

Report

of the Commissioner for Civil Rights
Protection on the activities
of the National Preventive
Mechanism in Poland in 2008



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of the National Preventive Mechanism in Poland in 2008

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1. Introduction

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the OPCAT or the Protocol) was adopted by the General Assembly of the United Nations in New York on 18 December 2002. In Poland, following the act of 8 July 2005 on the ratification of the Optional Protocol to the UN Convention against Torture (...), the President of the Republic of Poland ratified the above Protocol on 2 September 2005¹. It came into force as regards the Republic of Poland on 22 June 2006. Pursuant to Article 28 (1) of the OPCAT, the Protocol entered into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

The objective of the Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. Therefore, the Subcommittee on Prevention, i.e. the Subcommittee of the Committee against Torture was established at the international level. However, at the domestic level each State Party shall set up a national preventive mechanism.

In Poland the tasks of the National Preventive Mechanism (hereinafter referred to as the NPM) are executed by the Commissioner for Civil Rights Protection (hereinafter referred to as the Commissioner). However, it took a long time to designate this new institution in Poland. The possibility for Polish Ombudsman to execute the tasks of the NPM in Poland was the subject of correspondence for several years, as early as since Prof. Andrzej Zoll was the Commissioner for Civil Rights Protection. Moreover, in the explanatory statement for the act agreeing to the ratification of the OPCAT by the Republic of Poland, the institu-

¹ Dz.U. of 2007, No 30, item 193 – The Government statement of 23 June 2006 on the binding force of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations in New York on 18 December 2002.

tion of the Commissioner was pointed out as the most appropriate for executing the tasks of the NPM. Eventually, although the authorities of the Republic of Poland were committed to maintain, designate or establish a national preventive mechanism, at the latest one year after the entry into force of the Protocol, only on 18 January 2008 the Polish Ombudsman was officially designated as the National Preventive Mechanism. On this day, Mr. Łukasz Rędziniak, the Undersecretary of State in the Ministry of Justice, acting on the grounds of the resolution of the Council of Ministers No 144/2005 of 25 May 2005, addressed a letter to the Commissioner for Civil Rights Protection entrusting him with fulfilling the tasks of the National Preventive Mechanism.

Thus, the present Report is the first report of the National Preventive Mechanism in Poland, which Poland is obliged to publish and disseminate, pursuant to Article 23 of the OPCAT. The Report presents the conclusions from visits organised between 18 January and 31 December 2008, broken down by specific types of places of detention. It also refers to other activities of the Commissioner for Civil Rights Protection, related to the protection of rights of persons deprived of their liberty against prohibited forms of ill-treatment. In addition to the execution of tasks of the National Preventive Mechanism, the Polish Ombudsman has undertaken numerous actions which fall within the protection against torture and other cruel, inhuman or degrading treatment or punishment of persons placed in custodial settings. Since this is the first report of the NPM, it was also extended to cover general information on the Optional Protocol to the UN Convention against Torture (...), its principles, and the activities of the Subcommittee on Prevention. Since the aim of the Report is to disseminate knowledge on the OPCAT and its implementation in Poland, and to indicate the problems in functioning of certain places of detention noticed by the Mechanism.

2. The mandate of the National Preventive Mechanism in Poland

A. The objectives of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Optional Protocol to the Convention against Torture (...) was adopted by the General Assembly of the United Nations, in order to emphasize and reaffirm that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights. At the same time, the adoption of the OPCAT resulted, as indicated in the Preamble, from the necessity to adopt further measures to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the CAT) and to strengthen the protection of persons deprived of their liberty against prohibited forms of ill-treatment.

The idea of the Protocol was based on the belief that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention. According to the Protocol, the latter concept means any place under the jurisdiction and control of a given State 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 (Article 4 (1) of the OPCAT). The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority (Article 4 (2) of the OPCAT). These definitions are very broad which means that various places are subject to visits.

According to the Protocol, preventive visits are carried out by an independent international body and by national bodies. Based on the OPCAT, the Subcommittee on Prevention, i.e. the Subcommittee of

the Committee against Torture was established at the international level. However, at the domestic level each State Party to the Protocol is obliged to establish a national preventive mechanism. Both bodies contribute to the system of regular visits to places of detention, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. It is also significant that a national preventive mechanism should function on the rounds of the so-called Paris Principles. The Principles were adopted by the UN General Assembly in the form of resolution (UN General Assembly resolution 48/134 of 20 December 1993) and relate to the status and functioning of national institutions established to protect and promote human rights. The Paris Principles are general recommendations which apply to different types of national institutions involved in human rights protection.

B. The concept of torture and of cruel, inhuman or degrading treatment or punishment

While prohibited forms of ill-treatment of persons deprived of their liberty are referred to in the Protocol, synonyms are used, and only the definition of torture is specified in acts of international law. Since pursuant to Article 1 of the UN Convention against Torture (...), the term “torture” means “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Furthermore, the European Court of Human Rights emphasizes that ill-treatment has to occasion suffering of the particular intensity and cruelty and attain a minimum level of severity, in order to be considered as torture. Account should be taken, however, of the distinction drawn between the concept of torture and cruel, inhuman and degrading treatment². The right to freedom from

² The ECHR judgement of 21 December 2000 in the case of *Egmez v. Cyprus*, complaint No 30873/96, p. 17.

torture is absolute, as well as the right to a fair trial, the right not to be punished for an act which was not yet a crime at the time of its commission, and the right to freedom of thought, conscience and religion. Thus, no circumstances may justify the use of torture. Even the interests of State security, the martial law, the state of emergency, the fight against terrorism and organized crime cannot justify the use of torture or other forms of inhuman treatment.

The judgements of the European Court of Human Rights, which adjudicates in cases involving issues of human rights provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms, also play an important role in interpretation of the concept of torture and other prohibited forms of treatment and in their better understanding, in the light of conduct towards persons deprived of their liberty. On a number of occasions, the European Court of Human Rights has expressed its opinions on the discussed concepts, which is important for their interpretation.

The UN Convention against Torture (...) does not define any prohibited forms of ill-treatment of persons deprived of their liberty which are less severe than torture. Article 16 (1) of the CAT only implies them by stating that each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Whereas the European Commission of Human Rights and then the European Court of Human Rights, while interpreting the concept of inhuman treatment or punishment, emphasized that it is more general than torture, which in turn covers inhuman treatment. Degrading treatment, on the other hand, is a separate category of behaviour³.

Referring to the judgments of the European Court of Human Rights in Strasbourg, it should be stressed that inhuman treatment occurs when ill-treatment is intended, severe suffering is inflicted and there is no justification for such suffering. Nevertheless, each case should be examined on a case by case basis.

On the other hand, the treatment of a person deprived of liberty is considered degrading, if it severely humiliates a given person in front of that person or in public, making them act against their consciousness

³ R. St. J. Macdonald, F. Matscher, H. Petzold, *The European system for the protection of human rights*, Martinus Nijhoff Publishers, Dordrecht-Boston-London 1993, s. 229.

or will. Whereas a punishment is deemed degrading if humiliating or degrading reaches a certain level differing from the normal level of humiliation associated with serving a prison sentence. However, a given method of treatment of a sentenced person does not have to inflict long-lasting physical or mental distress to be considered degrading⁴.

C. The powers of the National Preventive Mechanisms in the light of the OPCAT

Pursuant to Article 17 of the OPCAT, each State Party to the Protocol shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol (i.e. starting on 22 June 2006) or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. The status of national preventive mechanisms is described in detail in Part IV of the OPCAT. It is relatively broad, in order to ensure that these new institutions operate efficiently in individual states.

First of all, national preventive mechanisms are guaranteed the functional independence as well as the independence of their personnel. Moreover, the experts of the national preventive mechanisms should have the required capabilities and professional knowledge. As regards the composition of the mechanism, there is a strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

Furthermore, in accordance with Article 19 of the OPCAT, the national preventive mechanisms shall be granted at a minimum the power to regularly examine the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment. They shall have the right to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment. While making such recommendations, the mechanisms shall take into consideration the relevant norms of the United Nations, such as the so-called Paris Principles, which relate to the functioning of national institutions for protection and promotion

⁴ Ibidem, p. 242.

of human rights, explicitly indicating the necessity to ensure adequate measures allowing these institutions to fulfil their tasks. In addition, the mechanisms submit proposals and observations concerning existing or draft legislation.

In order to enable the national preventive mechanisms to fulfil their mandate, their members have the right of access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location. Moreover, during the visits the members of the mechanisms have the right of access to all information referring to the treatment of those persons as well as their conditions of detention, and to all places of detention and their installations and facilities. What is important, they have the opportunity to have private interviews with chosen persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary. Members of the mechanism also have the right to have interviews with any other person who the National Preventive Mechanism believes may supply relevant information. The mechanism also has the liberty to choose the places it wants to visit and the right to contact, send information to and meet with the Subcommittee on Prevention.

Further to the above, entrusting the Polish Ombudsman with the tasks of the National Preventive Mechanism ensures a proper implementation of the OPCAT provisions, related to the mandate of national preventive mechanisms. The Commissioner for Civil Rights Protection is sovereign and independent from other state authorities in his activities, and he reports only to the Sejm (lower chamber of Polish parliament). Moreover, since the beginning of the existence of this institution in Poland, the employees of the Commissioner's Office have been visiting places of isolation. Hence, they are experienced workers, possessing the qualifications and expertise needed to fulfil the tasks of the National Preventive Mechanism in Poland.

3. The organisation of the activity of the National Preventive Mechanism within the Office of the Commissioner for Civil Rights Protection

In 2008, the tasks of the National Preventive Mechanism were performed by three specialised departments in the Office of the Commissioner for Civil Rights Protection: the Criminal Executive Law Department, the Public Administration Issues, Healthcare and Protection of Aliens Department, as well as the Rights of Soldiers and Public Officers Department. The activity of the Mechanism was coordinated by the Criminal Executive Law Department, which is in charge of the majority of detention places to be visited under the Mechanism. In addition, the representatives of the Commissioner's Office Local Departments in Gdańsk, Katowice and Wrocław were included in the visiting team if the visits were carried out in units located within their respective areas. Each Local Department appointed two employees to cooperate with the Mechanism on a permanent basis. Following the recommendations of the Association for the Prevention of Torture (hereinafter referred to as the APT), external experts, including psychologists, psychiatrists, and addiction specialists, also participated in visits. In the period between January and the end of December 2008, external experts (an addiction specialist, a psychiatrist and a psychologist) participated in visits to eight places of detention.

The visiting persons have ID badges with the logo of the Office of the Commissioner for Civil Rights Protection, their first name and surname, and the National Preventive Mechanism label. Each visit is followed by a report, prepared within 2-3 weeks, and then appropriate recommendations are given to the relevant authorities. In 2008, to the report an opinion of a psychologist, a psychiatrist or another external expert was annexed. Starting in 2009, such opinion has been included in the report from a visit as its integral part, thus making the report clearer and more comprehensible for the management of the visited institution.

The NPM recommendations are mainly intended to improve the treatment and living conditions of persons deprived of their liberty, as well as to prevent torture and other cruel, inhuman or degrading

treatment or punishment. Both the existing and draft legislation is also analysed from this perspective (Article 19 (b) and (c) of the OPCAT).

Furthermore, it should be noted that in 2008 no problems were observed either in implementing Article 22 of the OPCAT, or with entering into a dialogue with the Mechanism by competent national authorities. Article 20 of the OPCAT was also fully implemented.

What is important, while this report was being drawn up, we were still waiting for the Marshal of the Sejm to accept the draft amendment to the Statutes of the Office of the Commissioner for Civil Rights Protection, where it will be clearly indicate that the Polish Ombudsman performs the tasks of the National Preventive Mechanism. In the future, the Act on the Commissioner for Civil Rights Protection is expected to be amended and, in particular, that provisions stipulating the preventive activity of the Commissioner will be added.

4. Financing of the National Preventive Mechanism in Poland

In its first year of operation in Poland, the National Preventive Mechanism experienced financial problems, which prevented it from implementing the assigned tasks properly. Despite entrusting Polish Ombudsman with the tasks of the National Preventive Mechanism as of 18 January 2008, the Government of the Republic of Poland did not allocate resources necessary for the execution of tasks related to the proper implementation of the Optional Protocol to the UN Convention Against Torture (...), which is its obligation pursuant to Article 18 (3) of the OPCAT. Only as of 1 July 2008, following the decision on amendments to the state budget for 2008, the Minister of Finance allocated PLN 426,000 (around € 110 thousand) for financing the activity of the National Prevention Mechanism in 2008. It helped to facilitate conducting preventive visits to various places of detention located throughout the country, which was mainly the result of the possibility to increase the number of staff in specialised departments in the Office of the Commissioner for Civil Rights Protection, which conduct the NPM preventive visits.

However, the final months of 2008 were again focused on taking intensive measures to obtain financial resources for the Mechanism's operation in 2009. At the time of submitting the 2008 draft budget of the Commissioner for Civil Rights Protection, PLN 2.5 million (around € 646 thousand) was earmarked for the functioning of the Mechanism. It was assumed that the activity of the Mechanism would be intensified in the second year of its functioning in Poland by, inter alia, increasing the number of staff, which at the same time would allow to check regularly how the persons deprived of their liberty are treated in places of detention, with the aim to strengthen, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment. During its work on the 2009 budget, the Sejm's Public Finance Committee cut funds for this objective completely. Therefore, the Commissioner for Civil Rights Protection exercised his constitutional right and presented his position on this matter at the plenary session of the Sejm of the Republic of Poland. The Commissioner's ad-

dress had a positive result in the form of PLN 140 thousand being allocated for the activity of the National Preventive Mechanism in Poland (€ 362 thousand). However this amount, it is just a drop in the ocean of needs, and it does not allow to develop the activity of the Mechanism in 2009 to the extent that was expected. At the same time, it contravenes Article 18 (3) and (4) of the OPCAT.

The Commissioner for Civil Rights Protection addressed the Secretary General of the Association for the Prevention of Torture, as well as through the High Commissioner for Human Rights to the Subcommittee on Prevention of Torture (SPT). On 17 December 2008, in Geneva, PhD Janusz Kochanowski met with the representatives of the APT in person and indicated the problems involved in proper implementation of the OPCAT in Poland. The APT is a non-governmental organisation, monitoring the proper implementation of the OPCAT in all States Parties to the Protocol. This organisation also mentioned the execution of tasks of the National Preventive Mechanism in Poland by the Commissioner for Civil Rights Protection as a negative example. In its publication of January 2008 – “National Human Rights Commissions and Ombudspersons’ Office / Ombudsmen as National Preventive Mechanisms under the Optional Protocol to the Convention against Torture” – the APT emphasised that no increase in the number of staff of the Criminal Executive Law Department in the Commissioner’s Office was observed, which would reflect the execution of new tasks resulting from the activity of the Mechanism. The APT has noticed that it is not clear how such a small department of employees may physically undertake visits on a regular basis in a country of 39 million people.

Unfortunately, the budgets of national preventive mechanisms, which were allocated in 21 countries, according to data as of 31 December 2008, are not known. Thus, it is difficult to compare their financial opportunities. However, France provides relevant data which show that around € 2.5 million is planned to be allocated for the needs of the national preventive mechanism there. Just for comparison, in this country the prison population amounts to about 52 thousand persons, whereas in Poland there are around 87.5 thousand prisoners.

5. Visits under the National Preventive Mechanism in 2008

The definition of place of detention, pursuant to Article 4 (1) of the OPCAT, is very broad and in Poland it covers almost 1,000 various types of institutions where persons deprived of their liberty stay. Throughout the country, there are⁵:

- 156 penitentiary institutions, including 86 penal institutions, 70 remand centres, and additionally 34 external divisions of individual institutions⁶;
- 155 juvenile institutions, including 26 juvenile detention centres, 18 juvenile reform schools, 62 youth care centres, 49 youth socio-therapy centres;
- 351 rooms within Police premises for apprehended persons or persons brought to sober up;
- 29 Police emergency centres for children;
- 46 emergency detoxification centres;
- 42 psychiatric hospitals where security measures are taken;
- 5 guarded centres for foreigners;
- 8 deportation centres, within Police or Border Guard premises;
- 28 military disciplinary detention centres, including 2 independent detention centres for regular soldiers;
- 1 military penitentiary unit.

Between 18 January and 31 December 2008, the representatives of the Commissioner for Civil Rights Protection, while executing the tasks of the National Preventive Mechanism, carried out preventive visits in 76 various types of detention places. They included: penal institutions, remand centres, spaces for detained persons in the Police premises, Police emergency centres for children, emergency detoxification cen-

⁵ The number of institutions was given according to the information available to the NPM. This number can vary since institutions are established or closed during a year, and the Office of the Commissioner is provided with updated information after some time.

⁶ The Ministry of Justice, the Central Management of the Prison Service, "Informacja o wykonywaniu kary pozbawienia wolności i tymczasowego aresztowania za listopad 2008 r." (Information on the execution of imprisonment sentence and detention on remand for November 2008), Warsaw, p. 4-12.

tres, youth care centres, youth sociotherapy centres, juvenile detention centres, juvenile reform schools, military disciplinary detention centres, psychiatric hospitals, guarded centres for foreigners and deportation centres. Detailed list of visited institutions, by type of institution, is available at: www.rpo.gov.pl; go to bookmark: Działalność – Krajowy Mechanizm Prewencji – wizytacje KMP w 2008 r. at the Commissioner's website (only in Polish). The results of the visits, by types of detention places, are presented below. The results indicate specific problems and general follow-up measures taken.

The following summary of visits does not, though, include centres for foreigners applying for refugee status or asylum. These institutions will be visited in 2009 by the Public Administration Issues, Healthcare and Protection of Aliens Department, as a part of its tasks resulting from the National Preventive Mechanism. Moreover, it should be noted that, starting in 2009, the activity of the Mechanism will be extended to cover social welfare homes, which will be visited by the Labour Law and Social Insurance Department. However, only the institutions which fall within the definition contained in Article 4 (1) of the OPCAT will be visited.

A. Penitentiary institutions

In 2008, 13 penal institutions, 15 remand centres and one external division of remand centre were visited.

The living conditions in the visited penitentiary institutions varied. During private interviews, persons deprived of their liberty oftentimes complained on the living conditions, pointing out the insufficient lighting in their cells, the lack of hot water (under the provisions in force, the administration of penitentiary institutions is not required to provide housing cells with hot water), worn-out equipment, worn-out mattresses or limited air circulation caused by the window blinds installed. While executing the tasks of the National Preventive Mechanism, the Commissioner's representatives also paid special attention to sanitary arrangements. In some institutions the 'sanitary corners' were still only partly separated from the rest of the cell, with a sheet of plywood or a curtain (the Remand Centre in Białystok), or not separated at all (the Remand Centre in Łódź). The visiting persons also noticed that in some institutions baths were in terrible condition due to malfunctioning ventilation system. As a result, the walls and ceilings became mouldy and got destroyed (the Penal Institution in Tarnów). Furthermore, it was pointed out that the living conditions in some penitentiary institutions

were completely unadjusted for the physically handicapped (the Remand Centre in Poznań). The housing cells for the physically handicapped were identical with those for physically healthy prisoners, hot water was not available, and the location of such cells, with no lift, in fact prevented any possibility for the handicapped to exercise several of the rights to which all persons deprived of their liberty are entitled, such as going for a walk or taking part in cultural and education activities. As a consequence, it could lead to cruel, inhuman or degrading treatment of this group of prisoners.

In many cases, however, the structure of the buildings, dating back to the beginning of the 19th century or even earlier, limits the possibility of taking fast and comprehensive corrective measures. Another problem, inseparably linked with the living conditions, consists in scarce financial resources available to the prison service for complete refurbishment. Having visited the Remand Centre in Sosnowiec, where the management, the visiting persons, as well as the supervising judge have for many years been indicating the urgent need for complete refurbishment and nothing is being done in this respect, the visiting persons concluded that a possibility should be considered to close down this institution. Since further exploitation of the buildings where prisoners stay may be dangerous for their safety.

The situation in the Remand Centre in Sosnowiec was described in a letter of 18 March 2008, addressed to Prison Service Director General⁷, where it was pointed out that during the three years that passed since the last visit paid by the Commissioner's representatives to this institution, neither investments nor renovations were undertaken to improve the conditions of buildings where the prisoners lived, of other facilities and equipment. In the reply it was stated that systematic measures were taken with a view to improving the situation, however, the need was emphasised for significant funds necessary to complete the modernisation work.

The above situation may have resulted from the fact that major part of funds at the disposal of the Ministry of Justice has lately been allocated for obtaining 17 thousand new accommodation places for persons deprived of their liberty. It is necessary to create such new accommodation places, because of overpopulation, which has been a constant problem in our country since 2000. This issue was widely commented in 2008, following the Constitutional Tribunal judgement,

⁷ RPO-494787-VII-708.1/05.

concerning Article 248 of the Executive Penal Code, described in more detail in Point 6 of this Report. At this point, however, it should be emphasised that this judgement is of particular importance in the context of the National Preventive Mechanism activity. In view of the fact that the Tribunal stressed that excessive overpopulation in a cell may in itself be qualified as non-humanitarian treatment, or even as torture or inhuman or degrading treatment if different types of inconvenience involved in staying in a penitentiary institution accumulate, such as: poor sanitary conditions, unhygienic conditions, and the lack of privacy while making use of sanitary facilities, permanent inability to satisfy the need to sleep due to the insufficient number of beds and the light permanently switched on or the noise, the insufficient lighting preventing reading, poor ventilation of cells, especially uncomfortable for non-smokers placed in the same cell with smokers, conditions facilitating the spread of diseases or no possibility of being treated.

Considering the above, during the NPM preventive visits to penal institutions and remand centres, carried out in 2008, the population of these institutions was verified. In one of the institutions, due to overpopulation, women from housing wards were placed in a holding cell with the newly imprisoned, and healthy women – in a sick ward (the Remand Centre in Białystok). The use of sick wards as housing cells for healthy prisoners is in fact a common practice if an institution is overcrowded.

Some instances were observed when even if a penal institution or a remand centre was not overcrowded, some housing wards were overpopulated – 20% over the prescribed capacity (the Remand Centre in Białystok). The level of population in other institutions amounted to 113–114% (the Remand Centres in Warsaw, Białoleka, Łódź, Radom), 120% (the Remand Centre in Krasnystaw), and 126% (the Remand Centre in Warszawa-Służewiec)⁸. The situation was particularly difficult in this regard in the Lublin region. As a consequence, on 6 May 2008, the Commissioner for Civil Rights Protection submitted a request to Prison Service Director General for information on the measures taken to solve this problem⁹. The reply informed that certain investment and organisational activities were taken which should contribute to solving the overpopulation problem in this specific Prison Service District.

On the other hand, in 2008 the NPM visits were also carried out in institutions that managed to solve the problem of overpopulation.

⁸ Data based on the information received from individual institutions on the day of visit.

⁹ RPO-583270-VII-702.2/08.

Generally, it should be noted, however, that the excessive population of remand centres and penal institutions is still a major problem of Polish penitentiary system, causing increased tensions and conflicts between inmates, which translates to a higher number of extraordinary incidents. The excessive population of penitentiary institutions hinders the development of a proper corrective environment, as well as the implementation of more effective corrective measures. In some of the visited remand centres or penal institutions, at the time when individual housing cells were visited, the prisoners staying in those cells expressed their dissatisfaction with the situation, and complained to the visiting persons mainly about the poor social and living conditions (for example, the Remand Centre in Łódź). In addition to the issue of living conditions of persons deprived of their liberty, the visiting persons also paid attention to how the prisoners were treated by the Prison Service officers. For that reason, the groups of prisoners who could be exposed to mistreatment to a greater extent than the others were mostly selected for private survey interviews. During each of the visits, interviews were held first of all with persons deprived of their liberty qualified as posing a serious threat to the society or to the institution safety, with prisoners over 60 years old, with foreigners and with prisoners who, during the 6 months prior to the visit, were subject to direct coercive measures or disciplinary measures in the form of solitary confinement.

During the interviews, accusations of mistreatment of prisoners were brought against Prison Service officers. Sometimes persons deprived of their liberty indicated that they were subject to humiliating comments, vulgar remarks or assault (the Remand Centres in Białystok, Łódź and Radom). However, apart from isolated cases, prisoners decided not to lodge an official complaint clarifying their accusations. Nevertheless, such signals, showing that violence is used against prisoners, are alarming. The complaints of assault, which were received, were subsequently submitted to the competent law enforcement authorities.

Despite the above signals, proving the need for constant training of Prison Service officers in matters such as relations with prisoners and respect for human rights, there were also institutions where the behaviour of ward heads and supervisors was evaluated very positively, and their approach towards persons deprived of their liberty was considered acceptable.

Furthermore, the internal Rules of Procedure verified during visits often required redrafting (Remand Centre in Białystok). The Rules of

ten governed the tobacco smoking issue differently from the ordinance of the Minister of Justice of 26 November 1996 laying down the rules for admissibility of tobacco use in the closed facilities reporting to the Minister of Justice (Dz. U. of 1996, No 140, item 658). This happened for instance in the Penal Institution in Chelm or in one ward of the Penal Institution in Tarnow.

As for the prison canteens, the visiting persons noticed, first of all, the diversified practices throughout the country concerning the possibility of taking food products bought by their relatives during visits to the cells. In some institutions it was permitted, while in the others it was not; the maximum amount of shopping also varied. This matter should be regulated at the national level, as significant differences in this practice may lead to justified dissatisfaction of prisoners, especially if they are transferred from one institution to another.

The problems of the prison health service and measures taken in this regard by the Commissioner were described in more detail in Point 6 of this Report, in a subsection on the activity of the Criminal Executive Law Department. It should be noted here, however, that it is a sensitive issue in the functioning of each penitentiary institution. During the visits, prisoners complained about excessively long waiting time for a specialist consultations, ineffective treatment, disparaging attitude to their health problems or improper attitude of the physicians. In one of the visited institutions attention was also drawn to the method of examination. Pursuant to Article 115 (7) and (8) of the Executive Penal Code, health-care services in an increased severity prison are provided in the presence of an officer who is not a medical professional. Upon the request of an officer or an employee of the prison health facility for detained persons, health-care services may be provided to a sentenced person without the presence of an officer who is not a medical professional. On the other hand, for person serving a sentence of imprisonment in a half-open penal institution the health-care services may be provided upon the request of a person providing such services in the presence of an officer who is not a medical professional if necessary from the point of view of the prisoner's safety. However, in one of the visited penal institutions the surgery door was open in addition to the presence of a Prison Service officer during examination. In the corridor there were other prisoners waiting to be examined by a physician. They could easily hear what was going on in the surgery and become familiar with the course of examination. Such a public examination of a prisoner may be considered a humiliating treatment and should be eliminated.

Furthermore, in the majority of institutions non-compliance of the content of the Charter of Patients' Rights with the situation of a sentenced patient repeatedly occurred. For example, it included legal regulations which were not applicable in the situation of a sentenced patient, such as information on the right to have care provided by a close relative, while it lacked information on the very important right of access to the medical report, including right to request its copies and photocopies. Sometimes it included, however, reference to provisions no longer applicable. Moreover, the text was seldom put in a place accessible to patients so that they could read it.

During the preventive visits under the National Preventive Mechanism, the problem of using the closed-circuit TV cameras was noticed throughout the country. Due to the lack of statutory instruments, the problem has been dealt with by penitentiary institutions individually, so far. For example, the cameras were installed in cells for the handicapped or in holding cells (the Remand Centre in Gdańsk) or in the chapel (the Remand Centre in Poznań). This problem has been settled at the central level, as described in a subsection on the activity of the Criminal Executive Law Department, Point 6 of this Report.

As regards the foreigners detained in Polish penitentiary institutions, they usually speak Polish. However, there were also people speaking a language not understandable to any of the Prison Service officers, for example Chinese. It must be hard to communicate with such people and to verify whether their rights are respected. The penitentiary institutions should provide access to translated versions of legal acts concerning a sentence of imprisonment or provisional detention to the foreigners speaking more popular languages such as English, German or Russian. However, such documents were still missing in some of the visited institutions. During the interviews with the detained foreigners, the Commissioner's representatives most often received complaints about problems in communication with the Prison Service officers and ward supervisors, and about the fact that the administering body prevented the prisoners from corresponding with their relatives in their home country for a long time (eg. for six months). They also mentioned that a duty solicitor was assigned who spoke Polish only, while they did not speak this language at all. The problem with respect of the rights of foreigners detained in Polish penitentiary institutions is thoroughly analysed by the Criminal Executive Law Department in the Commissioner's Office and, after the

research is completed, it will be presented in a separate publication, as it was done for the situation of Polish citizens detained in penitentiary institutions abroad.

It is worth noting that detained persons more and more often seek damages and compensation from the State Treasury. This issue was also verified during the visits. Prisoners asserted claims in civil proceedings due to poor living standards, overpopulation or the lack of provision of proper health care. These are three most troublesome aspects of the functioning of Polish penitentiary institutions. In the majority of cases, the suits did not result in the State Treasury's failure, however, in some cases the court allowed for the claims of prisoners.

Furthermore, more and more cases brought before the European Court of Human Rights in Strasbourg concern the issue of Polish citizens detained in penitentiary institutions. As an example one can mention the cases *Zborowski v. Poland* and *Dzieciak v. Poland* which were examined last year. In the first case the applicant was detained pending trial for four years and during this period he corresponded with his lawyer. The majority of envelopes were marked "censored". The Court held that there had been a violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, namely the right of the claimant for the respect of his correspondence. In other similar cases against Poland, the Court has already held that as long as the Polish authorities continue the practice of marking detainees' letters with the "censored" stamp, the Court has no alternative but to presume that those letters have been opened.

In the latter of the above mentioned cases, the Court held that Poland violated Article 2 of the Convention, namely the right to life, and thus the other Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms as well, as the rights included in these articles are covered by the right to life. In this case the applicant spent 4 years in pre-trial detention. During this period he suffered from a serious heart disease and did not have access to an adequate medical care. As a consequence, he died. In its judgement, the Court emphasised that the detained persons were in a specific situation and therefore the State was bound to ensure their safety.

While discussing the visits to penitentiary institutions from the point of view of the protection of detainees against torture and other cruel, inhuman or degrading treatment, it is also worth mentioning the charges concerning the existence of secret CIA prisons in Poland reported by the media. The international human rights organizations,

including Human Rights Watch and Amnesty International, claim that such prisons existed among other places on the territory of the Republic of Poland.

In the light of the alarming reports of the Polish and foreign mass media suggesting that members of the Al-Qaeda terrorist group were detained and mistreated in the Polish CIA prisons, the Commissioner for Civil Rights Protection requested the Coordinator of Special Services to provide information in this regard as early back as in 2005. The Commissioner's Office received a reply indicating that measures were taken in order to verify the media reports. Furthermore, the Government Spokesman denied all information in this respect, and since the very first rumours the Polish authorities had been willing cooperate with the institutions appointed to clarify this issue both by the Council of Europe and the European Parliament appeared. In addition, in 2007 the representatives of the Commissioner for Civil Rights Protection visited the military unit in Stare Kiejkuty and the airport in Szymany. They did not find any evidence that secret CIA prisons had existed on the territory of Poland.

The Commissioner for Civil Rights Protection submitted another request on this issue to the Prime Minister in the middle of 2008. In his reply, the Prime Minister informed the Commissioner that he had requested the Public Prosecutor General to initiate proceedings relating to the case in question. Currently, the National Prosecution Service is investigating the alleged existence of CIA prisons in Poland. The Office of the Commissioner for Civil Rights Protection was informed about the numerous intended procedural acts, for which the completion date is not specified.

Therefore, the Commissioner for Civil Rights Protection has no available information which could confirm the fact that secret CIA prisons have existed in Poland or that torture was used on its territory. He has been also assured several times that the Government of the Republic of Poland complies with the international agreements regulating the issue of the protection of human rights and fundamental freedoms and proscribing the use of torture and other inhuman treatment.

B. Sobering stations

In 2008 two sobering stations were visited – in Poznań and Warsaw.

The employees of the Office of the Commissioner for Civil Rights Protection found that any forms of torture or other cruel, inhuman or degrading treatment in the visited sobering stations are not used. The

employees of the visited stations treat the patients with respect for human dignity and in compliance with the legal regulations in force.

However, the technical condition of rooms and their equipment differs from one centre to another. The technical conditions of the sobering station in Poznań do not fully comply with the guidelines provided for in the ordinance of the Minister of Health of 4 February 2004 on the methods of escorting, accepting and discharging inebriated individuals and on organization of sobering stations or other establishments created or indicated by a local government unit (Dz.U. No 20, item 192, as amended). In particular, it is not fully equipped with or there is a lack of: urinals and washbasins, separate showers for women and men with at least one shower per 15 persons. Moreover, it was found during the visits that the sobering station in Poznań has enough space; however, the rooms require specific financial resources for refurbishment and renovation.

Placement of sober homeless people in the station is a separate question. Despite the willingness to provide these persons with care and a possibility to sleep in decent conditions, this practice is not permitted in the stations.

On the other hand, the sobering station in Warsaw ensures very good living standards, and the introduction of new techniques (monitoring) and organisational innovations (the control unit) is crucial for respecting the rights of the persons placed in this institution. The use of cameras which register the entire course of a patient's stay in the sobering stations allows to control both the patients' behaviour and correct fulfilment of the tasks by the station employees. The control unit employees review the monitoring records and the documents of a patient's stay in the station, so that any irregularities may be detected and quickly eliminated in the future.

Visits to the sobering stations will be continued in 2009 on a more frequent basis. However, the last year activities of the NPM allow to conclude that there are significant differences in the functioning of these stations in terms of living standards, which depend on the levels of funds assigned for the centres by the local governments, as well as the of forms of addiction prevention measures taken. Furthermore, the stations have to be constantly monitored for application of direct coercive measures.

C. Rooms in the Police premises for apprehended persons

In 2008, 11 rooms in the Police premises for apprehended persons or persons brought to sober up (hereinafter referred to as the Ward) were visited. These rooms were in the premises of Poviats or Town Police Headquarters.

When analysing the problems found by the Commissioner's representatives during the execution of tasks under the National Preventive Mechanism, it should be noted that in all units there was a problem with implementing the provisions of the ordinance of the Minister of Interior and Administration of 14 September 2001 laying down the rules for admissibility of tobacco use in closed facilities reporting to the Minister competent for internal affairs (Dz. U. of 2001, No 106, item 1163). The apprehended persons were usually allowed to smoke in the toilets and corridors instead of separate and adequately adapted spaces or designated rooms, where such persons were placed.

Failure to carry out compulsory medical examination of drunk persons brought to the Ward found in one of the Wards should be considered as inconsistent with the provisions of the ordinance of the Minister of Health of 4 February 2004 on the methods of escorting, accepting and discharging inebriated individuals and on organization of sobering wards and other establishments created or indicated by a local government unit (Dz. U. of 2004, No 20, item 192, as amended). It should also be added that the stay of an inebriated person in the Ward is undoubtedly dangerous for this person's health or life, if the Police officers have no credible information on this person's health condition. Furthermore, in many institutions there were gaps in medical visits registers and the Commissioner's Office employees requested the Police officers to require the physicians who examine patients on the spot to record the examination results properly, as the missing date of examination or the name of the person examined may in certain circumstances (for example the death of the detainee or notification of the Public Prosecutor by the detainee) may prevent establishment of the necessary evidence.

As regards other types of documentation kept in the Ward for apprehended persons Ward, the Police officers repeatedly failed to record in the detention protocol why it was not signed by the apprehended person.

The Commissioner's representatives also paid attention to the obligation imposed on the Police officers to fully respect the provisions of Rules of Procedure governing the stay of apprehended persons in rooms in the Police premises. It happened sometimes that the persons brought to the Ward were not familiarized with the Rules of Procedure. In the majority of cases, the Rules of Procedure were not put in such places in the Ward to allow a detained person to read them. In one of the wards the Rules of Procedure were invalid. In another Ward the

Rules of Procedure were developed individually and contained only the basic rights and obligations of the detained persons. Thus, the content of the Rules of Procedure diverged from the text specified in Annex to the ordinance of the Minister of Interior and Administration of 13 October 2008 on rooms in the Police premises for apprehended persons or persons brought to sober up and the Rules of Procedure concerning the stay in such rooms (Dz. U. of 2008, No 192, item 1187). However, it should be noted that this ordinance entered into force on 12 November 2008 and replaced the ordinance of the Minister of Interior and Administration of 21 March 2003 laying down the standards of rooms in the Police premises for apprehended persons or persons brought to sober up and the Rules of Procedure concerning the stay in such rooms (Dz. U. of 2003, No 61, item 547).

The issue of accessibility of the Rules of Procedure for the persons apprehended in the Police premises and, in general, information about their rights, was also approached by the Commissioner for Civil Rights Protection in his letter of 9 February 2009 addressed to the Minister of Interior and Administration. The letter emphasised that the scope of work undertaken in order to improve the implementation of the right of access for the apprehended persons to information on their rights was not satisfactory. The provisions which guarantee the right to the persons staying in rooms for apprehended persons in the Police premises familiarize with their rights and obligation and the Rules of Procedure concerning the stay in such rooms, should be included in the act having the status of an ordinance rather than an internal act in the form of instruction or an order of the Police Commander-in-Chief.

As for the Rules of Procedure concerning the stay of persons placed in rooms for apprehended persons or persons brought to sober up, the initiative of the Police Commander-in-Chief to translate them into foreign languages should be appreciated, as it will be easier for foreigners who do not speak Polish to acquaint themselves with their rights and obligations.

During the visits attention was also focused on the missing equipment in rooms for apprehended persons in relation to the requirements stipulated in the above mentioned ordinance of the Minister of Interior and Administration which was in force at the time of visits. For example, there was no rail in the duty-room; sitting stools were missing in rooms for apprehended persons; and the call signalling system was missing in the surgery. In one of the visited Wards many rooms specified in the legislation in force during the visit and which were needed

for proper functioning of the institution, were not available. There was no duty-room, surgery, shower room, meal heating and portioning room, dishes and equipment washing room, deposit storage room with a separate space for belongings of people suffering from a contagious disease, clean and dirty linen storage spaces (Poviat Police Headquarters in Nowe Miasto Lubawskie). The visiting persons had reservations about the living standards in the Wards which did not meet the applicable legal provisions and needed renovation and refurbishment.

Furthermore, the question of recording the application of direct coercive measures remains open, as this is signalled only by a concise entry in the register of service, that direct coercive measures were used. A record in a separate register would allow actual control of the lawfulness of such measures and would provide a basis for verification of their use. This problem is especially important from the point of view of the protection of the detained persons against cruel and inhuman treatment. The issue was also raised by the Commissioner for Civil Rights Protection in his letter addressed to the Minister of Interior and Administration. The Commissioner stressed that it was unacceptable that such a significant issue as the use and documentation of use of direct coercive measures was regulated by an instructive act. At present, apart from the Police Act of 6 April 1990 and the ordinance of the Council of Ministers of 17 September 1990 laying down the cases, circumstances and methods of use for direct coercive measures by the Police officers, this issue is regulated, by the Service Procedure for the Police officers in the premises intended for persons apprehended or brought to sober up, which is annexed to the Order No 7/94 of the Police Commander-in-Chief of 10 November 1994 on the equipment and technical security devices in rooms for persons apprehended or brought to sober up and on the service of Police officers in such premises. Regulation of the use of direct coercive measures on instructive service procedure basis is inconsistent with the provisions of the Constitution of the Republic of Poland. Besides, unlawful and disproportionate use of direct coercive measures can be tantamount to inhuman or degrading treatment. The lack of possibility to control the use of these measures by an independent external body, such as the National Preventive Mechanism, in view of the lack of transparent documentation, results in the lack of safeguards against authority abuse.

From the point of view of the activity of the National Preventive Mechanism it should be noted that in the rooms designed for persons apprehended or brought to sober, visited in 2008, no factors were found that would prove that tortures were used. However, the above

mentioned problem of recording the use of direct coercive measures was observed during the visits, which is especially significant from the point of view of the preventive activity under the Mechanism. The incidents of cruel treatment violating the human dignity of persons detained in one of the visited Police Headquarters (Poviat Police Headquarters in Nowe Miasto Lubawskie), exposed in the media, are also alarming. This case is still monitored by the Commissioner, who also addressed the Police Commander-in-Chief on 23 September 2008 in this regard. During the visit to the said Police Headquarters, the persons apprehended in the Ward did not raise any objections to their treatment by the Police officers.

D. Police emergency centres for children

In 2008, 4 Police emergency centres were visited under the National Preventive Mechanism activities. The living standards in the centres vary from one to another. This is probably the effect of the lack of any regulations in the area of requirements to be met by the police emergency centres for children. Therefore, in some centres the living standards for minors are very good (Police Emergency Centres for Children in Wrocław and Warsaw) with separate television room, education room, dining room, and even gymnasium. In other centres, however, the number of rooms in which the minors spend their entire free time is significantly lower. Therefore, on 13 February 2009 the Commissioner for Civil Rights Protection generally addressed the Minister of Interior and Administration¹⁰ to regulate these issues as it was done in the case of rooms in the Police premises for persons apprehended or brought to sober up. In reply, the Office of the Commissioner for Civil Rights Protection was informed about the work undertaken in order to regulate this issue and about the draft document developed by the General Headquarters of Police.

Besides, taking account of the respect for the dignity of minors placed in police emergency centres for children, the members of the National Preventive Mechanism pointed at the lack of shower curtains in the majority of centres and the requirement to wear pyjamas by the minors all day long in one centre (the Police Emergency Centre for Children in Wrocław).

It was also emphasised that in the case of large police emergency centres for children it would be appropriate to consider the possibility

¹⁰ RPO-605914-VII-7020/11006.1.

psychological consultations in the case of minors experiencing trauma. The visiting persons also indicated to the fact that the document "Rights and obligations" available to minors during their stay in a centre should include a possibility for a minor to lodge an appeal to the family judge against important decisions concerning their detention and stay in a centre, such as the use of direct coercive measures, isolation, contact with parents, and mistreatment. Moreover, the addresses of the judge supervising a given police emergency centre for children and that of the Commissioner for Civil Rights Protection should be displayed in the most easily accessible places of the centre.

During the visits to the police emergency centres for children, the representatives of the Commissioner for Civil Rights Protection also check another important issue, namely the period of stay of a minor in such institution. Since it is a short stay, the fundamental problem is its legality in the context of human rights. The Act on Proceedings in Juvenile Delinquency Proceedings (hereinafter referred to as the Juvenile Delinquency Act) provides for the rule of verifying the decision on the legal stay of minors in police emergency centres for children. A stay exceeding the limits specified in Article 40 of the Juvenile Delinquency Act means that the detention of a minor was unlawful. The interpretation of Article 40 (7) with relation to Article 40 (6) point 4 of the Juvenile Delinquency Act, according to which indefinite detention of a minor in a police emergency centre for children is possible if the minor who ran away from an institution subject to the Ministry of Justice and is detained in an emergency centre is informed within 72 hours about the decision to place him or her in a corrective or medical institution. Undoubtedly, such a decision should be implemented immediately.

While verifying the issue of lawful stay of minors in police emergency centres for children, it was found that the problem of prolonged stays in such institutions exceeding the periods specified in the Juvenile Delinquency Act occurs in many institutions and results from the difficulty in enforcing judgements of the court by other institutions. At the same time, the persons detained in a police emergency centre for children fail the obligation to attend the school, therefore, a longer stay a child may fall behind in school. It is a serious problem, especially in view of the fact that in some visited centres the stay of minors lasted even up to 5 months.

It is even more difficult to assess whether placing of a minor in an emergency centre (thereby the lawfulness of their stay) is lawful

or not, if his/her behaviour does not meet the conditions specified in Article 40 (1) of the Juvenile Delinquency Act, which govern the placing of a minor in an emergency centre for children. For example, it turned out during one of the visits that a minor had been placed in an emergency centre at the request of the court. Periodic judicial controls are not sufficient to monitor this issue effectively. Thus, the lawfulness of detention and the duration of stay of minors in such institutions should be constantly monitored by the head of a given institution in cooperation with the supervising family judge. This requirement should be included in the generally applicable provisions. On the other hand, the suggestion of various environments to legalise the practice of detaining runaways from corrective and educational centres (juvenile reform schools and youth sociotherapy centres) in a police emergency centre for children could be implemented only if the maximum duration of such a stay is defined in accordance with the provisions of Article 41 (3) of the Constitution of the Republic of Poland. It is also necessary to settle down and amend the current regulations governing the time limits of the stay of minors in emergency centres, so that they are consistent with the Constitution. Minors cannot be treated as second-class citizens. On the contrary, as it turns out from the applicable international agreements, the standard of children's rights protection should be higher.

In order to properly execute the minors' rights in the above mentioned area, it is necessary to reintroduce statistics to assess the duration and lawfulness of detentions in police emergency centres for children in specific periods; it has not been kept recently in the General Headquarters of Police. The statistics should be arranged properly, since it is impossible to obtain the most important information, if a division into two groups of minors placed in an institution for different reasons is not reflected in the statistics of a given institution.

Additionally, it should be stressed that the provisions which govern the functioning of police emergency centres for children do not constitute a coherent system consistent with the Constitution. It is the result of the lack of appropriate legal basis for developing Rules of Procedure and other internal orders for emergency centres for children, introduction of regulations concerning the minors' rights to the internal act in the form of an Annex to Decision of the Police Commander-in-Chief No 346 (Section V point 6), contrary to the constitution which provides for

that legal acts of this rank cannot serve as a basis for decisions concerning citizens and other entities. Therefore, it is necessary to transfer to an ordinance a part of the provisions of Annex to Decision No 346, concerning the use of direct coercive measures; isolation; medical care; situations justifying the refusal of admission to an emergency centre and some relating procedures; definition of extraordinary cases and the procedure for reporting such cases to the supervisory bodies and examining them; or the documentation kept in emergency centres. The use of closed-circuit TV cameras in police emergency centres for children has also not been regulated yet.

Another serious problem related to the functioning of such institutions is the use of direct coercive measures while escorting minors to emergency centres. The improper use of such measures in the form of handcuffing, concerned half of persons interviewed in one of the visited emergency centres for children (in three out of four cases the use of handcuffs on the detained minors was unlawful). The unlawful use of direct coercive measures, which are illegal, violates the fundamental human rights and should be classified as unlawful violence. Moreover, it should be pointed that the use of direct coercive measures by Police officers is hardly controllable due to the lack of appropriate instruments provided for in the Police Act and the ordinance of the Council of Ministers of 17 September 1990, and tracing of such use is impossible due to the lack of individual records of such measures; this what the Commissioner notified of the Police Commander-in-Chief in his general intervention of 23 September 2008. As described in the section concerning premises for persons apprehended or brought to sober up, this intervention also emphasised that the unlawful use of disproportionate direct coercive measures is usually tantamount to inhuman or degrading treatment. Thus, the lack of a record system for the use of such measures, which would be easily available, clear, transparent and controllable by an independent external body, results in the lack of safeguards against authority abuse. This issue is important because the use of direct coercive measures further limits the rights of persons whose fundamental rights have already been significantly limited when they were apprehended or brought by the Police. It concerns directly the sphere of personal dignity, which is hard to define, but fundamental in the context of human rights protection. The Commissioner's suggestions will be examined by the Interministerial Group for Standardising the Rules of the Use of Direct Coercive Measures and Firearms.

E. Youth care centres

In 2008 preventive visits were carried out to 3 youth care centres. The living standards for minors in these institutions varied and some of the centres definitely required financial support. From the point of view of the activity of the National Preventive Mechanism, cases of mistreatment of the minors placed in youth care centres were the most worrying problem.

Therefore, after each visit to such institutions, the representatives of the Commissioner for Civil Rights Protection stressed the importance of respect for the rights of minors, including the right to personal immunity. The practice of administering non-statutory penalties and the principle of collective responsibility found in one of the centres, was considered unacceptable. It is inappropriate to treat work as a punishment or to make wards do work which is obviously pointless, such as pouring the sand from one place to another. Such practices are unacceptable as they indicate cruel, inhuman or degrading treatment or punishment. They may also escalate aggression among the wards.

As regards the treatment of minors, serious irregularities were found in one of youth care centres (the Youth Care Centre in Lubaczow). During the visit the employee of the Office of the Commissioner received a complaint from a ward about the use of corporate punishment by some of the centre's employees. The ward said that he "was beaten with a baton on his back and buttock when he gets bad notes at school and uses swear words". Other wards of the same corrective group did not complain and did not signal such problems. However, objections were raised about the use of collective responsibility towards the minors if one of them escaped from the centre. The punishment had the form of a ban on phone calls, watching TV, doing shopping or going to bed earlier. The representatives of the Commissioner for Civil Rights Protection were also informed about the use of non-statutory punishments for shouting during classes, such as presses-up, knee bends or cleaning the toilets instead of someone else. Moreover, some wards did not know who to refer to in the case of unfair punishment or where to turn if they wanted to complain about the behaviour of the staff.

According to the visiting persons, the findings of the visits provide grounds for a statement that there are signs of cruel, inhuman or degrading treatment of wards in the institution described above. In the introductory talk with the visiting persons the director of the centre did not conceal that in his opinion the use of force was an appropriate method for gaining obedience and respect in the case of some minors.

This fact was the decisive factor in lodging the quatuordecim above ward's complaint about being beaten with a baton to the Public Prosecutor despite its imprecise content (which, in fact, is adequate to the intellectual and psychological state of this minor).

Taking into account the treatment of minors in other facilities visited in 2008, two noted cases of pupil mistreatment should be indicated (Juvenile Reform School in Malbork). The first one involved sending two pupils to their classes in pyjamas, whereas the second one was the incident of a pupil being pushed by his tutor. It was established that this incident took place during the summer holidays. In the correspondence carried on with the Office of the Commissioner for Civil Rights Protection, the director of the facility described in detail the circumstances of the incident, pointing out to the fact that after the incident the boy concerned was included in the therapeutic and resocializing activities. The case was settled, and at the same time it served to sensitize the staff to their obligation to treat juveniles in the appropriate way and to respect their dignity.

Juvenile Reform School in Wloclawek shows how much depends on the staff - in Wloclawek the staff, and methods they have elaborated, will likely result in this institution becoming exemplary in the near future. The last disciplinary proceeding against a staff member working there took place back in the 80s. Similarly, the incidents of parents lodging a complaint on the institution's activities are very rare.

When analyzing how juvenile reform schools work, it is necessary to point out a problem typical for these institutions, i.e. the fact that directors rarely use the possibility to apply for an earlier release of a juvenile. Yet, stay in facilities, including resocialization and rehabilitation centres, should be treated as a temporary solution, especially if in the juvenile's environment there is a network of adequate consulting centres, schools and support centres. Article 25 of the Convention on the Rights of the Child imposes on the State an obligation to carry out a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement. European Court of Human Rights also adopted a position that taking of the children into public care should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and should be consistent with the aim of reuniting the child with his or her family (case law: *W vs Great Britain* 1988, *Olsson vs Sweden* 1992, *Andersson vs Sweden* 1992, *Hokkanen vs Finland* 1995, etc.). Provisions that make it possible to change the preventive measure adopted when the aim of its

application has been completed, are laid down in the act of 26 October 1982 on juvenile justice, as well as in the educational law – Article 8 of the regulation of the Minister of National Education and Sport of 26 July 2004 on the detailed rules of guidance, admission, transfer, release and stay of juveniles at the juvenile reform schools and youth sociotherapy centres (Dz. U. No 178, item 1833).

The visits conducted revealed a need for legal measures and instruments necessary for conducting specialist juvenile therapy in the institutions, making use of verified programmes and competent trainers. A better medical diagnosing is also required of the youth directed to institutions for juveniles, including resocialization and rehabilitation institutions having little capability in terms of medical diagnostics and treatment. Some behaviours of children in such institutions may require psychotherapy and medical proceedings, rather than sociotherapeutic activities. It is also recommended to improve the access of youth from these institutions (as well as all the types of institutional care facilities for juveniles) to specialists, especially psychiatrists, neurologists and psychotherapists. This access is currently dramatically weak in relation to the needs.

Another problem regards community interviews in families of pupils attending juvenile reform schools, with an aim to determine their parent's payment for the stay of the juvenile in such facility. One of the facilities, which applied in this matter to the competent local social assistance units, faced refusals invoking explicit wording of the provisions of Articles 106 and 107 of the act of 12 March 2004 on social assistance (Dz. U. of 2008, No 115, item 728). This issue will be verified to establish whether this is a common practice, which would be contradictory to the social assistance goals, as provided for in Article 15 of the act, as well as unreasonable. Aid institutions should be familiar with the families of pupils at such schools, as in the near future such institutions will take over the tasks connected with making the pupils independent, and should even take such families into accounting their social work.

The information provided justifies the assumption that juvenile reform schools, as places of detention in Poland, require constant monitoring. The visits under the National Preventive Mechanism permit identification of problems in functioning of individual centres, leading to cruel, inhuman or degrading treatment or punishment of juveniles. Thus, the facilities need to be visited regularly, which will prevent unlawful methods of treatment of juveniles that unfortunately do take place, as the visits conducted in 2008 demonstrated.

F. Youth sociotherapy centres

In 2008, only one youth sociotherapy centre was visited, namely the one in Puławy. Thus, it is difficult to indicate the systemic problems in this type of facilities. However, the conducted activities made it possible to determine that the assumed educational aims of the visited facility were being fulfilled with commitment and their level was adequate. This was confirmed by the pupils themselves during the interviews carried out in private. The minors indicated, that they were treated with respect of their human dignity, that attention was paid to their maintaining contacts with their families, and with natural environment, where their individual development, in terms of social relations, takes place. Pupils had no difficulties indicating persons having positive authority in the facility.

During the visit, it was determined that running it was significantly impeded by the fact that the owner of the building, where the facility was located, was an official receiver. The lack of investments that would improve living conditions of pupils was evident. The facility clearly needed a subsidy. The visiting persons underlined, among other things, the need for major repairs and renovation of the kitchen, for replacing old windows with the new ones, as well as for additional furniture (beds and other) in order to increase the comfort of pupils during their stay. According to the visiting persons, it was also necessary to employ on regular basis a nurse and, if possible, a psychologist and sociotherapist or a family therapist.

Also cases of inflicting pupils with unacceptable punishment, such as one hand push-ups or knee bends, were noted during the visit. These practices should be completely eliminated. Furthermore, given the problem of using tobacco products, observed among the pupils, it was recommended to introduce to the facility programme some pro-health activities with the aim to inform about the consequences of smoking and to encourage youth to a healthy life-style.

To conclude, several elements in the facility functioning were observed that need to be changed. Inflicting non-regulatory punishment, as described above, may be considered as degrading treatment and punishment. It is difficult, however, to generalize from irregularities discovered in this facility and draw conclusions about other institutions of this type. Youth sociotherapy centres were included in the schedule of visits under the National Preventive Mechanism in 2009. Thus, a subsequent report will make it possible to present more detailed information on the functioning of detention places of this type in the Republic of Poland.

G. Juvenile detention centres

In 2008, the three juvenile detention centres were visited under the National Preventive Mechanism, two resocializing and rehabilitation institutions, and one resocializing and therapist institution.

The problems discovered during the visits were occurring with a different frequency in individual entities. However, in consequence of the actions performed it should be noted that the social and living conditions provided for the juveniles staying at the centre were good, and juveniles rights were generally respected.

According to persons who carried out the visits under the National Preventive Mechanism, placing pupils in a transition ward posed a major problem in juvenile detention centres. This issue is regulated by the Ministry of Justice regulation of 17 October 2001 on juvenile detention centres and refuges for minors (Dz. U. of 2001, No 124, item 1359). According to Article 44 of this regulation, it is possible to place a juvenile in a transition ward with a particular aim specified in the regulation, for a period not exceeding 14 days. Article 25 (1) (4) of the above mentioned regulation, on the other hand, states that to ensure safety and order in the facility, the centre's director may place a juvenile in a separate living quarter or transition ward for a specified period of time.

During the visits in one of juvenile detention centres, all the transition wards were occupied by juveniles placed there under Article 25 (1) (4) of the regulation mentioned above. The analysis of a record of stay in transitional ward lead to the conclusion that the cause of placing a juvenile in that place was breaking the regulations, usually by smoking cigarettes on the facility's premises, refusing to follow superior's orders and displaying aggression towards other pupils or members of the staff. One juvenile, who was already 18 years old and demonstrated no willingness to continue his studies, was placed in a transition ward for the time when the classes took place. The director of the centre explained that the dormitory was open only in the afternoon and thus there was no place where persons refusing to attend school could stay. At the same time, according to the order of the day in transition ward, there were no activities scheduled for pupils, neither resocializing nor recreational or fitness activities in the open air. The interviews with pupils staying at the transition wards show that they always have to stay in the rooms, and between 8 a.m. and 9. p.m. they are not allowed to lie on their beds, they can only walk around the ward or sit. Most of them spend their time reading books or newspapers. Juveniles consider placing in the transition ward as the worst sort of punishment.

The described factual circumstances, discovered by the Commissioner's representatives during one of the visits, provide a basis to acknowledge that the law provisions in force are interpreted in a way which makes their application too strenuous for the juveniles and at the same time very convenient for the facility's staff, not demanding any effort on their part. Sometimes the frequency of resolving to transition ward becomes a rule in punishing juveniles. According to the employees of the Commissioner's Office, inflicting juveniles with this method of punishment is an instance of inhuman, degrading treatment and punishment. Detaining a juvenile in the transition ward is an irrational and non-pedagogic isolation punishment, and not a disciplinary measure or educational action acknowledged in a therapeutic and educational system, which by its very nature indicates the requirement to search for the best solution for a juvenile, motivating him to self-development without the unnecessary psychophysical and social degradation. Furthermore, this conduct is non-compliant with the United Nation Rules for the Protection of Juveniles Deprived of their Liberty (United Nations General Assembly Resolution 45/113), stating that any disciplinary procedures and related measures should maintain the interest safety and an ordered community life in the facility, and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person (rule 66). All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned (...) (rule 67).

Another problem noticed in two of the visited institutions was the lack of guaranteed activities in the open air. For example, due to the juveniles' escapes, which occurred in the facility, the pupils are allowed to leave the building once a week. Such actions stand in contradiction with the implementation of the right to development and the right to health protection. According to the visiting persons, these limitations also contradict Article 68 of the Constitution of the Republic of Poland, according to which the right to protection of health manifests itself also in the fact that public authorities shall support the development of physical culture, particularly amongst children and young persons. At the same time, this case proved that in national provisions there are no legal regulations guaranteeing a juvenile daily access to activities in

the open air. Ensuring such activities should be considered necessary, given the young person's need for psychophysical development, as well as the need for releasing negative emotions in case of the maladjusted youth. Access to the open air should be an obligatory right, not just a privilege, analogically as in the case of adults deprived of freedom. The latter, while staying in penal institutions, have a right to a daily walk, even if they are classified as prisoners posing a serious public menace or a serious threat for the institution's safety.

It should be noted that one of the visits reports met with rejection of its findings. At the same time, the Ministry of Justice informed that the Office of the Commissioner's comments and conclusions will serve as the basis for carrying out, in 2009, inspection activities in juvenile detention centres and in refuges for minors. Also, the Department of Decision Implementation and Probation prepared "The list of procedures regarding work safety and organization", which is binding for all the juvenile detention centres and refuges for minors. Among other things, the list relates to the issue of preparing transition ward regulations, keeping the pupils' documentation and providing the juveniles with psychological and pedagogical assistance. The comments submitted in consequence of the visit will be taken into account while drafting the act on the rights of juveniles.

H. Refuges for minors

In 2008, members of the National Preventive Mechanism visited four refuges for minors, one of them intended for girls (Refuge for minors in Falenica), where educational environment is excellent. This was confirmed by juveniles' statements but even more sound evidence was the pupils' bond with the facility, which lasted even after they left the institution and the trust they placed in their tutors and in the director. The girls consider that living conditions, medical and social care and the aid provided by the institution are very good, while the skilful and long-term cooperation with some external entities (the Church, civic organizations) results in pupils feeling safe and gaining the motivation to change. A characteristic feature of the visited refuge for girls is its co-existence with a juvenile detention centre. However, such co-existence of two in fact so different facilities does cause some problems. During the visit, a need was identified to change the existing statutes in such a way that pupils from both facilities get indubitable message regarding their rights, obligations and rules of functioning, taking under consideration the differences between the refuge for minors and the juvenile

detention centre. Currently, this message is much clearer in practice than in internal documents, i.e. this information is explained better to the girls than it is written down.

During the visit of the refuge for girls it was established that the planned investments were necessary to achieve the required standards and improve living conditions in the facility (kitchen, attic). A number of issues that appear to be less significant, such as improving the safety in two sports fields with damaged surfaces, cannot be neglected.

The visit described above allows to draw a conclusion that in refuges, just like in juvenile detention centres, placing juveniles in transition wards is a vital issue. As preliminarily indicated in the point referring to the juvenile detention facilities, the basic use for this ward is regulated by Articles 44 and 51 of the regulation on juvenile detention centres and refuges for minors. Under these provisions, after admission to the juvenile detention centre or refuge, a juvenile is placed in the transition ward. In juvenile detention centre, placing a juvenile in such ward may take place for a period no longer than 14 days in order to provide him or her with preliminary medical check, personal background check, as well as hygienic and health procedures. The reasons for placing a minor in transition ward may also be to carry out a preliminary adaptation interview, to prepare a plan of individual resocializing activities, to maintain safety and order in the facility, as well as to prevent aggression and disorganization of facility's life. On the other hand, in case of admission to the refuge for minors, placing in the transition ward may take place for a period no longer than 14 days in order to provide a juvenile with preliminary medical check, personal background check and hygienic and health procedures, as well as to conduct a preliminary interview and prepare basic information on the minor. In addition, Article 25 (1) (4) of the regulation gives grounds for applying this measure in both types of facilities, also so as to ensure safety and order – provided that the director executes it for a specified period of time. The provision is imprecise and leads to its various interpretations in practice.

Furthermore, during the visit it was noted that the transition ward often takes over a function of the isolation ward, when a need arises to apply this measure of direct coercion. The transition ward should function as a “sluice”, while the isolation ward should function as a measure of direct coercion, applied rigorously in a specific case, as needed. The provision ensuring a possibility of placing a juvenile in the transition ward to ensure safety and order in the facility, which

in addition basically enables undocumented placing of a juvenile in a “separate living quarter” for the same and, in any case, too general reasons, decreases the level of protection against unknown punishment. The legislator intended to prevent such punishment through typical coercion instruments, including isolation, by introducing in Article 95a of the act on juvenile justice a number of requirements concerning the application of direct coercion measures.

The United Nation Rules for the Protection of Juveniles Deprived of their Liberty (Resolution 45/113) also clearly forbid applying isolation as a disciplinary measure. According to the Rule 67 “all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement (...)”. It should be underlined that coercion applied without any legal grounds or with violation of rights becomes a violence. Coercion should be understood as violence, legalized and limited to cases of absolute necessity. For these reasons, the issue of appropriate regulation of legal norms concerning juvenile’s separation should be considered, which is crucial from the point of view of the National Preventive Mechanism’s activity. Inappropriate use of a transition ward can lead to cruel and inhuman treatment of juveniles. Therefore, it is necessary to remove the said solution from the general provisions in force, or to word it in a way that will make respecting rights of juveniles possible.

The Department of Decision Implementation and Probation in the Ministry of Justice shared the view of Commissioner’s representatives that placing juveniles in a transition ward for the so called educational reasons is inappropriate. The director of a juvenile detention centre or refuge for minors may place a juvenile for a specific period of time in a separate living quarter or in a transition ward so as to ensure safety and order. However, in this case the provisions regarding the 14-day period of stay in the transition ward do not apply. Thus, the issue calls for implementation of relevant legal regulations to eliminate the recurring irregularities in interpretation of the provisions currently in force.

Due attention should also be paid to ensuring juveniles contact with their families. The general provisions in force guarantee juveniles the protection of family bonds. Refuge for minors is obliged to aid juveniles to establish contacts with their families or guardians. In the visited institutions this function was fulfilled in various ways. In some of them no problems were identified in this regard, while in others visits were allowed once a month, plus Christmas and Easter, and only on the

parent's request could the director give a consent for visits at other times. This frequency should be considered insufficient.

Analysing the issue of the right to contact with family, attention was drawn to the provision stating that the first pass may be issued to minors staying in open juvenile detention centre after they stayed there for 2 months. This provision appears to be irrational and, in practice, unjust to juveniles who come to the facility directly from the refuge for minors, where they used the passes. In such case, granting of passes should be based on conduct assessment of the juvenile while he or she was on the leave from the refuge. It should also be noted that the previous regulation on juvenile detention centres and refuges for minors gave such an opportunity. Then again, the current provision is anti-educational and leads to the discontent of juveniles transferred from the refuges to the juvenile detention centres.

Like in juvenile detention centres, also in refuges for minors a provision should be introduced guaranteeing that juveniles each day spend some time in the open air. The method of protecting juveniles against escape or self-aggression, employed in some facilities and consisting of a ban on leaving the building, is not provided for in the regulations, is contradictory to the standards of juveniles' rights protection, and, moreover, it could not be used even for adult dangerous criminals.

Limiting access to the open air is contradictory to the Recommendation "European Rules for Juvenile Offenders Subject to Community Sanctions or Measures" (Strasbourg, 4 April 2008). In the wording of the rule 82 "All juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day". The national provisions lack legal regulations which would guarantee that a juvenile has daily access to activities in the open air. However, such activities should be considered necessary, given the young person's need for psychophysical development, as well as the need for releasing negative emotions in case of the maladjusted youth. Therefore, this issue should be regulated as soon as possible in Polish legislation, to clearly specify that access to the open air is the right of the juvenile (as of adults deprived of liberty) and not merely a privilege.

During the visits it was noted that the Refuge for Minors in Falenica operates on grand scale, exceeding the facility's statutes, and supports the girls leaving the facility. After they have been released, the girls not only phone frequently but also visit the refuge asking for advice or help, they commute to school run by the refuge (for as long as 2 years), and they search medical care as well as support in finding some liv-

ing quarters. For various reasons they turn with their concerns to the refuge and not to the aid institutions. The procedure of gaining independence requires that in order to receive aid one needs to be released. Besides in such institutions there is always one or more new people dealing with such issues, who in fact only promise to arrange things that are necessary right away. Since in the refuge the girls get help immediately, at any time day or night, they feel safe and are not embarrassed to talk about their problems. Sometimes they turn for help only to the facility. Consequently, usually it is the tutor or psychologist who coordinates the process of gaining independence. Such person also knows best what he or she should require when aiding the pupil in gaining independence.

However, actions taken for the benefit of former pupils may not be of an extralegal nature and should have their place in the provisions in force. It may be assumed that scale of this phenomenon depends neither on the type of centre or refuge nor on its location, though it may be more common in the facilities for girls.

The legality of juveniles' stay in the refuges is an issue that should be controlled on regular basis. There are indeed cases of prolonging juveniles' stay in this type of facilities. Thus a systematic control of pupils' documentation, conducted by the director of the facility, is necessary.

Cruel and inhuman treatment of pupils involves not only resorting to using violence against them and to unlawful punishment, but it also means not respecting their fundamental rights. An example of lack of attention paid to proper implementation of these rights are internal regulations of such institutions – unorganized and partially inconsistent with the law provisions in force and with international standards (for example, internal regulation in the Refuge for Minors in Łańcut).

In addition to the issues discussed above, from the National Preventive Mechanism's perspective, also the way juveniles in the facilities are treated by the staff is of great significance. Thus, these were the issues discussed during the interviews carried out with pupils in private. In 2008, pupils of a refuge for minors informed the employees of the Commissioner's Office about incidents of beating and intimidating by one of the tutors (Refuge for Minors in Gacki).

Fearing the consequences, juveniles refused to lodge an official complaint. Since it was not possible to verify juveniles' allegations, the information on prohibited forms of juveniles' treatment was passed on to the facility director who undertook to carry out an investigation pro-

cedure. It should be noted that the facility director was in touch with the employees of the Commissioner's Office and informed them on an ongoing basis on the tutor, whom the allegations concerned. Eventually, the director of the refuge filed offence notification with the public prosecutor's office. The public prosecutor's office is still carrying out examination proceedings on the possible criminal offence committed under Article 231 (1) of the Penal Code, i.e. a public official exceeding his authority.

The second allegation concerning inappropriate treatment of a juvenile by another tutor has been answered and denied. It was related to a conversation with a juvenile about insufficient cleanness and personal hygiene in the presence of other pupils. In this respect there were no grounds for declaring a violation of juvenile's rights or inappropriate treatment. However, the tutor has been informed about the possibility of the re-occurrence of such misunderstandings, especially in case of juveniles with a limited intellectual capacity or a strongly neurotic personality. Thus, it is necessary for the whole staff of the refuge to be particularly sensitive and to choose appropriate working methods and forms. The director informed also that an internal survey on the safety and compliance with the rights of juveniles has been carried out in the facility in order to prevent possible unlawful forms of the juveniles' treatment.

As for other issues that followed the visit, it should be noted that in some cases shower cubicles had no curtains and sometimes this happened also in the toilets (Refuge for Minors in Szczecin). Although it was usually motivated by the safety reasons and risk of suicidal behaviour, a feeling of privacy for juveniles using sanitary facilities should be ensured in the opinion of the Commissioner's Office employees.

Following the visits to the refuges for minors, it should be concluded that these places require monitoring, while the regularity of preventive visits of the National Preventive Mechanism will certainly improve the treatment of juveniles in those facilities. Pupil's fear of lodging an official complaint against the facility staff also should be acknowledged. It is a particularly sensitive issue which always needs an individual approach.

I. Quarters for detained persons in Border Guard centres

Quarters for detained persons function at the particular Border Guard centres. In 2008, the National Preventive Mechanism representatives made one visit to the quarters for detained persons on the premises of the Border Guard centre in Hrubieszów. On the visit day

all quarters available to the detained persons were in a very good technical condition and clean. There was no one in there. However, since the early 2008, after the quarters were commissioned, they were occupied by 11 persons, including 7 foreigners. The competent Chief Commander of the Border Guard requested the competent Voivode to issue a decision to expel these foreigners from the territory of Poland. The findings show that any person stayed in the quarters for detained persons in Border Guard centre longer than 48 hours.

Therefore, the living conditions of the quarters for detained persons and the documentation analysis proved that the persons placed in those quarters were treated appropriately. No circumstances were identified that would result in cruel, inhuman or degrading treatment or punishment of detainees.

J. Deportation Centres for foreigners

In 2008, in Poland there were 10 quarters arranged in the Police or Border Guard organization units and intended for detention centres for those to be deported, organized within. Currently there are 8 active units of this type solely within the Border Guard Units.

In 2008, while performing the National Preventive Mechanism's tasks, the Commissioner's representatives carried out visits in four quarters intended for deportation centres for foreigners.

In the case of the Deportation Centre located in the Włocławek City Police Station, it was found immediate actions are needed to improve technical and sanitary conditions of the ward and shower room. On the visit day the quarter's walls were dirty and shabby. The spaces were also filled with an offensive smell. Furthermore, proper organization of monthly medical examinations should be provided in the quarters according to the requirement laid down in Article 24 of Rules of organization for the foreigners staying in the guarded centres and deportation centres, which is annexed to the Ordinance of the Minister of Interior and Administration of 26 August 2004 on the requirements to be met by the guarded centres and deportation centres and on the rules of organization for the foreigners staying in the guarded centres and deportation centres (Dz. U. of 2004, No 190, item 1953). Besides, the visiting persons found it necessary either to provide conditions that would allow men and women to stay in the facility or to cease admitting foreigners of one of the sexes to the deportation centre. Measures need to be undertaken in order to grant the prisoners access to brochures or leaflets with information on their rights and obligations. For-

eigners should also have access to the information on the composition of served meals. It should be noted these comments were invalid on the day of drawing up this Report, because the Deportation Centre of Włocławek City Police Station was closed down.

On the other hand, Deportation Centre for foreigners of Bieszczadzki Border Guard Unit in Przemyśl is kept in a very good technical and sanitary condition. During the visit neither living conditions nor any other circumstances indicated that the prisoners in the Deportation Centre were treated in unlawful manner. Foreigners staying in this unit are provided with appropriate medical care. At this point it should be mentioned that a case of tuberculosis has been detected in the unit. Suspicion that one of the foreigners staying at the Deportation Centre is a carrier of this disease arose about a week before the NPM visit. The suspected foreigner stayed in the facility for about a month. During that time he occupied the ward together with two other prisoners. According to the information acquired the foreigner has been placed in the isolation ward and passed necessary tests immediately after the illness had been suspected. Since that time patient had had no contact with other prisoners, while the facility staff used protective equipment, such as masks and gloves, in the presence of the sick person. The test results, obtained by the facility medical staff on the visit day confirmed that the foreigner is the carrier of the disease. They also showed that the disease is in the sputum positive stage.

It should be noted that only after having received the test results did the medical officer on call inform the sanitary inspector about a case of infectious disease. Meanwhile, according to Article 20 (3) in conjunction with paragraph 4 of the Act of 6 September 2001 on infectious diseases (Dz. U. of 2001, No 126, item 1384) the medical staff is under obligation to inform the relevant inspector even if there is only a suspicion of the said disease. The appropriate information should be send to the inspectorate within the 24 hours since the suspicion concerning the disease had arisen.

The visiting persons had also doubts about the fact that until the day of the visit no preventive and protective actions were undertaken in regard to the foreigners who stayed for about a month in the same ward with the sick person.

In the next visited units - Deportation Centre for foreigners of Nadbużański Border Guard Unit in Biała Podlaska and Deportation Centre for foreigners of Podlaski Border Guard Unit in Białystok – the living conditions were very good. However, it seems that the showers need to be modified to ensure proper intimacy.

Therefore, it should be noted that no irregularities, which could lead to inhuman or degrading treatment of persons placed there, were found in any of the deportation centres visited by the National Preventive Mechanism representatives.

K. Guarded Centres for foreigners

In Poland there are 6 active Guarded Centres for foreigners. In 2008, the National Preventive Mechanism representatives visited three facilities of this type in Podlaski, Nadbużański and Bieszczadzki Border Guard Units.

In the Guarded Centre for foreigners of Bieszczadzki Border Guard Unit in Przemyśl the conditions are very good. On the visit day all spaces available to the prisoners in the Guarded Centre were in a very good technical condition and clean.

The information provided by the Border Guard officers suggests that on the Guarder Centre premises measures of direct coercion occurred by means of immobilizing grips used on the aggressive prisoners. Such cases are recorded in the duty log and in the form of official memos and reports. Furthermore, in the cases of gross violation of order in the Guarded Centre, the violators are placed in isolation. According to the statements of the Border Guard officers, each case of this measure results in an application to the relevant Court to change the place of detainment from the Guarded Centre to the Deportation Centre.

It should be noted that the punishment imposed in the Guarded Centre on the foreigners who do not submit to the facility's rules practically consists in temporary limiting prisoner possibility of watching television.

The visiting persons took also notice of the foreigners' contacts with the nongovernmental organizations dealing with the protection of their rights. The representatives of these organizations may meet only with the prisoners whose names they are able to give to the Border Guard officer on call. Thus, it may be presumed that the contacts between nongovernmental organizations and foreigners in the visited facilities are possible only when a foreigner has previously asked those organizations for help.

The above practice raises certain doubts of the visiting persons. Limited contact of the nongovernmental organizations with the prisoners who have not contacted earlier these organizations for various reasons in regard to their matters, may hamper the preventive actions

of these organizations to counteract violation of foreigners' rights and their non-humanitarian treatment. Therefore, it is necessary to consider a change in the organization method regarding the prisoners' meetings with the representatives of nongovernmental organizations, with an aim of providing these institutions with a possibility of performing the tasks assigned to them.

Furthermore, in the opinion of visiting persons, foreigners who stay at the Guarded Centre are not granted appropriate access to the brochures or leaflets informing about their rights and obligations.

In the Guarded Centre for foreigners of Nadbużański Border Guard Unit in Biała Podlaska and the Guarded Centre for foreigners of Podlaski Border Guard Unit in Białystok the living conditions the foreigners are very good. The visiting persons had no comments as to the treatment of the foreigners detained in the premises.

In conclusion, during the preventive visits carried out in 2008 in Guarded Centres for foreigners, no elements in detainment of foreigners were found that could lead to cruel, inhuman or degrading treatment or punishment.

L. Psychiatric hospitals

From the point of view of the National Preventive Mechanism activities it is necessary to carry out visits in the psychiatric hospitals where security measures are applied. Psychiatric hospitals of this type are included in the definition of places of detention provided for in Article 4 (1) of the OPCAT. In the Republic of Poland there are 42 facilities of this type in total. However, some of them have several wards with different security level. Security measures in the psychiatric facilities may have different levels: basic, reinforced and maximum security. The latter level is applied in the Regional Forensic Psychiatry Hospitals located in Gdańsk, Branica and Gostynin. Besides, these facilities include separate rehabilitation centres with a strengthened security, psychiatric facilities and rehabilitation centres for women with a strengthened security, and psychiatric health care facilities where juveniles may be placed.

In 2008, within the framework of the National Preventive Mechanism tasks, the Commissioner's representatives carried out visits in 8 psychiatric hospitals.

The visiting persons found Voivodship Podkarpacki Psychiatric Hospital in Żurawica a patient-friendly facility. In accordance with Annex 2, item 18, of the Ordinance of the Minister of Health of 10

August 2004 laying down the list of psychiatric health centres and rehabilitation centres intended for the application of security measures as well as on the composition, appointment procedure and the tasks of psychiatric commissions on security measures (Dz. U. No 179, item 1854, as amended), this hospital is referred to as a centre intended for the treatment of 30 patients admitted to the hospital on the basis of the criminal court decision to use psychiatric treatment as a security measure at the reinforced security level. However, the ward with a reinforced security level was not actually established. The visiting persons have been informed that the actions were taken to delete the facility from the list.

The medical staff friendly attitude towards the patients and their problems is particularly visible in the hospital. The irregularities found seem to result from the lack of knowledge of the patient rights and applicable procedures, rather than from the ill will or unacceptable negligence. However, necessary actions need to be taken in order to fully comply with the law provisions concerning application of the direct coercive measures (including documenting and control of their legitimacy) and the elimination of irregularities. In this respect it would be appropriate to ensure systematic training of the staff responsible for and participating in the application of the direct coercive measures, because the training delivered directly after recruitment includes only technical issues on applying coercion.

In addition, patients kept in the hospital without their consent should be provided with necessary information on the reasons for their admission and on their rights. The rehabilitation system also needs appropriate adjustments for preparation of individual rehabilitation programs in consultation with the patient and rewards for the participants of therapy. There is also a need to restore compliance with the law as regards the registration requirement levied on the patients and hospital administrative staff.

According to the medical staff of the visited hospital ward, restraint is the one used most frequently among the direct coercive measures. It is administered under the close supervision of the nurse so as to ensure the safety of the patient who is subject to coercion. It is worth noting that this measure is rarely used. However, the perusal of the collective documentation and the files selected from particular patients' medical documentation with regard to the use of direct coercive measures shows some irregularities. As established during the interview with the ward staff, the direct coercive measure in the form of restraint is

usually practiced by the nurse, within the limits of her rights. The physician is immediately notified of this measure. However, the fact of restraining patient by the nurse is not recorded in the medical documentation contrary to the Article 18 (2) requirements of the Mental Health Protection Act. Furthermore, there were cases of restraining patients in the circumstances not provided for in the Mental Health Protection Act. It should be stressed that, pursuant to Article 18 (1) and (3) of the Act, the use of restraint is permissible only when a patient attempts to commit suicide or murder, or makes an attempt on his/her or someone else's health or life, or poses a threat to the (public) safety, or in a violent way damages the objects in his/her surroundings.

However, holding a patient and compulsorily administering medication is permitted when the patient seriously disturbs or hinders the ward operation. Hence, restraining patients due to their "psychomotor agitation", "increased psychomotor drive", "state of fright" or "lack of reaction to reproofs" should be considered a gross contravention of the mentioned regulations – provided this is not a result of laconic entries in the medical documentation.

Assessment of the legitimacy of using direct coercion measure in the form of restraint also raises doubts. In the visited ward the deputy Medical Director, who is authorised to make the assessment, is usually notified about the restraint only after the measure has been used on a particular patient. Should a restraint be applied for a longer time, this may result in overrunning the three-day period for assessment, as established in Article 18 (6) of the Mental Health Protection Act. Neither in the individual nor in the collective medical documentation is there any mention of warning patient about the potential use of a coercive measure. This raises doubt as to whether the obligation to warn the patient pursuant to Article 18 (2) and (4) of the Mental Health Protection Act is properly exercised.

According to the explanations of the medical staff working in the visited ward, holding a patient is most frequently accompanied with forcible administering of medication. However, during the visit it was found that cases of patient holding and the use of emergency or scheduled administering of medication without the patient's consent are not recorded in the medical documentation. Therefore, the legitimacy of using these two forms of direct coercion is assessed by the deputy Medical Director of the hospital as required.

Neuropsychiatric Hospital in Lublin was another psychiatric hospital visited in 2008 by the NPM. Forensic psychiatry ward is a part of

this hospital. As for the requirements laid down by the Ordinance for the facilities with reinforced security level, those fulfilled include installation of the devices in windows to prevent unauthorized exit from the facility (anti-burglary windows P4), closed-circuit television (thought without the night-vision cameras) and a direct access to the fenced recreational area. The requirement concerning a possibility of dividing wards into smaller units of 10 and 20 beds should also be considered fulfilled. In the ward the electronic alarm system goes on not only when the door and window is opened (as required by the Ordinance) but also when the buttons on the corridor walls are pressed - this seems to be a good solution. Building entrances are guarded by the employees of an outsourced security firm (who sometimes help the facility staff with the application of the direct coercion). However, the requirement to employ a number of ward staff at least two times higher than the facility capacity as regards the number of patients has not been fulfilled. Although the ward capacity is 22 places, while the staff number is about 60 employees (including the security staff), in the same ward there are also patients who were referred to the facility with a basic security level (29 places).

Pursuant to the Ordinance of 10 August 2004, in a ward with reinforced security level the rules of procedure laid down in annex no 6 to the Ordinance should be applied. Meanwhile, in the forensic psychiatry ward of the Hospital in Lublin the rules of procedure imposed by the regulation of the hospital administrator No 33/2007 of 30 March 2007 are in force. These rules of procedure are very restrictive and seriously interfering with the patients' life and provide for bans that are not provided for in the Mental Health Protection Act and Ordinance of 10 August 2004 and in some cases prohibit the activities allowed by the overriding regulations. For example, the rules of procedure impose control of telephone calls (contrary to the Ordinance, which guarantees the perpetrator the right to uncontrolled telephone calls), detailed list of objects that a patient is allowed to keep in the ward (and a requirement for a permit to be obtained in order to keep any objects not listed), ban on the possession of objects that are not dangerous (for example compute, soup, cosmetics containing alcohol, cameras); in general, the rules prohibit visits of persons under 15 years of age, handing over or receiving any correspondence, written information and other carrier media to the patients by the visitors as well as using mobile phones and cameras during the visits. According to the rules of procedure, correspondence and packages are subject to control, whereas "products

difficult to control” are not accepted, and the groceries are “rationed out to the patient in daily portions”, while the rest is stored in the ward. On the other hand, outdated or rotten articles “are destroyed in the patient’s presence”. It should be noted that the rules of procedure often leave the decision in the discretion of the staff and some of concepts are vague. Furthermore, the rules of procedure inform patients that their unauthorized exit (as well as aid in or incitement to such actions) is a criminal offence according to the law – which is not true. According to the Commissioner’s representatives, the major part of the rules of procedure is not in conformity with the law, but the fact that rules of procedure differ from the legal regulation provided for in the Ordinance of 10 August 2004 are applied is a law violation in itself.

The method rehabilitation in the forensic psychiatry ward does not seem to be entirely compliant with the Ordinance of the Minister of Health of 20 October 1995 on the organization of rehabilitation in hospitals and rewarding the participants of such rehabilitation (Dz. U. of 1995, No 127, item 614). Pursuant to the Ordinance, the rehabilitation should take place 5 times a week for at least 4 hours a day in a therapy lab in line with individual rehabilitation programmes prepared in consultation with the patient. According to the staff, rehabilitation plans are not consulted with the patients individually. The therapy schedule does not show that patients spend 4 hours a day in the laboratory and some of the rehabilitation activities consist of “tiding up beds and wardrobe” or “cleaning work in the ward and outside”. However, it should be noted that the ward is very well equipped and has a wide variety of activities to offer (gym, relaxation activities, bibliotherapy, aerobics).

Restraint is in principle used for a short period of time, apart from one patient who is restrained almost permanently (alternatively with isolation). The reasons for using restraint include, for example, “psychotic agitation” but in some cases the reasons for restraining the patient were not recorded in the medical report. This practice is in contradiction with Article 18 (1) in conjunction with (3) of the Mental Health Protection Act of 19 August 1994 (Dz. U. of 1994, No 111, item 535, as amended), which allows for restraining patients only in the cases of an attempt to commit suicide or murder, an attempt on one’s own or someone else’s health or life, a threat to the public safety or violent damaging or devastating objects in one’s surroundings. The staff of forensic psychiatry ward invokes one of the commentary on the Act of 1997, which actually mentions agitation as a reason for restrain-

ing or isolating a patient. However, it should be stressed that since this commentary has been made the Act has been amended ten times, and more recent commentaries do not specify agitation as a reason sufficient to apply direct coercion. It is worth noting that the rules for applying direct coercion in the forensic psychiatry ward has been basically consistent with the Mental Health Protection Act and the Ordinance, however, practice and convictions expressed by the staff stray off the solutions recommended in the rules of procedure.

Furthermore, restrained patients are not always temporarily released, even though under Article 14 (2) the staff has an obligation to release the patient for a short period of time at least once every 4 hours. Neither the documentation mentions warning of the patient about the use of a direct coercion. According to the staff, only in some cases the patients are warned about the restraint or isolation. Furthermore, a number the seals in the restraint (isolation) reports are illegible and signatures of persons who commissioned coercion's application are missing in some cases. The staff claims that coercion ordered by nurses is illegal, therefore, coercion is always ordered by the physician. However, there is only one physician on call in the whole hospital complex after 3:35 p.m., hence, it is doubtful that he/she may order coercive measures in all the dangerous situations. It should be noted that the Mental Health Protection Act allows direct coercion to be ordered by a nurse who has to notify immediately the medical officer about the fact. This means that this is the nurse who gives the reasons for coercion and signs as the ordering person in a case of restraint or isolation order.

Another alarming practice is that isolation is not used as a separate coercive measure for the patient who is almost permanently restrained with straps or belts. It was found during the visit that it is the nurses who decide about releasing the patient from restraint and replacing it with isolation – this is not, however, treated as a change of a direct coercive measure and supervised by the physician. The nurses only put down code “12” in the restraint or isolation report, without giving any reasons for isolation.

Following the visit to the Neuropsychiatric Hospital in Lublin, it was decided to undertake some indispensable measures with regard to organizational aspects, medical staff training (and the security staff as well, if they are involved in using coercion), and supervision, in order to restore the practice of using the coercion in accordance with the law,

and to eliminate the irregularities found. Also, the rules of procedure of the forensic psychiatry ward, as being against the law, should be replaced with the rules of procedure annexed to the ordinance of 10 August 2004. Besides, the possibility to deliver mail to patients directly should be taken into account (i.e. by a postman, and not through the secretariat). Also, isolation wards should be adjusted to the requirements of Article 8 of the ordinance of 23 August 1995 and furnished with safe windows in accordance with Annex 1 section X (5) of the ordinance of the Minister of Health of 10 November 2006 laying down requirements to the rooms and equipment in health care centres in sanitary and professional terms (Dz. U. of 2006, No 213, item 1568, as amended) - i.e. windows glazed with safe glass from the inside and secured against opening by patients.

The Specialist Psychiatric Hospital in Jarosław was another institution visited in 2008. It is situated on a vast area in a cluster of buildings. Some of them need renovation badly, while others were undergoing renovations on the day the visit took place. In accordance with Annex 1 item 20 and Annex 2 item 7 of the ordinance of the Minister of Health of 10 August 2004 laying down the list of psychiatric and rehabilitation facilities where security measures are to be applied, as well as on the composition, appointment procedure and tasks of psychiatric commission for security measures (Dz. U. No 179, item 1854, as amended), the hospital in Jarosław is mentioned as a centre that can accommodate 20 patients referred there for treatment on the grounds of criminal court decision to use psychiatric treatment as basic security measure and 60 patients referred to the hospital on the basis of the criminal court decision to use psychiatric treatment in enhanced security conditions.

It was found that the perpetrators, who were to be placed in psychiatric facilities under basic security conditions are kept in general wards and their number exceeds 20. On the other hand, the perpetrators who were to be placed in a psychiatric facility with reinforced security stay in a separate ward or in a separate building. The building where the ward is situated meets the requirements laid down in the ordinance on the list of psychiatric and rehabilitation facilities (...). The doors and windows are equipped with devices preventing unauthorized exit, and any attempt at an unauthorized opening triggers an alarm. There is also a direct access to the recreational area and there is a possibility to divide wards into smaller units. The building is also equipped with the closed-circuit television. However, there are doubts as to whether

all the staff are able to use it properly. It should be also stressed that there are no night-vision cameras installed and only illuminated corridors can be monitored at night. There are also reservations as to the supervision of patients. Pursuant to the ordinance, the staff should outnumber the ward capacity as regards the number of patients at least twice, whereas, in the forensic psychiatry ward the staff is less numerous than the perpetrators. During the visit, the corridor which accommodated 44 patients was guarded by 1–3 staff members.

During the visit it was found that the patients were not registered for temporal stay within the 24 hours since their admittance, and that there was no database of those persons, whether in the form of a paper register or in the computer system. The above-mentioned practice is contrary to Article 10 (2) and Article 13 of the Act of 10 April 1974 on Population Census and ID Cards (Dz. U. of 2006, No 139 item 993, as amended). Furthermore, the ward staff use direct coercive measures in the forensic psychiatry ward, whereas in the other wards an intervention team is called to each patient. According to the general psychiatric ward staff, they resort to verbal persuasion only, until the intervention team arrives. As the hospital covers a vast area, it seems necessary to deliver staff training courses on the use of direct coercive measures, because the existing conditions do not guarantee safety to the patients and staff members.

In addition, the analysis of the relevant collective documentation and selected individual patients' files for the use of direct coercive measures shows the following irregularities: in both visited wards patients happened to be restrained in the circumstances not provided for in the Mental Health Protection Act. It should be stressed that pursuant to Article 18 (1) and (3) of the Act the restraint is permitted only when a patient attempts to commit suicide or murder, or makes an attempt on his/her or someone else's health or life, or poses a threat to the (public) safety or in a violent way damages the objects in his/her surroundings. However, holding a patient and compulsorily administering medication is permitted when the patient seriously disturbs or hinders the ward operation. Hence, restraining of the patients who "behave incorrectly", "take other patients' belongings", "steal things from others", "are agitated, anxious", "walk naked along the corridor", "make escape attempts" and the fact that "other patients threaten the said patient with assault" should be considered serious infringement of the principles set in the above mentioned regulations – unless it is a result of very laconic records in the medical documentation – evident-

ly a standard practice in the visited ward. There is record of the patient being warned about the potential use of the coercive measure neither the individual nor collective medical documentation. This raises doubt as to whether the obligation to warn the patient, pursuant to Article 18 (2) and (4) of the Mental Health Protection Act, is correctly exercised. Moreover, the cases of holding a patient and forcibly administering medication are not considered direct coercive measures in the visited ward. According to the explanations of the ward medical staff, a patient is held most frequently when medication is forcible administered. However, during the visit, it was found that the cases of patients held and emergency or scheduled treatment used, i.e. medication administered, without the patient's consent, are not recorded in the medical documentation. Therefore, the legitimacy of these two forms of direct coercion is not subject to the obligatory assessment procedure by the vice medical director of the hospital. There are doubts as to the manner the medical report on the use of restraint or isolation is filled in. According to the medical report records the patients are very frequently not released for a short period of time when a coercive measure is applied (even when it takes many hours), which is inconsistent with Article 14 of the ordinance on the Use of Direct Coercion, pursuant to which the nurse on duty ensures that the patient is released for a short period of time during the application of the coercive measure so that the patient can change his/her position or satisfy their physiological and sanitary needs, at least every 4 hours.

The visit under the National Preventive Mechanism was also paid to Eugeniusz Wilczkowski Voivodeship Autonomous Hospital in Gostynin. In accordance with Annex 1 item 17 of the ordinance of the Minister of Health of 10 August 2004 laying down the list of psychiatric and rehabilitation facilities where security measures are to be applied, as well as on the composition, appointment procedure and tasks of psychiatric commission for security measures (Dz. U. No 179, item 1854, as amended), the hospital is mentioned as a centre that can accommodate 30 patients admitted to the hospital on the grounds of criminal court decision to use psychiatric treatment as basic security measure. The collected data show that between 3 and 5 persons, who have been referred for psychiatric treatment by the court as a security measure, usually await to be admitted to the hospital. Pursuant to the ordinance of the Minister of Health of 20 April 2005 on the detailed rules of referring, admitting, transferring, releasing and holding minors in public health care centres, the hospital is included in the list

of centres intended for the treatment of minors who are referred by the family court to a centre with reinforced security. However, the hospital does not run such a ward. The analysis of the collective documentation and selected individual patients' files leads to the conclusion that the coercive measures used in the visited psychiatric ward include holding a patient, forcible administering of medication and restraint with straps (in the bed, in the ward). Isolation is not used as an appropriate room is not available. The patient is restrained under the nurse supervision so as to guarantee safety of the restrained patient as well as that of other patients. It should be stressed that this coercive measure is used sparingly and only in compliance with the law. In the ward, the proper practice is used with regard to the coercion procedures also in the case when restraint is used at the patient's request. Moreover, the ward staff are trained with regard to the use of direct coercion. However, what raises doubts in the visited ward is the practice of notifying the vice Medical Director, who is authorised to assess the legitimacy of the use of restraint, only after the measure has been used towards a particular patient. In the case of applying restraint for a longer time, this may result in overrunning the three-day period for assessment, set forth in Article 18 (6) of the Mental Health Protection Act. As regards the medical restraint or isolation records, it was found that the nurse signature was missing in the relevant spaces of observation tables, and the stamp of the physician prescribing the restraint was sometimes missing too.

However, the hospital generally seems to be a patient-friendly institution. The friendly attitude of the medical staff towards the patients and their problems is visible. The head of the visited psychiatric ward showed thorough knowledge of the regulations concerning mental health protection. However, the rehabilitation system requires adjustments when it comes to rewarding participants attending therapy classes. Also, compliance with the law as regards the obligation to register the patients should be reinstated both in respect of the patients and hospital administrative staff.

In 2008, the Commissioner's representatives paid a visit to Voivodeship Psychiatric Hospital in Olsztyn. In accordance with Annex 1 item 29 of the ordinance of the Minister of Health of 10 August 2004 laying down the list of psychiatric and rehabilitation facilities where security measures are to be applied as well as on the composition, appointment procedure and tasks of psychiatric commission for security measures (Dz. U. No 179, item 1854, as amended), the hospital in Olsztyn is men-

tioned as a hospital that can accommodate 12 patients referred there for treatment on the grounds of criminal court decision to use psychiatric treatment as basic security measure. On the visit day, there were 10 patients who referred by the court for psychiatric treatment as a security measure. It was found that in one case the period of 6 months for submitting the opinion on the patient health to the court was exceeded. During the visit it was found that patients were not registered for temporal stay within 24 hours since their admittance, and that there was no database of those persons, whether in the form of a paper register or in the computer system. The above-mentioned practice is contrary to Article 10 (2) and Article 13 of the Act of 10 April 1974 on Population Census and ID Cards (Dz. U. of 2006, No 139, item 993, as amended). The patients' living conditions in the visited ward are very poor. This is certainly not due to the lack of ward staff's good will but to the fact that the ward is overcrowded with patients (60 people) as compared with the available space and the number of staff employed. During the visit, the patients were anxious and the staff hardly managed to control them. Therefore, frequent use of restraint cannot surprise. However, it should be emphasised that tough living conditions and the shortage of staff (about which – according to the hospital's director – nothing can be done for financial reasons) do not justify the preservation of status quo, because there are serious doubts whether such conditions are conducive to improvement in the patients' mental health. Moreover, indispensable actions should be taken with regard to organisational aspects, the training of medical staff and supervision in order to restore the legal practice of using coercive measures and eliminate the irregularities found in that respect.

During the next visit to Jozef Babinski Specialist Psychiatric Hospital in Łódź, it was found that there were no proper sanitary conditions in the observational ward of the hospital. Apart from shared wards for a large number of patients, the beds were also placed in the corridor and the general room. The latter was also used as an observational room, dining room and television room. Cigarette smoke was an additional nuisance for people in the corridor and observational room. In this hospital section there was no separate room for smokers. The approval procedure for the direct coercive measures was applied incorrectly either. It consisted only in periodical assessment of the security measures records, which were kept in particular wards. However, the records contained only information on the cases of restraint used. However, the records did not contain information on the instances of holding patients and forcibly administering medication. There is no

supervision of the application of such direct coercive measures in consequence. Moreover, the hospital does not keep any database of the persons subject to treatment, neither in the form of a register nor in a computer system, and temporary or permanent patients are not registered. As a reply to the above comments the Deputy Marshal of Łódzkie Voivodeship informed the Office of the Commissioner for Civil Rights Protection that the hospital director was required to eliminate the irregularities found and that he did so.

In the case of the Regional Forensic Psychiatry Centre in Gostynin, pursuant to the ordinance of the Minister of Health of 10 August 2004 laying down the list of psychiatric and rehabilitation facilities where security measures are to be applied, as well as on the composition, appointment procedure and tasks of psychiatric commission for security measures (Dz. U. No 179, item 1854, as amended), the centre can accommodate 64 patients referred for treatment on the grounds of criminal court decision to use psychiatric treatment as a reinforced security measure. On the visit day, there were 48 patients in 4 wards.

During the visit it was found that the centre administration registers patients subject to treatment. However, it should be noted that registration is carried out once a week (on Fridays), whereas patients should be registered within 24 hours from their arrival at the centre pursuant to Article 10 (2) and Article 13 of the Act of 10 April 1974 on Population Census and ID Cards (Dz. U. of 2006, No 139, item 993, as amended.).

The centre is situated in a multi-storey building complex; the buildings meet the majority of requirements laid down in the ordinance of 10 August 2004 with reference to the facilities providing maximum security. The treatment and living conditions of the patients are very good. The analysis of the collective documentation and selected individual patients' files leads to the conclusion that the direct coercive measures used in the visited wards include holding a patient, forcible administering of medication and restraint with straps (in the isolation ward with a bed). Isolation is not used, as the centre has no an appropriate room. The rare use of direct coercive measures is striking in the visited ward as the persuasion is the preferred method of handling dangerous situations.

According to the staff, the patients are warned about the intention to use a direct coercive measure. However, this is not recorded in the collective medical documentation or in the individual patients files. Hence, there are doubts as to whether the obligation to warn the patient, pursuant to Article 18 (2) and (4) of the Mental Health Protection Act of 19 August 2004 is correctly exercised. Therefore,

it should be recorded in the medical documentation that the patient was warned about the intension to use direct coercive measure. The rehabilitation system needs adjustments concerning the preparation of individual rehabilitation programmes in consultation with the patients and rewarding of patients who attend therapy. It is also necessary to meet the requirements laid down in the ordinance laying down the list of psychiatric and rehabilitation facilities where security measures are used (...) with reference to the windows security and door alarm installation as well as the introduction of the closed-circuit television.

In 2008, the Commissioner's representatives paid a visit to the National Forensic Psychiatry Centre for Minors in Garwolin. The centre is designed to enforce court decisions ordering a minor to be held in a psychiatric hospital or another treatment centre, issued on the grounds of the Act on Juvenile Delinquency Proceedings. The centre provides maximum security and can accommodate 40 patients. During the visit, no infringement of the rights, to which the minors staying there were entitled, was found. The patients had good living and treatment conditions. The applicable regulations for admission to and release from the Centre as well as for the use of direct coercive measures provided for by the law are observed. Compliance with law should be restored only as regards the duty to register the patient. The centre does not keep database of the persons subject to treatment, neither in the form of a register nor in a computer system, and the temporary or permanent patients are not registered. During the visit no occurrence that could lead to cruel, inhuman or degrading treatment of minors was identified.

To conclude, the visits carried out in psychiatric hospitals in 2008 under the National Preventive Mechanism indicate that these institutions require systematic supervision. Visits carried out so far revealed the recurrent problem of using direct coercive measures contrary to the applicable regulations. From the point of view of the National Preventive Mechanism, abuse of these measures constitutes a serious problem. Indeed, in some cases, long-term restraint lasting for almost a year and used in a general room, may be considered inhuman or degrading treatment. Moreover, during the visits, the problems found out consisted in that the patients, who were kept in a hospital against their will, were not informed about the reasons for their admittance to the hospital and about their rights. In many institutions the duty to register the patient at his/her admission to the hospital was not observed.

M. Military places of detention

In Poland, there is one Military Custodial Establishment in Ciechanów and 28 military disciplinary custodies - two of them are autonomous short-term detention facilities for the soldiers who perform their compulsory military service. However, since the last compulsory enrolment into military service took place on 4 December 2008, most likely the said places of isolation will be gradually closed down.

In 2008, the Military Custodial Establishment in Ciechanów and two military disciplinary custodies (Warsaw, Rzeszów) were visited under the National Preventive Mechanism.

During the visit in the military disciplinary custody supervised by a garrison mobilisation centre in Rzeszów there were no soldier arrested. The detention house for the soldiers kept in isolation as well as the amenity rooms were fitted with the necessary and mostly new equipment, pursuant to the ordinance of the Minister of National Defence of 25 October 2002 laying down the conditions for establishing military disciplinary custodies and requirements for the premises in such centres (Dz. U. of 2002, No 183, item 1529). The quarters have been thoroughly renovated and they are in very good condition.

In a military disciplinary custody in Warsaw likewise there was no soldier of compulsory military service detained either. According to the military on duty in the custody the situation has not changed since 2004. However, unlike the Rzeszów custody, that in Warsaw urgently needs renovation. In particular, the heating system and warm water supply for the showers should be fixed. It is also necessary to replace the locks of detention room doors and windows.

The Military Custody in Ciechanów is the only establishment of this type in Poland. In 2008, 89 recruits were detained; 67% of them were sentenced for leaving their quarters without permission and 12% for possessing or taking drugs. The other recruits were mainly sentenced for their refusal to return from vacation or from a pass.

During the visit, there were 5 recruits who served custodial sentence. The living conditions were good. All the recruits serving custodial sentence were interviewed. They had no comments.

In the light of the above, in 2008, the visits carried out under the National Preventive Mechanism in the custodies intended for the compulsory military service recruits, no forbidden forms of treatment of persons placed in such custodies occurred. Apart from bad living conditions noted in one of the visited custodies, nothing that could be qualified as inhuman or degrading treatment of sentenced recruits was identified.

6. The Activity of the Commissioner for Civil Rights Protection with regard to the rights of the persons deprived of their liberty with exclusion of the National Preventive Mechanism

During the first year of the National Preventive Mechanism operation in Poland, the OPCAT was not probably fully implemented, especially the regularity of visits to the places of detention, due to the problems with fund raising. This was also a result of the Commissioner's statutory tasks implementation (done by specialised departments) simultaneously with examination of the citizens' complaints received by the Office of the Commissioner. Therefore, the report also presents the activities of the National Preventive Mechanism departments in broader terms insofar as these activities concern protection of rights of the persons deprived of liberty, in the meaning of Article 4 (2) of the OPCAT.

A. The Criminal Executive Law Department

Due to the issues it is dealing with, the Criminal Executive Law Department undertook a number of actions which fell under the category of measures intended to protect the persons deprived of their liberty and placed in the detention establishments against torture and other cruel, inhuman or degrading treatment.

First of all, in 2008 the Criminal Executive Law Department set about analysing extraordinary incidents which occurred in the Polish penitentiary institutions. The cases such as the death of Claudio Crulica, Romanian citizen, who died of extreme physical exhaustion after he refused food for a long time during his detention on remand in Cracow Remand Centre, proved that the Commissioner learns about dramatic incidents through mass media with considerable delay¹¹. This situation prevented the Commissioner from responding appropriately and promptly to the cases possible violation of civil rights and freedoms. The Commissioner's immediate access to the full information about

¹¹ *Tygodnik Powszechny* of 6 April 2008 "Śmierć po rumuńsku".

extraordinary incidents in the penitentiary institutions across Poland is of key importance also due to the fact that the Commissioner for Civil Rights Protection fulfils the functions of the National Preventive Mechanism.

Therefore, the Commissioner requested¹² the Director General of the Prison Service to notify him regularly via the Central Board of the Prison Service of any unusual cases (such as prison riot, death of a prisoner or someone else; a serious injury caused by a prisoner or Police officer, employee, someone else or a Police dog; suicide of an officer, employee or prisoner; serious breach of safety; rape of a prisoner, bullying of a prisoner; beating of a prisoner resulting in a serious injury; an offence committed by an officer or employee and prosecuted ex officio; a case of at least 20 prisoners suffering from the same disease; a prisoner's suicide attempt) which occurred in penitentiary institutions across Poland. The Director General of the Prison Service started sending such information to the Office of the Commissioner, as of 1 July 2008¹³.

Moreover, in the letter¹⁴ addressed to the Minister of Justice – Director of Public Prosecutions, the Commissioner stated that the shocking death of the Romanian citizen in the custody suite, who died of prolonged hunger strike during detention, should give an impulse to the analysis of the communication system functioning in such unusual cases, not only at the level of a given penitentiary institution, but across the whole country. Lack of interest in the prisoner's hunger strike, which lasted for many months, both of the management of custody suite, and Director General of the Prison Service and the Central Management of the Prison Service proves the poor functioning of the system. The Commissioner presented a number of conclusions resulting from the analysis of information on the investigation procedure carried out by the District Inspectorate of the Prison Service, and also pointed out the activities of penitentiary court. Though the request for approval of medical action to be taken against the prisoner's will pursuant to Article 118 (2) and (3) of the Penal Code was filed in court on 3 January 2008, it was examined only after 6 days. The medical action was undertaken after the court decision had become final. This induces a question that court decisions issued under such procedure should be executable as of the date of their issue. However,

¹² RPO-586099-VII/08 of 24 April 2008.

¹³ Letter of 11 June 2008.

¹⁴ RPO-586099-VII/08 of 11 June 2008.

the Undersecretary of State in the Ministry of Justice did not share¹⁵ the Commissioner's reservations with regard to the functioning of the communication of information on unusual cases at the higher level of penitentiary organizational structures. Analysis of the case of the Romanian prisoner hunger strike, the Minister of Justice found that there was a problem with enforceability of the decisions of penitentiary court issued in accordance with Article 118 of the Executive Penal Code. The Ministry of Justice made a draft act amending the Executive Penal Code and a few other acts; according to the draft act a decision is to be enforced following the court proceedings as soon as it is issued, unless the act provides otherwise or the court withholds the execution of the decision.

The Central Board of the Prison Service set about working on the amendment to the ordinance No 2/04 of the Director General of the Prison Service laying down the detailed rules for management and coordination of penitentiary operation and on the responsibilities of the officers and employees of the penitentiary and therapeutic wards in order to specify the procedures to be applied in the case of prisoners who refuse meals for a long time. The provisions of § 14 (2) of the ordinance of the Minister of Justice laying the detailed rules, scope and procedure of health services to the detained persons by the health care centres for persons deprived of liberty¹⁶ were clarified by additional provisions which imposed on the prison health services an obligation to notify immediately the penitentiary judge in the case of a 10% loss of the body weight recorded by a doctor, on the first day of a prisoner's hunger strike.

Another issue analysed by the Criminal Executive Law Department in 2008, and also during the visits as has mentioned in point 5 of this report in the part devoted to penitentiary institutions – was the use of the closed circuit television in prisons and custody suits. The issue was taken up for examination in connection with the complaints received by the Office of the Commissioner, about the use of the closed circuit television in the cells and other places used by prisoners (not intended for the so-called dangerous prisoners). In the investigation report, the Director General of the Prison Service referred to the provision of Article 77 (1) (k) of the ordinance of the Minister of Justice on the methods of protection for organisational units of the prison service¹⁷

¹⁵ Letter of 18 July 2008.

¹⁶ Ordinance of 31 October 2003 (Dz. U. No 204, item 1985).

¹⁷ Ordinance of 31 October 2003 (Dz. U. of 2003, No 194, item 1902).

as a justification for the use of cameras. In the Commissioner's view, such an interpretation was erroneous. This provision generally specifies the possibility of using closed circuit television as one of the forms of technical security system intended to protect a penitentiary institution. In the Commissioner's opinion, in the light of this provision, the closed circuit television may be installed on the outer walls of buildings or ward corridors in a penitentiary institution. However, interpretation of this provision does not allow to use closed circuit television in the cells. Only the cells for the so-called dangerous prisoners may be an exception.

The statutory power to issue the above-mentioned ordinance, set forth in Article 249 (3) (4) of the Executive Penal Code, which does not mention any possibility of specifying the scope of the closed circuit television application, is also doubtful. The Commissioner addressed a letter¹⁸ to the Director General of the Prison Service, who replied¹⁹ that the case described was an individual incident, although in order to prevent similar incidents in the future, the Central Board of the Prison Service would pay particular attention to this issue when carrying out control. The regulations in this respect should not raise any doubts. Article 81 (2) of the ordinance of the Minister of Justice on the methods of protection for the organisational units of the prison service clearly specifies the purposes for which the closed circuit television is installed.

The reply also stated that it was justified to clarify the statutory power laid down in Article 249 (3) (4) of the Executive Penal Code and to regulate the rules of the CCTV cameras use in the cells, or to introduce an explicit provision in the Executive Penal Code to determine the use of the closed circuit television in penitentiary institutions. The Central Board of the Prison Service will take appropriate action in this respect as soon as an opportunity of amending the Executive Penal Code arises.

In another letter on the use of CCTV cameras in penitentiary institutions, the Commissioner requested²⁰ the Minister of Justice – Director of Public Prosecutions to take legislative initiative, in order to introduce appropriate legal regulations, and ensure that the applicable regulations will be complied with by the Prison Service. The Office of the Commissioner received many complaints about the use of CCTV cameras

¹⁸ RPO-572925-VII/07 of 29 January 2008.

¹⁹ Letter of 13 February 2008.

²⁰ RPO-572925-VII/07 of 30 July 2008.

in penal institutions and custody suits. According to the complaints submitted by the persons deprived of their liberty to the Commissioner, the directors of particular penitentiary institutions interpreted the applicable regulations according to their own needs and relied also on the internal guidelines, which are not the applicable law.

The Office of the Commissioner found that there were penal institutions and custody suits where CCTV cameras were installed in the baths or in the court proceedings rooms. Moreover, with the widening interpretation of the regulations, the CCTV cameras are installed in the cells, television rooms and the rooms for personal checks.

In his letter²¹, the Minister of Justice explained that the CCTV cameras could have been installed in the places and rooms (including baths) and the walking yards accessible to regular prisoners, though there were intended for and should be used only in relation with the temporary detention of “dangerous prisoners”. The Minister stressed that mere installation of CCTV cameras did not imply at all that constant monitoring was carried out, though the prisoners could believe that it was. The directors of particular penitentiary institutions should supervise the use of the said monitoring. The Undersecretary of State shared the Commissioner’s view that there was a need to clarify the rules for the use of the CCTV cameras in penitentiary institutions in an act with a status equivalent to a parliamentary act as well as in the ordinance of the Minister of Justice on the methods of protection for organisational units of the Prison Service²². The places and rooms where monitoring is legally unacceptable should be carefully considered and listed. The Commissioner was assured that appropriate legislative action would still be taken in 2008, at the time of one of the planned amendments to the Executive Penal Code.

The members of the Criminal Executive Law Department analysed the functioning of the prison health service. As the Prison Service has difficulties with fulfilling its statutory obligation and providing the detained persons with appropriate health services, the Commissioner requested²³ the Prime Minister to consider the need for creating an inter-ministerial committee which would examine and assess the quality of work and the needs of the Prison Service. The prison system has an increasing difficulty with recruitment of medical staff because of the low earnings and the nature of work. The medical staff are relatively

²¹ Letter of 25 August 2008.

²² Ordinance of 31 October 2003 (Dz. U. of 2003, No 194, item 1902).

²³ RPO-561484-VII/07 of 24 April 2008.

small and – apart from prison hospitals – they provide medical services to prisoners only during the working hours of the administration departments of penal institutions and custody suits. The emergency ambulance services are rarely provided outside the working hours of prison administration departments and the detained persons are frequently charged with the costs. The prisoners and their families frequently complain about limits concerning referrals for specialist consultations and treatment in public health care centres. This problem is especially striking during the visits conducted by the members of the National Preventive Mechanism, who very often hear negative opinions of the detainees on health care services.

The Secretary of State in the Ministry of Justice informed²⁴ that the issues discussed in the Commissioner's letter were reflected by individual incidents in penitentiary institutions. Some aspects of the organisation of health care for the detainees (private medical practice run in the rooms of a public outpatient clinic, or charging prisoners with the cost of ambulance services) are rare and eliminated by the management of the Prison Service. The Ministry holds the view that there is no point in creating a separate inter-ministerial committee to examine and assess the quality of work and the needs of the prison health service. It is hard to agree with such a view, especially that the visits under the National Preventive Mechanism confirm many irregularities and difficulties in the functioning of prison health service. The problem also translates into cases lost by our country before the European Court of Human Rights in Strasburg (the case *Dzieciak v. Poland*, *Musiak v. Poland*).

The problem of providing inadequate medical care to the detainees is also associated with the issue of procedures used when releasing seriously ill and unconscious convicts, who were granted a break in serving their penalty, from penitentiary institutions, raised in 2008. With reference to a story described in a press article²⁵, the Commissioner requested the Director General of the Prison Service to check whether the rights of the convicts were secured and exercised when they are referred to open hospitals due to their serious condition; in particular, their right to be treated with respect, to have their closest family immediately informed about any threat to their life and health, as well as their right to a dignified death and burial.

The reply did not dissipate doubts about the effectiveness and application of procedures in the case of releasing from penitentiary in-

²⁴ Letter of 13 June 2008.

²⁵ *Rzeczpospolita* of 13-14 September 2008 "Więzień nie żyje, areszt umywa ręce".

stitutions seriously ill and unconscious convicts, who were granted a break in serving their penalty. The reply suggests that when a convict is released from a penitentiary institution and transferred to a hospital, it appears that there is no entity that could secure the convict's rights. The reply did not suggest that any work would be done in order to enforce general regulations which would enforce a rule to notify the family (or close relatives) in such cases. It was only stated that the enforcement of the procedures for notification of the close relatives in the case of sudden deterioration of the convict's health was ordered by the director of the custody suit in Lublin. Still, this is an obligation of the management of all penal institutions and custody suits. Therefore, the Commissioner addressed²⁶ the Secretary of State in the Ministry of Justice to take a stand on the need for regulations which would secure the rights of the convicts moved to the open hospitals due their serious condition, and for clarification of the regulations concerning unusual cases and the rules for examining such cases, as well as for making these rules to be generally applicable in so far as they provide guarantees.

Moreover, in 2008 the Commissioner intervened *ex officio* with regard to the case presented in an article in the on-line edition of *Polska*, a daily published in Lodz, entitled "Prisoners from Łódź Voivodship want to give their blood". In accordance with Annex 1 – part 2.2.2. of the ordinance of the Minister of Health laying down the requirements for blood sampling from the prospective and actual blood donors²⁷, the persons who serve a sentence of deprivation of liberty are temporarily banned from donating their blood during the period of their detention and for a period of 6 months after their release. The analysed regulation may be deemed an infringement of the principle of equality, laid down in Article 32 of the Constitution. Moreover, the Commissioner found that the persons provisionally detained were not mentioned as a group banned from donating blood merely because of their detention in the custody suit. Therefore, the current regulations which refer to the persons serving the sentence of prison as those temporarily banned from donating blood, are obscure. In the light of the above, the Commissioner requested²⁸ the Minister of Health to take legislative initiative in order to amend the ordinance of the Minister of Health laying down the requirements for blood sampling from the prospective and actual blood donors as far as sentence of prison bans a convict from donating blood.

²⁶ RPO-598810-VII/08 of 15 December 2008.

²⁷ Ordinance of 18 April 2005 (Dz. U. No 79, item 691, as amended).

²⁸ RPO-594968-VII/08 of 16 October 2008.

However, the Undersecretary of State in the Ministry of Health did not share²⁹ the Commissioner's view on the need to amend this ordinance. Pursuant to the ordinance, the sentence of the deprivation of liberty is the reason for which prospective blood donors are not eligible during detention period and for a period of 6 months after their release. This requirement is only meant to ensure the safety of blood recipients rather than to discriminate against convicts. In accordance with the guidelines of the Council of Europe, the blood recipients' right to protect their health, in particular – reduction of infection risk to a minimum, should take absolute precedence over all other factors, including other person willingness to donate blood. Disqualification of the persons detained in penal institutions should be deemed justified.

In 2008, the media broadly discussed the problem of treatment and therapy for sex offenders. The provisions of the Act amending the Act – the Penal Code, the Act – the Code of Criminal Procedure, the Act – the Executive Penal Code³⁰ entered into force on 26 September 2005 with an extended scope of dealing with different categories of sex offenders. The amended Article 72 (1) and Article 95a (1) of the Penal Code impose on criminal justice bodies and health care providers the obligation to undertake relevant legal, penal, organisational and treatment/therapy measures with respect to the sex offenders. The Commissioner put addressed the Minister of Health twice – in 2006 and 2007, regarding the requirements for implementation of the above-mentioned provisions. The statutory provisions, which are so important from the point of view of public interest, had been in force for two years now and yet they had not been implemented in practice. Indeed, in-patient and outpatient facilities were not established for that category of perpetrators. Therefore, the Commissioner requested³¹ the Minister of Health to take stand on this issue and to specify what measures had been undertaken and when the measures would be completed by the Ministry of Health regarding the implementation of regulations in this respect.

The Director of the Public Health Department in the Ministry of Health explained³² that a Team was created to develop a strategy for systemic solutions as regards persons with sexual preference disorders to resolve the problems mentioned by the Commissioner, in particular to facilitate the implementation of court decisions imposing an obliga-

²⁹ Letter of 17 December 2008.

³⁰ Act of 27 July 2005 (Dz. U. No 163, item 1363).

³¹ RPO-230517-VII/04 of 11 February 2008.

³² Letter of 24 July 2008.

tion on the convict to undergo treatment. The Team members believe that it is necessary to amend the provisions of the Penal Code and the Executive Penal Code in respect of the procedures regarding sex offenders, as well as to develop therapeutic programmes and to create an organisational structure by establishing an appropriate number of dedicated centres for sexual disorders treatment. On the basis of the Team reports the Public Health Department in the Ministry of Health elaborated draft acts in this respect. The proposals of amendments for the relevant regulations will be presented to the Minister of Justice.

Apart from the above mentioned topics the issue of transporting the detained persons was also addressed. The Commissioner was addressed by a citizen who complained that his rights had been infringed because of transport in special vehicles of the Prison Service. The Commissioner examined the claim and found that any specific regulation on the use of such vehicles did not exist. The statutory power of the Minister of Interior and Administration and other ministers to issue an ordinance governing the technical requirements for special vehicles and vehicles used for special purposes of various units, including Prison Service vehicles, is laid down in Article 66 (7) of the Act – Road Traffic Law³³. The Act provided a basis for the ordinance of the Ministers of Interior and Administration, National Defence, Finance and Justice, of 24 November 2004, on the technical requirements for special vehicles and vehicles used for special purposes of the Police, the Internal Security Agency, the Intelligence Agency, the Border Control Services, the Tax Inspectorate, the Customs, the Prison Service and the Fire Brigade (the ordinance has been repealed and is not in force any more).

As of 1 October 2006, delegation of legislative powers to issue the relevant ordinance was changed, but the mentioned regulation was applicable for a year since the act had entered into force pursuant to a relevant provision of the amending act. As of 2 October 2007 the above-mentioned ordinance ceased to be applicable in accordance with the law. At present it is impossible to evaluate technical requirements that a special vehicle or vehicle used for special purposes has to meet. Therefore, the Commissioner requested³⁴ the Minister of Interior and Administration to issue an ordinance in order to execute statutory power under Article 66 (7) of the Act – Road Traffic Law.

The Minister of Interior and Administration informed³⁵ that work

³³ Act of 20 June 1997 (Dz. U. z 2005 r. No 108, item 908, as amended).

³⁴ RPO-586245-VII/08 of 7 October 2008.

³⁵ Letter of 30 October 2008.

was under way in the General Headquarters of Police on a draft ordinance of the Ministers of Interior and Administration, National Defence, Finance and Justice on the technical requirements for special vehicles and vehicles used for special purposes by the Police, Internal Security Agency, Intelligence Agency, Military Counter-Intelligence Services, Central Anticorruption Bureau, Border Control Services, Tax Inspectorate, Customs, Prison Service and Fire Brigade. The Minister also stressed that it was necessary to prepare a new draft Act which would exercise the statutory power laid down in Article 66 (7) of the Act – Road Traffic Law in connection with the comments submitted during the intra-Ministry consultations.

Last year the Constitutional Tribunal passed the judgement concerning overpopulation of Polish penitentiary institutions, that was especially important - also from the perspective of the National Preventive Mechanism activities. The Commissioner for Civil Rights Protection declared the willingness to participate in the proceedings (on 7 September 2007) concerning constitutional complaint filed by Mr Jacek G. about the overpopulation of penal institutions and custody suits³⁶.

The Tribunal adjudged that Article 248 (1) of the Act – the Executive Penal Code³⁷ was not consistent with Article 40 (4) and Article 2 of the Constitution of the Republic of Poland as well as with Article 31 (3) of the Constitution. The provisions of Article 248 (1) of the Act of 6 June 1997 – the Executive Penal Code will cease to be applicable after the period of 18 months since the date of judgement publication in Polish Journal of Laws (*Dziennik Ustaw*)³⁸. The judgment was published in *Dziennik Ustaw* of 5 June 2008 (No 96, item 620). Therefore, Article 248 will cease to be applicable on 5 December 2009. The Tribunal emphasised that the date of entry into force of the judgement was postponed due to the actual situation of Polish penitentiary institutions, i.e. the state of permanent overpopulation. Should Article 248 (1) of the Executive Penal Code cease to be applicable forthwith, the present pathologies would have become even more pronounced as in the present situation the penal institutions are full up and many convicted persons cannot serve their sentences. According to the information provided by the Tribunal, the problem concerns 40 thousand convicted persons (other sources mention 60 thousand). The situation in which legally valid judgements are not executed undermines the

³⁶ Information on the activity of the Commissioner for Civil Rights Protection in 2007, p.425.

³⁷ Act of 6 June 1997 (Dz. U. of 2005 No 90, item 557, as amended).

³⁸ Judgement of 26 May 2008 (file No. SK 25/07).

State authority. The Constitutional Tribunal believes that the content of the challenged Article 248 (1) of Executive Penal Code and its interpretation result in its non-compliance with Article 40 and Article 41 (4) of the Constitution. Overpopulation in prisons resulting from the application of the challenged Article of the Executive Penal Code may be the reason for inhuman treatment of prisoners. Indeed, it is hardly imaginable that with less than 3 m² of cell space per person (one of the lowest standards in Europe) may be referred as humane treatment. Moreover, the request for humane treatment also includes the requirement of corrective and supportive measures which prepare for the life outside prison and prevent a relapse into crime, and thus allow to fulfil the goal of the punishment.

In 2008 the Constitutional Tribunal pronounced another important judgement, which was important in the context of persons detained. The judgment concerned the issue of provisional detention of pregnant women. The Commissioner addressed the Tribunal in this respect on 24 April 2007³⁹. The Constitutional Tribunal ruled⁴⁰ as follows: Article 259 (1) of the Act – the Code of Criminal Procedure⁴¹ is consistent with Article 18 and Article 68 (3) of the Constitution; Article 260 of the Act – the Code of Criminal Procedure is consistent with Article 18 and Article 68 (3) of the Constitution, Article 33 (2) (2) of the ordinance of the Minister of Justice on the administrative procedures connected with provisional detention and the execution of penalties and coercive measures resulting in the deprivation of liberty and the documentation of these procedures⁴² is consistent with Article 249 (3) (7) of the Act – the Executive Penal Code⁴³ and with Article 92 (1) of the Constitution, however is not consistent with Article 213 of the Act – the Executive Penal Code⁴⁴ and Article 92 (1) of the Constitution and with Article 213 of the Act – the Executive Penal Code.

Other issues, that the Criminal Executive Law Department also addresses, cover the procedures of dealing with juvenile delinquents. Information presented at the 23rd Polish Conference of Children's and Youth Psychiatrists on 28-30 March 2008 shows that a forensic psychiatry system for minors has not been created in Poland yet. Suspension of activities of a special committee supervised by the Director of

³⁹ Information on the activity of the Commissioner for Civil Rights Protection in 2007, p.420.

⁴⁰ Judgement of 22 May 2008 (file No. K 24/07).

⁴¹ Act of 6 June 1997 (Dz. U. No 89, item 555, as amended).

⁴² Ordinance of 13 January 2004 (Dz. U. No 15, item 142).

⁴³ Act of 6 June 1997 (Dz. U. No 90, item 557, as amended).

⁴⁴ Act of 6 June 1997 (Dz. U. No 90, item 557, as amended).

the Institute of Psychiatry and Neurology in Warsaw adversely affected the quality of forensic psychiatry opinions in the cases of minors that the committee provided in the previous years. In the present the possibilities offered by better cooperation between juvenile judges and expert psychiatrists who carry out forensic psychiatric observation with regard to referring minors to facilities providing appropriate security conditions are not relied upon sufficiently. The Commissioner requested⁴⁵ the Minister of Justice and the Minister of Health to enhance cooperation between the ministries concerned in order to improve the quality of procedures for referring minors to public health care centres for psychiatric observation or treatment and to complete the forensic psychiatry system for minors.

The Vice Director of the Department of Decision Implementation and Probation in the Ministry of Justice informed⁴⁶ that it was necessary to amend the ordinance of the Minister of Health on the detailed rules for referring, admitting, transferring, releasing and holding minors in public health care centres⁴⁷ by creating a psychiatric committee for minors which would have to issue opinions on referring to a centre within 14 days from the receipt of an application. This would allow the family court to effective and appropriate selection of a treatment facility for a minor way.

The Minister of Health informed that the Ministry of Health was developing a National Programme for Mental Health Protection. The programme would be based on the amended provisions of the Mental Health Protection Act⁴⁸. The draft of the amended Act was submitted to the Marshal of the Sejm on 6 November 2007 for discussion in the Sejm.

B. The Public Administration Issues, Healthcare and Protection of Aliens Department

Simultaneously with the above mentioned general activities carried out under the National Preventive Mechanism, the cases of foreigners placed in detention facilities are handled by the Public Administration Issues, Healthcare and Protection of Aliens Department of the Commissioner's Office as complaints and letters are being received from the parties interested on standard or case-by-case basis. For obvious

⁴⁵ RPO-587722-VII/08 of 29 April 2008.

⁴⁶ Letter of 14 May 2008.

⁴⁷ Ordinance of 20 April 2005 (Dz. U. No 79, item 692).

⁴⁸ Act of 19 August 1994 (Dz. U. No 111, item 535, as amended)

reasons, such as language barrier, ignorance of Polish law including the right to receive assistance from the Commissioner for Civil Rights Protection with respect to the protection of rights, the number of complaints directly submitted by the foreigners with the Commissioner's Office is considerably low. However, this does not show the real scale of the problem. The majority of the complaints addressed to the Commissioner by the foreigners detained in the Deportation Custody facilities or in the guarded facilities concern the expulsion proceedings. Some complaints also concern legalisation of foreigner's stay in the territory of Poland.

It should be stressed that the Commissioner for Civil Rights Protection examines cases not only associated with complaints received from persons directly interested or aggrieved. The Commissioner may also undertake appropriate actions on his own initiative after information about a possible violation of certain rights and freedoms is received. Therefore, media reports are an important source of information in this respect, that requires the Commissioner to intervene in an individual case.

Actions of the Vietnamese security services targeted against the Vietnamese citizens in Polish detention facilities were one of the cases that the Commissioner took up based specifically on media information. In his letter addressed to the Minister of Interior and Administration, the Commissioner expressed his concern regarding the content of press reports which suggested that the Vietnamese security service officers interviewed Vietnamese citizens in Poland based of the agreement on mutual handing over of the citizens concluded in 2004 between the Republic of Poland and the Republic of Vietnam. According to the media reports, the interviews were to confirm the identity and were also intended to provide assistance for security authorities in investigating the political and opposition activity of the interviewed persons. The authors of the publication also reported that the interviewed persons included foreigners in deportation custody and guarded facilities who applied for refugee status. In his letter the Commissioner requested a stand to be taken regarding the presented case, especially information about the cases in which the authorities reporting to the Ministry of Interior and Administration allowed the Vietnamese citizens to be interviewed by the Vietnamese security officers.

The Undersecretary of State at the Ministry of Interior and Administration replied that actions described in the request concerned operations had been carried out during the expulsion proceedings and had

been intended to confirm personal data of the foreigner to be expelled and to issue the travel document. He also mentioned that any cases of foreigners intimidation during interviews carried out by the Border Traffic Control Officers of the Vietnamese Ministry of Public Security were not heard of. Arrangement of interviews, especially location and permanent monitoring of the interview rooms as well as the presence of Polish Border Guards officers and interpreter prevented such situations. Besides, none of the interviewed foreigners made a complaint, even oral, about the course and content of the interviews. It also has been assured that the persons who are subject to refugee status proceedings are not interviewed.

When the Commissioner familiarised himself with the reply, he requested the Ministry of Interior and Administration to explain the issue again. According to information available to the Commissioner the Vietnamese security officers interviewed at least a few Vietnamese citizens subject to refugee procedure, the interviews happened to be carried out after the procedure has been closed.

The Undersecretary of State at the Ministry of Interior and Administration confirmed this information in his reply. At the same time the Commissioner was assured that Vietnamese officers had not access to any information or documents that would reveal that persons interviewed had ever applied for the refugee status. Furthermore, the Undersecretary of State declared that measures would be undertaken to prevent Vietnamese security officers from interviewing Vietnamese citizens awaiting a decision regarding their application for refugee status for humanitarian reasons and to guarantee safety to persons applying for refugee status. Having received these explanations, the Commissioner made a decision to end the investigation procedure regarding the matter in question.

In addition to the issues mentioned above, the Public Administration Issues, Healthcare and Protection of Aliens Department also receives complaints from the persons detained without their consent in psychiatric establishments, regional forensic psychiatry facilities or social care facilities with psychiatric profile as well as in detoxication treatment facilities. These are persons with psychiatric disorders who reside in specified facilities pursuant to the provisions of the Act on protection of mental health, and who have been placed in a hospital by way of the court decision or without such decision in emergency situation. This group also includes patients who were admitted to a hospital with their consent and then withdrew the consent. Another group is

comprised of persons who committed a criminal offence and who are detained in the specified facilities following the protective measure adjudicated by a penal court. In the secure facilities there are also persons who undergo addiction treatment pursuant to the court decision and persons under psychiatric observation. Occasionally, also families or friends of the persons detained in the secure facilities apply to the Commissioner.

Examples of complaints received by the Commissioner's Office in 2008 include the following: total ban in forensic psychiatry wards, a ban on the use of nicotine gums and patches, a limited access to electric kettle, a ban on walks (for those interned), impediments to the use of passes, hindered contacts with family, failure to apply necessary rehabilitation, contentious treatment of patients by the personnel, and poor living conditions. In one case the patient family claimed that the hospital attempted in cooperation with a self-government body to convince a patient to an unfavourable management of his property rights.

The patients often gainsay their detention in such institutions. In such a case the Commissioner examines the legal basis of a person's detention in an institution and requests its authorities to take a stand on the objections. The complaints are also taken into consideration during the visits.

One of the problems noticed concerns the issue of passes for the interned persons as such passes cannot be issued to them in the present circumstances. This matter is not referred to in current regulations, whereas according to the jurisdiction neither the provisions regarding prisoners are to be applied in this respect nor the provisions applied to the rest of patients in psychiatric institutions. This leads to dramatic situations when an interned person cannot, for example, visit seriously ill relatives, or participate in family funerals. A general intervention is being considered in this respect. Another problem consists in that the criminal offenders have to wait long to be placed in psychiatric institutions - they remain for many months at large and pose a threat to others, or they are detained in the custody suits as persons provisionally detained. This matter has been mentioned by the Criminal Executive Law Department in the general intervention addressed to the Minister of Health, to which no response has been received so far. The Commissioner also intervened with the Ministry of Health to gainsay restriction imposed by the Polish National Health Fund in respect of the pass period length for persons remaining in 24-hour psychiatric wards, but the Minister did not share the Commissioner's concerns.

The Commissioner has also observed that secure facilities fail to apply appropriate procedures when a request to be discharged or a withdrawal of the consent is submitted – patients’ requests are at the most recorded in medical reports (“a routine request to be discharged from the ward”). The staff often do not know that in such instances the court should be notified (of a withdrawal of consent) or the patient should be informed about his/her entitlement to apply to the court for a discharge order.

However, it should be emphasised that the Commissioner does not examine complaints concerning methods of treatment and he can refer the applicant to appropriate authorities which deal with such issues.

7. Cooperation of the National Preventive Mechanism with other institutions

A. Subcommittee on Prevention of Torture (SPT)

The Subcommittee on Prevention of Torture is a body which collaborates with national preventive mechanisms on development of a system of regular visits to detention places in order to prevent torture and other forms of cruel, inhuman or degrading treatment or punishment. This is a new body of the United Nations established on 18 December 2006. Thus, it was established four years after acceptance of the OPCAT by the General Assembly of the United Nations. It is responsible not only for visiting of detention places. It also serves a function of an advisory body to States Parties and national preventive mechanisms appointed by them, and integrates all existing mechanisms. Both SPT and national preventive mechanisms are designed to conduct a constructive dialog with and to submit recommendations to the authorities of individual countries in order to prevent torture and other prohibited forms of treatment of the detained persons.

The Subcommittee on Prevention of Torture has not yet been visiting places of detention in Poland. Since 2007, its experts carried out visits in Sweden, Benin, Mexico, Mauritius and Maldives. In 2009, the SPT planned visits in Paraguay, Honduras, Colombia and Estonia.

Currently, one of the members is a representative from Poland — professor Zbigniew Lasocik. However, members of the Subcommittee on Prevention of Torture are independent experts and do not commit themselves to the matters of the countries they come from.

In 2008, the Commissioner for Civil Rights Protection acting as the NPM did not keep touch with the Subcommittee. As late as towards the end of 2008, the Commissioner addressed the SPT through the High Commissioner for Human Rights in connection with the problem of raising funds for the activities of the National Preventive Mechanism in 2009. Therefore, cooperation with the Subcommittee is expected to develop. However, it must be borne in mind that the Mechanism is entitled to keep confidential communication with the Subcommittee, whenever necessary.

B. Association for the Prevention of Torture (APT)

The Association for the Prevention of Torture is an international non-governmental organisation which has been operational since 1977, and is currently responsible for supervision of the activities of national preventive mechanisms in individual States Parties to the OPCAT. Jean-Jacques Gautier is believed to be the founder of the APT. He established the Swiss Committee Against Torture (CSCT) and later transformed it into the Association for the Prevention of Torture (APT)⁴⁹.

The APT is engaged in a campaign for ratification of the Protocol and its proper implementation. On its website (www.apr.ch) the Association disseminates a number of publications on the operation principles of national preventive mechanisms and on the method of conducting preventive visits; this is a valuable source of information for the Polish National Preventive Mechanism.

In 2008, while performing the tasks of the National Preventive Mechanism in Poland, the Commissioner for Civil Rights Protection kept in touch with the APT members. He kept them informed about the establishing process and activities of the NPM in Poland. At the meeting with the APT members in Geneva towards the end of 2008, the Commissioner also mentioned the difficulties in fund raising for the activities of the Mechanism in Poland.

C. Non-governmental organisations

As the Commissioner is responsible for the execution of tasks under the National Preventive Mechanism, once every 2 to 3 months he meets with the representatives of the Association for the Implementation of OPCAT. This is the name given to an initiative group created in the Department of Social Prevention and Resocialization of the University of Warsaw on 26 October 2007. The group members represent academic environment and non-governmental organisations which act for the benefit of human rights and their protection. Key humanitarian and protection organisations have been invited to cooperate, including: Amnesty International in Poland, Helsinki Foundation for Human Rights, Stefan Batory Foundation and Penitentiary Association "Patronat". In 2008, the Commissioner held regular meetings with the representatives of the Association and discussed issues related to the first year of the functioning of the Mechanism in Poland. During the meetings information about the problems faced by penitentiary facilities in Po-

⁴⁹ www.apr.ch

land, as well as by other places of detention was exchanged. Interview questionnaires for the detained persons elaborated for the purpose of the National Preventive Mechanism have been jointly discussed. At the same time the Coalition members submitted recommendations to the Commissioner with regard to proper implementation of the OPCAT and analysed the relevant problems. On the other hand, they provided support to the Commissioner for Civil Rights Protection – for example in his efforts to raise funds for the activities of the NPM in 2009. The Coalition sent a letter to the Secretariat of the European Committee for the Prevention of Torture regarding this matter.

The aforementioned cooperation between the National Preventive Mechanism and non-governmental organisations is of great value, it encourages a discussion about the problems identified in the functioning of detention places in Poland and an exchange of views in this respect. The organisation representatives who meet with members of the NPM are experienced as far as conducting visits to places of detention is concerned. They have a broad knowledge on the subject of the protection of human rights. It all also serves to achieve transparency of the activity of the Mechanism in Poland.

8. Summary

Torture is one of the most serious infringements of fundamental human rights. In spite of the fact that it is generally prohibited by the international law, it may still happen to be used. Therefore, the system of regular visits to detention places is of profound meaning and is considered one of the most effective measures for prevention of torture and other prohibited forms of treatment of detained persons.

When recapitulating the execution of tasks by the Commissioner under the National Preventive Mechanism in its first year of operation in Poland, particular attention should be drawn to the difficulties encountered during the implementation of the OPCAT.

Polish Ombudsman did not receive necessary funds from the Government of the Republic of Poland for execution of the tasks under the National Preventive Mechanism despite the provisions of the Optional Protocol and Paris Principles. Despite the difficulties the Commissioner had to overcome in 2008, there were 76 preventive visits conducted. They allowed for conclusions to be drawn regarding the upholding of the rights of the detained and the plans concerning further functioning of the NPM.

Most importantly, there has not been any proof so far that could suggest torture use on the territory of the Republic of Poland. However, in various types of detention places treatment cases happen that could be considered degrading or inhuman punishing. There are numerous concerns and objections about the living conditions of persons detained in the penitentiary facilities. Sometimes they may be considered a disregard to human dignity. This is the problem of overpopulation, which still affects penitentiary institutions in Poland. This is a constant threat to the realisation of rehabilitation goals of an imprisonment sentence. It can often result in a violation of fundamental human rights.

Furthermore, based on the results of the visits, it should be noted that constant verification of the use of direct coercive measures in various units is required. Cases of physical violence used against detained persons, including minors are alarming. Humiliating punishment of minors, such as doing knee bends or press-ups on one hand, or to tip-

ping sand from one side to the other, is unacceptable. Placing minors in transition wards in juvenile detention centres and refuges as well as failure to guarantee daily outdoor activities are also serious infringements.

As far as the future plans are concerned, it should be stressed that main objective is to complete the implementation of the Optional Protocol to the UN Convention against Torture (...). This, however, will only be possible after the financial and human resources proportional to the performed tasks are guaranteed for the activities of the National Preventive Mechanism and it will become eventually possible to separate it from the Commissioner's Office to achieve regular preventive visits to all types of detention places. It is difficult to say how long it will take to implement these changes. This is not expected in 2009 due to scarce financial resources allocated for the activities of the NPM.

Recapitulation of the first year of the National Preventive Mechanism activities in Poland, there is hope that the authorities of the Republic of Poland will recognise the need to assist institutions involved in the protection of detained persons against prohibited forms of treatment. The experience gained in 2008 indicates that the NPM's visits are well justified and should be intensified.