handing out a questionnaire to a foreigner, informing the education section to check the relevant boxes (defined as "first symptoms"), and conducting an in-depth interview by a social worker. Neither medical examination nor psychological diagnosis nor psychiatric diagnosis were taken into account at this stage. The assessment and decision of whether a

person belongs to a vulnerable group, including whether he or she is a victim of torture and/or inhumane behaviour, was arbitrary and belonged solely to the social worker. No criteria for verifying "first symptoms" during the in-depth interview were indicated, and there were no guidelines or scenario for conducting it, no set of questions or description of indicators or criteria for analysing the material collected. In addition, the interviews were not minuted, but only recorded with an internal (inaccessible to the foreign migrant) memo written by social workers.

In the opinion of the NMPT, this demonstrates the arbitrary nature of the conclusions reached and the decision made by the interviewer (the content of the interview or the information provided by the foreign migrant are not verified by anyone or in any way), and the result of the interview is passed on to the highest decision-making level of the GCF, i.e. directly to the Commander-in-Chief.

At the initial review stage, a foreign migrant at the GCF is referred to an internal psychologist only if he or she is identified by a person from the education section as vulnerable. This results in a complete disregard of the mental and physical health aspect at this stage of identification. Significantly, the "Border Guard Rules for Handling..." do not specify what a referral to a psychologist means in practice. There are no provisions in the document to guarantee that a migrant can make an informed and voluntary decision about whether or not to contact a psychologist. Safeguarding such an opportunity requires that comprehensive information about the purpose of the meeting, the activities to be undertaken, the scope and limitations of medical secret, as well as the possible results and consequences of taking part in the meeting or opting out of the meeting be provided in an comprehensible way, in writing as well as verbally. The meeting should be documented in the form of a migrant's acknowledgment of being provided with information, of the opportunity to ask questions, receiving answers to them, and understanding the entire content provided.

"Border Guards Rules for Handling..." at the stage of essential verification clearly distinguish between actions to identify a possibility of causing danger to life and health and a reasonable suspicion of being subjected to violence. This should be counted among the strengths of the document. It is also positive that in the case of the former, identification by the doctor can occur at any time during the stay in the GCF.

However, in terms of the former condition, only physical health is verified, while mental health risks are not assessed. A risk to the mental condition is not necessarily related to previous negative experiences. Restriction of liberty alone, especially lengthened restraint, is a strong enough stressor to be able to cause mental disorders.

It should be emphasized that the GCF environment is so atypical that most people do not have effective coping mechanisms also for the other stressors present in detention (collective residence and social exposure, staying in a foreign country, interacting with uniformed people, changing diet and not being able to have any influence on the food consumed, lack of familiar and comfort-inducing stimuli, etc.). According to the Act on Foreigners, those experiencing mental disorders that have developed during their stay in a GCF or existed before but intensified during their stay in the GCF meet the first prerequisite and should therefore be released from detention. At the same time, the "Rules for Handling..." explicitly indicate that the assessment of whether a person should be released from a GCF is subject not only to the danger to his or her health, but also to the availability of treatment or therapy in detention. This contradicts the provisions and intent of the legislature, which explicitly refers to the possibility of causing danger to health. If staying in the GCF is the source of the mental disorder, prolonging detention and attempting treatment contradicts the law (and is additionally ineffective because the stimulus causing the disorder is still present).

The opposite situation occurs with regard to the examination of the second prerequisite. A reasonable presumption of being subjected to violence is examined only from a psychological aspect - by an in-house or external psychologist or psychiatrist. Physical manifestations of violence including torture and inhumane treatment (such as scars and deformities visible externally, skeletal and soft tissue damage visible on diagnostic imaging, changes in physiological parameters and functioning of internal organs) are ignored. Unfortunately, there are also deficiencies in the document in the area of mental health screening that cause it to contradict the Act on Foreigners. Foreigners are diagnosed by psychologists or psychiatrists only after they have been classified as vulnerable by social workers. This puts the competence of the education section's staff (who are not required to have background in psychology or psychiatry) in assessing mental health above that of the staff specialized in psychology or psychiatry. This is contrary to the scope of knowledge and skills required of these professional groups.

Moreover, the Algorithm does not provide for a situation where a psychologist - as the first professional group - identifies a migrant as a victim of torture notwithstanding the rest of the GCF staff, despite the fact that it is the mental health professionals that have the necessary knowledge, competence and tools needed for such identification. It is important to further emphasize here the current state (widespread in the community of psychologists and psychiatrists and reflected in the Istanbul Protocol) of psychological knowledge regarding the functioning of people after traumatic experiences. The occurrence or absence of a mental disorder or disorders after a traumatic experience affects only a portion of the population of trauma survivors, occurs at different times after the trauma, varies in nature (various disorders may develop in full-blown form or may selectively present only some of their symptoms), while in some cases post-traumatic growth (improvement in well-being and subjective quality of life and

satisfaction with life) may spontaneously occur. This is in accordance with the provisions of the Act on Foreigners where a reasonable presumption of being subjected to violence is not linked to a specific diagnosis or the presence of a specific disorder or condition at the physical and mental levels.

At the same time, post-traumatic symptoms can occur not only after direct personal experience of violence, but also in people who have dealt with a description or image of such violence (themselves being in a safe environment - e.g., aid workers, people watching the events on TV). Symptoms for diagnostic purposes are examined from the perspective of their frequency, time of occurrence, duration, impact on the daily functioning and independence of the person who experiences them, the person's subjective assessment of the annoyance of the symptoms and the suffering they cause. Therefore, the identification of victims of violence, torture and inhuman treatment should be interdisciplinary and comprehensive, and any doubts should be resolved so that a person concerned is released from detention.

In terms of post-diagnosis activities, the rules also contradict the Act on Foreigners. They allow for a situation (occurring at the previous stage) where a person who meets one or both of the Act's prerequisites precluding detention still remains accommodated at the GCF. It is further troubling that the content of this section of the document focuses primarily on conducting activities that are conditional on maintaining detention measure.

According to the NMPT, the current provisions of the Border Guard algorithm prevent psychologists working at GCFs from effectively identifying torture victims. It should be emphasized that even those who have received training on the Istanbul Protocol do not have the opportunity to implement its principles in practice, as the existing internal procedure of the Border Guard does not reflect the principles described in the Protocol.

Availability of psychological support in the GCFs visited

The rapid increase in the number of people referred to GCFs, including families and minor children, observed since mid-2021, as well as the broader situational context, indicated an urgent need to increase the number of psychological professionals at the facilities visited. In addition to the observations resulting from the visits, the NMPT also asked the Commanders-in-Chief of the Border Guard divisions and facilities within which the GCFs operated to provide statistical data on changes in access to mental health support. The information provided is contained in Table 1.

Table 1 Availability of psychological support in GCFs before and during the crisis on the Polish-Belarusian border⁷⁰.

| GCF | Maximum capacity (as at 30.06.2021) | Number of psychologists/working hours per month (as at 30.06.2021) | Maximum capacity (as at 31.12.2021) | Number of psychologists/working hours per month (as at 31.12.2021) |
|--|-------------------------------------|--|-------------------------------------|--|
| GCF and temporary GCF in Biała Podlaska | not applicable | not applicable | 200 | 2 psychologists working full time and an external psychologist available for min. 16 hours a month. |
| GCF in Białystok and temporary GCF in Czerwony Bór | 165 | 1 psychologists working full time and an external psychologist available for min. 32 hours/month | 306 | The number of staff and working hours have not changed. In addition, the possibility of consultation at an external facility and ad hoc support from 3 psychologists employed at Podlaskie Division of Border Guard. |

⁷⁰ Based on statistics provided by the Border Guard.

| GCF | Maximum capacity (as at 30.06.2021) | Number of psychologists/working hours per month (as at 30.06.2021) | Maximum capacity (as at 31.12.2021) | Number of psychologists/working hours per month (as at 31.12.2021) |
|--|-------------------------------------|---|-------------------------------------|--|
| GCF in Krosno Odrzańskie and temporary GCF in Wędrzyn. | 64 | 1 external psychologist (clinical psychologist) working for 16 hours a month ⁷¹ . | 780 | The number of staff has not changed. The psychologist was also working at temporary GCF, for a total of 32 hours per month. |
| GCF in Kętrzyn | 120 | 1 psychologist working full time | 478 | 1 psychologist working full time and 1 psychologist delegated from Warmia and Mazuria Border Guard Division working full time. |
| GCF in Lesznowola | 73 | 1 external psychologist working 20 hours a month. | 192 | The number of staff and working hours have not changed. The second psychologist in the process of recruitment. |
| GCF in Przemysł | 115 | 1 psychologists working part time and an 1 external psychologist available for maximum 20 hours/month | 184 | The number of staff and working hours have not changed. |

In the NMPT's opinion, the statistics cited below testify to the mismatch between the availability of psychologists in the GCFs and the changing situation. Taking into account the significant increase in the number of foreigners placed in the GCFs, it should therefore be considered that in practice **there has been a systemic deterioration in the exercise of the right of foreigners to receive adequate psychological support care.** At the same time, the statistical information confirms the NMPT's observations on this issue, resulting from its visits.

As an external psychology expert who participated in one of the visits pointed out, the minimum time required for a single psychological diagnosis of an adult,

⁷¹ The data relates only to the GCF in Krosno Odrzańskie, which was in operation at the time.

including the issuance of an opinion, is 4 hours. In case of a child, this process can be much longer, as it requires observation by a diagnostician not only in the migrant-psychologist interaction but also in group activities (interacting with other children and interacting with adults other than parents), carrying out specialized medical tests (e.g., vision, hearing, neurological examinations).

It should be noted that if a psychologist is available for 20 hours per week, even assuming that 4 hours is sufficient time regardless of the age of a person being examined, it would be possible to diagnose 1 person per week, or 5 people per month. Looking at the availability of psychological support services from the perspective of psychological support, on the other hand, and assuming that a single consultation would last 60 minutes each time, and that those in need of longer support would use it only once a week, only 5 people a week would have access to it. However, it should be borne in mind that the situation described would thus mean that there would be no pool of hours for diagnostic actions.

Another factor affecting the real availability of psychological support is related to the competence, number and diversity of those providing services. In case of family facilities, it is necessary to provide diagnostic and psychological support for children and adolescents by specialized psychologists. In a family-oriented GCF, the team of psychologists should consist of at least four individuals - two psychologists specialized in working with children and adolescents, and two specialized in working with adults. In this context, it should be emphasized that in the family-oriented facilities visited, the NMPT representatives did not encounter paediatric psychologists.

An even worse situation in this regard was observed at the facility and its temporary branch with a male profile, where the total maximum capacity increased more than twelve times, from 64 to 780. However, the increase of capacity did not affect the increase in the number of psychologists; the same psychologist was working in both GCFs - only her working hours doubled. In

practice, this meant that in both GCFs designed for up to 80 foreign migrants and its temporary branch, which can accommodate up to 700 people, one psychologist provided care for 4 hours a week in each facility. According to the information she provided, the first psychological consultation aimed at the initial assessment of a migrant's current psychological condition was also the last one in most cases. The consultation usually took between 1.5 and 2 hours. The timing of the consultation depended primarily on the problems reported by the foreigner and the need for an interpreter and the quality of the interpretation. At the time of the consultation, a note or opinion was usually made, which was then attached to the medical records.

In some cases, medical consultations, including psychiatric consultations, were also initiated by the psychologist, which were usually limited to issuing pharmacological recommendations. At the same time, it should be pointed out, based on the experience of treating anxiety disorders and depression, that effective drug treatment should be co-administered with psychotherapeutic intervention. In the conditions of detention observed, such psychological support was not available at all.

Taking into account the average time of a single consultation indicated above, a maximum of 2 foreigners could benefit from a consultation with a psychologist within the framework of her weekly four-hour availability in each GCF. According to the documentation provided, during the 4 months of the temporary GCF operation, the psychologist admitted a total of 33 foreigners, 8 of whom refused consultation. Thus, 24 foreigners were consulted, an average of 6 per month. Thus, in case of the 478 men staying in the facility on the days of the NMPT visit, they could theoretically wait for 5 years for an initial psychological examination. The situation was also exacerbated by a steady increase in the number of foreigners admitted to the GCF. Thus, it should be recognized that even with the appropriate psychologist's competence, conditions and working time, foreign

migrants once examined did not have access to any form of care or therapy other than pharmacotherapy. At the same time, it should come as no surprise that none of the 1153 foreign migrants admitted to the GCF and temporary GCF combined in the period from July 1 to December 31, 2021, were included in the algorithm provided for in the “Border Guard Rules for Handling Vulnerable Foreigners”.

The observed overcrowding coupled with staffing deficits also led to a lack of availability of any form of therapy, support groups, and no psycho-educational classes. It should also be pointed out that a significant part of the verification of foreigners’ mental state was a neuropsychological examination. Patients were questioned about their addictions to psychoactive drugs and identified as addicts or potential addicts on that basis. However, the diagnosis made in this regard did not involve the possibility of receiving addiction therapy due to the lack of a PESEL number, which at the formal level conditions referral to therapy.

In addition to neuropsychological and addiction diagnosis, there was no diagnosis for depression or anxiety disorders in the male-oriented GCFs visited. After the initial psychological interview, no further psychological tests were usually ordered. Differential diagnosis was not carried out, either.

It should also be noted that with such limited availability of a psychologist, it is difficult to expect that the mental health of foreigners and the possible impact of detention on the deterioration of their condition can be adequately and individually examined before drafting a motion to the court for extension of stay in the GCF. The implication is that in most cases, statistically speaking, decisions to extend detention are made regardless of the mental health of the foreign migrants.

The real availability of psychological support is also determined by being aware of a possibility to use it, of its nature and purpose. In addition, a sense of

subjectivity and awareness of one's rights among those using or potentially needing such services is important. In one of the GCFs visited, the NMPT representatives noted that the foreign migrants gathered in the corridor were interested in a consultation with a psychologist. They waited in front of the door to the pass-open part of the GCF, where the psychologist's consultation room is located. They greeted her in the corridor, asked when they could have an appointment. From the information obtained, it appeared that the psychologist tried to get acquainted with all the foreigners, she made contact with them in the corridors, library, and common areas. In the NMPT's opinion, this is an important element of the support availability, which allows to get acquainted with both the type of services offered and the person providing them.

The education section's staff notes showed that information about the psychological support offered was conveyed during the first interview conducted by social workers with newly admitted foreigners. A similar practice was also observed at the other facilities visited.

5. Healthcare services

One of the main areas of interest for the NMPT during its visits to GCFs was access to adequate medical care. This is because it should be borne in mind that the dynamic increase in the number of migrants crossing the state border illegally has resulted in a large number of people in poor health on Polish territory. Some of the foreigners in GCFs arrived in the country with health problems already diagnosed in their countries of origin, making it necessary to provide them with continued treatment. In many cases, however, the deterioration of mental and physical condition of foreigners was due to circumstances related to the migration route itself, especially at the stage of crossing the Belarusian-Polish border. Indeed, it must be remembered that many of those placed in GCFs had previously stayed for days in the border forests, and

some of them also spoke of violence they had experienced at the hands of Belarusian officers. In view of the above, it was particularly important to see how the public authorities responded to the emerging challenges in this regard.

- According to international standards for the detention of foreigners, each newly admitted person should undergo an initial examination within 24 hours of being placed at the GCF⁷², conducted by a doctor or a qualified nurse who then reports the findings to the doctor.
- Immediate assessment of the health status of a foreigner newly admitted to a GCF is in the best interest of both the foreigner and the GCF staff, as it allows identification of risk areas, including those related to e.g. self-inflicted injuries and transmission of infectious diseases (which is particularly important during the SARS-CoV-2 coronavirus pandemic). It also allows noting the injuries that the foreigner already had at the time of admission to the GCF⁷³.

In this regard, it should be noted that the description of the examination conducted is essential, regardless of whether the examination was conducted on a newly admitted person or one who has been staying at a GCF for a long time. Therefore, it is necessary to ensure that the medical records kept include full information on the results of the medical examination conducted. The description should also include any statements made by foreigners about their condition, including any violence they have experienced. It is also the duty of the examining physician to refer to the statements made by the foreigner, including whether and to what extent the information provided by the person examined is

⁷² See CPT report on a visit to Serbia and Montenegro in 2006 r., [CPT/Inf (2006) 18], para. 74; CPT Nineteenth General Report, 20 October 2009, [CPT/Inf (2009) 27], para. 82.

⁷³ See CPT report on a visit to Sweden in 2015, [CPT/Inf (2016) 1], para. 37;

confirmed by the results of the examination conducted⁷⁴. In a situation where allegations of mistreatment by a foreigner coincide with the doctor's observations (or if there is no complaint from the patient and the results indicate violence), such information should immediately be forwarded to the prosecutor's office for further investigation⁷⁵.

During one of the NMPT visits⁷⁶ a male migrant at the GCF told the NMPT representatives that immediately before being admitted to the facility he was beaten by a Border Guard officer who had escorted him. The incident was to result in a broken arm and a number of other health problems. In connection with the reported situation, the visitors requested access to the foreigner's medical records.

According to the medical records: *"The patient came to the outpatient clinic with a headache (he reports an injury), he also added that his right shoulder and right hand hurt, he has been dizzy, vomiting and suffering from insomnia for several hours (...)"* After a telephone consultation with a doctor, the man was referred to the hospital for further diagnosis. In connection with the foreigner's subsequent visit to the outpatient clinic, the medical records noted: *"left testicle enlarged, painful on palpation. He reports a testicular impact injury from a beating (...). A follow-up general urinalysis, urine culture and testicular ultrasound were ordered"* The information sheet attached to the hospital records, in the section on history, indicated: *"The patient reports that yesterday he was beaten, he knows by whom, he complains of pains in his elbow, right forearm, headaches and neck pain (...)"* According to the diagnosis, the man was diagnosed with a head injury and a right wrist injury - suspected fracture of the distal pole of the

⁷⁴ See CPT report on a visit to Austria in 2014, [CPT/Inf (2015) 34], para. 46;

⁷⁵ Ibid.

⁷⁶ Ad hoc visit to the GCF in Lesznowola on 16 February 2022;

ulna. Notably, the external diagnosis of injury indicated: stabbing, hitting, twisting, beating and scratching by another person (code W50.2 according to the ICD-10 International Statistical Classification of Diseases and Health Problems). According to information provided by the Commander of the Border Guard Station within which the GCF is located, after receiving the medical diagnosis, the foreigner was given the opportunity to file a complaint with the Commander-in-Chief (in the presence of an interpreter) who, regardless of this fact, decided to send a notice to the prosecutor's office⁷⁷.

In the opinion of the NMPT, the facts cited above are an example of handling a case in accordance with the international standards outlined.

It should also be emphasized that, in accordance with the recommendations of the Istanbul Protocol, any injuries spotted should, in addition to their description, be recorded on so-called body maps. However, according to the NMPT's observations, there was no practice of using this tool in the GCFs visited. During a visit to the outpatient clinic of one of the GCFs, the visitors noticed patient condition forms containing so-called body maps⁷⁸. The nurse conveyed, however, that these forms are filled out only if a so-called fit-to-fly certificate is needed for those who are to be deported as part of a deportation operation organized by the European Border and Coast Guard Agency Frontex. **According to the NMPT, the use of forms containing so-called body maps should be the standard during medical examinations of all foreigners.**

⁷⁷ The case described is the subject of a complaint pending before the Office of the CHR.

⁷⁸ NMPT visit to the GCF and Detention Centre in Przemyśl between 31 January - 3 February 2022;

- The UN Subcommittee on the Prevention of Torture (SPT) recommends subjecting all persons found to have health problems, including mental disorders, to a full medical and psychological examination. In-depth diagnostic procedure should result in the implementation of appropriate therapy, and circumstances related to the health of foreigners should always be taken into account in the procedures pending against them⁷⁹.
- The CPT, meanwhile, points to the need to ensure confidentiality in all dealings with health issues of foreigners in administrative detention, including, in particular, the proper safeguarding of medical records so that only medical personnel have access to them. The Committee also stressed that, as a general rule, all medical visits should take place out of hearing and sight of officers, unless the doctor decides otherwise in a particular case)⁸⁰.

During the visits, the NMPT representatives did not receive information indicating that officers were present in the doctor's/nurse's consultation room during their examinations, including in the case of visits to external health care facilities. Nevertheless, the NMPT has observed with concern a practice prevailing in some of the facilities visited of giving newly admitted foreigners a power of attorney form for signature, authorizing the GCF manager to access their medical records. The NMPT understands that in GCFs where medical services are outsourced, there is sometimes an urgent need to provide medical records to emergency services called in due to urgent circumstances.

⁷⁹ See SPT report on a visit to Romania, 8 March 2018, CAT/OP/ROU/1, para 117.

⁸⁰ See CPT Nineteenth General Report, [CPT/Inf (2009) 27], para. 92.

In the opinion of the NMPT, situations in which non-medical personnel of GCFs are authorized to inspect records of a foreigner's health should be marginal, justified only by extraordinary circumstances in a particular case.

Availability of medical care in GCFs visited

In light of international standards, the daily presence of qualified nurses is considered a certain minimum in the context of access to medical care for foreigner migrants at GCFs. In particular, nurses should be responsible for conducting the initial examination and interview upon admission to the GCF, providing the doctor with reports of foreigners who need consultation, as well as distributing prescribed medications, securing medical records, or supervising the maintenance of appropriate hygiene standards in the GCF⁸¹.

Providing adequate medical assistance is particularly important for those with identified special needs, including: foreign minors, pregnant women, the elderly and those with physical, mental or intellectual disabilities.

Special attention should also be given to foreigners who have undergone traumatic experiences, including those who have suffered torture or other forms of violence⁸².

During the visits, the NMPT representatives spoke with many foreigners who reported poor health. Particularly during the first visits and in temporary GCFs, the migrants reported serious problems in terms of being able to receive adequate assistance. In doing so, they tended to point to the low availability of doctors accepting appointments at the GCF, which, with the observed overcrowding, resulted in extended waiting time for consultations. The NMPT has also observed problems in the provision of services by medical specialists. In

⁸¹ See CPT Nineteenth General Report, [CPT/Inf (2009) 27-part], para. 91.

⁸² See Recommendations of the Committee of Ministers issued on 16 April, 2003, regarding detention measures for asylum seekers, Rec(2003)5, § 13.

this context, it should be noted that for family-oriented facilities, regular access to physicians with paediatric and gynaecological specialties is particularly desirable. This problem has already been pointed out by the NMPT in the past⁸³. According to the information obtained, only two of the facilities visited have outsourced paediatricians.

In view of the observed increase in the number of people sent to GCFs, efforts have been made at most of the GCFs visited to increase available medical care, including hiring additional staff. **According to the NMPT, the effects of the measures taken were generally disproportionate to the needs identified.** Of utmost importance to the issue at hand, the visiting team were repeatedly informed by healthcare personnel about inadequate staffing, which translated into an excessive workload. Statistics on the medical care provided by the Border Guard are shown in Table 2.

⁸³ See NMPT Report, *Obcokrajowcy w detencji administracyjnej* [Foreigners in Administrative Detention]. Results of NMPT monitoring in guarded centres for foreigners in Poland, 2021. Chapter 5.4.3.

Table 2 Availability of medical care in GCFs before and during the crisis on the Polish-Belarusian border⁸⁴

| GCF | Maximum capacity (as at 30.06.2021) | Number of healthcare personnel and working hours (as at 30.06.2021) | Maximum capacity (as at 31.12.2021) | Number of healthcare personnel and working hours (as at 31.12.2021) |
|---------------------------------|-------------------------------------|---|-------------------------------------|---|
| Temporary GCF in Biała Podlaska | not applicable | not applicable | 200 | Temporary GCF: 1 paediatrician and 1 general practitioner Monday through Friday (paediatrician available twice a week, general practitioner every day on working days). Nurse on duty (5 nurses)/2 paramedics every day between 7:30 a.m.- 9.30 p.m. |
| GCF in Białystok | 165 | GCF: 1 physician in the process of specialization in internal diseases, 14 hours a week (3-4 times a week); 3 nurses between 8.10 a.m. - 3:30 p.m. Monday through Friday and 3 nurses between 3:30 p.m. - 9.30 p.m. Monday through Friday and between 7:30 a.m.- 9:30 p.m. on Saturdays, Sundays and holidays. | 159 | GCF: 2 physicians, 1 in the process of specialization in internal diseases, 1 family medicine specialist (each 4 hours, 3 times/week); 3 nurses between 8.10 a.m.- 3:30 p.m. Monday through Friday and 3 nurses between 3:30 p.m.-9.30 p.m. Monday through Friday and between 7:30 a.m.-9:30 p.m. on Saturdays, Sundays and holidays. |
| Temporary GCF in Czerwony Bór | not applicable | not applicable | 147 | 1 internist (3 times/week for 4 hours); 5 paramedics on duty between 8:00 a.m. - 9:30 p.m. |

⁸⁴ Based on statistics provided by the Border Guard.

| GCF | Maximum capacity (as at 30.06.2021) | Number of healthcare personnel and working hours (as at 30.06.2021) | Maximum capacity (as at 31.12.2021) | Number of healthcare personnel and working hours (as at 31.12.2021) |
|--------------------------|--|--|--|---|
| GCF in Krosno Odrzańskie | 64 | GCF: 1 surgeon (3 times/week for 2 hours); 3 nurses (7 days/week for 12 hours) between 8:00 a.m. - 8:00 p.m. | 80 | The number of staff and working hours have not changed. |
| Temporary GCF in Wędrzyn | not applicable | not applicable | 700 | 1 surgeon (3 times/week for 2 hours); paramedics (7 days/week for 12 hours), from 9:00 a.m. to 9:00 p.m. |
| GCF in Kętrzyn | 120 | 1 ophthalmologist and 1 dentist; 2 nurses and 2 paramedics. Total working hours of healthcare personnel and hours of seeing patients: every day between 7:30 a.m. - 9:30 p.m. | 478 | The number of healthcare personnel has not changed, 2 extra paramedics were hired. |
| GCF in Lesznowola | 73 | 5 physicians, of which one specialized in family medicine and three in the course of specializing to become psychiatrists and infectious diseases specialists; 5 nurses; healthcare provided for 7 days/week between 8:00 a.m. - 8:00 p.m. | 192 | 8 physicians, of which one specialized in family medicine, one paediatrician and 6 in the course of specializing to become psychiatrists and paediatricians and infectious diseases specialists; 11 nurses; healthcare provided 7 days/week between 8:00 a.m. - 8:00 p.m. |

| GCF | Maximum capacity (as at 30.06.2021) | Number of healthcare personnel and working hours (as at 30.06.2021) | Maximum capacity (as at 31.12.2021) | Number of healthcare personnel and working hours (as at 31.12.2021) |
|-----------------|-------------------------------------|---|-------------------------------------|---|
| GCF in Przemyśl | 115 | 1 physician employed at Bieszczady Division of Border Guard (Monday through Friday for 8 hours/day) and 2 other doctors: family medicine specialist and oncologist (3 times/week for 3 hours); 3 nurses working based on employment contract (Monday through Friday 7.30 a.m. - 3:30 p.m.) and 8 nurses hired based on a civil-law agreement, Monday through Friday between 3:30 p.m. - 9.30 p.m. and on Saturdays, Sundays and holidays - 7:30 a.m. -9:30 p.m.; 5 officers qualified as senior assistant paramedics. | 184 | The number of staff and working hours have not changed. |

The NMPT was concerned by information provided by management and medical staff at some GCFs about problems with referring foreign detainees to external specialists, which made it difficult for them to access doctor-ordered tests. Cases were pointed out where doctors were said to have refused to admit patients on the grounds that they were foreigners placed in a GCF. **According to the NMPT, differentiating the situation of patients based on their origin or legal status is unacceptable as a manifestation of discrimination, and also contradicts the professional ethics of physicians.**

Both migrants and physicians at GCFs pointed to a language barrier as one of the main problems in getting adequate assistance. At one facility, the paramedic

employed there had a specialized web application - a translator of medical terms. However, he could not use it due to the lack of Internet⁸⁵.

- In the CPT's view, if the healthcare personnel is unable to make a proper diagnostic assessment for linguistic reasons, they should be able to use a qualified interpreter immediately. In addition, migrants should be fully informed about the treatment they are offered⁸⁶.

On a positive note, the information presented in one of the GCFs, according to which, in case of a language barrier, when urgent medical intervention is necessary, the external doctor receiving a foreign migrant only makes a diagnosis while informing about the need for an interpreter for the next appointment⁸⁷.

In the course of visits, the NMPT received information about problems experienced by foreigners who wanted to visit an external doctor of their choice at their own expense⁸⁸. At the same time, it should be pointed out that according to paragraph 28 of the Rules and Regulations on the Foreigners' Stay at a Guarded Centre and Detention Centre for Foreigners, *"treatment of a foreigner at his or her expense, by a doctor of their choice, requires a consent of the head of the GCF or the officer responsible for the functioning of the detention centre."* According to the information provided by the facility's manager, it appeared that if such a need is reported to him, he consults with the facility's attending physician before issuing a decision on case by case basis.

⁸⁵ NMPT visit to the TGCF in Czerwoný Bór on 1 September 2021.

⁸⁶ See summary of the CPT Nineteenth General Report, [CPT/Inf (2009) 27], p. 92.

⁸⁷ NMPT visit to the GCF and Detention Centre in Przemyśl between 31 January - 3 February 2022;

⁸⁸ NMPT visits to the GCF in Krosno Odrzańskie and a temporary GCF in Wędrzyn on 18-21 October 2021;

In the opinion of the NMPT, the possibility of being assisted by a doctor of one's choice, at one's own expense, is in line with the international standard, according to which the right of access to a doctor should include, if requested by the person concerned, the right to be examined by a doctor of one's choice⁸⁹. Therefore, the GCF manager's decision should not depend on the opinion of the medical staff employed at the GCF.

Detention of foreigners in poor health condition

According to the observations of the NMPT, there is a systemic problem in Poland concerning the referral to GCFs of foreigners whose mental and physical condition points to a possible threat to their life or health. In this regard, it is necessary to point first and foremost to the provisions of the document "Border Guard Rules for Handling Vulnerable Foreigners," discussed in greater detail elsewhere in this Report, which improperly transpose the prerequisites described in Article 400 of the Act on Foreigners into internal procedures. At the same time, the NMPT sees problems in this matter related to the lack of proper medical and psychological diagnosing process preceding a motion to the court for placement in a GCF or detention centre for foreigners.

In this context, it should be emphasized that the current regulations do not impose an obligation to examine every person subject to the above-mentioned motion. Whether the prerequisites - specified in the algorithm - which justify the medical examination, occur or not, is decided by the Border Guard officer who is not a healthcare professional. In terms of the examination itself, an assumption error needs to be pointed out, in connection with which a doctor decides that there are no contraindications to detention based on the current state of health, while according to the Act on Foreigners, any symptoms and statements by foreigners indicating a potential risk of health deterioration in detention should

⁸⁹ See CPT Seventh General Report, [CPT/Inf (97) 10], p. 31.

be a sufficient circumstance to exclude the possibility of sending the person examined to live there. The almost automatic granting of Border Guard motions by courts issuing decisions to place foreigners in GCFs are also of concern.

The NMPT representatives have repeatedly observed cases where the health of foreigners raised reasonable doubts about the legitimacy of their stay in a GCF.

While inspecting the rooms at the temporary men's facility, the visiting team encountered a young man who remained in his room despite the fact that other foreigners in his block had gone to the canteen for lunch. During a conversation, the man reported that he had been suffering from very severe paroxysmal headaches for a long time, and pointed to a brain tumour as the cause. In doing so, he pointed out that he had already had an MRI scan before arriving in Poland, which confirmed the diagnosis. He kept pictures of his test results in his cell phone, which was deposited in a safe storage room. At the request of the visitors, the officers issued the cell phone to him. According to images taken in Russia during a contrast-enhanced MRI scan, the patient was diagnosed with a brain tumour 5 cm x 4 cm x 3 cm in dimension overlapping an artery, the description of the image provided for a recommendation of a neurosurgical consultation. In the foreigner's medical records kept at the GCF did not include the photos of the test results from the cell phone and their translation, while the external examinations performed again confirmed the existence of the tumour, but the doctor did not include any recommendations for further treatment, or any recommendations for release from detention in order to prepare the patient for and perform neurosurgical operation.

When discussing the patient's situation, the doctor employed at the temporary GCF stated that *"most likely the foreigner has a brain glioma and is unlikely to live long"* . After noting the foreigner's extremely difficult situation and suffering, the head of the facility decided to immediately release him from detention,

which in the NMPT's opinion was an adequate response. However, this does not change the fact that the man had been in detention for more than seven weeks and during that time he had been subjected to increasing suffering and lack of adequate neurosurgical treatment. Moreover, the foreigner reported that he was a victim of an attack in Afghanistan, in the course of which he suffered a stab wound. This was confirmed by numerous scars on his torso.

The visiting team were present at the temporary male-profiled GCF during the admission of foreigners transferred from another detention facility. The NMPT representatives observed foreigners leaving the bus while carrying one of them out in their arms. Due to the prevailing confusion and the lack of an Arabic translator, it was impossible to have a one-on-one interview with the man, and his medical records were not provided to the temporary GCF. However, as the foreigners traveling with him indicated, the man had a serious ambulatory problem, but they did not know if any medical examination had been conducted. The facility's management ultimately decided not to admit the foreigner to the facility due to the inability to provide him with basic healthcare.

The above mentioned situation raises the NMPT's concern about the practice of relocating foreigners between GCFs, in light of the early identification of vulnerable groups and relevant diagnoses, and the inability to provide adequate care and/or continuity of treatment. The lack of adequate communication prior to a foreigner's relocation also places an additional burden on doctors at the facility to which he or she is referred.

There are also reservations when healthcare professionals do not receive a foreigner's documentation with his or her admission to the facility. Failure to do so can ultimately lead to a deterioration of foreigners' health, escalating to inhumane treatment. In the situations described, the medical staff of the

receiving facility is burdened with additional duties that, in practice, reduce other migrants' access to medical services and increase the cost of services.

Due to the above, the NMPT recommends informing medical personnel about foreigners having serious health conditions before they are transferred, as well as handing over the records of relocated individuals upon admission to a new GCF.

The examples cited above represent only a fraction of the cases of placement in GCFs of foreigners whose health condition points to the use of other measures than detention. Their stay in isolation, lack of adequate medical care, and the resulting deterioration of health may be considered manifestations of ill-treatment and may give rise to liability (including compensation) on the part of the host country. It should also be borne in mind that referring foreigners with serious health problems to GCFs generates additional responsibilities on the part of medical personnel.

Situation in GCFs in connection with the COVID-19 pandemic

In view of the epidemic state announced in the territory of the Republic of Poland, issues related to preventing the transmission of the SARS-CoV-2 coronavirus in the visited facilities were of interest to the NMPT, including the procedures in force related to testing and quarantine.

First of all, it should be noted that the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) already in the first months of the pandemic drew attention to the special situation of migrants living in detention, who are not sufficiently protected from infection, stressing the fact that this situation threatens their health and offends their dignity⁹⁰. In this context, the NMPT finds highly

⁹⁰ See: <https://www.osce.org/odihr/451333>.

disturbing the solution adopted in connection with the situation on the Polish-Belarusian border to reduce the minimum area per foreigner placed in detention to 2 m². In addition to the aforementioned violations of migrants' fundamental rights resulting from the legal changes, including the right to respect for human dignity, the crowding of foreigners in the facilities generates a significant risk of virus transmission and exposes those placed there to loss of health and life.

With this in mind, the NMPT representatives received information on the lack of a procedure for coronavirus testing and isolation after admission to GCFs. In some facilities, tests were performed on all new admissions, while in others, only foreigners brought in from Border Guard facilities were tested, or no one was tested. In doing so, they pointed out that foreigners are tested after detention, hence there is no need to retest them.

It should be emphasized, however, that only so-called rapid antigen tests with limited detection were performed on detainees at Border Guard facilities. Hence, during most of the visits conducted, there were infected foreign migrants at the facilities. The associated need to stay in isolation, given the observed housing conditions, may have been long-lasting and burdensome. In doing so, it should be noted that the detection of a case of COVID-19 involved, in practice, the imposition of a quarantine on all the foreign migrants. If more infected individuals were diagnosed over time, isolation was successively extended to the entire group.

In view of the above, the NMPT recommends coronavirus testing for all newly admitted foreigners.

6. The right to contact a lawyer

In light of international standards for the protection of the rights of persons deprived of their liberty, access to a lawyer is one of the basic guarantees to minimize the risk of ill-treatment.

- According to the CPT, irregular migrants should be allowed access to legal aid from the first moments of detention. The execution of the indicated right is particularly important in the context of ensuring the possibility of an effective remedy to enable them to receive a prompt decision on the legality of their deprivation of liberty issued by a judicial authority. The judicial review should include an oral hearing with legal assistance, free of charge for those who cannot cover its costs.
- The foreign migrants at GCFs should also have the right to ongoing contact with lawyers, including holding meetings with them in conditions that ensure their confidentiality⁹¹.

The obligation to provide foreigners residing in the European Union Member States with access to legal aid, including free legal aid, is also specified in the Community law⁹².

During their visits, the NMPT representatives did not receive information on impediments to the execution of the foreigners' right to legal aid. In most cases, the attorneys representing GCF migrants were representatives of NGOs providing free legal assistance, whom the foreigners met just before or after their detention by Border Guard officers as well as during the lawyers' regular visits to the GCFs. In this context, it should also be noted that due to the coronavirus pandemic, some consultations were carried out remotely using instant messaging. However, from the information received, it appears that both

⁹¹ See extract from the CPT Nineteenth General Report, [CPT/Inf (2009) 27], para. 81-82, 86-87.

⁹² See Article 9 of the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180/96.; Article 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348/98.

desktop and remote meetings with attorneys were conducted in conditions that ensured their confidentiality. In many GCFs, the visiting team noted information folders prepared by aid organizations in places accessible to the public, including telephone numbers where legal advice could be obtained.

According to the NMPT, however, the possibility of making use of legal aid depended to a large extent on the involvement of the lawyers themselves and the initiatives they undertook. The NMPT therefore recommends that systemic measures be taken to ensure that every foreigner deprived of liberty is in contact with a lawyer if they report such a need.

7. The right to information

Obtaining reliable information about one's actual and legal situation is considered a basic right of a person deprived of liberty. Understanding the applicable provisions on the pending proceedings and one's rights minimizes the risk of mistreatment. This aspect is particularly important in case of foreign migrants placed in GCFs. Being confronted with a new reality, not knowing the language and not understanding the procedures they are subjected to, negatively affects their mental well-being and can prevent them from exercising other rights they have.

At the same time, it should be pointed out that the problems experienced by foreigners in communicating with the staff during detention, as well as those related to the lack of access to comprehensibly communicated information intensify the stress of foreigners, increase the sense of isolation, isolation in their own problems, reinforce the sense of helplessness, the sense of misunderstanding the situation, increase interpersonal tension, are an anxiety-producing factor and increase depression.

- In the CPT's view, irregular migrants who are deprived of their liberty should be clearly informed about the proceedings against them and the rights they can exercise. Information on this subject should be provided promptly and in an understandable manner, including, above all, in the language spoken by the foreigner. Moreover, the indicated information should also be presented in writing. It is therefore necessary to prepare translations of standard instructions into the languages most commonly spoken by those admitted to detention facilities, and if a foreigner does not speak any of these languages, a translator should be provided. Every foreign migrant should confirm in writing that he or she has read the notice of rights⁹³.

Regardless of the information on the proceedings conducted by public authorities, every foreigner admitted to a GCF should be instructed about the rules that apply there. It should be emphasized that the rules and regulations of the GCF should also be made available in the languages most commonly used by foreigners. The document should define the broadest possible range of issues, rights and responsibilities relevant to the foreign migrant. The rules and regulations of the GCF should also include information on disciplinary procedures while indicating the right of the detainees to be heard on alleged violations, as well as a procedure for appealing to an independent body against any sanction imposed on them. Indeed, without such rules, there is a risk that an informal (and uncontrolled) disciplinary system will develop⁹⁴.

⁹³ See CPT report on visits to the Netherlands in 2007, [CPT/Inf (2008) 2], para. 36 and Romania in 2006, [CPT/Inf (2008) 41], para. 61;

⁹⁴ See CPT Nineteenth General Report, [CPT/Inf (2009) 27], para. 88.

Lodging applications for international protection; feedback on proceedings conducted

In the course of its visits, the NMPT received many reports regarding the inadequate exercise of the right to obtain reliable information on their legal situation by foreigners placed in GCFs. During interviews with them, the visiting team routinely covered the subject of proceedings that were conducted against them, as well as their rights in this regard. An exceptionally important issue was verification that those declaring their willingness to apply for international protection had adequate access to the procedure. And given the changing profile of foreigners arriving in Poland compared to previous years, especially in the context of their countries of origin and the languages they spoke, the NMPT representatives paid particular attention to access to interpreters. The documentation available at the facilities was also analysed, including forms of instructions on the rights and obligations of persons referred to GCFs.

Representatives of the NMPT noted that most interviewees did not understand their legal situation. The foreigners indicated that they had applied for refugee status in Poland, and according to their knowledge, their stay at the GCF was to last about 2-3 months, after which they would be released from detention as refugees. However, from the documentation they provided, it appeared that a deportation procedure was pending or a decision to this end had been issued. The detainees were not aware of the difference in the above-mentioned proceedings, and written information about the possibility of applying for international protection was not posted in public areas at the temporary GCF concerned until the time of the visit⁹⁵.

On the basis of interviews with the foreigners, the NMPT representatives also obtained information that some of them declared their intention to apply for

⁹⁵ NMPT visit to the Temporary GCF in Czerwony Bór on 1 September 2021;

international protection already at the time of their apprehension, as well as during operations conducted with their participation at Border Guard stations and foreigners registration centres. However, they were to be informed that they would be able to do so after being placed in a GCF. These claims are confirmed by statistics provided by the Border Guard, which show that in the period from July 1 to December 31, 2021, the applications for international protection filed in the GCFs covered 1,780 individuals with the procedure. In view of the above, it is necessary to point to the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland regarding the procedure of application for international protection:

Article 24. 1. The foreigner shall submit an application for international protection to the Head of the Office through the Commander-in-Chief of a Border Guard division or the Commander-in-Chief of a Border Guard post.

A foreigner who is staying at a GCF, an arrest for foreigners, a remand prisons or penitentiary institution shall submit an application for granting international protection through the Commander-in-Chief of a Border Guard division or the Commander-in-Chief of a Border Guard post competent with respect to the seat of the GCF, arrest for foreigners, remand prison or penitentiary institution concerned.

The United Nations High Commissioner for Refugees (UNHCR) presented analogous conclusions in the context of the problems encountered by foreigners seeking international protection. He stressed that migrants often experience difficulties at the initial stage, regardless of whether they declare their willingness to apply for protection shortly after crossing the border or at a later stage. It must be borne in mind, therefore, that without providing adequate information on the rules of application, the course of the proceedings and other relevant issues, it may in practice prevent those seeking international protection from

lodging a formal application at all, or from doing so in a way that they can understand⁹⁶.

The NMPT also draws attention to a practical aspect of delaying the possibility of applying for international protection, which is important from the point of view of a dynamic increase in the number of foreigners arriving in Poland. Failure to accept the application after being apprehended by the Border Guard and before being placed in a detention centre shifts this obligation to officers serving in the GCF. Taking into account the excessive workload observed at the Foreigners Administrative Service Section, omissions at earlier stages can lead to a definite delay in the submission of the relevant application by a foreigner. This situation is well illustrated by an example of one of the migrants interviewed by the NMPT representatives. A man declaring his intention to apply for international protection failed to do so during his 3-month stay at the GCF.

It should also be borne in mind that in case of foreigners applying for a refugee status already after a deportation decision was issued for them, the decision has a potentially negative impact on granting international protection. This is because the investigating authority may suspect that the foreigner has submitted the application in order to delay deportation.

The NMPT therefore recommends that every foreigner be informed in an understandable way about the possibility of applying for international protection immediately after being apprehended by Border Guard officers. Those interested should be given the opportunity to submit an appropriate application as soon as possible. Regardless of when the application was lodged, each applicant should be instructed in writing, in an understandable language, about the rules of the pending procedure, including his or her rights, persons and

⁹⁶ See UNHCR, Reception of asylum-seekers, including standards of treatment, in the context of individual asylum systems, Global consultations on international protection - 3rd meeting, 4 September 2001, EC/GC/01/17, para. 11.

organizations providing legal assistance and entities providing information and support in the context of the rules of the refugee procedure and the benefits available, including medical care⁹⁷.

- Analogous rights in terms of access to information should be enjoyed by those foreign migrants in GCFs who are subject to deportation proceedings or are awaiting execution of a deportation decision already issued. The CPT stressed that people deprived of their liberty in connection with migration should be given clear written information - promptly and in a language they understand - about all their rights and the procedures applied to them. A document of this kind should be available in the languages most commonly spoken by the foreigners concerned, and if necessary, a translator should be used⁹⁸.
- The Committee also considered it essential that migrants be informed well in advance of the planned deportation so that they can mentally adjust to the situation and be able to inform certain persons of the fact, as well as recover personal belongings. The Committee noted that the constant threat of deportation "hanging" over migrants who have not received any information about its timing can trigger anxiety in a person about to be deported, which reaches a peak at the time of deportation and can often turn into a state of violent agitation⁹⁹.

⁹⁷ See Article 5 of the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180/96.

⁹⁸ See CPT Seventh General Report, [CPT/Inf (97) 10], para. 30.

⁹⁹ See CPT Thirteenth General Report, [CPT/Inf (2003) 35], para. 41.

The visit revealed that the procrastinated proceedings and the related inability to set a date for leaving a GCF had a very negative impact on the mental state of the detained foreigners. Interviewees pointed out that even in case of a prison sentence, the convict is aware of how long the detention will last. Many months of detention and the lack of real prospects for leaving the GCF have affected the behaviour of foreigners in many cases, leading, among other things, to aggressive and self-aggressive behaviour.

The NMPT representatives also noted that in overcrowded facilities migrants had sporadic contact with officers acting as deportation caseworkers. As a result, it was unfeasible in practice for them to obtain adequate information about their situation and their rights. The NMPT reservations were also raised upon finding that foreigners who are to be deported or relocated to another GCF are informed about it only several hours or a dozen hours in advance.

With the above in mind, the NMPT recommends informing all persons subject to deportation proceedings or awaiting enforcement of a decision thereon about their rights and any other issues related to pending procedures. This information should be provided in writing and, if necessary, orally, in a language understood by the foreigner. The NMPT also recommends that foreigners who have been given a deportation date or are scheduled to be transferred to another GCF be given information about this well in advance so that they can contact their family or attorney and mentally prepare for the event.

Access to an interpreter

In light of international standards for the protection of the rights of foreigners deprived of their liberty, providing them with information in a language they can understand is crucial to effectively instructing those in detention about the procedures to which they are subject and their rights. As indicated above, the migration situation observed since mid-2021 and a shift in the countries of origin

of foreigners arriving in Poland also posed a challenge in terms of providing access to interpreters of languages such as Somali, Urdu, Pashto and Farsi. The NMPT representatives visiting both Border Guard facilities where detained migrants were housed and GCFs observed many irregularities in this regard.

The NMPT received information from foreigners according to which the interpretation service provided to them was illusory in practice. Indeed, the foreigners reported that in the course of the operations conducted, some interpreters indicated that the forms submitted to the foreigners concerned "*are important and they must be signed.*" Information on the content of statements and other documents that foreigners signed was therefore not provided to them. The situation was similar for some of the court hearings concerning the placement of foreigners in GCFs. Those who were subjected to decisions on the matter only learned that they would be placed in a GCF for 2-3 months. In this context, it is also necessary to recall the situation in which foreign migrants at a temporary GCF visited by the NMPT¹⁰⁰ team asked the team members about a name of the town in which the GCF was located because they wanted to apply to NGOs providing free legal assistance, but did not know the GCF location.

The visiting team also found irregularities in the foreigners' documentation under review. Some of the detention reports lacked information about the language spoken by detainees. There were also cases where the aforementioned information was indicated, while there was no annotation of the interpreter or the interpreter's signature and seal. In the context of standard forms of instructions on the rights and obligations of persons admitted to GCFs, representatives of the NMPT noted that some foreigners signed documents in languages they did not speak, as indicated by the information contained in the documentation prepared after detention. These suspicions were confirmed

¹⁰⁰ NMPT visit to the Temporary GCF in Czerwony Bór on 1 September 2021;

during one-on-one interviews, with most interviewees indicating that they had learned about the facility's rules from other migrants with whom they were able to communicate. In doing so, it should be noted that a frequent solution observed in the visited facilities was the use by officers of foreigners who spoke English or Russian as interpreters. It should be emphasized that the CPT holds that the use of detainees as interpreters should be avoided¹⁰¹. The GCF staff also used electronic translators for basic communication.

On a positive note, the solution adopted in some of the facilities visited was to present the daily routine applying to the foreign migrants in a pictorial form, using pictograms. According to the NMPT, the use of universal symbols allows the vast majority of migrants to learn about how the facility operates, including meal times, shopping, educational and sports activities, or the healthcare and mental health support provided. A noteworthy example is a GCF¹⁰² in which the officers employed (as well as staff at the division's headquarters) are able to establish communication with foreigners in English, Russian, French, Italian, Urdu, Hindi and Vietnamese. **According to the NMPT, the language competency of those serving in detention facilities where foreigners are placed should be systematically improved. This is because it is crucial for exercising their rights and ensuring smooth communication.**

In some of the sites visited, the visiting team observed a large number of materials on the premises regarding the daily routine, rules for making medical appointments and shopping. Information in several languages about the rules of the GCF and contact details of institutions upholding human rights are posted in publicly accessible places. Posters and brochures of NGOs providing free legal assistance were also available in common areas.

¹⁰¹ See CPT report on a visit to Bulgaria in 2010, [CPT/Inf (2012) 9], para. 53;

¹⁰² NMPT visit to the GCF and Detention Centre in Przemyśl between 31 January - 3 February 2022;

The NMPT asks that special care be taken in providing foreigners with information relevant to their situation and their rights in the language they speak. At the same time, the NMPT recommends translating the GCF rules and regulations and the standard instruction forms with which newly admitted persons become acquainted into as many languages as possible, taking into account current migration trends and the countries of origin of foreigners. The NMPT also recommends drawing up documents defining the GCF daily routine by means of pictograms.

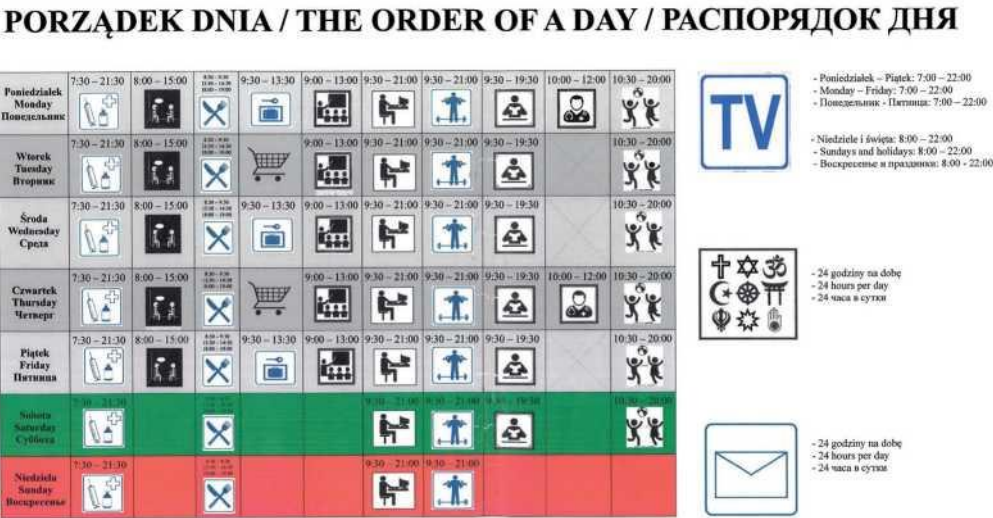


Figure 1. Information on daily routine of the GCF in Kętrzyn

8. Living conditions

During the visits to the guarded centres for foreigners, representatives of the National Mechanism for the Prevention of Torture each time inspected the rooms in which foreigners were staying or which were allocated for their potential stay. The inspection covered, in particular, bedrooms, washrooms and toilets, isolation rooms for people who are ill, rooms for cultural, educational and sports activities, rooms for religious practice as well as recreation and walking areas. The inspection aimed to assess whether the living conditions in the visited establishments were in line with the principle of respect for human dignity and met the requirements set out in applicable international standards and national

law provisions. It should be noted that the assessment of detention conditions from the point of view of possible violations requires examining whether the they do not make the deprivation of liberty severe beyond the unavoidable minimum, and whether measures have been implemented to reduce inconvenience caused to foreigners and to protect their health and general well-being.¹⁰³

It should be emphasized that due to the dynamic increase in the number of foreigners admitted to detention centres, the visiting team also examined the impact of the current migration trends on the living conditions of persons placed there. The activities carried out made it possible, in addition, to assess the implementation status of the NMPT recommendations issued in the previous years.

- In the light of international standards, the conditions in which foreigners with unregulated status are detained should reflect the nature of their detention, in particular in terms of restrictions imposed on them and access to various forms of activity¹⁰⁴.

¹⁰³ See judgment of the ECtHR of 7 April 2005 in the case of *Karalevidus v. Lithuania*, application no. 53254/99; judgment of the ECtHR of 20 October 2016 in the case of *Muršić v. Croatia*, application no. 7334/13.

¹⁰⁴ See Nineteenth General Report of the CPT, [CPT/Inf (2009) 27], para. 79.

- In the opinion of the CPT, guarded centres for foreigners should guarantee sufficient living space and should be properly furnished and kept clean.¹⁰⁵ Migrants staying there should also have rooms with adequate amount of light (including daylight), ventilation and heating.¹⁰⁶ Every person should have a separate bed with a mattress and clean linen¹⁰⁷ as well as a locked cabinet¹⁰⁸. Foreigners placed in the guarded centres for foreigners should have free access to basic personal hygiene products¹⁰⁹ as well as products for keeping their clothes and rooms clean¹¹⁰.
- Importantly, foreigners in administrative detention should have 24-hour access to toilets¹¹¹ and to bathrooms with hot water¹¹². It is also necessary to ensure access to drinking water¹¹³ and meals adjusted to the requirements of a given religion and to individual health needs¹¹⁴.

Systemic problems

The National Mechanism for the Prevention of Torture was concerned about the regulation of 13 August 2021 issued by the Minister of the Interior and

¹⁰⁵ See CPT report on the visit to the former Yugoslav Republic of Macedonia in 2014, [CPT/Inf (2016) 8], para. 113.

¹⁰⁶ See CPT report on the visit to Ukraine in 2002, [CPT/Inf (2004) 34], para. 62.

¹⁰⁷ See CPT report on the visit to Greece in 2007, [CPT/Inf (2008) 3], para. 25.

¹⁰⁸ See CPT report on the visit to Croatia in 2007, [CPT/Inf (2008) 29], para. 35.

¹⁰⁹ See CPT report on the visit to Greece in 2011, [CPT/Inf (2012) 1], para. 38.

¹¹⁰ See CPT report on the visit to the former Yugoslav Republic of Macedonia in 2014, [CPT/Inf (2016) 8], para. 120.

¹¹¹ See CPT report on the visit to Greece in 2011, [CPT/Inf (2012) 1], para. 38.

¹¹² See CPT report on the visit to Greece in 2013, [CPT/Inf (2014) 26], para. 51.

¹¹³ See CPT report on the visit to Hungary in 2005, [CPT/Inf (2006) 20], para. 53.

¹¹⁴ See CPT report on the visit to the former Yugoslav Republic of Macedonia in 2014, [CPT/Inf (2016) 8], para. 120.

Administration, which amended the regulation on guarded centres and arrests for foreigners¹¹⁵. As a result of the amendment, in the annex to the regulation, in Article 11, after section 1 paragraph 1a was inserted as follows:

1a. If it is necessary to place a large number of foreigners in a guarded centre or in a arrest for foreigners at one time but there are no free beds in the centre's bedrooms/cells, foreigners may be placed, for a period no longer than 12 months, in a bedroom or cell with living space smaller than set out in paragraph 1 point 1 but no smaller than 2 m² per person.

According to the regulations in force before, the minimum living space per person in administrative detention was, respectively, 3 m² for men and 4 m² for women and minors. **The minimum living space set out in the amendment to the regulation is therefore smaller than the standard for prisons where minimum living space per person is 3 m².**

In this context, it should be emphasized that, in accordance with international standards applicable to detention places, living space per person, even in penitentiary establishments, may not be smaller than 6 m² in single cells and 4 m² in multi-person cells¹¹⁶.

As a result of the visits the NMPT found that the amendment to the regulation caused an increase in the maximum capacities of the visited centres. Notably, in one of the centres the actual number of foreigners exceeded even the maximum number of foreigners defined based on the amended regulation¹¹⁷. Moreover, in

¹¹⁵ Dz. U. [Journal of Laws] of 2021, item 1482.

¹¹⁶ 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].

¹¹⁷ The visit to guarded centre for foreigners in Krosno Odrzańskie carried out on 18-19 October 2021.

one of the temporary centres,¹¹⁸ established in connection with the current migration situation, the visitors found as a result of measurements taken that in some bedrooms the living space per foreigner was less than 2 m².

Since the newly introduced living space standard violates the right of persons placed in the guarded centres to have their dignity respected, the placement of foreigners in living space conditions set out in the amended provision of the regulation may be considered inhuman or cruel treatment¹¹⁹. **The National Mechanism for the Prevention of Torture calls for immediate withdrawal of the recently enacted amendment. Given the optional nature of the adopted provisions, the NMPT recommends to commanders of the Border Guard units and stations in areas where guarded centres for foreigners are located that, when determining the maximum capacity of the centres, they should follow the standards applicable before the entry into force of the amendment to the Regulation of 13 August 2021.**

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 ¹²⁰.

According to the regulations in force, the installation of windows bars is still permissible¹²¹. Yet, in the light of international standards on the protection of persons deprived of liberty, conditions in places of detention of foreign migrants

¹¹⁸ 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, on 19 November 2021 the CHR sent a letter to the Commander-in-Chief of the Border Guard (ref. no. KMP.572.1.2021.MZ).

¹¹⁹ See judgment of the ECtHR of 13 July 2019 in the case of Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia, no. 14165/1613.

¹²⁰ See NMPT report Foreigners in Administrative Detention. Results of NMPT monitoring of guarded centres for foreigners in Poland, 2021, chapter 5.3.4.

¹²¹ See Article 5(2) of the Regulation of the Minister of the Interior of 24 April 2015 on guarded centres and detention centres for foreigners, Dz. U. [Journal of Laws] 2015, item 596.

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 avoided¹²².



Figure 2. Window bars in a bedroom, GCF in Krosno Odrzańskie.

¹²² See CPT report on the visit to Malta in 2008, CPT/Inf (2011) 5, para. 51.



Figure 3. Bedroom, GCF in Białystok.

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 foreigners¹²³. However, in some of the visited centres windows still had bars on them¹²⁴. The visiting team found that in one of the temporary centres, temporary bar panels were installed on the windows¹²⁵ 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).

¹²³ The NMPT visit to the guarded Centre for Foreigners in Biała Podlaska carried out on 19 January 2022.

¹²⁴ GCFs in Białystok, Przemyśl and Krosno Odrzańskie.

¹²⁵ TGCF in Wędrzyn.

Therefore, the NMPT recommends steps aimed at the soonest possible removal of the window bars.

Other irregularities

In the opinion of the NMPT, the solutions adopted in connection with the sudden increase in the number of people crossing the border of the Republic of Poland in an irregular manner and the resulting necessity to increase the number of beds in the existing guarded centres for foreigners and to establish temporary new ones has negatively impacted the living conditions at the centres. The main problem in the visited centres was their **overcrowding**. The problem was particularly visible e.g. in one of the guarded centres for families and unaccompanied minors. Its maximum capacity was increased from 120 to 478 places. As a result, some foreigners had to be accommodated in the building of a former boarding house and in residential containers¹²⁶. In the opinion of the visiting team, the living conditions in the former boarding house and the containers were much poorer than those in the main building of the guarded centre. It should be emphasized that the families living in the containers had to cross a distance of several hundred meters in order to use toilets, which in low temperatures and bad weather conditions posed a threat to their health.



Figure 4. Residential containers, GCF in Lesznowola.

¹²⁶ The visit to the guarded centre for foreigners in Kętrzyn carried out on 7-9 December 2021.



Figure 5. Residential container, GCF in Lesznowola.

The visitors also noted that in the former boarding house, as a rule, in every bedroom two families were placed, who then they separated the room by bedsheets or blankets. In the opinion of the NMPT, the practice violates the right of the foreigners to have their family and private lives respected, according to Article 8 of the European Convention on Human Rights¹²⁷. **With this in mind, the NMPT recommends that in one room, only members of the same family be placed.**

In this context, it should be emphasized that managers of some of the visited centres for families informed that they had decided not to admit more foreigners, despite having single free beds left in some bedrooms. The aim was to ensure that only members of the same family are accommodated in one room. The information was confirmed during the visit carried out by the NMPT.

¹²⁷ See Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on November 4, 1950, Dz. U. [Journal of Laws] of 1993, no. 61, item 284.

During one of the visits, the NMPT representatives found that some foreigners were placed in a Border Guard rooms for detained persons. This was assessed negatively because in such rooms toilets are separated only by 1-metre high partitions¹²⁸. Because of this, such facilities should not be used for accommodating foreign migrants.

Sanitary facilities in most of the visited centres did not raise any objections. One of the centres had recently undergone major renovation works as a result of which it had freshly renovated bathrooms and toilets¹²⁹. At one GCF, however, individual showers in the bathrooms were separated only with 1 metre-high partitions and had no covering on three sides¹³⁰.



Figure 6. Showers, GCF in Krosno Odrzańskie.

¹²⁸ The visit to the guarded centre for foreigners in Kętrzyn carried out on 18-19 October 2021.

¹²⁹ The visit to guarded centre for foreigners in Biała Podlaska carried out on 19 January 2022.

¹³⁰ GCF in Krosno Odrzańskie.



Figure 7. Bathroom adapted for persons with disabilities, GCF in Kętrzyn.

Despite some irregularities the NMPT representatives saw efforts taken by the managers of most of the centres to improve living conditions there. The examples included the installation of air conditioning systems in bedrooms or the renovation of the outdoor infrastructure at one of the centres¹³¹, including the building of a modern sports pitch and a playground for children. Outdoor, among the buildings there were lamps installed with adjustable light intensity so that the light could be dimmed at night not to disturb people. In one of the buildings there was a smoking cabin. In the period immediately preceding the visit, 21 modern multimedia kiosks were installed in the centre, which provide access to the internet and Microsoft Office tools to foreigners.

¹³¹ GCF in Przemyśl.



Figure 8. Sports pitch, GCF in Białystok.



Figure 9. Multimedia kiosk, GCF in Przemyśl.



Figure 10. Walking yard, Detention Centre for Foreigners in Przemyśl.



Figure 11. Playground for children, GCF in Przemyśl.



Figure 12. Bedroom, GCF in Przemyśl.



Figure 13. Bedroom, GCF in Przemyśl.



Figure 14. Outdoor gym, GCF in Przemyśl.



Figure 15. Indoor gym, GCF in Przemyśl.

In two of the guarded centres, the visiting team saw that in order to block excessive sunlight the foreigners hang blankets on the windows¹³² or covered them with paper¹³³.

The need to provide window coverings to protect against excessive sunlight and temperature in the guarded centres for foreigners, was mentioned by the CPT after its visit to Poland in 2017¹³⁴.

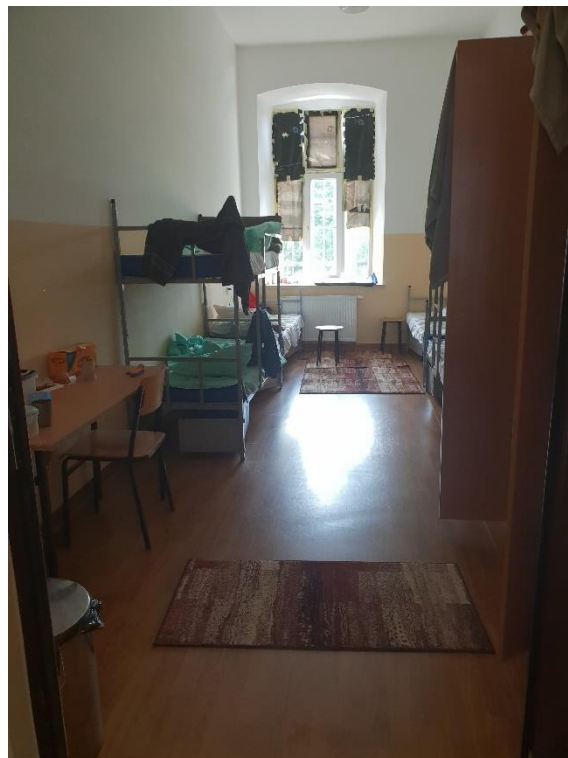


Figure 16. Bedroom, GCF in Białystok.

¹³² As above.

¹³³ TGCF in Wędrzyn.

¹³⁴ CPT report on the visit to Poland in 2017, [CPT/Inf (2018) 39], para. 39..



Figure 17. Bedroom in the unit for unaccompanied minors, GCFin Kętrzyn.

Therefore, the NMPT recommends introducing solutions to make it possible for persons detained in the centres to adjust the inflow of natural light to the rooms.

The NMPT was also interested in the operation of the facilities in Czerwony Bór, Biała Podlaska and Wędrzyn, established temporarily due to the migration situation and the large increase in the number of foreigners placed in GCFs pursuant to court decisions.



Figure 18. Bedroom, TGCF in Czerwony Bór.



Figure 19. Renovated toilets, GCF in Biała Podlaska.

It should be noted that, according to the information received, the commanders of the relevant Border Guard units in whose area the temporary centres were to

be established, had from a few to over ten days to adapt the infrastructure to the requirements provided for by law for guarded centres for foreigners. In Czerwony Bór and Biała Podlaska, buildings used before as open centres for foreigners were allocated to the needs of the TGCs. In Wędrzyn, military barracks were adapted.

During the NMPT's first visit to the TGCF in Czerwony Bór¹³⁵, the facility, with the maximum capacity of 148 places, was clearly overcrowded. Foreigners were accommodated in two buildings divided into smaller units. Each unit comprised two bedrooms (a five-person one and a two-person one) and a shared bathroom with a shower. The visiting team noted, first of all, that the buildings lacked common rooms, in particular adapted to the needs of children staying there. As a result, most of the foreigners spent their time in the staircases or outdoor.

Temporary centre in Wędrzyn

The establishment of the temporary guarded centre for foreigners in Wędrzyn in August 2021 was an unusual process. The temporary centres in Czerwony Bór and Biała Podlaska were located in buildings used previously as open centres for foreigners. In Wędrzyn, however, the centre was located within an active military training ground. The information received by the NMPT emphasized that the Commander of the Nadodrzański Border Guard Unit had only five days for organizing the centre. That is why the National Mechanism was particularly interested in the facility and visited it three times.

The NMPT assessed the living conditions at the temporary guarded centre for foreigners in Wędrzyn as very poor and not meeting the standards of decent treatment of persons deprived of liberty. The facility was originally planned for a maximum of 600 adult men. However, according to the information provided by

¹³⁵ The visit was carried out on 1 September 2021.

the Nadodrzański Border Guard Unit Commander, as of 31 December 2021 the capacity of the centre was increased to 700 places¹³⁶. During the visit to the centre, the visiting team found that the actual number of foreigners exceeded the capacity¹³⁷. It should be noted, however, that at the beginning of February 2022, some of the foreigners from Wędrzyn were transferred to the centres in Lesznowola and Przemyśl, which significantly reduced the number of people staying there¹³⁸.

At the temporary centre in Wędrzyn the foreigners lived in the military barracks buildings, each composed of two blocks (one block could accommodate a maximum of 150 people). The buildings were surrounded by Concertina razor wire. The wire was also extended around the small walking yards for migrants, which posed a real threat to them and to the officers. It should be emphasized that following the objections raised by the visiting team, the head of the centre decided to have the concertina wire removed from around the common spaces.

¹³⁶ Letter to the Director of the National Mechanism for the Prevention of Torture of 9 February 2022.

¹³⁷ A visit to TGCF in Wędrzyn carried out on 14-16 December 2021.

¹³⁸ According to the information from the Head of the Unit – the Guarded Centre for Foreigners in Krosno Odrzańskie, on 2 June 2022 there were 98 foreigners in the Temporary Centre in Wędrzyn.



Figure 20. Showers, TGCF in Wędrzyn.

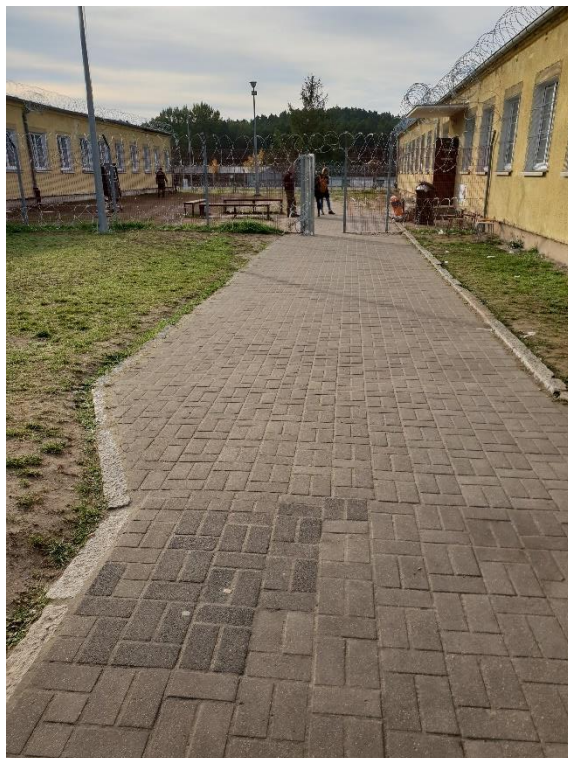


Figure 21. Walking yard, TGCF in Wędrzyn.



Figure 22. Bedroom, TGCF in Wędrzyn.



Figure 23. Bedroom, TGCF in Wędrzyn.



Figure 24. Concertina wire around the walking yard, TGCF in Wędrzyn.



Figure 25. Deposit room, TGCF in Wędrzyn.

Due to security reasons the head of the Wędrzyn temporary facility introduced solutions not met in the other guarded centres, e.g. required foreigners to remove shoelaces from their shoes.

The foreigners were accommodated in multi-person rooms for up to 24 people. This, in practice, made it impossible for them to maintain even a minimum level of privacy. They used blankets, sheets and other screens which they hang on the bunk beds to separate themselves from the other persons. As a result, officers had no possibility to exercise proper supervision over the safety of the migrants. They slept in bunk beds, apart from which there were only tables and simple stools in the rooms.

During the NMPT visit, the accommodation rooms were in a mess, and the cleanliness of the sanitary facilities was insufficient. There were cigarette butts and litter in the corridors and other common areas. The foreigners kept their clothes on the floor or in plastic bags under their beds.

In Wędrzyn, migrants interviewed by the NMPT also mentioned the great stress experienced by them because of military shooting and explosion exercises they could hear on daily basis. In the opinion of the NMPT the situation was unacceptable, given that among migrants at the TGCF there were persons who had left their countries of origin due to armed conflicts, and the detention conditions increased their trauma.

In the opinion of the National Mechanism for the Prevention of Torture, the accumulation level of additional inconveniences resulting from the living conditions at the centre may be considered as inhuman treatment. Therefore, urgent steps should be taken to transfer the foreigners to other centres and close down the temporary facility in Wędrzyn.

9. Right to contact with the outside world

According to international standards, foreigners placed in detention centres should be entitled to maintain regular contact with the outside world, and in particular they should be ensured a possibility to receive visits from relatives, a lawyer or NGO representatives¹³⁹.

- In CPT's opinion persons deprived of their liberty in connection with migration should be entitled to receive visits from members of family and other guests several times a week. One-hour visit per week¹⁴⁰ is regarded as the minimum. Therefore the guarded centres for foreigners (GCFs) ought to ensure appropriate infrastructure, in particular visiting rooms which should be, among others, child-friendly. It is crucial that if any restrictions are to be imposed on visits of a particular foreign national staying in the GCF, this should be done on the basis of an individual risk assessment¹⁴¹.

¹³⁹ See Seventh General Report, CPT/Inf (97)10, para 30; Nineteenth General Report, CPT/Inf(2009)27, para 87.

¹⁴⁰ See CPT report on the visit to Germany in 2010, CPT/Inf (2012)6, para 41.

¹⁴¹ See CPT report on visit to the Czech Republic in 2014, CPT/Inf (2015)18, para 41; to the Netherlands in 2011, CPT/Inf (2012)21, para 72; to Hungary in 2009, CPT/Inf (2010)16, para 44; to Austria in 2014, CPT/Inf (2015)34, para 49.

- In addition to direct contact with close persons, foreigners should have also access to their mobile phones. The centres should also be equipped with telephones to be used by foreigners who do not have mobile phones¹⁴². In view of the fact that some of the family members of those staying in GCFs live outside the borders of the Republic of Poland, access to computers should be ensured in the facilities, including the possibility of using means of virtual communication such as Skype and VoIP (Voice over Internet Protocol) and key websites¹⁴³.

The NMPT assessed the arrangements aimed at exercising by the foreigners detained in the guarded centres the right to maintain contact with the outside world. The visiting team was interested in issues related to, inter alia, the organisation of visits (especially during the COVID-19 pandemic), access to the Internet and the possibility to use mobile phones.

The rules for conducting visits are laid down in the provisions of the applicable house rules governing the organisation and order of foreigners' stay in guarded centres and arrests for foreigners¹⁴⁴. According to these rules, a visit lasts no longer than 90 minutes, while in justified cases, the head of the guarded centre or the officer in charge of the functioning of the arrest for foreigners may permit an extension of the visit time or allow the foreigner to receive more than one visit on the same day. The foreigner and no more than two adults may participate in the visit. The number of minors who have the required permit to

¹⁴² See Nineteenth General Report, CPT/Inf(2009)27, paras 79, 82; CPT reports on visits to: Hungary in 2015, CPT/Inf (2016)27, para 70; to Serbia and Montenegro in 2004, CPT/Inf (2006)18, para 78.

¹⁴³ See CPT reports on the visits to: the Former Yugoslav Republic of Macedonia in 2016, CPT/Inf (2016)8, para 133; to Denmark in 2014, CPT/Inf (2014)25, para 82; to Poland in 2018, CPT/Inf (2018)39, para 54.

¹⁴⁴ See Articles 21-23 of the Annex to the Regulation of the Minister of the Interior and Administration of 24 April 2015 on guarded centres and arrests for foreigners, Dz. U. [Journal of laws] of 2018, item 1576.

pay a visit is not limited, except that persons under 15 years of age may only conduct a visit under the supervision of an adult with a permit to visit.

Importantly, deviations from the way in which visits are organised are also possible in order to allow foreigners to maintain and consolidate the emotional bond with their family and other close persons, and to take permanent care of their children.

As a rule, the National Mechanism for the Prevention of Torture did not receive any alarming signals regarding the exercise of the right of foreigners to receive visits. Nevertheless, during the first visit to the temporary Guarded Centre for Foreigners in Wędrzyn, the representatives of the NMPT were informed about problems of organising meetings with families as well as lawyers and representatives of non-governmental organisations due to the location of the facility on a military training ground. Therefore it was not possible for family members who were not Polish citizens to enter the facility. As regards other persons interested in visiting a foreigner, it was necessary to carry out verification in order to issue a pass. However, according to the information provided later, lawyers and representatives of aid organisations were allowed into the temporary Centre in Wędrzyn.

Due to the pandemic, the possibility of in-person visits was temporarily restricted, which was justified on sanitary and epidemiological grounds. During the period when the visits took place, due to a high increase in SARS-CoV-2 virus infections on the territory of the Republic of Poland, from 26 January to 28 February 2022, all in-person visits were suspended at the GCFs on the basis of the guidelines of the Board for Foreigners of the Border Guard Headquarters¹⁴⁵. At the same time, the Board requested heads of the facilities to ensure alternative remote forms of contact with relatives and organisations providing

¹⁴⁵ See the letter of 26 January 2022, ref. no. KG-CU-III-1.074.3.2022.

legal assistance. In this context, it should be noted that in the centres visited separate computer workstations dedicated to remote visits were arranged.

The NMPT observed that the actual access, including the frequency of use and the length of the connection was dictated, in principle, by the number of available computer workstations in relation to the number of foreigners staying at the GCF who were interested in establishing contact in this form. It should be borne in mind, however, that because of the desire to maintain contact with close persons residing in other countries, remote meetings were very popular. The visiting team observed that an increase in the maximum capacity of the facilities and a significant growth in the number of people staying there meant that the number of available computer workstations with Internet connection was not sufficient to meet real needs.

In the temporary GCF in Wędrzyn there were two computers in each building inhabited by 150 persons. Deficiencies in this regard were also noticed in, inter alia, the Guarded Centre for Foreigners in Lesznowola. What is more, during the first visit to the facility in Krosno Odrzańskie, the representatives of the National Mechanism received information that due to the fact that the computer room was located in the unit on the ground floor of the building, 48 foreigners in quarantine in the unit on the first floor did not have the possibility to use the Internet.

At the same time, the steps taken in some of the centres to adjust the number of computer workstations to the changing needs should be appreciated. In one of the centres, foreigners had access to 20 out of 21 multimedia kiosks, installed at the beginning of 2022, which they could use every day between 7 a.m. and 9 p.m.¹⁴⁶ Multimedia workstations were also set up in visiting rooms so that the

¹⁴⁶ The NMPT's visit to the GCF and detention centre for foreigners in Przemyśl conducted from 31 January to 3 February 2022.

persons interested could make calls using Skype instant messaging in a privacy-friendly environment. As indicated by the person in charge of another facility, resulting from the commissioning, at the beginning of February 2022, of the building of the centre, where renovation works had been underway for over a year, the centre was retrofitted with 11 computers, 10 of which were intended for use by foreigners¹⁴⁷. **In the opinion of the NMPT, persons in charge of the guarded centres for foreigners in Poland should strive to systematically increase the number of computer workstations available for foreigners.**

Pursuant to Article 8 of the Regulation¹⁴⁸ laying down the conditions to be met by the guarded centres and arrests for foreigners, public telephones¹⁴⁹ in which a telephone call is automatically paid for using a telephone card may be installed in common areas of the guarded centre. Resulting from the amendment to the Regulation¹⁵⁰, as of July 2021 a public telephone may also be installed in the vicinity of the duty room in the arrest for foreigners. Pursuant to the amendments to the house rules introduced by way of the same legal act, it is possible to provide a foreigner, for a limited period of time, with a mobile phone, in case they do not have their own mobile phone or the mobile phone owned by the foreigner has an image recording function.

Bearing in mind the aforementioned provisions, it should be pointed out that during the visits conducted, some foreigners had mobile phones without the image recording function. According to the information provided, they received these devices in parcels sent by their families or they used the devices at the

¹⁴⁷ The NMPT's visit to the GCF in Biała Podlaska conducted on 19 January 2022.

¹⁴⁸ See the Regulation of the Minister of the Interior and Administration of 24 April 2015 on guarded centres and arrests for foreigners, Dz. U. [Journal of Laws] of 2015, item 1576.

¹⁴⁹ Within the meaning of the provisions of the Act of 16 July 2004 – Telecommunications Law, Dz. U. [Journal of Laws] of 2017, item 1907, as amended.

¹⁵⁰ See the Regulation of the Minister of the Interior and Administration of 21 June 2021 amending the Regulation on guarded centres and arrests for foreigners, Dz. U. [Journal of Laws], item 1196.

disposal of the Border Guard. In the context of generally accessible telephones, NMPT's interviewees pointed out that their location in a common area made it difficult to establish contact in the environment ensuring confidentiality of conversations. It should be pointed out to two issues which, in the opinion of the National Mechanism, may have a negative impact on the possibility to make phone calls:

1. in accordance with the applicable regulations, call costs are charged to the foreigners using both public and mobile phones. As regards persons without money, who also do not have the possibility to receive financial support from family or friends, the currently applicable provisions of the Regulation may lead to the actual limitation on the contact with the outside world;
2. national legal regulations restrict the possibility of using mobile phones by the foreigners in detention facilities who do not have an identity document. This is so because since 2016 it has been mandatory to register a SIM card under the regulations governing the telecommunications law. In the case of a foreign national who is not a citizen of an EU member state or the Swiss Confederation, the registration takes place against presentation of the number of the passport or residence card¹⁵¹.

In the opinion of the NMPT, measures of a systemic nature should be taken, including those aimed at amending the applicable regulations, to ensure equal opportunities to make telephone calls to all persons placed in the guarded centres and arrests for foreigners, irrespective of their financial status or whether they have an identity document or not.

During several visits the NMPT representatives were informed about the problems related to the lack of mobile telephony coverage and a poor Internet

¹⁵¹ See Article 60(b) of the Act of 16 July 2004 – Telecommunications Law, Dz. U. [Journal of Laws] of 2021, item 576.

connection, which was allegedly due to the location of the centres¹⁵². During the re-visit to the temporary GCF in Czerwony Bór, the visiting team were told that the problem of the lack of access to the Internet was solved by connection to the fibre optic network. The NMPT understands that the limitations indicated were unrelated to the decisions taken by the management of the visited centres. However, this does not change the fact that the circumstances referred to above may constitute a violation of the fundamental right of foreigners deprived of their liberty to maintain contact with the outside world. **In view of that, the National Mechanism recommends taking immediate steps to improve access to telecommunications services.**

10. Right to lodge a complaint

One of the minimum guarantees that mitigate the risk of ill-treatment cases in places of deprivation of liberty is to create an effective complaint mechanism. Persons in detention related to migration should have the possibility to lodge a complaint with both internal authorities and external institutions. They should also be given the opportunity to meet with the body responsible for handling complaints under conditions that ensure the confidentiality of the contact¹⁵³.

During their visits the NMPT representatives checked whether there were internal procedures in place in the guarded centres enabling lodging complaints and specifying the manner of their further handling. The NMPT team also verified the availability of information on both the internal complaint mechanism and contact details of external institutions to which foreigners could report their

¹⁵² The problems were mentioned by the management of the GCF in Lesznawola and in the temporary GCFs in Czerwony Bór and Wędrzyn.

¹⁵³ See CPT report on the visit to the United Kingdom in 2012, CPT/Inf (2014)11, para 136; to Spain in 2011, CPT/Inf (2013)6, para 97.

observations on potential violations of their rights. In addition, as part of their activities the NMPT got acquainted with the complaints lodged.

The visiting team did not receive any information on violations in this respect. Information on the possibility and procedure for lodging complaints as well as direct meetings with the management of the GCF were part of the document laying down the daily schedule in the facility. In some of the centres visited, there were complaint boxes in the common areas. However, it should be emphasised that in some establishments, neither information about external entities to which complaints can be submitted, nor their contact details were supplied in the common areas.

Bearing the above in mind, the National Mechanism recommends placing in a visible place in each residential unit information, in the languages most frequently spoken by foreigners, about both the internal complaint mechanism and the external institutions to which foreigners may lodge a complaint.

11. Access to consular and diplomatic assistance

One of the fundamental rights of persons residing outside their country of origin, including foreigners with irregular status placed in guarded centres, is the possibility to receive assistance from the staff of a consular post of their country of origin. However, as not all irregular migrants may wish to contact their national authorities, the exercise of this right must be left to the person concerned¹⁵⁴.

In the course of their activities, the NMPT representatives were informed about visits of embassy representatives to the guarded centres. As a rule, meetings with foreigners had an informative character. They were also aimed at

¹⁵⁴ See Nineteenth General Report, CPT/Inf(2009)27, para 83.

presenting the possibility of organising a voluntary return to the country of origin. In some cases their purpose was also to identify foreigners.

As pointed out by the head of the GCF in Przemyśl, the rule in such cases is to inform migrants in advance about the visit of representatives of diplomatic posts, which was confirmed by the foreigners themselves. Only persons interested in the meetings participated in them and only their personal data were provided to the employees of third-country representations. This rule is applicable, in particular, to foreigners applying for international protection in Poland. Therefore of concern is the information on such visits which took place to temporary GCF in Wędrzyn. Foreigners reported that they were brought to meetings with representatives of embassies (including transport to diplomatic posts) regardless of their will. The officers were to inform them that any resistance would involve the use of direct coercion measures.

The NMPT regards such situations as unacceptable, especially in the case of persons who have fled from their country of origin for fear of persecution. One of the interviewees said that after being informed of his stay in the guarded centre, the security services contacted his brother who was in his country of origin and threatened repression if the foreigner decided not to return.

The National Mechanism therefore urges that any consular assistance should be provided only in response to the request from the foreigners concerned. It is also necessary to be particularly cautious about the transfer of personal data of persons placed in GCFs to the diplomatic posts of their countries of origin.

12. Treatment of foreigners

Pursuant to Article 9(5) of the Act on the Border Guard of 12 October 1990¹⁵⁵, while performing their duties officers have the obligation to respect dignity as well as human and civil freedom and rights. This obligation is not limited to refraining from behaviour that violates the fundamental rights of persons deprived of their liberty as it is also crucial for officers to actively work to fully comply with these obligations¹⁵⁶.

In the context of the situation of foreigners detained in detention centres, it is particularly important that they are treated in a humane manner, with respect for their inherent and inalienable human dignity. In the course of the visits carried out, the representatives of the NMPT each time verified cases of using direct coercion measures with regard to foreigners and analysed the content of the complaints lodged. Communication between the staff of the centres and the detainees as well as activity ensured to them were also subject of observation.

It should be emphasised that in most of the visited facilities the officers' attitude to foreigners was full of respect. Except for occasional situations, detainees in the centres did not make any comments on the manner of their treatment by staff. What is also important is that during conversations with the visiting team, staff representatives showed that they were familiar with the situation of individual foreigners and often stressed their difficult situation. They also pointed to the negative impact of detention on the well-being of foreigners, especially minors.

¹⁵⁵ Dz. U. [Journal of Laws] of 2021, item 1486.

¹⁵⁶ See M. Balcerzak, *Odpowiedzialność państwa-strony Europejskiej konwencji o ochronie praw człowieka i podstawowych wolności. Studium prawnomiędzynarodowe* [Responsibility of the State-Party to the European Convention for the Protection of Human Rights and Fundamental Freedoms. International Law Study], Toruń 2013.

The only exception to the rule was the situation observed in the temporary facility for men where, due to the prevailing overcrowding and the inadequate number of officers in relation to the number of foreigners, the only interaction between them took place at the fence separating the residential blocks from the rest of the centre. That contact involved giving brief orders to foreigners, delivering correspondence or taking them out to the canteen. According to the NMPT, the lack of proper communication had a negative impact on the well-being of both the foreigners and the officers. **Based on the information received, it also transpires that the officers called foreigners only by their assigned register numbers, which, in the opinion of the National Mechanism, constitutes a dehumanising practice. Reducing a human being solely to the number assigned to them degrades them, thereby violating their right to respect for their dignity. Therefore such a practice in communication with foreigners should be abandoned without delay.**

Violations identified

During the visit to one of the guarded centres and the temporary facility subordinate to it the foreigners with whom the NMPT representatives spoke repeatedly pointed out to the inappropriate conduct of a doctor providing healthcare services in the facility¹⁵⁷. The doctor was to address the patients in an abusive manner, use vulgarisms and belittle information the foreigners supplied about their conditions. The foreigners even claimed that, due to the doctor's attitude, it was an overstatement that any medical care was provided in the facility, apart from basic medical care involving dispensing painkillers by nurses and paramedics. What is also significant is that the head of the GCF received a collective complaint about the doctor's behaviour.

¹⁵⁷ NMPT's visits to the GCF in Krosno Odrzańskie and temporary GCF in Wędrzyn carried out from 18 to 21 October 2021 and from 15 to 17 December 2021.

The National Mechanism considers such behaviour as unacceptable, contradictory to the Code of Medical Ethics and the provisions of the Act on the profession of physician and dentist, according to which, when providing healthcare services, doctors are obliged to respect intimacy and personal dignity of the patient. They are obliged to practice their profession in accordance with the indications of the state of the art in medicine, methods and means available to them for the prevention, diagnosis and treatment of diseases, in accordance with the principles of professional ethics and with due diligence¹⁵⁸.

The NMPT recommends that medical services to patients who are foreigners placed in the guarded centre be provided with respect for their fundamental rights and in compliance with the Code of Medical Ethics and applicable provisions in this respect.

The NMPT representatives also received worrying signals about the treatment of persons escorted between guarded centres as well as about an incident that allegedly occurred while waiting for foreigners to be admitted to the GCF in the course of an ongoing relocation. Firstly, according to the information provided, the Border Guard officers escorting the migrants denied them the possibility to leave the coach in order to take a breath of fresh air and to use the toilet during the stopover. It should be noted that the facilities between which the transport took place are more than 450 km apart. While understanding the need to ensure appropriate supervision of the persons relocated, the NMPT strongly emphasises that limiting the possibility to breathe in fresh air and satisfy physiological needs for many hours may be considered inhuman treatment within the meaning of Article 3 of the European Convention on Human Rights.

¹⁵⁸ See Article 36(1) of the Act on the profession of physician and dentist, Dz. U. [Journal of Laws] of 2021, items 790, 1559, 2232; Dz. U. [Journal of Laws] of 2022, item 583.

Bearing this in mind, the National Mechanism recommends taking measures which, on the one hand, will allow for proper supervision of foreigners deprived of their liberty during their convoy to other facilities, but on the other hand, will not lead to the restriction of their basic physiological needs.

In this context, it should also be underlined that, resulting from the analysis of the recordings of surveillance cameras, the men waited for many hours at the GCF for admission. They had left the vehicle one by one. In the course of their activities, the NMPT's representatives were informed that one of the foreigners waiting in the coach had allegedly been impatient and reported pain in his testicles to the officers. Then, irritated by the man's behaviour, one of the officers had allegedly taken him out of the vehicle and beaten him in front of his fellow passengers. The version was confirmed by the foreigner himself, who decided to lodge a written complaint with the Office of the Commissioner for Human Rights. Leaving the issue of the beating to the competent authorities for clarification, it should be pointed out that the man, upon admission to the centre, approached the medical staff and gave information about the violence allegedly inflicted on him. After taking him to hospital and carrying out an examination, he was diagnosed with a suspected fracture of his wrist bone. In addition, other traces were revealed that made probable the allegations made by the foreigner¹⁵⁹. In view of the above, the commander of the Border Guard Station notified the Prosecutor's Office of the possibility of committing a crime¹⁶⁰.

The NMPT emphasises that the violation of physical integrity of a foreigner deprived of liberty by representatives of the uniformed services, where there

¹⁵⁹ More information about this issue can be found in section 5 of this report.

¹⁶⁰ According to the information supplied to the Deputy Director of the Equal Treatment Department of the CHR Office by the District Public Prosecutor in Grójec (letter of 21 April 2022 in case file no. 4171-4 Ds.172.2022), the Prosecutor's Office launched an investigation into the abuse of powers by a public officer – an officer of the Border Guard, i.e. an act under Article 231(1) of the Penal Code.

were no statutory prerequisites to use direct coercion measures, is an act of violence which may comply with the definition of torture or other forms of ill-treatment¹⁶¹. **The National Mechanism recommends that Border Guard officers treat persons deprived of their liberty with respect for their rights and on the basis of the existing regulations.**

The National Mechanism also received information about acts of violence, including of a sexual nature that allegedly occurred between foreigners detained in a temporary centre for men. As the CHR pointed out in its letter¹⁶² to the Commander-in-Chief of the Border Guard: "(...) given the still huge disproportion between the number of residents and security officers in Wędrzyn, there is a lack of continuous and direct supervision of foreigners inside residential buildings. Such a situation causes a high risk for the safety of foreigners who may fall victim to aggression from fellow residents. The probability, almost certainty, of acts of violence among foreigners, is evidenced by the fact that during the recent visit there was a fight among several foreigners on the grounds of nationality. Moreover, the representatives of the Office also received worrying information about possible cases of sexual harassment".

In this context, the National Mechanism recalls that from the moment of admission to a guarded centre for foreigners, both the obligation to ensure the safety of persons detained there and the responsibility for possible violations, regardless of who actually committed them, rests with Border Guard officers.

In view of the above, the NMPT recommends taking all possible measures directed at ensuring the safety of foreigners staying at GCFs and in particular at

¹⁶¹ See Article 1 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP CAT) adopted by the UN General Assembly on 10 December 1984, Dz. U. [Journal of Laws] of 1989 No. 63, item 378.

¹⁶² See the letter of 11 January 2022, ref. no. KMP.572.1.2022.MZ.

counteracting any manifestations of violence perpetrated by other migrants placed in the facility.

13. Offer of cultural, educational and recreational activities

- Due to the administrative nature of the detention of migrants, neither the conditions, nor the regime in GCFs should reveal similarities with prisons. Therefore, migrants should be restricted in their freedom of movement within the detention facility as little as possible and they should be ensured access to outdoor activities as well as a diverse range of educational, cultural and sporting activities. This is particularly important in the case of children detained in the guarded centres¹⁶³.

In general, the NMPT assessed positively the cultural and educational offer in the visited family-oriented centres. In most of them educational activities were carried out, including, inter alia, Polish language classes for children and adults, as well as contests, sports competitions and additional activities. Nevertheless, the findings from the first visits indicated that educational activities were of an illusory nature. In one of the temporary facilities there was no space to carry out activities for children. The staff also pointed to a problem of the availability of books and magazines in the libraries due to placing in the GCFs foreigners, who spoke languages that had previously been rare. An additional problem in this

¹⁶³ See CPT, Extract from the Nineteenth General Report, CPT/Inf(2009)27, paras 79, 99; CPT report on the visit to Hungary in 2015, CPT/Inf (2016)27, para 42; CPT report on the visit to France in 2010, CPT/Inf (2012)13, para 43; CPT report on the visit to Ukraine in 2009, CPT/Inf (2011)29, para 62.

respect was the lack of possibility to order literature in many languages in Polish bookshops.

However, the representatives of the National Mechanism noted that there were no recreational and sport activities in the temporary centre for men in Wędrzyn. Foreigners placed there stayed all day in their bedrooms or in small walking yards. According to the information supplied by the representatives of the management and staff of the facility, board games and playing cards were made available to the men. It should be borne in mind, however, that as regards young men, the lack of any interaction combined with the inability to use their energy resulted in a deterioration of their mood and caused increased tensions. This, in the NMPT's opinion, led to the mutiny that took place in the centre on 25 November 2021¹⁶⁴.

14. Staffing situation and preparation of staff to perform their duties

In the course of the visits the representatives of the National Mechanism for the Prevention of Torture paid special attention to the staffing situation in the guarded centres for foreigners. A rapid increase in the number of persons sent to GCFs in the second half of 2021 posed a serious organisational challenge for both the management of the facilities and the male and female officers working there. The NMPT is aware of the correlation between the staffing levels and the quality of officers' work, their professional capabilities and motivation. These factors are undoubtedly also reflected in their attitude towards detained foreigners. Deficiencies in staffing levels lead to professional burnout and frustration, thereby creating the risk of inappropriate behaviour.

¹⁶⁴ In his general intervention letter to the Commander-in-Chief of the Border Guard of 11 January 2022, the Commissioner for Human Rights focussed on, inter alia, the problem of the lack of an appropriate offer of sports and recreational activities in the temporary GCF in Wędrzyn, r.ef. no. KMP.572.1.2021.MZ

- The UN Subcommittee for the Prevention of Torture (SPT) points out that the level of staffing in detention facilities has a direct effect not only on the safety and security of both the detainees and staff, but also on the possibilities for staff to organise the day-to-day work and on the regime of the institution as a whole. Adequate levels of staffing also prevent cases of burnout among staff-members and allow them to exercise their full professional capacity instead of concentrating only on running the daily routines¹⁶⁵.

The visiting team was very impressed by the commitment of both the persons in charge of the guarded centres and the staff reporting to them. However, the observed staff shortages translated into significantly increased workload, which resulted in overtime and the ensuing fatigue, stress and frustration. In this context a particularly difficult situation was observed in the Guarded Centre for Foreigners in Krosno Odrzańskie, where due to the decision to establish a temporary facility subordinate to it in Wędrzyn, the maximum number of foreigners increased by more than twelve times. One should also bear in mind that, apart from the need to ensure the safety of foreigners by officers of the convoy and security section, the mass intake of foreigners constituted an unimaginable burden for the employees of the general, educational or foreigners' service sections. The same problems were also noticed by the NMPT representatives, to a different extent, in the remaining visited facilities.

In addition to the issues relating to the increase in the number of centres and the resulting staff shortages, the NMPT identified two additional problems pertaining to the staff performing their duties in the centres visited. The first of these was the frequent turnover of officers seconded to temporarily perform duties in the GCF. It should be emphasised that the majority of the seconded Border Guard

¹⁶⁵ See SPT report on the visit to Sweden, CAT/OP/SWE/1, paras 139-140.

officers had no previous experience of serving in a detention centre and therefore required training in this respect.

In the opinion of the National Mechanism, since the staff are substituted every 2-3 weeks and they must be introduced to new duties earlier, they are able to actually serve in practice for a few days. This also generates, on the part of the GCF management, the necessity of continuous training of newly employed officers. **Therefore, the NMPT recommends the adoption of systemic solutions aimed at addressing staffing needs in the guarded centres in the long term.**

- As the CPT points out, the staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups.
- Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills.

- Furthermore, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action¹⁶⁶.

Taking into the above standard, it should be pointed out that the staff employed in the guarded centres for foreigners should be adequately prepared to perform their duties not only in the detention centre as such but also with the view to the profile of its activities. In this respect, the NMPT is concerned about frequent changes in the profile of the facilities observed in recent months. However, it should be borne in mind that the specific nature of work in the centres for families with minor children differs significantly from the GCF for men.

One of the facilities visited, which had functioned for many years as a detention centre for single adult men, was transformed into a family profile GCF in October 2021. The decision to change the profile of the facility made it necessary to supplement the equipment and to reorganise the operation of the centre, including e.g. the adaptation of activities to the needs of minors. At the same the staff indicated a lack of appropriate guidance training, especially in the context of identifying special needs of people who formed the target group. It is also worth noting that at the time of the subsequent visit, the centre was again a facility for men.

In the opinion of the NMPT, the adoption of short-term solutions for the organisation of GCFs imposes an additional burden on the management and staff of the centres, it also reduces the real possibility to provide foreigners with care adapted to their special needs.

¹⁶⁶ See CPT Seventh General Report, CPT/Inf (97)10, para 29.

15. Recommendations

Based on the findings from the visits conducted, acting pursuant to Article 19 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the National Mechanism for the Prevention of Torture requests that the following recommendations be implemented.

With regard to foreigners' stay in the guarded centres:

- ensuring that decisions on the detention of foreigners, including minors, are always taken as a measure of last resort and are preceded by a thorough analysis of the possibility of imposing non-custodial measures;
- taking efforts to ensure that each of the foreigners in detention may avail themselves of an effective remedy against the decision taken in their case;
- subjecting all detained migrants to a mandatory medical examination prior to submitting an application for their placement in a guarded centre or arrest for foreigners;
- taking legislative measures to ensure representation for every unaccompanied minor-foreigner in the territory of the Republic of Poland before the public authorities in proceedings pending with regard to them;
- taking measures to adapt some of the foster care facilities in Poland to the special needs of unaccompanied minors-foreigners;
- creating a comprehensive mechanism of verifying the age of foreigners, taking into consideration, among others, the following factors: biological, psychological, developmental or environmental;
- taking into account, when making the final assessment of a foreigner's chronological age, all available information and evidence. Any doubts should be resolved in favour of the minors-foreigners who declare their minority;
- if a foreigner is subjected to an examination in order to establish their chronological age, including in the documentation, in each case, a description

of the examination along with information on the margin of error;

- waiving the procedure described in the document entitled “Border Guard Rules for Handling Vulnerable Foreigners” and creating a tool for the effective identification of foreigners on whom torture or other forms of violence were inflicted.

With regard to psychological care:

- increasing systematically the number of psychologists, including child psychologists, in the guarded centres for foreigners;
- ensuring all foreigners, upon their placement in the guarded centre, access to an initial psychological examination that will enable the rapid identification of persons who should not be in detention, and will guarantee the continuity of medical treatment as well as access to medicines, examinations and proper care in other cases;
- improving accessibility to psychological examinations and psycho-social care by establishing cooperation with non-governmental organisations;
- enhancing access to adequate treatment options, including addiction treatment;
- improving access to activities aimed at reducing stress and increasing self-determination and empowerment;
- discontinuing the use of direct coercion measures or punishment against foreigners whose behaviour may be symptomatic of a disorder. In cases of self-aggression, aggression or suicide attempts, an adequate medical and psychological assistance or hospitalisation should be provided immediately after securing the foreigner;
- organising psychological consultations in an environment ensuring confidentiality;
- keeping records in a coded manner ensuring anonymity and confidentiality of the raw data;
- providing training for medical and psychological staff, education team and

male and female officers performing the functions of recognising, communicating and working with traumatised persons, survivors of violence, including torture and inhuman treatment, and persons with mental disorders;

- providing training to medical and psychological personnel in identifying victims of torture and documenting torture to the extent set out by the Istanbul Protocol and manuals to the Protocol designed for each of these professional groups;
- introducing physical and mental health assessments with the view to each of the prerequisites of Article 400 of the Act on Foreigners through psychological and psychiatric examination, including the examination of minors placed in detention together with their parents or persons who have custody of them. Describing the standard and scope of each examination by age group and the model document indicating the fulfilment of the prerequisites or lack thereof;
- conducting the above examinations with regard to all foreigners apprehended prior to referral to court and, in the case of detention, additionally during their stay in the GCF;
- waiving the interpretation provided by other persons in all identification activities and psychological work;
- adapting the content of the algorithm to the independence of each of the prerequisites for waiving detention, as laid down in the legal act;
- basing the opinion on a reasonable presumption of subjection to violence on a broader spectrum of symptoms and disorders, not just post-traumatic stress disorder.

With regard to the right to information:

- informing each foreigner in a way they understand about the possibility of applying for international protection immediately after being apprehended by Border Guard officers. The persons interested should be given the opportunity to submit the relevant application as soon as possible;
- informing each person applying for international protection in writing, in a

language they understand, on the rules of the ongoing procedure, including on their rights, persons and organisations providing legal assistance and as well as the entities providing information and support with regard to the rules for the refugee procedure and the benefits refugees enjoy, including medical care;

- informing all persons subject to return proceedings or awaiting enforcement of a return decision about their rights and any other issues relating to the ongoing procedures. This information should be provided in writing and, if necessary, orally, in a language the foreigner understands;
- providing foreigners who have been assigned a deportation date or are scheduled to be transferred to another GCF information on this well in advance so that they can contact their family or attorney and prepare themselves psychologically for this event;
- improving systematically language skills by persons in the service of the guarded centres and detention centres for foreigners;
- providing foreigners detained in the guarded centres with information relevant to their situation and their rights in the language they speak. This includes translation of the house rules of stay in the guarded centre and standard printed forms of instructions, with which newly admitted persons familiarise themselves, into as many languages as possible, taking into consideration the current migration tendencies and the countries of origin of foreigners;
- preparing documents specifying the daily schedule in the facilities by means of pictograms and placing them in common areas;
- ensuring foreigners adequate access to interpreters.

With regard to improvement of living conditions:

- immediate withdrawal of the enacted amendment reducing the minimum living space per person to 2 m² in a guarded centre for foreigners. Given the optional nature of the adopted provisions, the NMPT recommends to

commanders of the Border Guard units and stations in areas where guarded centres for foreigners are located that, when determining the maximum capacity of the centres, they should follow the standards applicable before the entry into force of the amendment to the Regulation of 13 August 2021;

- taking immediate steps aimed at the fastest possible relocation of foreigners detained in the temporary Guarded Centre for Foreigners in Wędrzyn and the closure of the facility;
- taking measures to remove external bars from room windows as soon as possible;
- placing only members of the same family in a bedroom;
- introducing solutions to make it possible for persons detained in the centres to adjust the inflow of natural light to the rooms.

With regard to the right of foreigners staying in the GCFs to maintain contact with the outside world:

- systematically increasing the number of computer stations connected to the Internet and accessible to foreigners;
- taking systemic measures, including those aimed at amending the applicable provisions, to provide equal opportunities for making telephone calls to all persons placed in the guarded centres and arrests for foreigners, irrespective of their financial status or whether they have an identity document or not;
- taking immediate steps to improve the available telecommunications services in the Guarded Centre for Foreigners in Lesznowola and in the temporary centres in Czerwony Bór and Wędrzyn.

With regard to providing medical care:

- taking steps to systematically increase the number of medical staff members, particularly doctors in the guarded centres;
- ensuring access to paediatricians and gynaecologists for persons detained in the GCFs with a family profile;

- extending the medical examination and the medical certificate issued to include reference to the danger (risk of possible negative consequences) to life and health associated with the detention and the assessment whether there is a reasonable presumption of subjection to violence. Describing the standard and scope of the medical examination in relation to each of the prerequisites for such presumption and adapting the existing document specimen to the extended scope of the opinion;
- using forms containing the so-called body maps when examining all foreigners;
- ensuring that situations in which non-medical staff of the GCFs are authorised to inspect documentation concerning the foreigner's condition of health are of a marginal nature, justified only by extraordinary circumstances in a particular case;
- conducting a medical assessment of marks on the body reported by the persons detained (or in the case of children by the persons who have custody) as traces of violence, including torture with the view to the verification of a reasonable presumption of subjection to violence;
- ensuring that the foreigners concerned can be examined by a doctor of their choice, at their own expense. The decision of the head of the GCF in this regard should not be dependent on the opinion of the medical staff employed in the centre;
- informing medical staff about foreigners in a bad health condition prior to their transfer to other facilities, as well as providing documentation of the persons relocated already at the time of their admission to a new centre;
- harmonising the principles concerning the testing of newly admitted persons for coronavirus in all guarded centres and detention centres for foreigners.

In the context of the right to lodge a complaint:

- placing, in a visible place in each residential unit, information in the most popular languages about the internal complaint mechanism and the external

institutions to which foreigners may lodge a complaint.

With regard to consular assistance ensured to foreigners:

- initiating contact between foreigners and representatives of the embassies of their countries of origin exclusively at the request of the foreigners concerned;
- exercising great caution about the transfer of personal data of persons placed in the GCFs to the diplomatic posts of their countries of origin.

In the context of adequate treatment:

- providing medical services to patients who are foreigners placed in a guarded centre with respect for their dignity and in accordance with the Code of Medical Ethics and the applicable legal regulations in this respect;
- taking measures which will, on the one hand, enable proper supervision of foreigners deprived of their liberty during their convoy to other facilities, but on the other hand, will not lead to a restriction of their basic needs;
- treating persons deprived of their liberty by Border Guard officers with respect for their rights and on the basis of the applicable regulations;
- not addressing foreigners exclusively by their identification numbers;
- taking all possible measures aimed at ensuring safety of foreigners staying at GCFs, in particular those aimed at counteracting any manifestations of violence that may be perpetrated by other migrants detained in the facility.

With regard to staffing policy:

- adopting systemic solutions targeted at addressing staffing needs of the guarded centres in the long term, due to an increase in the number of foreigners admitted;
- ensuring that every person performing duties in a guarded centre for foreigners has been provided with appropriate training in this respect, including on specific issues arising from the profile of a given facility.

Can a mutiny, hunger strike or suicide attempt... be a form of struggle for one's dignity? Can it be a sign of despair and helplessness, turning into aggression?

How can one's rights be asserted by people who, after fleeing war, poverty and violence, have been placed in a facility fenced off with a concertina wire, in a building with bars on the windows, where the sound of gunfire can be heard?

Where are they supposed to seek help if they do not know the laws and language of the country to which they have arrived?

Did foreigners detained in the centre in Wędrzyn, which was established within an active military training ground, have reasons for a mutiny? What are the conditions in other guarded centres for foreigners?

The staff of the Office of the Commissioner for Human Rights have checked these. They have described and presented their conclusions.

We invite you to read the report of the National Mechanism for the Prevention of Torture.

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