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**REPORT
OF THE COMMISSIONER
FOR HUMAN RIGHTS
ON THE ACTIVITIES OF THE
NATIONAL MECHANISM
FOR THE PREVENTION
OF TORTURE IN POLAND**



2017



What is happening behind closed doors? In isolated places that are not easily accessible and even more difficult to escape from? What can be concluded from visits to places housing persons deprived of their liberty?

Violence and torture as well as cruel and inhuman treatment - even though prohibited - still occur, especially away from “the public eye”. They occur, therefore, not only in dark places, but also in places that do not seem to arise suspicion, such as:

- prisons and pre-trial detention centres,
- psychiatric hospitals,
- social care homes,
- sobering-up stations,
- juvenile detention centres and shelters,
- rooms for detained persons of the organizational units of the police,
- Police emergency centres for children,
- youth care centres,
- rooms for detained persons of the organizational units of the Border Guard,
- Border Guard’s detention centres for the purpose of expulsion,
- closed detention centres for migrants,
- rooms for detained persons of the organizational units of the Military Police,
- nursing homes,
- facilities providing 24/7 care to the disabled, chronically ill and elderly.



Those establishments (there more than 3000 of them in Poland) need to be inspected on a regular basis. It is not only experience and common sense that justify this need but also obligations imposed on our country by international community.

The inspections in question are conducted under the National Mechanism for the Prevention of Torture (NMPT) – by experts (lawyers, pedagogues, sociologists, doctors, criminologists and psychologists) who investigate the conditions in places of detention where individuals are placed against their will¹.

The NMPT operates pursuant to the provisions of the Optional Protocol of the UN to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)². Each State-Party to the Convention is obliged to create a National Mechanism for the Prevention of Torture³.

1 Regulation no. 52/2016 of the Commissioner for Human Rights of 22 December 2016 on the names used by the team of the “National Preventive Mechanism” Until 2016 the team used the name “National Preventive Mechanism”, which, however, did not fully identify its role. The Commissioner for Human Rights changed it to the “National Mechanism for the Prevention of Torture” or “the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”

2 In relation to the Republic of Poland the protocol entered into force on 22 June 2006

3 Two significant international agreements are binding for Poland:

1. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly in New York on 18 December 2002. (Dz. U. No. 150, item 1253)

2. The Convention on the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950. (Dz. U. of 2010, No. 90, item 587)





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Dear Readers,

Torture is one of the gravest violations of fundamental human rights. It not only infringes upon numerous rights enjoyed by people, but also constitutes a direct assault on human dignity which is protected by the Polish Constitution as the source of those rights. Torture is universally prohibited under international law. The prohibition of torture is absolute and unconditional, and there exist no circumstances under which torture may be justified. According to the case-law of the European Court of Human Rights in Strasbourg, the state, regardless of complainant's attitude, may not evade compliance with this prohibition, even at times of war or any other threat to national security⁴.

Regular unannounced visits to places of detention are considered one of the most effective measures to prevent torture and other prohibited forms of treatment of detained persons. The visits, which constitute a preventive pillar of the protection of rights of such persons, are supplementary to the responsive protection of persons in detention, provided by the European Court of Human Rights in Strasbourg. The reason for introducing the ongoing monitoring of places of detention is the fact that detained persons are exposed to the risk of abuse of various types. Instances of abuse may result, among others, from the state's penal policy, insufficient financial resources for ensuring appropriate conditions, inadequate preparation of staff working in places of detention or the lack of proper supervision. There is, therefore, a deep reason behind the existence of the mechanism of regular visits to places of detention which is considered one of the most effective measures for preventing torture and other prohibited forms of treating persons deprived of their liberty.

The Republic of Poland is one of 88 States-Parties that have ratified or acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵ (hereinafter referred to as the OPCAT or Protocol), adopted by the United Nations General Assembly in New York on 18 December 2002. Poland is also one of 67 countries that have established their National Preventive Mechanisms.

The objective of the Protocol has been to introduce a system of regular visits undertaken by independent bodies to places where people are deprived of their liberty. At the international level the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been established. At the national level, each State-Party is required to establish its National Preventive Mechanism. These measures are intended to prevent torture and other cruel, inhuman or degrading treatment or punishment.

⁴ Case Ireland vs. the United Kingdom, judgment of 18 January 1978, application no. 5310/71

⁵ Dz. U. (Journal of Laws) of 2007, No. 30, item 192



2017 was the tenth year of the Commissioner for Human Rights' work as the National Mechanism for the Prevention of Torture. Representatives of the Commissioner's Office carried out 76 unannounced visits to various places of detention across the country.

Just like in the previous years, the Commissioner for Human Rights did not receive sufficient funds to implement the tasks of the National Preventive Mechanism, which was strongly against the provisions of the OPCAT and the Paris Principles⁶.

Our report describes main findings of the preventive visits and diagnoses the existing systemic problems. Regretfully, numerous systemic problems identified in the last years still remain unsolved. Such problems include the failure to amend the Act on juvenile delinquency proceedings, as had been postulated; the failure to solve the problem of placing persons, for the purpose of sobering up, in police rooms for detained persons; the lack of systemic solutions for pregnant juveniles (residents of juvenile establishments) as well as juvenile mothers and their children.

The layout of the report on the Mechanism's activities in 2017 differs from the previous ones. In order to make the recommendations of the National Mechanism for the Prevention of Torture more visible, a multi-colour print was introduced alongside a uniform method for highlighting the national and international standards and recommendations.

As in the previous years, in places of detention in Poland there occur situations which, regrettably, can be classified as degrading or inhuman treatment or punishment. Experience shows that NMPT visits play an important role in preventing torture. Given the fact that the country has over 3000 places of detention within the meaning of Article 4 of the OPCAT⁷, and that the NMPT visiting team is currently composed of 10 persons, despite their high commitment the Commissioner for Human Rights is, unfortunately, unable to guarantee compliance with the minimum international standards of frequency of preventive visits⁸.

Apart from the monitoring of places of detention, the year 2017 was also devoted to the continuation of the NMPT's regional debates held in voivodeship (region) capitals, during which the representatives of the NMPT discussed the key issues relating to the operation of places of detention in Poland. The meetings were addressed to representatives of all types of such places, as well as to representatives of public prosecutor's offices, judicial authorities, voivodeship self-governments and universities.

6 The Paris Principles are requirements to be met by human rights institutions. They were adopted by the UN in 1993. The main requirements to be met are independence and pluralism.

7 According to Article 4(1) of the OPCAT, a place of detention is any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

8 According to the UN Special Rapporteur on torture, ad hoc preventive visits under the NPM should be carried out once per several months, and comprehensive visits once per five years. According to minimum standards defined by the APT, comprehensive visits to organizational units of the police, pre-trial detention centres and to places of detention of people particularly vulnerable to threats or aggression, such as women and foreigners, should be carried out at least once a year.



We hope that you will find the present *Report of the Polish Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in 2017* an important source of information and that it will contribute to the improvement and proper functioning of the different types of places of detention in our country, in line with the international standards. We also hope that thanks to the clearer layout of the report its use will be significantly easier for you.

The report is also available on the website of the Polish Commissioner for Human Rights (www.rpo.gov.pl) in English, which makes it possible for international institutions to receive information on the activities of the National Preventive Mechanism in Poland.

Adam Bodnar, Ph.D.

Hanna Machińska, Ph.D.

OPERATION OF THE NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE

Organization

The role of the National Mechanism for the Prevention of Torture in Poland is performed by the Polish Commissioner for Human Rights⁹.

The National Mechanism for the Prevention of Torture is composed of: employees of the NMPT Team, members of the Expert Committee on the NMPT as well as external specialists.

- The National Preventive Mechanism constitutes one of the Departments within the Office of the Commissioner for Human Rights¹⁰. The NMPT Department is supported by employees of the Commissioner for Human Rights' regional representative offices located in Gdańsk, Wrocław and Katowice. Pursuant to the agreement concluded between the NMPT and CHR's regional representatives, in each regional office an employee has been designated who, apart from performing office work, also participates in 3 preventive visits under the Mechanism, held in establishments located in the area for which a given CHR's representative is responsible. In 2017 the National Mechanism for the Prevention of Torture consisted of 12 specialists and an employee working as a secretary¹¹. The Director of the NMPT in 2017 was Justyna Róża Lewandowska, and Przemysław Kazimirski was her deputy. Supervision over the activities of the National Mechanism for the Prevention of Torture was exercised, in the reporting period, by one of the Commissioner's deputies, col. Krzysztof Olkowicz. Starting from 26 September 2017 the role was assumed by Hanna Machińska (Ph.D.). Pursuant to OPCAT provisions, employees of national preventive mechanisms should have relevant skills and diversified professional knowledge as well as constitute a representation of men and women. Individuals working for the Mechanism in

⁹ Pursuant to Article 1(4) of the Act of 15 July 1987 on the Commissioner for Human Rights (hereinafter referred to as the Act on the CHR), consolidated text: Dz. U. of 2017, item 958.

¹⁰ Article 6 of the Appendix to Regulation no. 45/2015 of the Commissioner for Human Rights of 19 November 2015 adopting the Statutes of the Office for the Commissioner for Human Rights.

¹¹ One employee of the Mechanism was on maternity leave in 2017 and two employees did not participate in te visits organized beyond Warsaw as they were taking care of children below 4 years of age (Article 178(2) of the Labour Code).

2017 had relevant education in the field of law, sociology, political sciences, rehabilitation, psychology and criminology. The NMPT was composed of 7 women and 6 men.

The National Mechanism for the Prevention of Torture cooperates with the Sentences Enforcement Team operating within the CHR Office. The cooperation consists in regular exchange of experiences concerning the observance of rights of persons deprived of liberty. Representatives of the NMPT together with members of the Sentences Enforcement Team hold regular meetings with representatives of the National Headquarters of the Prison Service, in which current problems highlighted in complaints lodged by prisoners and identified during the NMPT preventive visits are discussed.

At the initiative of Deputy Commissioner for Human Rights Krzysztof Olkowicz, since 2016 preventive visits to penitentiary establishments have been carried out jointly with a representative of the Department for Soldiers and other Uniformed Service Members. The solution meets the needs of the Prison Service officers who may report problems related to the performance of their duties directly to the CHR Office employees who are aware of the officers' rights.

Moreover, the Head of the Department for Migrant and National Minorities' Rights also participates in visits performed under the Mechanism to closed detention centres for migrants.

- During the visits, the team is supported by external experts: doctors-psychiatrists, geriatricians, internal medicine doctors as well as professionals specializing in issues that constitute the focus of NMPT visits. The focus in 2017 was psychological and psychiatric assistance offered to foreign citizens placed in closed detention centres for migrants as well as the identification of torture victims among residents of those establishments. For this reason, the visits were carried out in the presence of experts, a psychologist and a psychiatrist, from the International Humanitarian Initiative Foundation.
- On 18 October 2016 the Commissioner for Human Rights established the Expert Committee on the National Preventive Mechanism. The Committee includes, among other, lawyers, representatives of non-governmental organizations, representatives of uniformed services and doctors¹² The composition of the Expert Committee on the NMPT in 2017 was as follows:
 - prof. Zbigniew Lasocik, Ph.D.
 - Maria Załuska; D.Sc., MD
 - prof. Marek Konopczyński; D.Sc.
 - Marzena Ksel; Ph.D.
 - prof. Grażyna Barbara Szczygieł; D.Sc.
 - Maria Ejchart-Dubois, co-president;

¹² The Committee is headed at present by: Justyna Józwiak, Ph.D. – NMPT employee as well as Maria Ejchart-Dubois, the Committee expert. The report on the activity of the Team is contained in the Information about the observance of the rights and freedoms of individuals and citizens in 2017 and on the activity of the Commissioner for Human Rights.



- Janina Agnieszka Kłosowska;
- Lidia Olejnik; Lt. Col.
- Paweł Knut; attorney
- Mikołaj Pietrzak; attorney
- Jerzy Foerster; Ph.D., MD
- Com. Bożena Szubińska;
- Joanna Klara Żuchowska; Ph.D., MD
- Kama Katarasińska-Pierzgalska;
- Agnieszka Aleksandra Sikora;
- Maria Książak;
- Aleksandra Chrzanowska;
- Katarzyna Wiśniewska; attorney
- Maria Niełaczná; Ph.D.
- Aleksandra Iwanowska, Ph.D., co-president (until 01.12.2017);
- Karolina Goral, secretary (until 01.12.2017).

In 2017 the NMPT Committee did not meet in full composition but in working groups. The first working meeting, held on 31 January, was devoted to thematic visits and focused on psychiatric assistance provided to underage residents of juvenile centres. The objective of the meeting was to summarize visits performed in that respect so far, discuss established problems, diagnose issues that further visits should focus on and prepare planned visits to psychiatric hospitals for children and teenagers¹³. Another meeting, organized on 18 April focused on the cooperation between the NMPT and the Campaign against Homophobia and concerned the analysis of the situation of LGBT persons in Polish penitentiary establishments¹⁴. The last meeting, held on 8 May, concerned, in turn, the conditions in closed detention centres for migrants. What was discussed in the course of the meeting were irregularities determined by the NMPT after visiting those establishments as well as the draft intervention to the Chief Commander of the Border Guard concerning the document entitled: *The principles of proceeding with foreigners requiring special treatment by the Border Guard*. Another item on the agenda was the so called domestic violence among foreign citizens placed in closed detention centres¹⁵.

Representatives of the Expert Committee also participated in 17 preventive NMPT visits¹⁶ and 6 regional debates organized under the Mechanism¹⁷.

13 The following Committee members participated in the meeting: Agnieszka Aleksandra Sikora, Joanna Klara Żuchowska Ph.D., MD, and prof. Joanna Klara Żuchowska as well as prof. Marek Konopczyński, D.Sc. Moreover, the meeting was attended by specialists in the field of juvenile psychiatric care - Marzenna Habib (Centre for Education Development), Teresa Panas, Ph.D. (Polish Psychological Association), Agnieszka Dąbrowska (Neuropsychiatric Hospital for Children in Józefów).

14 Paweł Knut, attorney, participated in the meeting on behalf of the Committee.

15 The Committee was represented by: Maria Ejchart-Dubois, Aleksandra Chrzanowska, Comm. Bożena Szubińska, Paweł Knut, attorney. The meeting was also attended by Witold Klaus, D.Śc. – president of the Association for Legal Intervention. Since 2018 Mr. Klaus has been a member of the NMPT Expert Committee.

16 Maria Książak (psychologist) – participation in 2 visits to closed detention centres for migrants; Joanna Klara Żuchowska, Ph.D., MD (internal medicine specialist) – participation in 9 visits (to, *inter alia*, residential care facilities, social care homes, sobering-up stations); Jerzy Foerster, MD (geriatrist) – participation in 6 visits (to, *inter alia*, residential care facilities and social care homes).

17 V Regional Debate, 17.01 Wrocław - attorney Katarzyna Wiśniewska (Helsinki Foundation for Human Rights) speech: *The rights of minors in detention*;

Methodology

The National Mechanism for the Prevention of Torture may visit all places of deprivation of liberty in Poland, that is such establishments in which detainees are placed pursuant to a public authority order, its insistence, consent or acquiescence (national, local government, private).

There are over **3000** places of detention in Poland

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

During visits, Mechanism's representatives may record sound, with the consent of individuals who are going to be recorded, as well as hold meetings with persons deprived of their liberty without the presence of other parties and meet individuals who, at their discretion, may provide significant information (Article 13(1a) of the Act on the CHR).

Preventive and unannounced visits of the NMPT

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

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

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

Every visit of the NMPT comprises the following stages:

- conversation with the establishment's managers,

VII Regional Debate, 12.04 Białystok - prof. Grażyna Barbara Szczygiel (University of Białystok), speech: *Situation of prisoners in penitentiary establishments*; VIII Regional Debate, 10.05 Rzeszów - Maria Książak, President of the Board of the International Humanitarian Initiative Foundation, speech: *Psychological care provided to foreigners in closed detention centres for migrants*; IX Regional Debate, 14.09 Zielona Góra - Jerzy Foerster, MD, geriatrist, speech: *Nursing and medical care provided to residents of social care homes*; XI Regional Debate, 25.10 Kraków - Marzena Ksel, Ph.D., Vice-President of the European Committee for the Prevention of Torture (CPT), speech: *The goals and results of the application of the Istanbul Protocol*; XII Regional Debate, 15.11 Bydgoszcz - prof. Zbigniew Lasocik (Faculty of Political Science and International Studies of the Warsaw University), speech: *Current challenges in the field of torture prevention in the light of the activity of the UN Subcommittee on Prevention of Torture (SPT)*.

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

If a person deprived of his/her liberty reports an unlawful event during the visit and expresses the desire to have it investigated, he/she has the opportunity to lodge an official complaint. The complaint is then forwarded to the competent team within the CHR Office.

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

When the visit is completed, a report is drawn up which describes all the findings and conclusions, as well as recommendations for the body managing the visited establishment and for its supervisory authorities. If the establishment's management does not agree with the recommendations, the NMPT representatives request the supervisory bodies to issue their opinion and position on the matter. Such a dialogue is conducted to indicate the merits of the NMPT's recommendations whose implementation will strengthen the protection of the rights of persons deprived of their liberty at the visited place.

During visits, NMPT's employees use the following measuring and recording devices: CEM DT-8820 multimeter, Makita LD060P laser rangefinder, digital camera.



Annual NMPT report

The most important objective of the operation of the National Mechanism for the Prevention of Torture is to develop a culture of non-acceptance of torture as well as cruel and inhuman treatment. This report also strives to serve that purpose.

It comprises key findings and presents major problems that need to be solved in order to increase the standards of the protection of human rights.

To make the report easier to read, those standards have been highlighted in the text.

The report also contains concrete examples of problems witnessed in the course of preventive controls conducted under the NMPT.

Such examples have also been highlighted so that they are easy to find in the publication.

The NMPT recommendations are presented in text boxes

PART II SITUATION IN PLACES OF DETENTION

Prisons and pre-trial detention centres

“No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but its lowest ones”.

Nelson Mandela

In 2017 a total of 5 penitentiary establishments were visited, including 2 prisons, 2 pre-trial detention centres and 1 field unit.¹⁸ In three cases the establishments were re-inspected¹⁹.

¹⁸ Pre-trial detention centre in Grójec KMP.571.4.2017, Wałbrzych BPW.571.1.2017, prison in Herby BPK.571.1.2017, Malbork BPG.571.1.2017, field unit of the pre-trial detention centre in Radom KMP.571.3.2017

¹⁹ Pre-trial detention centre in Grójec, Wałbrzych, field unit of the pre-trial detention centre in Radom.

2 prisons, 2 pre-trial detention centres, 1 field unit of a pre-trial detention centre

Areas which require improvement

1. Treatment

During the visit the NMPT representatives did not receive any information indicating that the prison personnel was using violence against detainees. Yet, there was some information that police officers did use violence against them at the point of detention and interrogation.

Torture - detainees' accounts

“I was beaten during the interrogations. They were beating me all over my body, with a truncheon; they were beating me on my heels. They were threatening that they would find me and my family. They wanted me to admit to breaking into the summer houses in the allotment gardens. During the interrogations I was handcuffed all the time. It took a long time. I did not get anything to eat or to drink. I could only drink a bit of water when they finally let me use the toilet. I had been interrogated a couple of times. Each time I was beaten. At last I admitted I was guilty, but only because I wanted them to leave me alone”.

“I was beaten with a truncheon on the corridor of the police department. They wanted me to admit my guilt. They were laughing, spitting on me, calling me names. I was beaten a couple of times. I suffered from health problems as a result of that”.

“I was beaten when they arrested me. I was sitting in the car. They sprayed gas in my face and dragged me from the car. I was flung to the ground and kicked. They crashed my head against the surface. I also received a blow with a fist on my side”.

Some of the presented accounts bear the traits of torture: waterboarding, hitting on the heels with a truncheon, beating, using threats. Detainees were allegedly handcuffed during interrogation, they

were refused food and something to drink and they were not allowed to use the toilet. Those measures were aimed at making them admit to offenses constituting objects of criminal proceedings²⁰.

The prisoner reported to Prison Service officers and the doctor that he had experienced violence, but his injuries were not documented and the prosecutor was not notified.

In one case the prisoner reported the fact of being assaulted by the police to the officers of the Prison Service and the prison doctor²¹. **In the photograph taken upon admission, contained in the prisoner's file, one can see marks of injuries (on the nose and forehead).** Despite that, medical documentation fails to mention any injuries existing during arrest or upon admission to the penitentiary establishment.

Additionally, the NMPT representatives found two handwritten statements, indicating that the injuries were sustained during arrest by the police.

Text of the prisoner statements found in the files: "I declare that I sustained the injuries which are visible on my body when I was arrested by the police" and "The injuries on my face and body were sustained during arrest prior to my admission to the pre-detention centre".

The formal note on the preliminary conversation fails to indicate whether the time and place of occurrence of the prisoner's injuries was discussed. Documents that were made available to the visiting team do not mention any measures taken by the administration of the establishment to examine the case. In particular, there is no indication whatsoever whether the establishment's director notified law enforcement bodies or the penitentiary judge.

It may be concluded from the response to the report, submitted by the director of the pre-trial detention centre, that this obligation was not fulfilled²².

In the light of currently applicable legal regulations, bodily injuries discovered upon the admission of an individual to the pre-trial detention centre should be recorded in the documentation of the intake examination and suspicion that the officers of the uniformed services might have used violence should result in the notification of enforcement bodies. Penitentiary judge should also be informed about the case²³.

²⁰ The problem is described in more details in the *Information about the observance of the freedoms and rights of persons and citizens in 2017 and the activity of the Commissioner for Human Rights* (in relation to Article 40 of the Constitution).

²¹ Pre-detention centre in Walbrzych

²² Letter of Director of the Pre-trial Detention Centre in Walbrzych of 20.10.2017, ref. no. DD.0812.5.2017.JK

²³ Cf. Article 304(2) of the Act of 6 June 1997 Code of Criminal Procedure (consolidated text: Dz. U. of 2017, item 1904); Article 36 (1) and (3) of the regulation of the Minister of Justice dated 23 June 2015 on administrative activities related to the enforcement of pre-trial detention sentences as well as penalties and coercive measures resulting in deprivation of liberty, and on documenting such activities (Dz. U. of 2015, item 927)

Given such circumstances and the lack of awareness about the provisions of the Istanbul Protocol among prison staff, the NMPT recommended documenting bodily injuries of detainees upon each admission to the establishment and discussing with them their origins. As the NMPT recommended, in case of indication that the injuries might have been sustained in relation to prisoner's apprehension - law enforcement bodies as well as the penitentiary judge should be notified. The NMPT also recommended that the personnel of the establishment should be acquainted with the provisions of the Istanbul Protocol²⁴.

The method for conducting body searches

Virtually in all visited establishments body searches were performed in one step (detainee was requested to fully undress at once), which is incompliant with the regulation of the Minister of Justice that has been in force since 2 January 2017²⁵. The NMPT recommended reminding personnel about applicable standards and change their methods of operation in that regard.

Body search is a hugely invasive and possibly embarrassing measure. Therefore, it should be conducted following an individual risk assessment and subject to the observance of strict criteria and supervision. All reasonable efforts should be made to minimize the feeling of embarrassment; detainees subject to body search should not be requested to remove all clothes in one step and should have the right, for example, first to undress from the waist up and then put on some clothes before undressing from the waist down(CPT)²⁶

Using handcuffs

71-year-old prisoner with impaired mobility handcuffed on the way to the doctor

In one establishment, the NMPT representatives presented reservations concerning the legitimacy of using handcuffs when transporting a 71-year-old prisoner, suffering from back problems and other mobility-hindering ailments, to the medical examination outside prison premises²⁷.

²⁴ Translation of the protocol is available on the website of the CHR under the following address: <https://www.rpo.gov.pl/pl/content/protokol-stambulski>

²⁵ Pre-trial detention centre in Grójec, Wałbrzych, prison in Herby, Malbork, field unit in Radom. See also Article 68 of the regulation of the Minister of Justice of 17 October 2016 on security measures in organizational units of the Prison Service (Dz. U. of 2016, item 1804)

²⁶ Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from the visit to Poland, CPT/Inf (2014) 21, Article 106

²⁷ Prison in Herby

Direct coercion measures should be used based on a case-by-case assessment when there are premises justifying such an action. Those measures should be necessary for obtaining certain objectives (the principle of necessity) and proportionate to the scale of threat and minimization of problems (the principle of proportionality)²⁸

The method of addressing detainees

The NMPT also had some reservations concerning the way security officers address the detained (using their surnames or on a first-name basis without the polite form - sir)²⁹. It is important to address persons who are dependent on us with respect. Otherwise, it is easy to cross the line. Such conduct helps to build a positive atmosphere in the place of detention.

Promoting constructive relations between detainees and personnel, in contrast to confrontational ones, serves the purpose of reducing tension that is present in every prison, and hence, it significantly reduces the risk of violent incidents and associated ill-treatment. In other words, the Committee would like the control and restrain measures to be adopted in an atmosphere of understanding and care. Such an approach may – paradoxically – increase safety on the prison premises” (CPT)³⁰

The NMPT recommendation: Appropriate method of communicating with prisoners needs to be ensured.

28 Article 6(1), Article 11, Article 12(1) of the Act of 24 May 2013 on the use of direct coercion measures and firearms (consolidated text: Dz. U. of 2017, item 1120)

29 Prison in Herby

30 CPT Second General Report, CPT/Inf (92) 3, Article 45

2. Living conditions

Multi-occupancy cells

The NMPT, with concern, recorded the existence of two, 13-person cells³¹. Such cells fail to ensure even a minimum level of privacy; they lead to conflicts, threats and violence and are a breeding ground for the development of criminal subcultures³².

Prisoner's account: "I ended up in an isolation cell, as I had beaten up another inmate. I did it in order to be on my own, for a while at least. In the cell in which I am serving my sentence there is not even a minimum of privacy"

Necessary renovations

In general, residential cells were in good physical condition. In one of the establishments the representatives of the NMPT pointed out to the necessity to perform some renovation work (they discovered damaged sanitary fittings and destroyed area outside the sanitary corners of washbasins, damp walls, multiple spots with plaster flaking off the wall)³³.

Unjustified violation of the intimacy of prisoners

The NMPT representatives also encountered solutions which infringe on the sense of prisoners' intimacy, such as: uncovered sanitary corner in the isolation cell³⁴, missing separation screens between shower stands in the bath³⁵.

Hot water in cells can still be a luxury

Not all cells had access to hot water. Yet, renovation work was conducted to remedy that situation³⁶.

31 Pre-trial detention centre in Grójec

32 CPT 11th General Report, CPT/Inf (2001) 16, Article 29

33 Pre-trial detention centre in Wałbrzych

34 Pre-trial detention centre in Grójec, prison in Malbork

35 Pre-trial detention centre in Wałbrzych

36 Pre-trial detention centre in Wałbrzych, prison in Herby

Bath once per week

The visits revealed that there is one establishment where the possibility to have a hot bath only once per week was a standard. Nowadays, in the light of international and Polish standards, access to one hot bath per week is against the principles of hygienic lifestyle³⁷.

Dirty clothing

In one of the establishments, the NMPT representatives pointed out that prison clothing in the vestibule of one of the cells was in bad condition. The clothes were lying in bags on the floor, they were dirty and unsuitable for use³⁸.

Failure to ensure the possibility for the proper storage of items

The delegation also pointed out that prisoners were not provided with the possibility to properly store their personal items in drawers located next to their beds, in containers or wardrobes³⁹. Prisoners had to keep their personal belongings in plastic bags, textile bags or simply scattered in their bed areas.

Missing roofing over prison yards

Moreover, prison yards were not sheltered with a roof which could protect prisoners from bad weather conditions during their walks⁴⁰.

3. The right to contacts with the outside world

The possibility to contact one's defence counsel and notify a selected person about the arrest and detention (including a consular representative in case of foreigners) constitutes a fundamental guarantee against ill-treatment in the period of deprivation of liberty. Therefore, it is essential to make prisoners aware of those rights and ensure they are respected in practice (SPT)⁴¹.

³⁷ Prison in Herby

³⁸ Pre-trial detention centre in Grójec

³⁹ Pre-trial detention centre in Grójec, pre-trial detention centre in Wałbrzych

⁴⁰ Pre-trial detention centre in Wałbrzych

⁴¹ Report of the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (SPT) from the visit to Ukraine, 16 March 2016, CAT/OP/UKR/1, Articles 37-42; SPT report from the visit to Ukraine, 18 May 2017, CAT/OP/UKR/3, Articles 45-52; SPT report from the visit to Togo, 28 April 2016, CAT/OP/TGO/1, Articles 79, 81, 115-116; Second General CPT Report, CPT/Inf (92) 3, Article 36; Report from the CPT visit to Poland, 25 June 2014, CPT/Inf (2014) 21, Article 26 and further.

In one of the establishments the internal order did not provide for the possibility of making phone calls by remand prisoners, unless such individuals were sentenced by the court of the first instance and order rules concerning serving the sentence of deprivation of liberty were applied to them⁴². That ban covered also contacts with a defence counsel or legal representative, mentioned in Article 215 (1) of the Executive Penal Code. The discussed rules and regulations relied on outdated legal provisions and were potentially misleading. They failed to take into account the ruling of the Constitutional Tribunal from 2014.⁴³

The rules and regulations also failed to pay heed to prisoner's rights, stemming from Article 211(2) of the Executive Penal Code, i.e. the right to immediately inform a selected person or institution (including consular office or diplomatic representation) and a defence counsel about his/her place of stay.

The NMPT recommended changing the internal order.

Prisoners' treatment during medical examinations and access to healthcare

The NMPT still encounters situations when officers of the security department from the Prison Service are present during the medical examination performed on the prisoner, even though medical personnel does not ask for their presence⁴⁴.

In the presence of security officers, the prisoner may not feel at ease to tell the doctor how he/she was treated. Such a situation may also result in the violation of prisoners' right to privacy and respect for their dignity and it may infringe the doctor-patient privilege.

Currently applicable legal regulations do not allow for such a situation to occur⁴⁵. Additionally, it compromises the preventive character of such an examination.

⁴² Pre-trial detention centre in Grójec

⁴³ In the ruling of 25 November 2014, file no. K 5 4/13 (Dz. U. of 2014, item 1707) the Constitutional Tribunal ruled that Article 217 c of the Executive Penal Code, in the scope in which it unconditionally prohibits the use of the phone by a remand prisoner for the purpose of communicating with a defence counsel, is incompliant with the Constitution.

⁴⁴ Pre-trial detention centre in Wałbrzych, prison in Herby

⁴⁵ Article 115 (8) of the Executive Penal Code

Officer's presence during examination is harmful for the process of building the right rapport between a patient and a doctor and usually it is not necessary from the point of view of security. The Committee also encourages the personnel of penitentiary establishments to work out alternative solutions intended to reconcile security requirements and the principle of doctor-patient privilege (e.g. installed emergency call system) (CPT)

It is important, therefore, to treat the presence of security personnel as an exception, justified in specific cases and resulting from a prior request of medical staff. Prisoner's medical examination should, in principle, be performed out of sight and hearing of officers⁴⁷.

Respecting the rights of persons with disabilities

A disabled prisoner located in the cell on the second floor, while a cell for the disabled is available

In one of the establishments a prisoner walking with a crutch was accommodated in an ordinary cell, even though there was still a place available in a three-person residential cell intended for individuals with impaired mobility.

The cell in which the prisoner was accommodated was located on the second floor of the pre-trial detention centre, which hindered his access to facilities on the ground floor: bath, prison yards, visit rooms⁴⁸.

The NMPT: Such situations lead to the risk of prisoner's degrading treatment and should be eliminated

Either gym or a walk

In one of the establishments the prisoner who wanted to participate in gym activities had to give up his right to a walk. The internal order of the facility considered such a situation admissible. NMPT recommended modifying the internal order in a way which would allow one to benefit from both, a walk and gym classes.

46 CPT report from visit to Poland, CPT/Inf (2014) 21, Article 79

47 Ibid., Article 79

48 Pre-trial detention centre in Walbrzych

49 Cf. Judgement Vincent against France of 26 October 2006, application no. 6253/03

4. Right to information

All prisoners have the right and the need to receive understandable and updated information concerning issues that are of importance to them - their rights, applicable procedures and methods for lodging complaints. Access to such information increases the sense of security and allows prisoners to play an active part in safeguarding their rights. It also facilitates access to complaint procedures and therefore, it plays a role in preventing violence. What is of paramount importance in that regard, is the situation of foreigners who usually are not familiar with the Polish language or regulations and procedures applicable in Poland.

During one of the visits, the representatives of the NMPT noticed that a prisoner of Vietnamese nationality who did not speak Polish was not properly informed about his rights⁵⁰. All documents of importance to him (internal order and statements) were drawn up in the Polish language. What also constituted a problem for the prisoner in question was communication with the establishment's personnel, including the doctor.

NMPT experts were reassured that, if need arises, an interpreter is called and available translation devices are used. Yet, the analysis of documentation indicated that the interpreter was only present during a meeting with a lawyer.

THE NMPT INDICATES THE STEPS THAT NEED TO BE TAKEN IN RELATION TO PRISONERS WHO ARE CITIZENS OF OTHER COUNTRIES:

report the existence of language barrier in the prisoner's file,

deliver to the establishment information leaflets for foreigners and provide them to prisoners in a language they can understand,

inform the prisoner about his/her rights and obligations, in a language that he/she can understand and indicate in the documentation what language was used to perform the information provision obligations and who participated in the procedure involving the prisoner (e.g. an interpreter),

ensure translation of all documents relevant to the prisoner (e.g. internal regulations, statements, decisions) into the language he/she can understand, especially if such documents have certain implications and he/she needs to confirm in writing the fact of having read them,

use the assistance of an interpreter, especially during the initial meeting and medical examination when the prisoner may report that he/she was a victim of violence.

50 Pre-trial detention centre in Grójec

Systemic problems

The analysis of problems determined during the visits allows one to formulate broader recommendations. The NMPT is aware that some problems may not be solved in isolation, without systemic support in the form of amended and improved provisions or procedures.

1. The problem of the lack of procedures in case of reporting torture and inadequate method for documenting injuries

Prison personnel, including medical staff, do not have any procedures in place specifying the method of conduct in case a prisoner reports being a victim of torture or violence or when there is a suspicion that torture or violence was used against him/her. Injuries are often documented in a superficial fashion and medical staff lacks sufficient knowledge about the provisions of the Istanbul Protocol.

The Istanbul Protocol, which acts as a manual for effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, is an official UN document drawn up by a group of experts and comprising practical information about the methods of torture, their consequences, ways of identifying them for the purpose of criminal proceedings and conducting effective investigations concerning torture. Its application is recommended by the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)

Medical examination of all persons admitted to prisons as well as proper documentation of injuries determined during such an examination constitute a significant guarantee of protection against torture and elimination of impunity. It also protects prison personnel from false allegations that injuries were sustained during one's stay in the penitentiary establishment.

Each prisoner should be examined within 24 hours from admission. Penitentiary establishments should maintain a register of injuries and document injuries in the right way. In case there is a suspicion of the use of violence, the Prosecutor shall be notified (CPT)

51 SPT report from the visit to Peru, 9 August 2017, CAT/OP/PER/1, Article 20; SPT report from the visit to Ukraine, 16 March 2016, CAT/OP/UKR/1, Articles 46-48; SPT report from the visit to Brazil, 5 July 2012, CAT/OP/BRA/1, Articles 38-39

The NMPT recommendation: Precise guidelines for prison doctors are needed

For this reason, the Commissioner for Human Rights intervened before the Director General of the Prison Service and requested him to introduce precise guidelines, addressed in particular to doctors employed by penitentiary institutions, which would set forth how the obligation to properly document physical and psychological injuries as well as the consequences of torture and violence should be performed. Those guidelines would also specify the procedure for reporting such cases to relevant law enforcement bodies⁵².

The reply of the Deputy Director General of the Prison Service does not indicate that the said guidelines will be implemented. The Deputy Director General merely mentioned that the issues concerning the protection of human rights and the Istanbul Protocol are a subject of systematic training that prison personnel, including officers, undergoes.⁵³

2. Limited living space for prisoners in cells

Living conditions prevailing in penitentiary establishments results from the universal problem of limited living space per prisoner in residential cells.

In accordance with Polish law minimum 3 m² of living space need to be ensured to every prisoner in a cell. The law also provides for the possibility to go below that standard⁵⁴, **even though one is not able to normally function in such conditions**. The Polish norm fails to comply with international standards and practices that are in place in most European countries.

Unfortunately, it may be concluded from the response of the Minister of Justice to the annual report on the activity of the National Mechanism for the Prevention of Torture in 2016 that introducing a 4m² standard requires a legislative initiative, which, given the current prison population and restructuring changes, is not possible⁵⁵.

The minimum standard recommended to Council of Europe countries by the European Committee for the prevention of torture and inhuman and degrading treatment or punishment (CPT) is minimum 4 m² in single-person cells and 6 m² in multi-occupancy cells, not including the cell's sanitary areas

52 General Intervention of the CHR dated 24.10.2017 to the Director General of the Prison Service, ref. no. KMP:571.6.2017.JJ

53 Reply of the Deputy Director General of the Prison Service dated 07.11.2017, ref. no. BSZ.55.6.2017.LL

54 Article 110 of the Act of 6 June 1997 of the Executive Penal Code (consolidated text: Dz.U. of 2017, item 665)

55 Letter to the Minister of Justice of 14 April 2018, ref. no. DWMPC-III-850-2/18

56 Cf. Living space per prisoner in prison establishments: CPT standards, 15 December 2015, CPT/Inf (2015) 44; 26th CPT General Report, CPT/Inf

Why is solving the problem of overcrowding in cells so important?

Having served their sentences, prisoners will be released and the conditions in which they were serving their sentences will have impact on their rehabilitation and future relations with others⁵⁷.

- Such small space in a cell fails to ensure even a minimum level of privacy; it becomes the source of frustration, mental suffering, conflicts and violence.
- In such conditions it is hugely difficult for the Prison Service to ensure safety to prisoners.
- Limited space hinders the performance of therapeutic activities and may strengthen or deepen non-psychiatric mental disorders or mental retardation that some prisoners may suffer from.
- Small living space also involves a higher risk of infectious diseases (e.g. viral hepatitis, tuberculosis, scabies).
- Moreover, placing individuals in such constrained spaces entails a risk of inhuman and degrading treatment, which collides with the international obligations of Poland.
- Such treatment of prisoners is an affront to a modern European country and significantly deviates from international standards.
- Both CPT as well as CAT have been calling on Polish authorities to introduce changes in that regard.
- Failure to introduce them entails the risk of passing unfavourable rulings against Poland by the European Court of Human Rights in Strasbourg.
- In such a situation, also the risk of paying compensation adjudicated to prisoners by Polish courts is on the rise.
- European courts examining the request of a Polish court to apply the European Arrest Warrant (EAW) will be able to postpone the execution of the warrant, if they assume that there is a risk of degrading treatment of a prisoner in Poland due to insufficient living space in a cell.

(2017) 5, Article 56

57 See also the CHR's General Intervention of 24.05.2016 and 29.07.2016 to the Minister of Justice, KMP:571.5.2016.RK

3. Prisoners' body searches should be subject to court's assessment

The Prison Service officers sometimes have to perform body searches on prisoners in order to make sure that they are not in possession of any prohibited or dangerous items. It is, however, important to use that measure in a professional manner while exercising caution and respecting individual's dignity. The decision to perform a search should result from the analysis of individual circumstances. **Otherwise, a body search may turn into a means of oppression and be considered as manifestation of degrading treatment.**

During the search the prisoner has to take off his/her clothes and in some cases also squat to allow the officer inspect his/her natural body orifices. The officer should also have the possibility to inspect prisoner's clothing, underwear, footwear and personal belongings.⁵⁸

Pursuant to Polish regulations prisoner's body search may be performed at any time. The decision in that regard is made by the prison's director and the prisoner is obliged to conform. Lack of cooperation on the part of the detainee may result in direct coercion measures being used against him/her. It may also lead to disciplinary consequences.

If the director decides to subject the prisoner to a search, it is not a decision that can be appealed against to a court, pursuant to Article 7 of the Executive Penal Code. The court cannot, therefore, verify whether it was a legitimate decision or not. Such a situation creates room for abuse. **It is imperative, therefore, that the legitimacy and the method of performing prisoners' body search be subject to external verification. Possible judicial control has a preventive role and may act as a deterrent to those willing to use it without justification.**

It should be observed that in the past there were cases when the decision to perform a body search proved illegitimate from the point of view of safety. This was the conclusion presented by the European Court of Human Rights in its rulings against Poland.

⁵⁸ Cf. Articles 116(2-5) and 6 of the Executive Penal Code

The European Court of Human Rights in Strasbourg: Body searches performed on prisoners on a daily basis combined with the obligation to remove all clothes did not stem from any specific safety needs and were not associated with any suspicions arising from the claimant's behaviour. Such a practice must have caused the sense of embarrassment, torment and depression which exceeded the inevitable sense of suffering and abasement, resulting from serving the punishment of deprivation of liberty⁵⁹.

The European Court of Human Rights in Strasbourg: National law, which was used in practice, failed to provide detainees with an effective appeal measure, allowing them to challenge the decision concerning the performance of the body search. Given the lack of such an effective appeal measure, it is difficult to fulfil, on a national level, the obligation to sufficiently justify body searches or searches with undressing.⁶⁰

On 21 January 2016 the Commissioner for Human Rights submitted a motion to the Constitutional Tribunal with a request to ascertain the non-compliance of Article 116(6) of the Executive Penal Code in conjunction with Article 7(1) of the Executive Penal Code with the Constitution in the scope in which it does not provide for the issuance of a decision concerning a body search performed on a prisoner⁶¹. The motion in question is awaiting consideration (Constitutional Tribunal file no. K5/16).

Despite the NMPT's appeals the legislator did not decide to amend provisions in that scope. The Minister of Justice informed the Commissioner that work is in progress in the National Headquarters of the Prison Service with respect to the development of comprehensive procedures aimed at specifying in which situations and in what manner body searches should be performed and in which case the decision about the search should be documented⁶².

59 Judgement in the case Świdorski against Poland of 16 February 2016, application no. 5532/10, Articles 60-61

60 Judgement in the case Milka against Poland of 15 September 2015, application no. 14322/12, Articles 30 and 48

61 Request of the CHR to the Constitutional Tribunal of 21.01.2016, ref. no. KMP571.83.2014

62 Letter to the Minister of Justice of 14 April 2018, ref. no. DWMPC-III-850-2/18

4. Failure to adapt prisons to the needs of persons with physical disabilities

None of the establishments designated by the Director General of the Prison Service provides the possibility for independent functioning of such prisoners⁶³. Such a situation is in breach of international standards and requires change⁶⁴.

Mandela Rules: the prison regime should seek to minimize any differences between prison life and life at liberty and prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis⁶⁵.

The NMPT recommendation: the order of the Director General of the Prison Service specifying which establishments can accommodate prisoners with physical disability needs to be updated

In view of the above, the Deputy Commissioner for Human Rights requested the Director General of the Prison Service to update the order specifying the intended purpose of penitentiary establishments, so that the establishments designated as wheelchair-accessible have architectural possibilities to fully adapt their facilities to the needs of persons with physical disabilities⁶⁶.

The Minister of Justice replied to the Commissioner that measures aimed at the elimination of architectural barriers in organizational units of the penitentiary system are taken successively, in response to actual needs. Moreover, all newly built facilities of the Prison Service comply with relevant regulations in that regard.⁶⁷

The NMPT will soon present a thematic report on that issue

63 Report of the Commissioner for Human Rights concerning the activities of the National Mechanism for the Prevention of Torture in Poland in 2016, p. 26-28

64 United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Resolution adopted by the UN General Assembly on 17 December 2015, Rule 5; Convention on the Rights of Persons with Disabilities, drawn up in New York on 13 December 2006. (Dz. U. of 2012, item 1169); Resolution of the Sejm of the Republic of Poland of 1 August 1997 - Charter on the Rights of Persons with Disabilities (M. P. of 1997 no. 50, item 475); publication of the UN Committee on the Rights of Persons with Disabilities, Guidelines on Article 14, The right to liberty and security of persons with disabilities, Adopted during the Committee's 14th session, September 2015

65 Rule 5

66 General Intervention of the Deputy CHR dated 24.01.2017 to the Director General of the Prison Service, ref. no. KMP571.2.2017.JJ

67 Letter of the Minister of Justice of 14 April 2018, ref. no. DWMPC-III-850-2/18

5. Limited range of cultural and educational activities for remand prisoners and convicts

“CPT calls on Polish authorities to undertake measures necessary for the development of programs of activities for both, remand prisoners as well as convicts. The goal should be to ensure that each detainee can spend a reasonable part of the day (eight hours or more) outside the cell while participating in purposeful and diversified activities (work, education, vocational training, sport, etc.)”⁶⁸

The range of activities offered to prisoners is very limited. Apart from an hour-long walk and activities organized in the common room they did not have a chance to be involved in other pursuits. In practice, as could be concluded from conducted interviews, they spent most of the time in the residential cell. They only left it to go for a walk.

The problem pertained also to juvenile prisoners who indicated that recreation and rehabilitation programs were not very attractive to them. Therefore, they were unwilling to benefit from those forms of activity.

Mandela Rules: Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners.⁶⁹ Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible.⁷⁰

Programs of activities dedicated to prisoners play an important role in ensuring safety as well as well-being of detainees and prison personnel. Forced idleness increases tension in the prison and may have serious consequences for the health and good disposition of persons deprived of liberty as well as for their future reintegration after they leave the penitentiary establishment. Extreme, forced and full idleness is inhuman in a longer term (SPT).⁷¹

68 CPT report from visit to Poland, CPT/Inf (2014) 21, Article 43

69 Rule 105

70 Rule 104

71 SPT report from a visit to Benin, CAT/OP/BEN/1, Article 273

Good practices to share

During NMPT visits, the representatives encountered initiatives that definitely go beyond the usual standard witnessed in prisons. Such noteworthy initiatives included:

- fully sheltered sanitary areas with washbasins in all residential cells within the establishment⁷²,
- children's corners in supervised visit rooms, in the waiting room for visitors, in a separate visit room without a supervisor as well as the high standard of all of those facilities⁷³,
- prisoners' waiting room in the outpatient clinic finished to a high standard⁷⁴,
- equipping the common room in one of the wards with, among others, two computer workstations without access to Internet resources, that can be used by detainees during common room activities⁷⁵,
- equipping all residential cells with wardrobes⁷⁶.
- What was also welcomed were efforts of the director of one establishment aimed at adapting a cell to the needs of prisoners with physical disability despite the fact that the establishment was not intended for individuals on wheelchairs⁷⁷.

72 Prison in Herby

73 Prison in Malbork

74 Prison in Malbork

75 Prison in Malbork

76 Field unit of the pre-trial detention centre in Radom

77 Prison in Herby

■ Detention of juveniles

8 establishments for juveniles

In 2017 the National Mechanism for the Prevention of Torture conducted inspections of four youth care centres⁷⁸ (including one re-inspection⁷⁹), two police emergency centres for children⁸⁰ and two juvenile detention centres and juvenile shelters⁸¹ (including one re-inspection⁸²). There were also 5 visits whose objective was to assess the access of minors to health services in the field of psychiatry and addiction treatment⁸³. After the analysis is concluded, a thematic report presenting the outcomes of those visits will be drawn up.

Police Emergency Centres for Children

Success of the CHR's efforts: provisions on body search considered unconstitutional

Minors who are admitted to Police Emergency Centres for Children are subject to a body search during which - in justified cases - they are requested to take off their clothes and underwear. Yet, pursuant to the regulation of the Minister of the Interior of 4 June 2012 on rooms for detained persons or intoxicated persons to sober up, transitional facilities and police emergency centres for children, as well as rules and regulations on the stay in such facilities and procedures used for image recordings of those facilities (Dz.U. [Journal of Laws] of 2012, item 638), the police officer may perform those activities without leaving the detainee in underwear only or without obliging him/her to undress completely.

78 YCC in Lidzbark Warmiński KMP:573.28.2017, YCC no. 3 in Warsaw KMP:573.29.2017, YCC in Oława KMP:573.33.2017

79 YCC in Mszana Dolna KMP:573.16.2017.

80 Police Emergency Centre for Children in Wrocław BPW:573.2.2017, Police Emergency Centre for Children in Katowice, KMP:573.11.2017

81 Juvenile Detention Centre and Juvenile Shelter in Konstancin-Jezierna Łódzki, KMP:573.26.2017

82 Juvenile Detention Centre in Racibórz, BPK:573.1.2017

83 Juvenile Detention Centre (JDC) and Juvenile Shelter (JS) in Sadowice, KMP:573.21.2017, JDC in Świecie, KMP:573.17.2017, JDC in Witkowo, KMP:573.25.2017, JDC in Tarnów, KMP:573.31.2017, YCC in Trzciniec, KMP:573.6.2017

The issue of the constitutionality of the applicable provisions concerning body search was examined in proceedings K 17/14 conducted before the Constitutional Tribunal at the request of the Commissioner for Human Rights on 14 December 2017. The Constitutional Tribunal passed a judgement stating that the fact that definitions of the notion of “the search of an individual” and “body search” are missing in the act infringes the constitutional rights and freedoms of an individual. The reply of the Secretary of State in the Ministry of the Interior and Administration dated 12 April 2018 indicates that, in connection with the Tribunal’s judgement, work has been initiated in the ministry to prepare proposals for legislative changes⁸⁴.

Monitoring the progress of work on the introduction of the said changes to applicable regulations remains on the NMPT’s agenda.

Another success - legislative changes in the regulation on RDPs and Police Emergency Centres for Children.

The change pertained to Article 8 (1)(9) of the Rules and Regulations granting the minor the possibility of a contact with a defence counsel, parent or a legal guardian after previously arranging the date with the head of the centre.

Pursuant to earlier wording of that regulation, the possibility for visiting a minor by those persons was subject to the approval of the court, the head of the centre or a police officer in charge of the case. Such a situation gave rise to concerns in the context of guaranteeing the right to defence to a minor and constituted the subject of the intervention of the Commissioner to the Minister of the Interior and Administration.⁸⁵

Moreover, access to a lawyer depended on the will of not only the detained person but also of other individuals, which is against the Constitution of the Republic of Poland (Art. 42 (2)), the Act on proceedings in cases of juvenile persons, and the relevant international standards e.g. the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant on Civil and Political Rights.

The NMPT: ensuring that a minor has access to a professional defence counsel from the moment of detention and during the stay in the police emergency centre for children is not only a legal requirement, but also one of the best safeguards against acts of violence.

84 Cf. BMP-0790-1-16/2017/PS

85 General intervention of the Minister of the Interior and Administration of 30 November 2015, ref. no. KMP.573.20.2015

Systemic problems

What still remains to be solved is the problem of police officer's presence during meetings with a defence counsel and the lack of possibility for the lawyer or a legal counsel to initiate such meetings.

The NMPT: juveniles have the right to visits
in conditions ensuring the confidentiality of conversations

It is especially important in terms of an effective realization of the right to defence, protection of legal professional privilege, the right to freedom and the protection of the confidentiality of communication. Every time an officer is present during a visit Article 49 of the Constitution of the Republic of Poland, which guarantees the right to freedom and protection of the confidentiality of communication, is violated.

The NMPT: Police emergency rooms for children admit juveniles in diversified legal situations, hence their rights should be subject to individually-modified restrictions.

Furthermore, pursuant to legal regulations⁸⁶ a defence counsel may contact a juvenile residing in the centre only at the juvenile's request. However, a juvenile may not be even aware that he/she already has a defence counsel, or may think that he/she does not need that type of professional assistance. In some cases, a juvenile may yield in to the pressure exerted by officers who may attempt to discourage or force him/her not to use such legal aid.

The legal situation of a child who has been deprived of liberty and is not represented by a defence counsel poses a number of risks. The child in detention may not realize what consequences can result from the statements he/she makes. Likewise, the child may be unaware of the consequences of procedures conducted with his/her involvement and the manner of evaluating evidence gathered in his/her case. Therefore, it is of such a paramount importance to also allow the defence counsel to request contact with a minor residing in the police emergency centre for children.

This problem, even though reported by the Commissioner⁸⁷, does not require further consideration in the view of the Ministry of the Interior and Administration⁸⁸.

⁸⁶ Article 32g (3) of the Act of 26 October 1982 on juvenile delinquency proceedings (consolidated text: Dz. U. of 2018, item 969) and the provision 8 (1) (9) of the Rules and Regulations

⁸⁷ Cf. Opinion of 31.10.2016 and 16.01.2017 concerning the draft regulation of the Minister of the Interior and Administration amending the regulation on rooms for detained persons or intoxicated persons to sober up, transitional facilities and police emergency centres for children, as well as rules and regulations on the stay in such facilities and procedures used for image recordings of those facilities is available on the website of the NMPT in the section devoted to opinions on legal acts.

⁸⁸ Cf. Reply of the Secretary of State in the Ministry of the Interior and Administration of 7.04.2017, DP-WL-0231-12/2016/WR

Good practices to share

The NMPT pays attention to good practices and interesting solutions when visiting police emergency centres for children.

The following noteworthy procedures and practices were observed in the police emergency centre in Katowice:

- The rules and regulations of the Police Emergency Centre for Children were written in a more child-friendly manner - as a concise list of rights and obligations - and placed in almost all facilities in the centre,
- If a child says he/she is hungry, a meal is provided, even before the lapse of 5 hours from placing the individual in the centre,
- If a minor is expected to participate in official proceedings outside the centre and it can take a long time, dinner is ordered for him/her,
- Police officers organize collections of games and books for the residents of Police Emergency Centres for Children,
- Every time a juvenile person is refused admission to the established, a note is prepared with a detailed explanation of such a refusal.

Juvenile detention centres, juvenile shelters as well as youth care centres

Systemic problems

The most pressing issue that needs to be solved with respect to minors placed in youth care centres, juvenile shelters and juvenile detention centres (JDC) is **the drafting of a new parliamentary act on juvenile delinquency proceedings**.

The Act, in the NMPT's opinion, should regulate the issues of: juvenile residents' access to medical care (including specialist care for pregnant minors), video surveillance, tests detecting the presence of alcohol and intoxicating substances, as well as contacts between juvenile residents and their parents, legal guardians and attorneys.

The Commissioner has already brought that issue to the attention of the Minister of National Education and the Minister of Justice. In response to the NMPT's report for 2016 the Ministry of National Education presented a list of problems and issues that will be analysed during a meeting of a special Taskforce dealing with juvenile delinquency proceedings⁸⁹. It could be concluded, in turn, from the reply presented by the Ministry of Justice⁹⁰, that a special team was appointed to analyse the legal regulations pertaining to juvenile delinquency proceedings that have been in effect so far, adapt those regulations to currently applicable standards and develop new legal solutions which would also address the problems highlighted by the NMPT and encountered in places of detention.

What still remains to be solved is the problem of an effective mechanism for lodging complaints by juveniles. That issue was discussed in the NMPT's report for 2015.⁹¹

89 Ref. no. DWKI-WSPE.5015.52.2017.KT.

90 Ref. no. DWMPC-III-850-2/18

91 Cf. Report of the Commissioner for Human Rights concerning the activities of the National Mechanism for the Prevention of Torture in Poland in 2015, p. 37

Lack of systemic solutions applicable to pregnant juveniles as well as juvenile mothers and their children

According to the NMPT, the existing legislation which, due to the lack of effective systemic solutions may lead to the separation of juvenile mothers from their children, poses a significant risk of inhuman treatment of such mothers and thus requires urgent amendment.

The NMPT: juvenile mothers should be able to stay in detention establishments together with their children on daily basis so as to build emotional and family ties, rather than to have to come to meetings with their children who are brought up by other persons.

The problem that juvenile detention centres and shelters struggle with are body searches.

They are not performed pursuant to the provisions of the act, but the regulation⁹². That regulation, additionally, fails to indicate persons authorized to perform body searches, premises for their performance as well as the means of appeal against decisions in that regard.

The NMPT: Body searches performed in juvenile detention centres and juvenile shelters should be regulated in the act.

⁹² The discussion concerns the regulation of the Minister of Justice of 17 October 2001 on juvenile detention centres and juvenile shelters (consolidated text: Dz. U. of 2017, item 487)

Good practices to share

During their visits, the NMPT representatives identified numerous positive initiatives increasing the security of juveniles and building the positive culture of non-acceptance of torture and other degrading and inhuman treatment.

Good practices observed in the Youth Care Centre in Mszana Dolna include:

- ensuring staff supervision (individual and group supervision),
- broad range of extracurricular activities adapted to the needs and interests of residents - extensive offer of sporting activities,
- cooperation with the Sursum Corda foundation and the Przemiana Serc [Change at Heart] foundation which, e.g., supports juveniles who have no adequate living conditions upon leaving the establishment.

Also actions taken by the Youth Care Centre No.3 in Warsaw should be appreciated:

- resident boys can benefit from addiction treatment - the establishment employs an addiction therapist,
- the establishment has extensive green areas with new infrastructure for sporting activities and recreation,
- there are comprehensive, thematic projects aimed at, among others, making children appreciate art or familiarizing them with the principles of running administrative errands,
- the facility established cooperation with the Practical Training Centre in Warsaw, thanks to which residents can complete their basic education,
- it cooperates, on a volunteering basis, with the religious house of the Congregation of the Missionaries of Charity,
- 244 scouting troop of the *Unbeaten Track* Scouting Group (Namiestnictwo Drużyn Nieprzetartego Szlaku) operates at the centre,
- there is a Youth Council in place in the centre which cooperates with the director, heads of education groups and the Council's supervisor.

The following solutions are considered good practices in the Youth Care Centre in Lidzbark Warminski:

- meetings with representatives of various professions and with the career coach,
- residents take part in external vocational courses and participate in various, external artistic and fine arts contents, etc.
- the establishment organizes relaxation classes with elements of hatha-yoga and allows residents to participate in fitness classes held in the Youth Community Centre,
- the establishment promotes reading by organizing activities in the City Library and in the Orangery of Culture,
- it also strengthens the love of sport – by organizing, among others, annual nation-wide YCC championships in beach volleyball or tournaments for 6-person-football teams on grass pitches,
- by taking care of animals staying on the premises of the Centre (there are five goats) residents learn empathy and responsibility,
- the youth are also involved in numerous charity events.

What is viewed as noteworthy in the Youth Care Centre in Oława is the fact that:

- parents of a child who is placed in the establishment receive a letter outlining the basic rules that need to be respected in the centre, concerning, for example, leave passes or bans,
- juveniles receive pocket-size brochures with cartoons presenting the basic rules applicable in the YCC,
- residents may participate in the socio-therapeutic programme: Artistic Activity as a solution for Anxiety, which aims, among others, at helping juveniles develop strategies for coping with their emotions
- each boy is examined by a doctor from a nearby outpatient clinic within the first week from being admitted to the establishment.

Treatment by the police and access to a lawyer

While visiting three establishments⁹³ and holding conversations with juveniles, the representatives of the NMPT received information about the use of violence by police officers during interrogations and upon detention.

- *What was it like at the police station?*

- *Everyone knows what it is like.*

- *What do you mean?*

- *They beat you....*

(part of a conversation between the NMPT representative with one of the residents)

Juveniles also indicated that they were interrogated in the absence of their parent, guardian or psychologist. Furthermore, they also stated that the first time they met their *ex-officio* lawyers was in the court room, which raises concerns in terms of effective protection against torture.

Experience of national and international institutions dealing with the prevention of torture shows that the risk of ill-treatment is at its highest in the first moments after detention.

Juveniles indicated various forms of abuse that police officers resorted to when dealing with them.

⁹³ Juvenile Detention Centre and Juvenile Shelter in Konstantynów Łódzki, Juvenile Detention Centre in Tarnów (for boys with moderate and light mental disability) and Juvenile Detention Centre in Witkowo. The objective of the visits was to assess the access of minors to health services in the field of psychiatry and addiction treatment

- *A juvenile said that he was hit and seated on a chair. He was handcuffed. When he was placed in an armoured cabinet, police officers started hitting it with truncheons. He was also being hit with a truncheon on his heels and at the moment of detention they sprayed gas into his face. He was not examined by a doctor following his detention. He first saw his ex-officio lawyer during the court hearing.*
- *Another one revealed that he was taken to one of the police rooms. He was seated on a chair with his hands cuffed at the back. The boy remained handcuffed for the whole period of the interrogation. Officers wanted to know the origin of the drugs and who sells them. He was being hit with an open hand and punched with a fist all over his body. After some time, the door opened and he could see his teary cousin in the opposite room.*
- *The minor explained that he was beaten by police officers upon detention and also later at the police station. He said that he was punched on his neck, he was kicked and flung to the ground and handcuffed. The handcuffs were on all the time until he was transported to the juvenile shelter.*

- *Another juvenile was interrogated at 1 o'clock at night in relation to the escape of some centre residents. The interrogation took place in a monitored visit room but none of the establishment's employees was present. The boy claimed that the officers were threatening him that he would be considered an accomplice. He mentioned that the officers made malicious comments addressed at him.*
- *A juvenile reported that he was detained on a staircase and then transported to the 5th police station in Katowice. This is where officers (policeman and policewoman) tried to force him to give false evidence. As he claimed, he received two blows with a truncheon and his legs were cuffed to a radiator (in the interrogation room). A lawyer was absent, so were any third parties. As the juvenile stated, the officers "had a crime, but there was no culprit", so they tried to make him admit guilt. They were screaming at him.*

All reported cases are now used by the NMPT to examine irregularities with respect to interrogating juveniles by police officers.

The Commissioner for Human Rights addressed an intervention to the Voivodeship Commander-in-Chief of the Police in Wrocław and to the Prosecutor's Office in Wrocław⁹⁴ in relation to the interrogation of a juvenile with mild intellectual disability by an officer of the police station in Jelenia Góra. In the opinion of the Commissioner, the method of bringing the juvenile to interrogation was in breach of the provision of the Code of Criminal Procedu-

94 Cf. KMP.573.21.2016

re. He was not summoned for questioning in compliance with the applicable legal provisions but brought to the police station accompanied by police officers. In his intervention the CHR also pointed out that the juvenile had no chance to refuse to go to the police station with the officers. Police officers' conduct in that regard was considered inadequate and disturbing as well as - in case of the lack of proper educational activities - posing the risk for further, unjustified deprivation of liberty of witnesses.

What was very important in terms of the protection of the right of minors was the intervention of the Commissioner for Human Rights to the Minister of Justice⁹⁵ in relation to irregularities determined during a visit to the Juvenile Detention Centre in Sadowice⁹⁶. During the visit the team viewed the footage from the video surveillance which documented the use of direct coercion measures against centre's residents. The analysis indicated a number of irregularities concerning the legality of their application, adequacy of use and documentation. Based on instances described in the intervention, the Commissioner pointed out the following issues:

- **inhuman and degrading treatment of juveniles while using direct coercion measures** – in relation to a boy who was stripped naked and led through a corridor with his hands cuffed at the back and restraining belt on. The juvenile was placed in a room without a bed, which offered no possibility for rest. Dressed only in pyjama bottoms he was forced to sit with his legs cuffed. He was also wearing a safety helmet and a restraining belt.
- **application, against the residents of the youth detention centre, of direct coercion measures**, to which the personnel of such establishments is not entitled – using a safety helmet and legcuffs on juveniles.
- **no video surveillance footage or its inadequate recording** – in two instances of direct coercion application, the video surveillance material, which would allow for assessing the legitimacy of the measure's use, has not been saved. In the remaining cases, in turn, that footage is not complete and does not provide a full picture of the use of direct coercion measures.
- **failure to meet the requirements concerning proper equipment in isolation rooms** – none of the rooms, in which direct coercion measures in the form of placement in an isolation room were applied, met the requirements on proper equipment.
- **incomplete notes documenting the use of direct coercion measures** – in one case the note is incomplete; it does not contain information about the date and time of the end of direct coercion. What is also missing is the signature of the juvenile confirming that he/she has been instructed about the possibility to lodge a complaint concerning direct coercion that was used against him/her.

95 Ref. no. KMP.573.21.2017

96 The objective of the visits was to assess the access of minors to health services in the field of psychiatry and addiction treatment

- **lack of medical examinations in relation to the use of direct coercion measures** – the analysis revealed that not all juvenile residents who were subjected to direct coercion were examined by a doctor.
- **doubts concerning the premises for the use of direct coercion in the form of isolation** – it should be pointed out that detailed premises for the use of direct coercion are specified in Article 27 of the Act on direct coercion measures and firearms.
- **lack of personnel training in the field of application of direct coercion measures** – only one person was trained on how to properly use direct coercion measures.
- doubts concerning the use of a tranquilizing injection that was prescribed by the doctor for use in case of resident's hyperactivity.
- **judicial supervision** - what causes concerns is the method in which a judge examines and evaluates the legitimacy of direct coercion use and its documentation.

An important letter, in terms of the protection of juvenile rights, was also the intervention of the Commissioner for Human Rights addressed to the President of the National Council of Legal Advisers and the President of the Supreme Bar Council⁹⁷. The letters referred to the need to guarantee that every person detained by the police or other services entitled to perform arrests has access to a defence counsel from the beginning of detention. The objective was to throw light on the problem of torture in Poland and encourage the councils to undertake awareness-raising activities among their counsels and legal interns, showing the role they can play in preventing that phenomenon.

The NMPT believes that education is the best method of prevention, as it influences attitudes and determines constructive actions.

The NMPT: The state should create a comprehensive system that will be educating the society and on the other hand - through an effective judicial and administrative apparatus and effective law - will minimize the risk of torture and other forms of inhuman or degrading treatment.

97 Cf. KMP.573.30.2017

■ Rooms for detained persons (RDPs)

In 2017 the NMPT visited **5 rooms** for detained persons

In 2017 the NMPT visited 5 rooms for detained persons or sobering-up stations within the organizational units of the police ⁹⁸.

Systemic problems

Visits performed in 2017 revealed that the majority of systemic problems which were presented in the report from 2016 still remain unsolved. The issues which still need to be solved include:

- failure to provide a medical examination to each detainee
- shifting the responsibility to take care of intoxicated persons to the police
- examination of persons with mental disorders by doctors other than psychiatrists
- lack of proper staff in RDPs

The Constitutional Tribunal about body search: The fact that legislation fails to define the notion of “the search of an individual” and “body search” infringes on the constitutional rights and freedoms of an individual. What stands at variance with the Constitution are also the regulations (including the regulation on RDPs) which virtually independently and comprehensively regulated the issue of body search⁹⁹

In order to allow the legislator to adjust the legal provisions to constitutional requirements, the Constitutional Tribunal extended the deadline for the loss of effect of unconstitutional provisions by the maximum period provided for in Article 190(3) of the Constitution, that is by 18 months – with respect to acts and 12 months - with respect to regulations. Monitoring the progress of work on the introduction of the said changes to applicable regulations remains on the NMPT’s agenda.

98 RDP in Malbork KMP570.5.2017, RDP in Częstochowa KMP570.6.2017, RDP in Grójec KMP570.8.2017, RDP in Płock KMP570.8.2017, RDP in Sokółów Podlaski KMP570.8.2017

99 Cf. Ruling of the Constitutional Tribunal of 14 December 2017, file no. K 17/14, at the request of the Commissioner for Human Rights, ref. no. II.519.344.2014

Good practices to share

NMPT employees observed some noteworthy practices in the operation of RDPs. The following practices deserve special recognition:

Permanent staff working in the Centre in Płock and Czestochowa

Public service is not an additional task for police officers that they may perform from time to time, alongside with other obligations. Police officers are not distracted from other duties for which they are held accountable. In the opinion of the NMPT, such an approach constitutes good basis for ensuring officer's full involvement in the work in RDPs and willingness to improve their qualifications in the field related to establishment's operation. This, in turn, may undoubtedly have positive impact on the way detainees as well as intoxicated persons brought to sobering-up stations are treated.

Making sure that 2-3 officers are on duty at the same time in the RDP in Czestochowa

This practice results in an increased level of safety for the detainees.

Basic information contained in a booklet which is placed in every room for detained persons in Sokołów Podlaski

Areas which require improvement

Foreigners in RDPs

There are instances when Ukrainian citizens are arrested but documentation fails to mention whether they could speak Polish or what language was used to inform them about the RDP's rules and regulations or whether an interpreter was present during the procedure.

The source of the NMPT's concern is that such individuals received information about the detainee's rights in the criminal procedure in Ukrainian. Therefore, what is called into question is the ticked off box confirming that such individuals have read and understood the protocol without any side note indicating their language proficiency.

The NMPT recommends that foreigners' detention protocols should contain information concerning detainees' knowledge of Polish, the language used to inform them about the rules and regulations of RDPs as well as possible presence of an interpreter during the procedure.

In case a foreigner does not speak Polish or his/her level of Polish is not sufficient, the NMPT recommends involving an interpreter during the RDP admission procedure. It should also be ensured that statements signed by foreigners are available in languages they can understand.



Information about detention

At the request of the detainee, police officers inform third parties, that he/she designates, about the fact of his/her arrest or transfer to a different place of detention.

Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody (Resolution of the General Assembly of the UN)¹⁰⁰

The NMPT: in the first place detainees should be allowed to exercise their right to inform individuals of their choice about their place of detention or imprisonment and only in special situations should that right be exercised by police officers acting on their behalf.

¹⁰⁰ Set of rules aimed at protecting all persons under any form of detention or imprisonment - Resolution of the General Assembly of the UN

Right to defence

The staff of RDPs fails to ensure an immediate and direct contact with an attorney or a legal counsel.

Allowing the person detained by the police to have an assistance of an attorney is a basic safeguard against ill-treatment. It acts as a deterrent to those who may feel inclined to ill-treatment of detainees. Moreover, an attorney is in an excellent position to initiate relevant actions if ill-treatment actually occurs (CPT)¹⁰¹

As officers who were on duty during the visit to the RDP in Częstochowa reported, the establishment is not the place in which such a contact could be established and all requests in that regard are directed to the police station or the police department responsible for the detention. It could be concluded from the conversation held with the Municipal Police Commander in Częstochowa that he is familiar with that procedure.

Given the inadequate practice that was adopted by the personnel of the RDP, it should be also observed that Article 245(1) of the Code of Criminal Procedure does not indicate that a specific unit responsible for detention should ensure a contact with an attorney or a legal counsel. It simply states that *the detainee, at his/her request, should be entitled to immediately contact an attorney or a legal counsel (...)*.

Some of the inspected facilities did not have a list of attorneys and legal counsels that is normally made available to persons wishing to exercise their right to defence. What was also missing was a list of institutions dealing with the protection of human rights (e.g. the Commissioner for Human Rights and the free-of-charge civic hotline 800 676 676).

The NMPT reminds that the right to have access to a defence counsel is one of the three basic rights of detainees and constitutes a guarantee for the protection against torture.

¹⁰¹ See: CPT 21st General Report [CPT/Inf (2011) 28]

Social care homes

Introduction

7 social care homes were visited by the NMPT in 2017

**141 social care homes were
visited in the years 2009 – 2016**

The results of social care homes' monitoring have been described in the thematic report entitled *Rights of residents of social care homes*¹⁰², published in 2017. The report provides guidance to entities that operate social care homes, to their staff, residents as well as relatives of current or future residents of such homes.

The irregularities found in individual institutions as well as the highlighted problem areas should encourage discussion on the changes necessary for protecting the homes' residents against potential situations of ill-treatment.

102 <https://www.rpo.gov.pl/pl/content/raport-kmpt-prawa-mieszkanow-domow-pomocy-spolecznej>

Success

Amendment to the Act on Mental Health Protection

On 1 January 2018, the amendment to the Act on Mental Health Protection (hereinafter: AMHP) entered into force. The amendment consisted, primarily, in strengthening the rights of persons who are placed in social care homes without their consent, by ensuring the protection of those persons' procedural rights.

Undoubtedly, a ground-breaking case which related to a legally incapacitated person and which was examined by the European Court of Human Rights was that of Mr Kędzior. He was placed at an SCH by his brother who was his legal guardian. Mr Kędzior sought to convince the courts that there was no necessity for him to live at the SCH. However, his efforts were unsuccessful as according to the Polish law, only the legal guardian of an incapacitated person had the right to appear before courts with regard to such matters. Yet, Mr Kędzior did not give up and, as a result of his attempts, in 2012 his case was examined by the European Court of Human Rights in Strasbourg (where he was represented by Adam Bodnar, at that time a lawyer of the Helsinki Foundation for Human Rights).

The ECHR issued a judgment in favour of Mr Kędzior and awarded to him a compensation in the amount of EUR 10,000 to be paid by the Polish state. The Court ruled that Poland had violated the provision of Article 1)5) of the European Convention on Human Rights (right to liberty and security of person) applicable to a person suffering from mental illness who, based on a decision of his legal guardian, was placed in a social care home against his will.

In 2016, pursuant to the application filed by the Commissioner for Human Rights, the case was examined also by the Polish Constitutional Tribunal. It, too, ruled that the regulations which did not provide for any possibility to appeal to court and initiate a proceeding to verify whether a person's placement in an SCH was justified, were contrary to the Constitution. The Tribunal pointed out that the possibility for a legal guardian to place a fully incapacitated person in an SCH without taking any account of the person's will (assuming that the person is able to communicate his/her needs and decisions) constituted a contravention, by a legislative act, of the principle of person's subjectivity, and a violation of person's dignity. Furthermore, such person's placement in an SCH interfered with his/her personal freedom: the necessity to change the place of residence and to follow the home's regulations were considered to violate the constitutionally guaranteed liberty of person.

Under the regulations that were in force until the end of December 2017, the court was not even required to hold a hearing of the legally incapacitated person concerned. Such a person, during his/her stay at the SCH, had no possibility to seek verification of the need for his/her further stay there, even in the case of his/her health improvement or the availability of a person willing to provide support to him/her within the local community.

On 1 January 2018, the situation of legally incapacitated persons radically improved!

Any person placed in an SCH, including a legally incapacitated person, may apply to a guardianship court for changing its ruling on the person's placement in the home (Article 41 of the AMHP). Also, a person who does not consent to staying in the home any longer, may apply to the guardianship court for the annulment of its ruling on the person's placement there.

The amended act has also introduced the obligation for the court to hold a hearing of the legally incapacitated person to be placed in a psychiatric hospital or an SCH.

Furthermore, in order to ensure extended full-scope legal protection of persons with mental disorders or intellectual disabilities, for any person admitted to an SCH or a psychiatric hospital without his/her consent the court is required to appoint (instead of "may appoint", as was worded in the previous regulations), ex-officio and without any request, a lawyer to monitor the person's situation.

If a person is placed in an SCH without his/her consent but with the consent of his/her legal representative, a ruling of the guardianship court is required. At least once per six months, periodic examinations of the person's mental health have to be carried out.

Systemic problems

The systemic problems identified in the last years have not yet been properly solved by those responsible for relevant legislative work in Poland ¹⁰³.

The issue of performance by SCH staff members of the role of legal guardians of incapacitated persons

A situation in which one person is an SCH employee and, at the same time, a guardian of an incapacitated person is not a good solution because of the problems arising from the combination of the two roles (the lack of impartiality that is necessary to take due care of the home resident's interests but that cannot be maintained since the employee is formally answerable to the SCH director).

The issue of CCTV monitoring

Security and the right to privacy will always be in contradiction to each other. Only wise and well-balanced legislation can reconcile the two values. Unfortunately, there is a lack of such legislation applicable to social care homes.

The problem of alcohol abuse by some residents, and the lack of SCHs for residents with alcohol-related problems

As many as 10% of SCH residents may have alcohol-related problems

The problem certainly cannot be considered a marginal one. According to the findings of the NMPT, in most social care homes for senior persons or persons with chronic somatic diseases there are some residents with alcohol problems. In some of the visited facilities, the share of such persons in the total number of residents was as high as 10%. However, the possibility to place alcohol-abusing persons in SCHs in which they would undergo a relevant therapy is limited because of the low number of such facilities.

¹⁰³ On 30.01.2018 the Commissioner for Human Rights forwarded a letter of intervention to the Minister of Family, Labour and Social Policy concerning the protection of the rights of residents of social care homes. He requested the minister to take a position on the existing systemic problems relating to the work of social care homes; letter ref. no. KMP575.7.2016

The amendment of 11 May 2013 added, to Article 56 of the Act on Social Welfare dated 12 March 2004, paragraph no.7 that introduced a special type of SCH that offers such therapy. In Article 59(6) and (7) of the Act, the procedure of referral to such homes and the maximum duration of stay in them are set out¹⁰⁴. However, the implementing provisions which regulate key issues related to the work of the homes for alcohol-dependent persons were adopted only in January 2017.¹⁰⁵ Due to this, in 2017 only one facility of this type, the Social Care Home at ul. Rozrywki 1 in Kraków, was operating. Also, the Social Care Home for people with chronic mental illnesses, located in Pleszew, established a special ward for alcohol-dependent persons. Yet, the number of such facilities is still insufficient.

The issue of the rules on SCH residents' contacts with the outside world

The NMPT emphasizes that all residents of social care homes, regardless of the grounds for their placement in the home or their legal incapacitation, should be treated equally by the homes with regard to their possibility to leave the facility's premises.

Only a psychological or physical condition diagnosed by a physician may be a reason for not allowing a resident to leave the home. The SCH is then required to ensure to such a resident the possibility to leave the facility under supervision.

Freedom of person is one of the aspects of freedom within the meaning of Article 31 of the Constitution. Therefore, it may be restricted only by the operation of the law, provided that relevant reasons exist and that the boundaries of the restriction have been determined (the obligation to respect the principle of proportionality and the prohibition to violate the basic rights and freedoms). All the requirements have to be met jointly when restricting the rights and freedoms of an individual. Failure to follow the said general principles should be considered ungrounded reduction of the constitutional protection of individual's rights.

¹⁰⁴ consolidated text: Dz. U of 2017, item 1769

¹⁰⁵ Regulation of the Minister of Family, Labour and Social Policy of 24 January 2017 amending the Regulation on social welfare homes, Dz. U. of 2017, item 224. According to the regulation (Article 1(1)), an individual support plan should be drawn up within two months of the person's admission to the SCH. The coordination of activities indicated in the plan is the task of an addiction therapy specialist or instructor, or a person trained in the subject (Article 1(2)). Residents of SCHs for addicted persons should have ensured the supervision of a psychiatrist, addiction psychotherapy specialist, addiction therapy instructor or a person trained in the subject of therapy and rehabilitation for persons dependent on alcohol (Article 1(4)). An SCH for addicted persons should have at least 0.5 full-time employee (of the therapeutic care team) per home resident (Article 1(4)). An SCH of this type should also provide to its residents access to: individual and group therapies, cognitive skills training including memory training, training in social skills required to maintain abstinence or reduce alcohol consumption, motivation-building activities to help to maintain abstinence or reduce alcohol consumption (Article 1(3)).

The issue of SCHs' cooperation with psychologists

A key pillar of proper care for residents of social care homes is providing them with permanent and unrestricted access to a psychologist. Only a psychologist employed by the facility can provide such access in practice.

The problem has been raised since 2013. However, every year the Minister of Family, Labour and Social Policy replies to the Commissioner that social care homes do not need psychologists or psychiatrists employed specifically within their structures, and that the frequency of the home residents' contacts with psychologists is not determined by way of regulations because it depends on individual person's needs.

The NMPT: The question that should be asked in the context of the Ministry's position concerns the quality of ad-hoc psychological care.

The issue of family judges' insufficient control over social care homes

According to Article 43(1) of the AMHP, the court supervision over the legality of placement and stay of people with mental disorders in social care homes and over the observance of their rights and living conditions in the facilities, is required only in the case of social care homes for persons with mental illness or mental retardation.

Residents with mental disorders may, however, stay also in other types of care homes, e.g. in homes for chronically ill persons. There are care homes not supervised by a court although they have some mentally ill residents. This puts some residents of social care homes in a worse position as their unsupervised deprivation of liberty, for an undetermined period of time, is against the necessity to guarantee to every person his/her personal freedom and the possibility to seek, through a visiting judge, the verification of the person's situation.

The NMPT: the regulations need to be changed

Good practices to share

The SCH in Elk, named Tęczowy Dom - Farma św. Józefa [St. Joseph Rainbow Home and Farm], is a care home for physically self-dependent boys. It is located in the village of Jeziorowskie, 15 km from Elk. Next to the home there is a farm where residents may work to learn to become independent. On the day of the visit, four boys were working on the farm. The facility plans to have animals, including alpacas, that will be taken care of by the home's residents. The facility also has a particularly good location in the vicinity of a forest and a river.

Alternative communication methods and „communication passports”

Thanks to the practices developed in the below-mentioned institutions, communication with their residents with severe intellectual disabilities is possible.

The SCH in Radzymin: the use of the Hodgkinson mental test, and the Barthel index, in order to determine the person's degree of self-dependence and to properly adjust the offered care and therapeutic activities to the needs of the residents.

The SCH in Międzyrzecz: an extensive offer of therapy facilities: an art and occupational therapy room; a music therapy room combined with a small library and a kitchenette; a computer room, and a kinesitherapy room. The home also organizes **Occupational Therapy Workshops** which include workshops in the following subjects: carpentry, ceramics, floristry, interior design, culinary and housekeeping activities, social skill in professional work, and psychology.

The SCH named Jedlina, located in Mienia: numerous **facilities for conducting occupational therapy:** a sports hall (with exercise towers and ladders, a rowing simulator, stationary bicycles and a table for table tennis), a music room (with a place for listeners), a computer room, a “surrounding world experience” room, a technical room and a stable (offering hippo-therapy and ergotherapy). The possibility of paid employment is also offered to the residents: 10 residents had paid jobs (each 0.5 of the full-time job) in the Occupational Activity Facility in Mińsk.

24-hour care facilities

Introduction

24-hour care facilities are, next to social care homes and nursing facilities, a type of care facilities for senior persons and persons with health problems. The psychological and physical health condition of those patients is related to an increased risk of violation of their rights.

The provisions of the Act on Social Welfare set out the standards of work of the facilities that provide 24-hour care for disabled, chronically ill or senior persons (Articles 67-69 of the Act), procedures for the facilities' supervision and inspection, as well as procedures to be followed in the event of identifying a care facility that operates without the required permit. In order to run a business activity consisting in the operation of a 24-hour care facility, specific requirements have to be met and a permit issued by the head of the voivodeship administration (i.e. the province administration) has to be held. The state's approach is based on the assumption that care provision to dependent persons is not just an ordinary business activity. On the other hand, by introducing the system of permits for individual persons to provide such services, the legislator has, in fact, admitted that the state is not able to provide such services by itself and, therefore, it finds it necessary to shift a part of such activities to private service providers.

- In 2017, representatives of the National Mechanism for the Prevention of Torture visited fifteen 24-hour care facilities¹⁰⁶

Systemic problems

Legality of residents' stay

In the opinion of the NMPT, of particular importance from the point of view of the rights of persons who are residents of 24-hour care facilities, in particular persons who are not formally legally incapacitated but are in a condition that makes it impossible for them to understand their situation properly and to make conscious decisions, is the process of such persons' placement in the facilities. Persons acting on behalf of such residents are not in any way authorized, in the light of the regulations in force, to make decisions to place the resident in a

106 The following 24-care facilities: „Dom nad Świdrem” in Otwock, KMP:573.3.2017; Dom Opieki „Sielanka” in Palmiry, KMP:573.7.2017; Dom Opieki „Spokojna Przystań” in Baniocza, KMP:573.4.2017; Dom Opieki Nad Osobami Starszymi „Zielony Zakątek” in Zabki, KMP:573.1.2017; Centrum Opiekuńczo-Rehabilitacyjne „Alter Domus” in Otwock, KMP:573.9.2017; Dom Opieki „Ostoya Homes” in Stare Babice, KMP:573.2.2017; Dom Opieki „Nestoria” in Piaseczno, KMP:573.5.2017; Dom Opieki „Nestor” in Wojszczyce near Pomiechówek, KMP:573.8.2017; Centrum Seniora „Angel Care” in Wrocław, ref.no. BPW:573.1.2017; Dom Opieki „Złota Jesień” in Gdańsk, BPG.573.1.2017; Dom Spokojnej Starości „FiliZanka” in Gnojnik, KMP:573.13.2017; Dom Opieki „Florans” in Stare Babice, KMP:573.18.2017; Facility for Chronically Ill Female Residents in Warsaw, KMP:573.27.2017; DUOMED s.c in Marki, KMP:573.36.2017; Dom Opieki „Józefina” in Józefów near Warsaw, KMP:573.35.2017

24-hour care facility. This applies, in particular, to situations in which those persons are not legal representatives of the residents, as the residents are not legally incapacitated and no legal guardian has been appointed for them. It would be desirable, therefore, to regulate the issue in the generally applicable regulations, e.g. by introducing solutions similar to the consent of a custody court for the provision of a health service, which is given in accordance with Article 32 of the Act of 5 December 1996 on the Professions of Physician and Dentist¹⁰⁷, or similar to the consent for a person's placement in a psychiatric hospital, which is given under Articles 22 and 23 of the AMHP. The solutions could include, among others, the requirement for a family members or other persons to apply to a court for a consent for the person's placement in a care facility. Thanks to the supervision by courts, the status of persons admitted to such facilities would be significantly strengthened, as at present such persons often have no possibility to have any influence on their future.

Use of direct coercion measures in 24-hour care facilities

In the opinion of the NMPT, there is a lack of legal regulations on the use of direct coercion measures in such facilities. According to the current regulations, the use of such measures in places other than psychiatric hospitals is permitted only in organizational units that are operated by the social welfare system, in social care homes and, in the case of specifically authorized authorities e.g. the police, at any place as required. If direct coercion measures are used in 24-hour care facilities, then in the opinion of the NMPT they may constitute actions that are prohibited (violation of bodily integrity, or unlawful deprivation of liberty). The Commissioner has applied to the Minister of Family, Labour and Social Policy for regulating the use of direct coercion measures in 24-hour care facilities¹⁰⁸. The Minister shared the Commissioner's opinion and ensured that the Ministry is working on introducing, into the Act on Social Welfare, provisions that would require employment, by such facilities, of medical personnel that would be authorized to use direct coercion measures. Unfortunately, despite the Minister's announcements the amendment has not yet been introduced. Currently, 24-hour care facilities are not formally permitted to use coercion measures in relation to their residents but are at the same time required to keep registers of cases of use of direct coercion, including the date and scope of using such measures.

¹⁰⁷ consolidated text: Dz. U. of 2017, item 125

¹⁰⁸ KMP:575.13.2016

■ Psychiatric hospitals

Introduction

- **In 2017, 15 psychiatric hospitals or psychiatric wards in general hospitals were visited**

To 7 institutions, thematic visits were held to verify the availability of psychiatric care for minors¹⁰⁹. In the remaining 8 institutions¹¹⁰ the visits focused on the state of observance of the rights of adults who were placed there against their will i.e. without their consent, and adults who agreed to be placed in the institution but while staying there changed their decision.

- **8 visited hospitals and only 3 experts – psychiatrists who took part in the NMPT visits as experts!**

The NMPT encounters a problem with finding physicians willing to cooperate with the Mechanism, which problem is growing every year .

Systemic problems

Underfinancing of psychiatric wards

Easy and quick access to a patient's bed in the case of emergency should be a standard. However, none of the visited institutions ensured access to patients beds from three sides.

The issue of shortage of funds allocated by the National Health Fund to treatment in psychiatric hospitals has been raised by the National Mechanism for the Prevention of Torture since 2012, when the NMPT presented a report on the issue, drawn up by the Commissioner for Human Rights. This problem has not lost its validity in 2017. Its source is in the assessment of the CMB, omitting by the NFZ in the financial assumption that in addition to psychiatric treatment, the hospital must provide often more expensive somatic treatment (which is particularly needed for older people), medicines (medicines, insulin for diabetics, etc.), as well as transport for needed consultations.

¹⁰⁹ Results of the visits will be presented in a special thematic report to be drawn up by the NMPT

¹¹⁰ Psychiatric Ward of the Psychiatric Care Institution "Salus" in Szczecinek, KMP:574.1.2017; Psychiatric Ward of the Department of Psychiatry, Combat Stress and Psychotraumatology of the Military Institute of Medicine in Warsaw, KMP:574.13.2017; Psychiatric Ward "Oddział Psychoatryczny ZOZ sp. z o.o in Świętochłowice, KMP 574.1.2017; Psychiatric Ward of the Municipal Hospital in Sosnowiec, KMP:574.14.2017; Psychiatric Ward of St. John Paul II Municipal Hospital in Elbląg, KMP:574.16.2017; Psychiatric Ward of the 7th Army Hospital for Navy in Gdansk KMP:574.15.2017; Psychiatric Ward of the General Hospital in Kolno, KMP:574.18.2017; Psychiatric Ward of the Mental Health Centre in Słupsk, BPG.574.2.2017

Unfortunately, the visits carried out in 2017 showed that the number of places available in psychiatric hospitals was too low, just like in the previous years. The NMPT still finds cases in which patients' beds are placed in corridors within psychiatric wards, or in which additional beds are placed in patient rooms in the wards, which results in overcrowding and makes it impossible to access the beds from three sides. The information gathered by the visiting teams shows that such practices are still found in many psychiatric hospitals.

The NMPT: placement of patients' beds in psychiatric ward hallways or corridors clearly violates the patients' right to privacy. Such violation also takes place when too many patients are placed in a hospital room, which negatively impacts the treatment process and causes tensions between patients.

The NMPT: patients subject to preventive measures are sometimes hospitalized in such conditions for several years

Creation of an environment positively contributing to the therapeutic process requires, primarily, the provision of sufficient living space for patients (...). Special attention should be paid to the design of patient rooms and recreation space, which should ensure appropriate visual stimulation. In patient rooms, next to the beds there should be bed tables or cabinets, where patients should be allowed to have certain personal items (photographs, books, etc.). It is also important for patients to have access to a place where their belongings would be stored in a locked space - the lack of such a place may negatively impact patients' sense of security and autonomy (CPT)¹¹¹.

111 See: CPT /Inf/E (2002) 1 -Rev. 2011

CCTV monitoring in psychiatric hospitals

The legality of the use of CCTV monitoring for the safety of hospital patients can be ensured by the existence of a legal basis for it in a parliamentary act.

The Commissioner for Human Rights submitted a general intervention to the Minister of Health with regard to the need to regulate in relevant legislation the issue of the use of CCTV monitoring in psychiatric hospitals. The Minister of Health agreed with the arguments presented by the CHR and announced that appropriate regulations would be introduced to the Act on Mental Health Protection. Unfortunately, the announced solution has not yet been implemented. According to the letter of 22 May 2017 of the Undersecretary of State from the Ministry of Health, replying to the report on the NMPT activities in 2016, the issue of legislation on CCTV monitoring in hospitals, used for purposes other than patient health condition monitoring (e.g. CCTV monitoring used in patient isolation rooms) is beyond the scope of competences of the Minister of Health¹¹².

Undoubtedly, the act amending the Act on Mental Health Protection and certain other Acts should be positively evaluated in the part in which it provides for the obligation to install CCTV monitoring in rooms assigned to the use of direct coercion in the form of patient's isolation. However, there are no adequate regulations, at the parliamentary act level, on single-patient rooms where direct coercion is used in the form of restraining patients with mental disorders, and on patient observation rooms and hospital wards with increased security regime.

Apart from the above arguments relating to the need for appropriate legislation, the issue of individuals' monitoring with the use of CCTV equipment is of fundamental importance from the point of view of human rights. Particular attention should be paid to patients of psychiatric hospitals, as their placement in such institutions is also connected with an increased risk of social exclusion, as compared to other social groups. There is no doubt that the failure to ensure proper protection of the rights of such patients and of their personal data and images may lead to the risk of misuse of such information.

The NMPT shall continue to seek the adoption of regulations, on the parliamentary act level, to provide a basis for the use of CCTV monitoring in psychiatric hospitals.

112 ref. no. IK:1265525.DL(2)

Lack of regulations on escorted transport of persons subject to preventive measures, outside the institution

All procedures relating to mentally ill persons should be clearly regulated in such a way so as not to raise any doubts.

Regulations which set out who, in what situations, by what means of transport and with the use of what coercion measures may transport persons who have been placed in hospitals instead of prisons, should be an absolute minimum as concerns the safety of such patients.

For several years, the NMPT has been calling for regulating the procedure of escorted transport of patients of psychiatric hospitals and wards, who are held there pursuant to adjudicated preventive measures, outside the premises of the institution for the purpose of medical consultations, examination or treatment.

Currently, it is the responsibility of the hospital administration to provide such escorted transport. The NMPT noted that at present there happen situations in which psychiatric hospital patients are escorted by public transport, which raises reasonable concerns about the safety of other passengers. In the opinion of the Ministry of Health, it is justified to introduce, into the Executive Penal Code, provisions on escorted transport of persons in relation to whom preventive measures have been adjudicated. According to the NMPT, it is necessary to take legislative action to determine the escorted transport procedure, i.e.: situations in which it should be used, responsible entities, escorting team composition, means of transport, and measures to be taken in order to prevent aggression and uncontrolled departure of the escorted person. At present, it is the sole responsibility of psychiatric hospitals to organize escorted transport and to ensure its safety and security, in cases when it is necessary to transport a patient beyond the psychiatric hospital for the purpose of an important medical consultation, examination or treatment procedure.

Emergency call system

Patients' safety should be considered a priority. Therefore, why does the Ministry of Health not see the need to adopt a standard for emergency call systems installed in rooms for patients?

According to the NMPT, the role of an efficient and easily accessible emergency call system cannot be overestimated. It enables fast intervention of medical personnel in emergency situations of health deterioration of patients.

The NMPT: emergency call buttons should be available in all rooms used by patients (bathrooms, bedrooms, safety rooms for patient isolation as a direct coercion measure, etc.).

Emergency call systems are also of particular importance for persons with disabilities who, according to the requirements laid down in the Convention on the Rights of Persons with Disabilities should be provided with various forms of personal assistance, broadly understood mobility measures, and reasonable accommodation to ensure to those persons the enjoyment or exercise, on an equal basis with others, of all fundamental freedoms as well as safety.

In this context, attention should be paid to the lack of emergency call installations, identified also in some visited psychogeriatric wards where there are supine patients who are unable to leave the room to notify personnel about any emergency.

The Act on Patients' Rights as well as the Patients Ombudsman highlight the issue of safety of healthcare procedures.

The Regulation of the Minister of Health of 26 June 2012 on specific requirements to be met by premises and equipment of medical service providers¹¹³ does not require the installation in hospital wards of emergency call systems that can be accessed from patient rooms, bathrooms and other rooms used by patients.

In view of the lack of such regulations, the Commissioner requested the Minister of Health to consider introducing relevant obligations under the law. In his letter dated 29 June 2017 the Minister of Health replied that the National Consultant in Psychiatry and the National Consultant in Youth Psychiatry had been requested to provide their opinions on the issue. According to their opinion, (...) hospital patients of psychiatric wards are persons whose physical condition makes it possible for them to move by themselves. Therefore, installation in such wards of the above-mentioned systems whose main task is to call a staff member to provide assistance does not seem grounded¹¹⁴.

Good practices to share

Cooperation between the Mental Health Centre in Słupsk and the Police School in Słupsk

The cooperation covers training provision in those aspects of psychology and resident treatment that are important in the opinion of the Police School and the Mental Health Centre in Słupsk. Under the agreement between the two institutions, police officers conducted a series of training courses for the centre's staff. The training subjects included methods of immobilizing aggressive persons by force and of restraining such persons, as well as a basic self-defence course, the use of direct coercion measures, approach to cases of domestic violence and the so-called blue card procedure. The Centre, in turn, trained police officers in the methods of dealing with people with mental disorders. Work was also started with the aim to draw up a practice-oriented manual on the subject, to be available to all police officers.

113 Dz. U of 2012, item 739

114 see: ref. no. KMP:574.4.2017

Wireless internet access for patients of the hospital in Swietochłowice and of the Military Institute of Medicine in Warsaw

Protection against the use of force, and the high standards of care

in the Psychiatric Ward of the Department of Psychiatry, Combat Stress and Psychotraumatology of the Military Institute of Medicine in Warsaw; the good practices consist in:

- making photography documentation of any injuries of patients admitted to the ward;
- state-of-the-art. Therapeutic methods and facilities: the ward has special well equipped and air-conditioned rooms for individual and group therapies, where the conducted sessions can also be recorded for the purpose of therapy;
- the possibility for the ward's patients to use a gym which is located outside the hospital (the patients get access cards to the gym that is used by the local community),
- the possibility for the ward's patients to use a garden with benches and a place for a grill, and access to wireless internet.

Nursing facilities

Introduction

Similarly as other types of places where people are detained and which are visited by the NMPT representatives, nursing facilities may also have residents who have been legally incapacitated pursuant to a court ruling. Thus, such facilities are also monitored by the NMPT.

- **In 2017, the National Mechanism for the Prevention of Torture held visits to 11 nursing facilities and convalescent homes (hereinafter also NF, CH, facilities)¹¹⁵.**

Systemic problems

Rules of persons' admission to nursing facilities

The regulation of Minister of Health of 25 June 2012 on referral to nursing facilities and to convalescent homes (Jurnal of Laws of 2012, item 731), stipulate that every application for admission to a nursing facility should be signed by the person who is seeking admission to the facility or by his/her legal representative.

The NMPT identified the problem of the lack of legal regulations on the admission to nursing facilities of adult persons who, due to their health condition, are not able to independently sign their applications and, at the same time, do not have their established legal representatives who could do this on their behalf. In the opinion of the NMPT representatives, the problem is of systemic nature. It consists in the fact that in the case of patients who are not legally incapacitated but, at the same time, are unable to express their will because of their somatic diseases, their family members have no authorization under the law to apply to a court for ordering to place such a patient in a nursing facility. It should also be emphasized that the problem concerns only those nursing facilities that are institutions targeted at all types of residents. As regards psychiatric nursing facilities, the placement of persons who are not legally incapacitated but, at the same time, are unable to express their will because of their somatic diseases is done on the grounds of Article 21 in conjunction with Article 3(1) and (2) of the Act on Mental Health Protection.

¹¹⁵ Nursing facility of the Congregation of the Sisters of the Holy Elizabeth in Wrocław, KMP573.10.2017; non-public nursing facility of the Caritas association of the Archdiocese of Gdansk, KMP573.12.2017; nursing facility "Kaśmin" in Drożdżówka, KMP573.15.2017; nursing facility in Maków Mazowiecki, KMP573.14.2017; nursing home "Złota Ostoja" in Palmiry, KMP573.19.2017; nursing facility in Knyszyn, KMP573.23.2017; nursing facility in Mońki, KMP573.20.2017; convalescent home "Dom Opieki Curatum" in Brwinów, KMP573.24.2017; convalescent home in Słupsk, KMP 571.8.2017; nursing facility of the Rehabilitation and Resocialization Centre "Dom Ciepła" in Warsaw, KMP573.34.2017; nursing facility for Chronically Ill Persons, run by the Congregation of the Sisters o- Missionaries of Charity in Otwock, KMP573.32.2017.



Good practices to share

Nursing facility in Wrocław - the facility runs practical training for nurses and physiotherapists. Throughout the academic year, apart from the facility's employees, care of patients is also taken by trainees i.e. students. The facility admits persons with disability, who have been referred by the Wrocław Municipal Office for a 21-day stay there. The patients have ensured specialist care, thanks to which their relatives have time to rest. The facility in Wrocław is the only institution visited by the NMPT which permits visits to patients both by family members with children and by pet animals.

Nursing facility in Knyszyn – the facility has introduced a system of personnel rotation: the nursing facility's personnel rotates with the personnel of the internal medicine department of the hospital in whose structure the facility operates. The solution aims to protect the facility's personnel against occupational burnout to the risk of which those working with chronically ill people are exposed.

Nursing facilities in in Słupsk, Gdańsk and Warsaw pay specific attention to the role of psychologists in the process of health improvement of their patients. The Warsaw facility employs as many as three psychologists.

Closed detention centres for migrants

2 closed detention centres for migrants and 1 remand centre for foreign citizens

In 2017, the National Mechanism for the Prevention of Torture conducted inspection visits to two closed detention centres for migrants: the Closed Detention Centre for Migrants in Krosno Odrzańskie¹¹⁶ and the Closed Detention Centre for Migrants with a Remand Centre in Przemyśl¹¹⁷. The visiting team included external experts in psychology and psychiatry.

The representatives of the Mechanism had problems in fulfilling their task as because of the security considerations, they were refused the possibility of conducting interviews with groups of foreigners in their bedrooms. The issue was then a subject of the exchange of written explanations with the Chief Commander of the Border Guard.

Success

The decision of the Chief Commander of the Border Guard which regulated support provision by psychologists within the structures of the Border Guard has been changed.

Border Guard: at a closed centre for migrants, psychological examination is also possible at the request of a foreign citizen, and in the presence of an interpreter

¹¹⁶ KMP572.1.2017

¹¹⁷ KMP572.3.2017

Until 6 October 2017, the decision did not provide for the possibility of conducting a psychological examination at the request of the interested person, which was raised in the last year's report. According to the new order¹¹⁸, the centre's psychologist is required to provide psychological service after obtaining, from the head of the closed centre, a **physician or a foreign citizen placed in the centre, information about the occurrence of a difficult situation**. Moreover, the psychological service has to be provided in a language understood by the foreign citizen, in the presence of an interpreter or person fluent in the foreign citizen's language.

The adopted solution meets the NMPT's expectation expressed in the Report on the NMPT's activities in 2016.¹¹⁹

Systemic problems

Lack of effective identification of victims of torture

In Poland, there is still no effective system of identifying foreign citizens who have been victims of torture and violence.

Article 400 of the Act on Foreigners provides that: decision to place a foreign citizen in a closed detention centre for migrants or in a remand centre shall not be issued if:

1. it can cause a danger to the foreign citizen's life or health, 2. the psychological or physical condition of the foreign citizen justifies the conclusion that the person has been subjected to violence.

118 Decision no. 182 of the Chief Commander of the Border Guard of 6 October 2017 on the provision of psychological services by the Border Guard (Official Bulletin of the Chief Commander of the Border Guard, dated 6 October 2017)

119 see: Report of the Commissioner for Human Rights on the Activities of the National Mechanism for the Prevention of Torture in Poland in 2016, page 157.

The NMPT: According to the regulations, such persons should not be placed in closed detention centres for migrants or, if they have already been placed there, they should be released immediately.

However, in the visited institutions there were persons whose behaviour could with a large probability suggest that they had been victims of torture or could have been identified as victims of torture:

„My life doesn't make sense, I have no future. Everything has been taken away from me, my thoughts, my mind. But I still have the right to my body, I can do whatever I want with it, you can't take this away from me. I don't want to live.”

- A Chechen man: during his questioning he stated he had been subjected to torture and inhuman treatment in his country of origin. He also spoke about wartime violence as a result of which he suffered chest injuries. He said he got shot on his leg. What he said matched his psychological and physical condition. He had a shot scars on his leg that, and his medical documentation confirmed his disability, the story of his psychiatric treatment in Germany and numerous symptoms indicating deterioration of his health condition during the process of detention.
- A Chechen woman, the man's wife often cried, her deteriorated psychological condition was visible, she reported somatic complaints, she repeated that she “can't stand it all any more”, and she felt she was in danger.
- Another Chechen man reported sleep problems and intrusive memories of being tortured in his country of origin where his left hand fingers were broken. He had visible scars on his body, and he could not straighten one of his left hand fingers. His psychological and physical condition matched the reported violence.
- A Chechen woman with an 18-month-old child reported that she was tortured in her country of origin (the details of the torture are mentioned in the NMPT's internal documentation only, due to cultural taboo). Her psychological and physical condition seemed to confirm that she was subject to severe violence and torture. She had symptoms of PTSD and depression. The condition of the woman deteriorated during her detention.
- A Chechen man reported violence used against him in his country of origin, including kidnapping, violence and psychological torture (threats that he and his family would be killed). His psychological and physical condition included sleep problems, nightmares, hyperactivity, irritability, frequent intrusive thoughts. The foreigner might have been a victim of violence, including torture and inhuman treatment which he reported.

- A man from Syria (which country of origin he only reported) was placed in custody as a result of a suicide attempt that took place at the centre for foreigners where he suffered a suicide crisis connected with the long period of detention. The patient's condition required immediate intervention and placement in a psychiatric hospital because of direct risk to life. The NMPT experts carried out a crisis intervention aimed at stabilizing the patient. It was not advisable to interview the patient about his traumatic experiences from his earlier life, before arrival to the detention centre. His psychological and physical condition suggested that his traumatic experiences and experienced violence were highly likely.

The NMPT highlights that a person's placement in custody because of a suicidal attempt constitutes inhuman treatment in itself when the person is in such a serious psychological condition.

The NMPT: All those persons were placed in closed detention centres in spite of circumstances constituting an absolute counter-indication for detention. What they needed to go through in Poland is a consequence of the lack of an effective system for an early identification of torture victims.

None of the persons identified by the NMPT as alleged violence victims or individuals whose mental health is at risk was released by 30 November 2017.

Even though there is an internal Border Guard algorithm in place in centres for migrants, which specifies the "Rules of proceeding with foreigners requiring special treatment by the Border Guard", in our opinion, it is incompliant with Polish law, the Istanbul Protocol as well as other well-established international standards. The said algorithm does not, namely, provide for the "immediate release" of foreigners who are the alleged victims of violence from the closed detention centre. Treatment and therapy offered on the premises of the centre to identified torture victims only deepens mental injuries of migrants in detention.

The Commissioner for Human Rights expressed his reservations concerning the "Rules of proceeding with foreigners requiring special treatment by the Border Guard" in the general intervention addressed to the Chief Commander of the Border Guard¹²⁰.

120 KMP:572.4.2016

Detention of juveniles

The problem of juvenile detention is still awaiting resolution. In the centre in Przemyśl an 18-month-old child was deprived of liberty together with its mother.

The NMPT: one needs to move away from placing children in closed centres and do it only as the last resort until a relevant ban is implemented in Law.

When examining a motion for placing a foreigner in a closed centre, the court should consider adjudicating alternative preventive measures, other than detention. Such an approach derives from Article 401(5) of the Act on Foreigners¹²¹ and Article 88b (2) of the Act on granting protection to foreigners on the territory of the Republic of Poland¹²², and alternative preventive measures are listed, correspondingly, in Article 398(3) of the former and Article 88(1) of the latter.

Yet, the analysis of selected rulings contained in foreigners' personal files revealed that some courts did not even refer to the aforementioned provisions.

The assessment of the possibility to apply alternative measures, other than detention, was missing, for example in the rulings passed by the District Court in Słubice. As established, that court was adjudicating on the use of detention with respect to nine foreigners staying in the Centre in Krosno Odrzańskie. Those cases as well as the decision-making practice of that court are being examined in separate explanatory proceedings in the Office of the CHR.

At this point one should mention the first ruling of the European Court of Human Rights dated 10 April 2018 that directly pertained to the issue of placing children in centres for migrants¹²³. The court ruled that by placing children in closed detention centres for migrants Poland violated Article 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms which grants children the right to family life. When deciding on the placement of the family in the closed detention centre the well-being of three children was ignored, which stands in opposition to the obligations imposed on Poland by, among others, the UN Convention on the Rights of the Child and the EU Charter of Fundamental Rights.

According to the court, the fact that children are placed in the closed detention centre together with their parents is not in the child's best interest. Polish authorities should have considered applying the so called non-custodial supervision measures which constitute an alternative to detention. The court emphasized that detention should be the last resort.

121 consolidated text: Dz.U. of 2017, item 2206

122 consolidated text: Dz.U. of 2018, item 51

123 Case *Bistieva against Poland*, judgement of 10.04.2018, application no. 75157/14.

Areas which require improvement

Incorrectly conducted intervention in an emergency situation

In the closed detention centre for migrants in Krosno Odrzańskie a foreigner who was on hunger strike attempted a suicide. The man who refused any meals was staying in the medical isolation room. When the officers of the Border Guard were talking to him he attempted suicide by placing a loop made of the pull string from vertical blinds around his neck. In that situation border guard officers used direct coercion measures against him in the form of physical force. The foreigner was then transferred to the isolation room and the Border Guard submitted a request to the court to change the form of detention and move him from the closed centre to an arrest for migrants. Court's decision, which acknowledged the aforementioned request, was passed the following day. On the same day the migrant was moved to the Arrest in Przemyśl.

An NMPT expert watched the video surveillance footage of the event. The content of the conversations was not recorded in the video material but the footage presented the situation which preceded the suicidal attempt. The analysis revealed that neither a psychologist, nor a healthcare professional participated in the intervention that took place prior to the attempt. The intervention was headed directly by the director of the closed detention centre for migrants. The foreigner was alone with the Arabic language interpreter who, at the request of the director in charge of the intervention, was supposed to talk to the detainee. After exchanging a couple of words with the interpreter, the detainee rushed towards the vertical blinds' pull string and attempted to hang himself. This attempt was stopped by the BG employees.

Sobering-up stations

Introduction

3 visits in 2017

In 2017 the National Mechanism for the Prevention of Torture conducted inspections of three sobering-up stations: the Warsaw Centre for Alcohol-Intoxicated Persons¹²⁴, the Centre for Alcohol-Intoxicated Persons in Olsztyn¹²⁵ and the Centre for Alcohol-Intoxicated Persons in Tarnów¹²⁶.

Good practices to share

In the Warsaw Centre for Alcohol-Intoxicated Persons as well as in the Centre in Olsztyn the video material showing each instance of using direct coercion measure is analysed by a designated employee who is responsible for drawing up a report from the intervention. Later, that report is handed to the director of the establishment.

The NMPT: Such a solution allows the director to exercise constant and systematic supervision over the use of direct coercion measures. Therefore, he can promptly react in case of any established irregularity.

124 KMP574.9.2017

125 KMP574.12.2017

126 BPK.574.2.2017

In case of juveniles brought to the sobering-up facility in the Centre for Alcohol-Intoxicated Persons in Olsztyn, a medical examination by a paediatrician in the regional hospital is ensured. Nobody from the medical staff working in the Centre specializes in paediatrics.

The NMPT: Such a practice allows for a professional assessment of the juvenile's health status prior to his/her placement in the sobering-up facility.

The staff of the Warsaw Centre for Alcohol-Intoxicated Persons participated, in 2016-2017, in a number of training sessions, devoted among others to: provision of first aid, addiction prevention, holding negotiations. The Director of the Centre was also planning to ensure supervision to employees.

The NMPT: It should be emphasized that the qualifications of staff directly translate into the way intoxicated persons brought to sobering-up facilities are treated, hence it is hugely important to improve employees' expertise through training. Supervision additionally protects personnel from burnout.

PART III OTHER ACTIVITIES OF THE NMPT

Assessment of legislative acts¹²⁷

Assessment of legislative acts, both those in force and those at the drafting stage, is a form of preventing torture and other cruel, inhuman or degrading treatment or punishment. The national preventive mechanisms' power to submit proposals and observations concerning existing or draft legislation to relevant authorities is provided for in Article 19(c) of the OPCAT.

In 2017 the NMPT submitted observations with respect to the following legislative acts:

- draft regulation of the Minister of Family, Labour and Social Policy amending the regulation on social care homes,
- draft regulation of the Minister of National Education concerning public educational care centres, youth care centres, youth sociotherapy centres, special educational care centres, rehabilitation and educational centres and facilities ensuring care and education to pupils in the period of receiving education outside their place of residence.
- draft prepared by the Council of Europe concerning the establishment of principles on the detention of migrants.

¹²⁷ All the observations have been made available on the NMPT website under the link [Assessment of legislative acts](#)

National and international cooperation¹²⁸

An important element of the operation and development of the National Mechanism for the Prevention of Torture is the participation of its representatives in various events on the national level. This way, the NMPT emphasizes its role as a body that protects the rights of persons deprived of their liberty, as well as gains new experience as a result of cooperating with other entities operating in this area.

The most significant events in 2017 included the conference “Polish representation before the ECHR - more than two decades of experiences of the Ministry of Foreign Affairs”, which was organized by the Ministry of Foreign Affairs on the 20th anniversary of the first ruling passed by the European Court of Human Rights with respect to Poland (Proszak against Poland); the meeting of representatives of YCC’s directors, family judges, academics, the NMPT with the representatives of Szczecin branch of the Supreme Chamber of Control devoted to the discussion of issues related to the operation of youth care centres in Poland; the meeting with CPT representatives during the inspection of the places of detention in Poland informing about the status of protection of persons deprived of their liberty against inhuman and degrading treatment and torture or the session of the Senate Committee on Human Rights, Rule of Law and Petitions concerning the petition submitted by the Helsinki Foundation for Human Rights with respect to the amendment of the act on juvenile delinquency proceedings.

Another major event was the Congress on Human Rights organized by the Commissioner for Human Rights. The National Mechanism for the Prevention of Torture organized two panels devoted to the protection of persons deprived of liberty against degrading and inhuman treatment and torture. The first panel “Torture victims in closed detention centres on the territory of the Republic of Poland” touched upon the problem of identifying torture victims among foreigners placed in closed detention centres and discussed psychological assistance that is offered to them. During the second panel - “Is it possible to fully eliminate torture in Poland?” – the participants discussed the mechanisms for the protection of the most vulnerable individuals against torture and their effectiveness.

¹²⁸ More information on the NMPT’s activity on the national and international arenas is available on the NMPT website under the tabs NMPT’s *National cooperation* and NMPT’s *International cooperation*.



The cooperation between international organizations and the national mechanism for the prevention of torture is a significant element of preventive work. What is developed during international meetings are standards concerning the methodology of the NMPT's operation as well as issued recommendations. Therefore, such international cooperation also constitutes an indispensable part of the work of the Polish NMPT.

In June 2017 a representative of the NMPT participated in the conference organized by the European Academy of Law in Trier and devoted to the topic of "Improving Detention Conditions at EU Level. Best Practice, Legislation and the Follow-Up to the European Commission's Green Paper. The meeting was organized in cooperation with the Council of Europe, European Organisation of Prison and Correctional Services (EuroPris), the Commissioner for Human Rights and the German National Agency for the Prevention of Torture. It was the last out of five meetings devoted to the improvement of detention conditions in Europe.

In May/June 2017 a representative of the NMPT took part in consultations organized by the Council of Europe and devoted to the issue of prepared codification of European principles for administrative detention of migrants. The consultations were conducted in three thematic fields: practical implementation of the principles and guaranteeing protection to migrants, administrative detention in places other than closed detention centres and the necessity to eliminate prison-like conditions of deprivation of freedom in closed centres, as well as migrants with special needs. The consultations were attended by the NMPT's representatives from such countries as: Austria, Germany, France, Croatia, Macedonia, Moldova, Kosovo, the Czech Republic, Slovenia, Estonia, Malta, Italy, Portugal, Spain, England, Ukraine, Kazakhstan, Kirgizstan, as well as developing structures of NMPT from Tunisia and Morocco alongside with observers from international institutions (APT, CPT, UNHCR).



In September 2017 a representative of the NMPT participated, as a speaker, in an international conference devoted to the situation of children deprived of liberty in educational care and correctional institutions. The meeting was held under the Czech presidency in the Council of Ministers of the European Union. The Ministry of Labour and Social Policy of the Czech Republic was the organizer of the said conference.

In October 2017 a representative of the NMPT took part in the meeting of national preventive mechanisms, organized by the Council of Europe and the European Union Agency for Fundamental Rights (FRA) under the programme “NPM Forum”. It was organized in connection with the need to implement judgements of the Court of Justice of the European Union (case Aranyosi and Caldaru) as well as other framework decisions concerning detention by the countries of the European Arrest Warrant. The European Commission called on the FRA to initiate work associated with monitoring of conditions of deprivation of liberty. For this purpose the FRA suggested creating a database containing standards (both, international as well as those established by the NMPT) pertaining to the conditions of detainment. That database would be useful for judges who will be deciding about transporting a convict to the country of his/her origin.

Educational activity

NMPT regional debates

2017 saw the continuation of the cycle of 16 regional debates held in the capital cities of regions that was initiated in 2016.

2017: 8 regional debates

The meetings were addressed to representatives of all types of places of detention, representatives of the public prosecutor offices, judicial authorities, voivodeship governments and universities. The debates provided a platform for the exchange of experience in the cooperation of heads of the detention places with the NMPT in the field of protecting the rights of persons deprived of their liberty. The visits also aimed to provide an insight into the systemic problems identified during the preventive visits to places of detention, and to highlight the role of the National Mechanism for the Prevention of Torture as a partner for the heads of the visited establishments in building the culture of non-acceptance of torture and other cruel, inhuman or degrading treatment or punishment. In 2017, 8 regional debates were held in Wrocław, Szczecin, Białystok, Rzeszów, Opole, Zielona Góra, Kraków and Bydgoszcz. The debates in Kraków and Bydgoszcz were attended by Deputy Commissioner for Human Rights Hanna Machińska, Ph.D., whereas the previous regional debates were attended by Col. Krzysztof Olkowicz. Przemysław Kazimirski, Deputy Director of the NMPT was in charge of preparation and moderation of all the debates. Apart from the representation of the National Mechanism for the Prevention of Torture (deputy CHR and deputy director of the NMPT), 4 regional debates in 2017 were also attended by NMPT Director Justyna Róża Lewandowska. The NMPT employees: Klaudia Kamińska, Rafał Kulas and Marcin Kusy also participated in the remaining debates.



Of greatest interest for attendees of the debate in Wrocław were issues related to the role of legal guardians of incapacitated residents of care homes, which role is sometimes performed by employees of such facilities, and the lack of provisions allowing juvenile mothers placed in rehabilitation establishments to exercise care over their children. Following the speech delivered by the representative of the Helsinki Foundation for Human Rights, attorney Katarzyna Wiśniewska, it was possible to discuss the problems related to the observance of rights of juveniles in detention.

The debate in Szczecin, in turn, provided an opportunity for one of the directors of the youth care centre to shed light on the problem of the lack of adequate therapeutic offer for children admitted to such facilities who had previously used psychoactive substances.

The lecture delivered by prof. Grażyna Barbara Szczygieł from the Białystok University, who specializes in executive penal law, was the starting point for a discussion on the actual possibilities of prisoners' rehabilitation. A representative of one of the social care homes, on the other hand, highlighted the problem of residents with the HIV virus who fail to observe safety principles and thus, put other residents at risk of infection.

The focus of the debate in Rzeszów was the problem of torture victims in closed detention centres for migrants. That problem was highlighted by Maria Książak, a psychologist and member of the NMPT Expert Committee who provides assistance to refugees. She her experience has been gathered e.g. during the conflict in Chechnya and Ingushetia. She emphasized that in the case of violence victims who flee their country to escape further violence, torture and persecution, the placement in such centres may increase their post-traumatic stress.

During the debate in Opole, in turn, the representatives of social care homes drew attention to problems with employing nurses in those establishments, which could be attributed to the fact that local authorities refuse to cover the cost of their remuneration. That is why, the only possibility to acquire such persons for work in social care homes is to employ them on nursing-caretaking positions.



Jerzy Foerster, an MD, a geriatrician, who is an expert of the Mechanism, participated in the debate held in Zielona Góra. In his speech he brought up the problem of the lack of a uniform model for medical care in social care homes, which is particularly striking in smaller towns with a shortage of nurses. When faced with the choice whether to apply for a job in a social care home or to go abroad, nursing students usually opt for the latter. They find employment abroad without problems. Foreign authorities may even offer incentives for such jobs. The speaker also observed that one of the problems facing social care homes is the issue of medication dosing. It sometimes happens that patients take several medicinal products (multi-medication). Some of them, such as antibiotics, are often taken for too long, e.g. for 30 days. Yet, it is possible to replace some drugs and thus reduce the number of taken doses. Therefore, it is important that someone pays attention to how doctor's recommendations are fulfilled.

The Cracow debate was dominated by the contributions of social care home representatives who voiced their doubts as to whether the NMPT should consider those establishments as places of detention at all. On the other hand, there were also voices emphasizing the legitimacy of monitoring activities conducted by the Mechanism's employees. The expert of the National Mechanism for the Prevention of Torture Marzena Ksel, Ph.D., Vice-President of the European Committee for the Prevention of Torture (CPT) spoke about the objective and consequences of applying the Istanbul Protocol as the tool dedicated to medical staff and intended for the identification of torture and ill-treatment victims.

The last debate held in 2017 took place in Bydgoszcz. On behalf of the NMPT Expert Committee it was attended by prof. Zbigniew Lasocik (D.Sc.) who, in the period 2007-2012, was a member of the UN Subcommittee for the Prevention of Torture (SPT) in Geneva. Prof. Lasocik is an expert in the field of penitentiary sciences, specializing in human rights and torture prevention. He is also a pioneer in the research on human trafficking. In his lecture he spoke about torture prevention. He indicated that Poland is facing challenges in connection with OPCAT. They include, among others, the necessity for dialogue and effective exchange of information between individual institutions. Prof. Lasocik also mentioned a profound role to be played by the media which should develop a culture of non-tolerance for any form of torture.

The organization of the regional debates is a form of fulfilment of the NMPT's educational role in preventing torture and other cruel, inhuman or degrading treatment or punishment.

Local media representatives were also invited to take part in the debates. Special information was prepared for them on the results of the NMPT's visits conducted in the 2 years preceding the meeting, in places of detention located in a given voivodeship.

Statements of the NMPT as a form of building the attitude of non-tolerance towards torture and other cruel and degrading treatment

In 2017 the National Mechanism for the Prevention of Torture started using a new educational tool in the form of NMPT statements. The statements present the NMPT's positions on events significant from the point of view of torture prevention. Such events may include the passing of a ruling by a national court or the ECHR, media announcements or adoption of a legislative act. In 2017 the NMPT issued two statements: concerning the death of Igor Stachowiak and the unjustified detention and placement in an RDP of a Ukrainian citizen.

Regretfully, due to significant personnel shortages, the NMPT conducted only one training that was held in the Police Training Centre in Sieradz.

Financing

Expenditures on the activities of the National Mechanism for the Prevention of Torture are covered from the state budget allocation received by the CHR. According to the Annual Report on the Implementation of Activity-Based Expenditures of the State Budget and of the European Funds Budget, in 2017 the Office of the Commissioner for Human Rights disbursed 2 340 015,73 PLN.



RZECZNIK PRAW OBYWATELSKICH