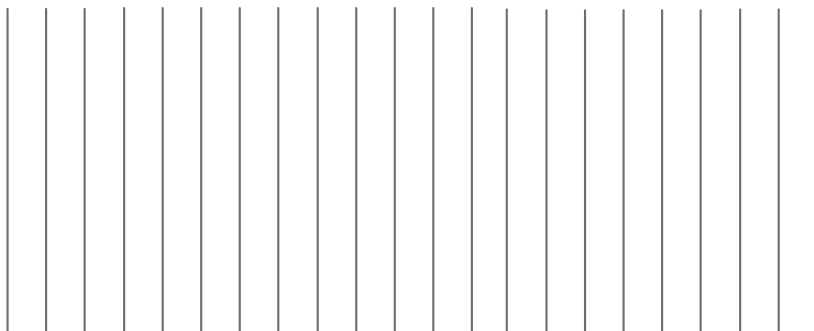


REPORT

OF THE HUMAN RIGHTS DEFENDER
ON THE ACTIVITIES
OF THE NATIONAL PREVENTIVE MECHANISM
IN POLAND IN 2013
(Synthesis)



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Report of the Human Rights Defender (Ombudsman)
on the Activities of the National Preventive Mechanism in Poland in 2013
(Synthesis)

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Abbreviations:

- APT – Association for the Prevention of Torture, based in Geneva
- PTDC – Pre-Trial Detention Centre
- PIB – Public Information Bulletin
- CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- CBPS – Central Board of the Prison Service
- SCC – Social Care Centre
- ECHR – European Court of Human Rights in Strasbourg
- HFHR – Helsinki Foundation for Human Rights
- ISP – individual support plans
- SS – Sobering-up Station
- CPP – Act of 6 June 1997 Code of Penal Procedure (Dz. U. No 89, item 555, as amended)
- EPC – Act of 6 June 1997 Executive Penal Code (Dz. U. No 90, item 557, as amended)
- NPM – National Preventive Mechanism
- MNE – Ministry of National Education
- YSC – Youth Sociotherapy Centre
- YCC – Youth Care Centre
- SAC – Supreme Administrative Court
- NHF – National Health Fund
- OSCE – Organization for Security and Co-operation in Europe
- OPCAT – Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dz. U. of 2007, No 30, item 192)
- CED – Centre for Education Development
- EW – External Ward
- PDR – Police detention rooms for detained persons or persons brought to sober up
- PECC – Police Emergency Centre for Children
- JS – Juvenile Shelter
- RC – Regional Court
- SPT – UN Subcommittee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- DC – District Court
- PS – Prison Service
- HRD – Human Rights Defender
- EU – European Union
- AAPP – Act of 6 September 2001 on access to public information (Dz. U. No 112, item 1198, as amended)
- APMH – Act of 19 August 1994 on the protection of mental health (Dz. U. of 2011, No 231, item 1375, as amended)
- APJC – Act of 26 October 1982 on proceedings in juveniles cases (Dz. U. of 2010, No 33, item 178, as amended)
- Pr – Prison
- JDC – Juvenile Detention Centre



Introduction

Dear readers,

Torture is one of the gravest violations of fundamental human rights. Apart from breaching other rights, it violates human dignity, protected by the Polish Constitution as the source of other rights. In spite of a general ban on torture in the international law, it still happens. Regular, unannounced visits to places of detention are considered to be one of the most effective measures for prevention of torture and other prohibited forms of treatment of inmates. They supplement the court system, managed in this respect by the European Court of Human Rights in Strasbourg.

The Republic of Poland is one of 72 States-Parties that ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹ (hereinafter: the OPCAT or Protocol), adopted by the General Assembly of the United Nations in New York on 18 December 2002. Poland is also one of 57 countries that have designated their National Preventive Mechanisms.

The objective of the Protocol was to establish a system of regular visits carried out by independent bodies to all places where persons are deprived of their liberty. The aim of these measures is to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The year 2013 was the sixth year when the Human Rights Defender performed the tasks of the National Preventive Mechanism. Representatives of the Defender carried out unannounced visits to 125 various detention centres across the country. The places were selected taking into account their type, size and location in the country. All available information on the problems of individual institutions was also taken into consideration.

Compared to the reports from previous years, this publication presents also final and valid judgments of courts in penal cases, delivered in the years 2008-2012, which prove that torture was used and was confirmed by the judiciary.

Our report presents the major findings of preventive visits and diagnoses systemic problems. Unfortunately, numerous systemic problems identified in previous years have not been solved. The most important of them include: unlawful, and in some cases, long wait to serve a prison sentence, the lack of proposed

¹ Dz. U. of 2007 No 30, item 192.



amendments to the Act on proceedings in juveniles cases or in the Executive Penal Code (with respect to persons subject to a preventive measure), the failure to resolve the problem of placing the persons “to sober up” in the Police detention rooms. The last problem is of particular importance, since deaths of such persons in the Police detention rooms were reported, mainly due to the lack of appropriate health care, similar to care provided in sobering-up stations. In 2013, those issues were the subject of numerous letters of the Defender to the competent ministers² and the subject of two motions to the Constitutional Tribunal³.

Unfortunately, as in the previous years, there are situations in the places of detention that may be considered inhuman or degrading treatment or punishment. The experience proves that the visits under the National Preventive Mechanism are important for prevention and should be intensified. However, this will only be possible when sufficient financial and human resources appropriate for the tasks are allocated for the activities of the National Preventive Mechanism. With her current personnel (13 persons) and given the number of places of detention (approximately 1800) within the meaning of Article 4 of OPCAT⁴, the Human Rights Defender is unable, despite the great commitment of her employees, to ensure that the minimum international standards on the frequency of visits are met⁵. Given the UN standards, the NPM Department should consist of 38 employees, proportionally to the number of places to be visited in Poland.

The Report has been divided into two parts. The first one discusses the organisational issues regarding the functioning of the NPM, activities in cooperation with other entities, both at the national and at the international level, identified instances of torture and presents the assessed legal acts. The second part of the Report includes a description of the methodology of work and conclusions from visits carried out in the analysed year, broken down by specific types of places of detention.

² <http://www.rpo.gov.pl/pl/content/raport-rpo-z-dzia%C5%82alno%C5%9Bci-w-polsce-kmp-w-roku-2012-0>

³ <http://www.rpo.gov.pl/pl/content/wnioski-do-trybuna%C5%82u-konstytucyjnego>

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

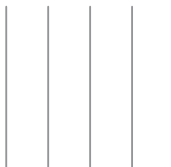
⁵ According to the UN Special Rapporteur on torture, ad hoc preventive visits under the NPM should be carried out once in several months, and comprehensive visits once in five years. According to minimum standards defined by the APT, comprehensive visits to organisational units of the Police, pre-trial detention centres and to places of detention of people particularly vulnerable to threats or aggression, such as women and foreigners, should be carried out at least once a year.



The Report is also available at the website of the Human Rights Defender (www.rpo.gov.pl) in English which allows international institutions to obtain information about the activities of the National Preventive Mechanism in Poland.

I hope that the “Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2013” will be an important source of information for you and will contribute to improving the functioning of individual places of detention in Poland and aligning their operation to international standards.

Irena Lipowicz
Human Rights Defender



Part I.





1. Operation of the National Preventive Mechanism

Pursuant to the Statute of the Office of the Human Rights Defender, Department VII of the Office constitutes the National Preventive Mechanism.⁶ In 2013, the tasks of the National Preventive Mechanism were performed by 13 employees. The Human Rights Defender on numerous occasions reiterated that the personnel of the Department is insufficient to fully perform the preventive obligations imposed on the HRD. The NPM Department was also supported by personnel of the Offices of Local Representatives of the HRD in Gdańsk and Wrocław.

The NPM Team visits all types of places of detention within the meaning of Article 4 of the OPCAT.⁷ Appropriate assessment of the treatment of persons deprived of their liberty requires information from various sources, which in many cases is impossible without the support and knowledge of experts. Therefore, the visiting teams included also external experts: psychiatrists and clinical psychologists.⁸

2. Financing

In the 2013 financial plan, a budget of PLN 3,145,717 was allocated to the National Preventive Mechanism. As a result of budget outturn, in 2013 expenditure related to performing the NPM function by the Defender amounted to PLN 3,131,342.02, of which capital expenses were PLN 220,453.24.

3. Cooperation with NGOs

In 2013, two meetings of the employees of the National Preventive Mechanism with the representatives of the Coalition for the implementation of the OPCAT were held.

On 24 July 2013, a representative of the National Preventive Mechanism attended a seminar organised by the Helsinki Foundation for Human Rights and

⁶ § 6 of the Annex to the Order No 26/2011 of the Human Rights Defender of 31 August 2011 on the Statute of the Office of the Human Rights Defender.

⁷ Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention).

⁸ The list of experts: see Part II.



entitled “How to ensure appropriate control of placement of incapacitated persons in social care centres? Implementation of the judgment in the case of *Kędzior v. Poland*”. The seminar touched upon two issues: placement of incapacitated persons in social care centres and groundless restriction of constitutional rights of the residents of those centres.

4. National activity

In 2013, within the framework of cooperation with the General Headquarters of the Police, the representatives of the National Preventive Mechanisms were asked to deliver training on the NPM activity at the police training centres. The trainings took place in the Police Training Centre in Legionowo (14-15 May) and in the Police Academies in Piła (12-13 June), Szczytno (22-23 August), Katowice (5-6 September) and Słupsk (26-26 November).

On 29 January 2013, a representative of the NPM participated in the conference summing up the *Monitoring of application of anti-discriminatory law by the judiciary*, organised by the Polish Society of Anti-Discrimination Law. The meeting was related to the publication of the report of the Polish Society of Anti-Discrimination Law entitled “Anti-discrimination law in the practice of Polish common courts”⁹.

On 14 February 2013, a meeting was held on the project “I want to be with you, mum” the aim of which is to establish wards for mothers with children at rehabilitation centres. The participants of the discussion organised on the initiative of the “Po Drugie” Foundation and the PEDAGOGIUM College of Social Sciences included representatives of ministries, administration offices, centres for juveniles, representatives of academic circles in the area of rehabilitation and law, the Ombudsman for Children and the Human Rights Defender, including the NPM.¹⁰

The conference held on 22 April 2013 in the Office of the Human Rights Defender was devoted to the publication of the report on the National Preventive Mechanism on CCTV surveillance in places of deprivation of liberty. The discussion focused on the major conclusions in the Report on using CCTV cameras in places of deprivation of liberty and the information about complaints about the

⁹ <http://www.rpo.gov.pl/content/przedstawiciel-kmp-marcin-kusy-wzi%C4%85%C5%82-udzia%C5%82-w-konferencji-podsumowuj%C4%85cej-%E2%80%9Emonitoring>

¹⁰ <http://www.rpo.gov.pl/content/przedstawicielka-kmp-ma%C5%82gorzata-molak-wzi%C4%99%C5%82-udzia%C5%82-w-spotkaniu-dotycz%C4%85cym-projektu-%E2%80%9Echc%C4%99-by%C4%87>



use of CCTV surveillance submitted to the Office of the Human Rights Defender by persons deprived of their liberty.

The Penal Law Students' Association "Temida", along with the European Law Students Association ELSA, Local Group Warsaw, organised a conference entitled "Conditions of the Polish penitentiary system. Diagnosis of problems and proposals for improvement" (13 May 2013) inviting a representative of the NPM to participate. In his lecture, the NPM representative presented the main problems encountered by the NPM Team during the visits to prisons and pre-trial detention centres, which are discussed in detail in the part of the report devoted to penitentiary establishments.

On 16 May 2013, a debate was held on the project entitled "Tribune of the Youth", attended by the Ombudsman for Children, representatives of the Ministry of National Education, the Centre for Education Development, the NPM and the employees of rehabilitation centres. The discussion focused on implementation of a new project in youth care centres, consisting in appointing a Tribune of the Youth to protect the rights of juveniles placed in such establishments.

On 17 May 2013, a representative of the NPM participated in the inauguration of the Polish project entitled "Mediation for the European Court of Human Rights", initiated by the International Senior Lawyers Project (ISLP) – Europe.¹¹ Mediation for the ECHR is one of the major pilot programmes initiated by the ISLP – Europe. The number of cases against Poland in the ECHR was the key argument for the ISLP – Europe decision-makers to entrust Poland with the programme. The strategic goal of the project is to relieve the Court in Strasbourg, since the number of cases adjudicated by the Court may undermine its efficient functioning.

The representatives of the NPM were invited to a conference "Interdisciplinary nature of the Prison Service" on the activity of the Prison Service in terms of penitentiary activity, social readaptation and rehabilitation, as well as education of juveniles and prevention of juvenile crime. It was held on 20 June 2013 at the Pre-Trial Detention Centre in Warsaw – Mokotów and was organised by the District Inspectorate of the Prison Service in Warsaw and the PEDAGOGIUM College of Social Sciences.

On 29 July 2013, the Office of the Human Rights Defender organised a conference devoted to discussing the Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2012, during which major conclusions and recommendations as to the NPM's operation were presented. The meeting was at-

¹¹ The organisation, established in 2010, provides the **pro bono** services of highly skilled lawyers to promote human rights.



tended, inter alia, by representatives of ministries, General Headquarters of the Police, Central Board of Prison Service, NGOs and academic circles.

A representative of the NPM participated in the conference “Carrying out the penalty and what next? Results of studies on life imprisonment in Polish prisons 2011-2012”, which was held on 12 September 2013. The aim of the conference was to present the report and discuss its conclusions and recommendations.¹²

Between 22 and 25 September 2013, a representative of the NPM participated in a training conference “Development and Future” (Changes to the juvenile social rehabilitation system – theory, projects, practice. Exchange of good practices – actions aimed at building appropriate social attitudes among the residents of juvenile centres and juvenile detention centres) organised by the “Po Drugie” Foundation and the “Horyzont” Wielkopolskie Rehabilitation Association.¹³

On 3 October 2013, a conference entitled “Sobering-up stations – law versus practice, directions of changes” was held at the Office of the HRD, with the participation of representatives of numerous groups, starting from academic circles, persons in charge of sobering-up stations, through central and local government administration, to public benefit organisations. At the first panel, the results of the Report of the HRD from the visits of the National Preventive Mechanism’s representatives to sobering-up stations, which provided the basis for the discussion on current legal regulations and the operation of the stations in practice. The second panel focused on identification of the required legal and actual changes to the functioning of sobering-up stations.¹⁴

5. International activity

The Human Rights Defender’s activity in the capacity of the National Preventive Mechanism is one of the areas of international cooperation of the RD. Therefore, the representatives of the NPM took part in international meetings on prevention of torture.

On 21 May 2013, a meeting of the representatives of the National Preventive Mechanisms of Poland and Albania was held at the Office of the HRD. During

¹² Memo from the conference: <http://www.rpo.gov.pl/pl/content/przedstawiciele-zespo%C5%82u-kmp-oraz-wydzia%C5%82u-karnego-post%C4%99powania-wykonawczego-na-konferencji>

¹³ Memo from the conference: <http://www.rpo.gov.pl/sites/default/files/Notatka%20z%20Konferencji.pdf>

¹⁴ Report, see: <http://www.rpo.gov.pl/pl/content/raport-rzecznik-praw-obywatelskich-z-wizytacji-w-izbach-wytrze%C5%BAwie%C5%84-przeprowadzonych-przez-0> Audio recording of the conference, see: <http://www.rpo.gov.pl/pl/content/zesp%C3%B3%C5%82-krajowy-mechanizm-prewencji-wraz-z-zespo%C5%82em-prawa-administracyjnego-i-gospodarczego>



the meeting, the members of the Albanian delegation were familiarised with the rights of the Polish NPM, the standards applied and the methodology of visits to places of deprivation of liberty, as well as the organisation of the work of the NPM Department at the Office of the Human Rights Defender.

Between 25 and 26 June 2013, the Macedonian National Preventive Mechanism organised workshops on national mechanisms for prevention of torture addressed to the representatives of all Balkan states. The representatives of the CPT, the SPT, the APT and a representative of the Polish National Preventive Mechanism were invited as experts.

On 1 October 2013, a meeting between a representative of the NPM, the director of the Kyrgyz Centre for the Prevention of Torture and a penitentiary reform adviser of the OSCE Centre in Bishkek was held at the Office of the HRD. Between 4 and 5 November 2013 in Bishkek, a representative of the NPM met with the Ombudsman of the Kyrgyz Republic, the director of the Centre for the Prevention of Torture in Kyrgyzstan who performs the function of the National Preventive Mechanism, as well as with the members of the Coordination Council comprising the representatives of the Parliament and NGOs supporting the Mechanism.

On 7 November 2013, the representatives of the NPM Department and the Department of Penal Law met with the experts of the Council of Europe at the Office of the Human Rights Defender. The aim of the meeting was to familiarise the representatives of the Council of Europe with the condition and problems of the prison health care service, taking into account the complaints submitted to the Office of the HRD, and the findings from preventive visits.

Between 21 and 22 November 2013, the representative of the Department participated in a meeting of representatives of national preventive mechanisms from around the world, the representatives of the CPT, the SPT and the Council of Europe, which took place in Strasbourg. The meeting focused on detention of immigrants and was aimed at drafting the *Declaration by national preventive mechanisms on the need for Council of Europe rules on immigration detention*.¹⁵

On 6 December 2013, workshops were held in Skopje on the protection of juveniles detained in organisational units of the Police. A representative of the Polish NPM took part in the workshops. In her presentation, she discussed the results of

¹⁵ One of the results of the meeting was the document entitled Draft Standards Framework for the Treatment of Immigration Detainees. At the beginning of 2014, the abovementioned declaration will be presented to the Council of Europe to report the need to develop the relevant standards. See: <http://www.rpo.gov.pl/pl/content/dyrektor-krajowego-mechanizmu-prewencji-wzi%C4%99%C5%82-udzia%C5%82-w-spotkaniu-krajowych-mechanizm%C3%B3w>



the visits to the Police emergency centres for children in the years 2008-2013 and the amendments to regulations on children deprived of liberty which were implemented as a result of general petitions of the Human Rights Defender.¹⁶

6. Training

On 15 February 2013, a training entitled *Courts and juvenile addictions and other aspects of juvenile delinquency proceedings*, organised in cooperation with Iustitia Judicial Training Centre Foundation, took place at the Office of the HRD. The training attended by the members of the NPM Department and judges of family and civil courts was delivered by a representative of the Nobody's Children Foundation and a representative of the Addiction Rehabilitation Centre in Zagórze.

The representatives of the NPM participated in the training on anti-discriminatory law organised on 29 May 2013 at the Office of the HRD.

On 11 and 12 December 2013, the members of the NPM Department took part in a training on accessibility of buildings for persons with various disabilities, organised by the Poland without Barriers Foundation. The two-day workshops covered not only legal issues, but also practical experience with architectural barriers and the needs of persons with physical and sensory disability.

7. 5th periodic visit of CPT representatives to Poland

Between 5 and 17 June 2013, the CPT representatives visited selected places of deprivation of liberty in Poland. The aim of the visit was to verify the implementation of recommendations issued by the CPT as a result of the visit to Poland in 2009.¹⁷ Particular attention was paid to the treatment of persons detained in the Police detention rooms and the conditions in prisons (with a focus on prison health care service and the treatment of prisoners classified as “dangerous”).

On 5 June 2013, Professor Irena Lipowicz – the Human Rights Defender, Ryszard Czerniawski PhD – Deputy Human Rights Defender, employees of the NPM Department, representatives of the Department of Penal Law and the Department of Administrative Law and Economic Law met with the CPT delegation.

¹⁶ See: <http://www.rpo.gov.pl/pl/content/przedstawiciel-kmp-wojciech-sadownik-wzi%C4%85%C5%82-udzia%C5%82-w-warsztatach-dot-ochrony-nieletnich>

¹⁷ Report from the visit in 2009 was published in 2011 (CPT/Inf (2011) 20).



During the meeting, the representatives of individual Departments provided information about the observance of human rights in individual types of places of detention in Poland.

8. Thematic report

Numerous irregularities in the functioning of sobering-up stations found by the representatives of the National Preventive Mechanism, supported by an in-depth analysis of the existing legal regulations concerning the stations, were presented in the Report of the Human Rights Defender from visits of the National Preventive Mechanism to sobering-up stations.¹⁸ In order to improve the situation described in the Report, the NPM employees recommended:

1. introducing a uniform system of care for intoxicated persons in the entire country;
2. introducing legislative changes to the legislation in force to eliminate the infringement of Article 92(1) of the Constitution;
3. stipulating the provisions restricting rights and freedoms in a statutory act;
4. precise formulation of the grounds for placing a person in a sobering-up station;
5. legislative work to ensure that legal regulations on the use of coercive measures in sobering-up stations are unambiguous;
6. regulating the use of CCTV surveillance in sobering-up stations in an act;
7. granting a special importance to the right to information;
8. eliminating situations conducive to infringement of the right of intimacy of persons placed in sobering-up stations.

9. Assessment of legal acts

The obligation to issue opinions about legal acts, both applicable legal acts and drafted legislation, by the entity acting as a national preventive mechanism stems from Article 19(c) of the OPCAT.

In 2013, the representatives of the NPM received 5 draft legal acts for assessment. No reservations were voiced in 2 cases and comments presented in 3 cases.

¹⁸ See: <http://www.rpo.gov.pl/pl/content/raport-rzecznik-praw-obywatelskich-z-wizytacji-w-izbach-wytrze%C5%BAwie%C5%84-przeprowadzonych-przez-0>

All opinions on draft legal acts were published on the website.

Comments were made to the following draft legal acts:

1. draft *Act of the Minister of Justice amending the Act – Penal Code and certain other acts as at 14 January 2013*;¹⁹
2. draft *Ordinance of the Minister of Justice on the conditions to be met by security cell and isolation room, the period of storage, the method of archiving or disposal of documentation on persons placed in a security cell and an isolation room, as well as the form of its documentation and conditions and organisation of placement of persons in a security cell or an isolation room*;²⁰
3. draft *Ordinance of the Minister of Justice on living conditions of inmates of prisons and pre-trial detention rooms*.²¹

No reservations were made with regard to the following draft legal acts:

1. draft *Act on proceedings related to persons with mental disorders who create a threat to life, health or sexual freedom*, in its version from 11 April 2013;
2. draft *Ordinance of the Minister of Justice amending the Ordinance on juvenile detention centres and juvenile shelters*.

10. Torture

Pursuant to Article 1 of the Convention against Torture and other cruel, inhuman, or degrading treatment or punishment, adopted by the United Nations General Assembly on 10 December 1984²², “*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.**

¹⁹ See: <http://www.rpo.gov.pl/pl/content/uwagi-do-projektu-ustawy-o-zmianie-ustawy-kodeks-karny-oraz-niekt%C3%B3rych-innych-ustaw-w-wersji>

²⁰ See: <http://www.rpo.gov.pl/pl/content/uwagi-do-projektu-rozporz%C4%85dzenia-ministra-spraw-wiedliwo%C5%9Bci-w-sprawie-warunk%C3%B3w-jakimi-powinna>

²¹ See: <http://www.rpo.gov.pl/pl/content/uwagi-do-projektu-rozporz%C4%85dzenia-ministra-spraw-wiedliwo%C5%9Bci-w-sprawie-warunk%C3%B3w-bytowych-os%C3%B3b>

²² Dz. U. of 1989 No 63, item 378.



The representatives of the NPM visiting various types of places of detention have not found any evidence for torture against inmates. However, this does not mean that such incidents do not take place in Poland. This conclusion stems from the analysis of court judgments issued in cases concerning the crime referred to in Article 246 of the Penal Code, which stipulates that a public official or anyone acting under his orders for the purpose of obtaining specific testimony, explanations, information or a statement, uses force, unlawful threat, or otherwise torments another person either physically or psychologically shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years. The representatives of the NPM analysed the information about persons sentenced based on this Article of the Penal Code provided by the Information Office of the National Criminal Register.

The analysis shows that **29 Police officers were sentenced between 2008 and 2012 in 18 cases related to the use of violence to extort information from detainees. It should be emphasized that, in the majority of cases, torture was used, because the Police officers, acting on their own or with other officers, who wanted to extort testimony, confession to crime or obtain information, intentionally inflicted physical and mental pain on detainees by means of e.g.**

- “(...) hitting him repeatedly with their hands on the face and the head, and beating and kicking him all over his body; they also forced the victim to make a statement about the committed crime kneeling and handcuffed, beating him at the same time with a rubber baton on his soles and feet (...)”²³
- “(...) acting in order to force the said person to confess to acquiring items obtained due to a prohibited act, he hit him several times with an open hand on the head”²⁴

It is also worth noting that sentences in the above cases usually fluctuated around the lower threshold provided for in the Penal Code. They were most often the sentences of deprivation of liberty for one year and several months (not more than 2 years), which were suspended for the trial period (2-5 years). Moreover, in

²³ District Court for Wrocław Śródmieście – file No V K 1561/06. Other judgments, see District Court in Toruń – file No VIII K 1700/11, District Court in Olsztyn – file No II K 16/10, District Court in Koszalin – file No II K 278/10, District Court in Poznań Grunwald and Jeżyce in Poznań – file No III K 909/08, District Court in Nysa – file No II K 507/07, District Court in Lipno – file No II K 646/10, District Court in Włocławek – file No II 213/09, Regional Court in Opole – file No III K 145/06, District Court in Giżycko – file No II K 47/07, District Court in Wyszaków – file No II K 218/07, District Court in Bolesławiec – file No II K 1490/10, District Court in Kalisz – file No II K 411/09, District Court in Szczytno – file No II K 763/09, District Court in Tarnobrzeg – file No II K 429/10, District Court in Chełm – file No VII K 1569/10.

²⁴ District Court in Biała Podlaska – file No II K 404/07.

7 cases judges also ruled on the ban on practising the profession (for 2 to 6 years).²⁵ The injured parties were granted redress also in 7 cases. All incidents of torture took place outside the rooms for detained persons and persons brought to sober up which are visited by the employees of the National Preventive Mechanism. They most often happened in other rooms in the Police headquarters, stations or units.

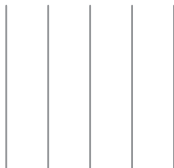
It should also be noted that on 6 November 2013 the HRD addressed the Police Commander-in-Chief²⁶ in relation to reports about the excessive use of coercive measures by the Police officers which result in injuries of detainees, asking him to present his opinion on the issue and take action, if necessary. In his reply of 4 December 2013, the Police Commander-in-Chief explained that the risk of incidents described by the Human Rights Defender was ever-present, although the Police officers are severely punished for mistakes committed while performing their duties or for intentionally breaching the law. The Police Commander-in-Chief also declared that the use of CCTV surveillance (audio and video recording) in the rooms where the Police activities are performed and the ban on performing such activities in those rooms when the CCTV cameras are off were issues still open to discussion.

On 16 December 2013, the HRD also filed a petition to the General Prosecutor, arguing that, pursuant to the case-law of the ECHR, the obligation of the authorities is to conduct penal proceedings reliably in order to investigate all circumstances of a given incident and the charges against public officers concerning their inappropriate behaviour towards detainees. At the same time, the Defender listed the mistakes in penal proceedings, consisting in insufficient initiative in terms of evidence, rejection of the version of events presented by the injured party without appropriate justification, as well as acceptance of ambiguous opinions of experts as the basis for discontinuation of investigation and incomplete assessment of the behaviour of the officers from the perspective of penal law.

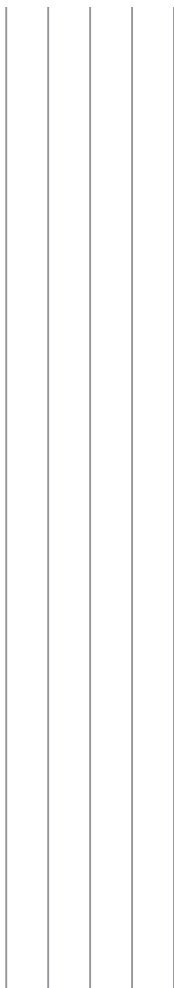
In reply of 8 January 2014, the General Prosecutor ensured that the proceedings referred to in the letter of the HRD were the subject of particular interest of the Office of the General Prosecutor which analysed the proceedings. In some cases, irregularities and the lack of commitment in finding evidence on the part of prosecutors were found. The General Prosecutor pointed to objective difficulties in conducting such proceedings (e.g. if the testimony of the complainant is the only evidence). Therefore, he supports the CCTV surveillance of the rooms where the Police officers perform their duties.

²⁵ Pursuant to Article 41(1)(4) of the Act of 6 April 1990 on the Police (Dz. U. of 2011 No 287, item 1687, as amended), a police officer shall be dismissed from the service, if he/she was sentenced with a valid court verdict for intended crime or fiscal crime, prosecuted by a public prosecutor.

²⁶ RPO-747187-II/13/EK.



Part II.





1. Methodology

In all the visited establishments, the National Preventive Mechanism operates based on the same methodology. The first stage is to establish the composition of the visiting group. According to OPCAT, experts of national preventive mechanisms should have the required capabilities and expertise. The visiting team usually consists of several persons, with one person performing the role of the group coordinator. Two persons, including the team coordinator responsible for drawing up the report from the visit, perform the inspection of the premises and buildings of the establishment, while others conduct individual conversations with prisoners. In order for groups to be interdisciplinary, the visits are also performed by experts in general medicine, psychiatrists and psychologists. They draft an expert opinion which is incorporated in the visit report. The duration of a visit depends on the size of the visited establishment and on the problems encountered on site. It usually lasts for one to three days.

The visits of the National Preventive Mechanism have the following stages:

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

If a prisoner reports an unlawful event, he/she has the opportunity to lodge an official complaint. Yet if the person does not consent to addressing the issue officially, the visitors consider the information as a report to be investigated in a way that prevents identifying the source. If the unlawful event is confirmed, the members of the visiting team report their findings to the director of the visited establishment and the complainant remains anonymous if he/she does not file an official complaint. If the visitors are unable to confirm the complainant's charges, these are reported during the summarising conversation as unverified reports, and it is the establishment director's duty to investigate them.

When the visit is completed, a report is drawn up which describes all the findings and conclusions, as well as recommendations for the body managing the visited establishment and for its supervisory bodies. If the establishment's management does not agree with the recommendations, the NPM representatives request the supervisory bodies to issue their opinion and position on the matter.

If the visitors discover torture or inhuman, degrading treatment or punishment, the visitors file a notification of a suspicion of a crime following the visit. In each case, the victim must consent to having his/her personal data revealed and to referring the case to law enforcement bodies. In drastic cases, it is admitted to depart from the rule, and the decision is made personally by the Human Rights Defender who signs the notifications of a suspicion of a crime. If the victim does not consent to report the case to the law enforcement agencies, and in the opinion of the visiting team the possible inappropriate behaviour is not drastic, the visiting team treats the information obtained as reports which may point to inappropriate treatment of detainees and requests the directors of the establishments to explain the situation and present their conclusions.

The situation is different when information about torture, inhuman or degrading treatment or punishment is derived from documents or CCTV footage, not directly from the victims. In such case, the visiting team does not have to request consent for referring the case to law enforcement bodies and each time draw up a notification about a suspected crime.

2. Prisons and pre-trial detention centres

2.1. Introduction

According to the annual schedule, visits covered a total of 29 penitentiary units, including 14 prisons²⁷, 11 pre-trial detention centres²⁸ and 4 external wards of prisons²⁹. In 2013, thematic visits were continued, with their aim being to examine the observance of the rights of prisoners serving the penalty of imprisonment in the therapeutic system for inmates with non-psychotic mental disorders (3 establishments³⁰) and the rights of remand prisoners (9 establishments³¹). None of the visits was a recontrol.

²⁷ Prisons: Żytkowice, Dębica, Braniewo, Wrocław No 1, Gdańsk-Przeróbka, Nysa, Iława, Goleniów, Jastrzębie-Zdrój, Kłodzko, Krzywaniec, Medyka, Biała Podlaska, Grudziądz No 2.

²⁸ Pre-trial detention centres: Bydgoszcz, Świdnica, Częstochowa, Elbląg, Chojnice, Białystok, Lubąń, Szamotuły, Lubsko, Szczytno, Bytom.

²⁹ External wards: Pionki, Czernsk, Grodzisk Mazowiecki, Przywary.

³⁰ Prisons: Goleniów, Iława, Kłodzko.

³¹ Pre-trial detention centres: Lubsko, Szamotuły, Białystok, Lubąń, Szczytno, Bytom, Chojnice, Świdnica, Prison No 1Wrocław.



2.2. Systemic problems

1. Overpopulation of penitentiary units and the so-called “queues to prisons”

In the opinion of the representatives of the National Preventive Mechanisms, **the problem of overcrowding of penitentiary units remained unresolved in 2013, as it was in the previous years. It should be emphasized that the fact that statistics did not reveal overpopulation (for a certain period of 2013) was due to using such places as patient rooms, cells for dangerous inmates or community rooms in residential wards to accommodate inmates.** The monthly statistics for 2013, presented on the website of the Prison Service, illustrate the relation between an increase in the number of additional accommodation places for persons deprived of their liberty, generated by the need to ensure the minimum surface area for the increasing prison population, and the statistical decrease in the occupancy rate of penitentiary units. For example, thanks to 2566 additional places obtained in January 2013, the occupancy rate of penitentiary units amounted to 96.7%; while in February it totalled 97.2% thanks to 2612 additional places used.³² Additional places in pre-trial detention centres and prisons were systematically acquired from the beginning of the previous year until April when their number reached 2864. Due to placement of healthy inmates in patient rooms, adaptation of community rooms for shared residential cells³³, placement of inmates who are not dangerous in cells for inmates posing a threat to the security of the unit, the overall occupancy rate in penitentiary units amounted to 96.4%, with the population of persons deprived of liberty amounting to almost 86,000. A decrease in the number of additional accommodation places to 2293 at the end of October 2013 was also due to the fall in the prison population by approximately 3000. **The information about the lack of statutory surface area for each inmate is necessary to give the full picture of the occupancy rate of penitentiary units. In January 2013, 1705 inmates were held in cells where the surface area per one inmate was smaller than 3 m²; while in March the figure was 2831.**³⁴

In December 2013, with the number of inmates amounting to 78,832, 2181 additional places of accommodation were still used and the heads of penitentiary units issued a total of 148 decisions on placing inmates in cells with the surface area per inmate smaller than 3 m². The comparison of the population of penitentiary units in January 2013 (85,618 inmates) and in December 2013 (78,832

³² The data come from statistics published on the website of the Prison Service.

³³ Cells for 15 or even 20 inmates, e.g. Pre-Trial Detention Centre in Bytom.

³⁴ <http://sw.gov.pl/Data/Files/001c169lidz/styczen-2013.pdf>, <http://sw.gov.pl/Data/Files/001c169lidz/marzec-2013.pdf>

inmates, the difference: 6786 inmates) shows that at the end of 2013 the Prison Service could resign from placing inmates in additional places of accommodation and the occupancy rate would not exceed the capacity of penitentiary units.

While the decrease in the number of inmates in penitentiary units at the end of 2013 was significant, the problem of the so-called ‘queues to prisons’ remains unsolved. As stated in the *Report of the HRD on the activity of the NPM in 2012* (hereinafter: Report from 2012)³⁵, Poland will be under the obligation to admit Polish citizens sentenced to imprisonment in the EU countries to Polish prisons (approximately 12,000 people). However, the number of persons convicted with a valid sentence of imprisonment, who failed to show up to serve their sentence, despite the set date of its beginning, is a much greater problem for the future occupancy rate of penitentiary units. According to the statistics of the Central Board of Prison Service, the number of such persons amounted to 35,335 in December 2013.

The data of the Ministry of Justice included in the rationale to the draft Act amending the Act – Penal Code and certain other acts of 10 December 2013³⁶ (hereinafter: draft from 10 December 2013), prepared by the Criminal Law Codification Commission, show that almost 50% of inmates in prisons are there as a result of the order issued to execute the earlier suspended penalty of imprisonment and approximately 70,000 people are waiting, for various reasons, to serve their sentence of imprisonment. The latter figure comprises 69,376 inmates recorded in the statistics of district courts and 2,112 inmates in the statistics of regional courts. The further part of the rationale says that the difference in the number of persons waiting to serve their sentence results from the fact that the Prison Service does not have information about the inmates whose documentation was not delivered from the court to prison due to i.a. postponement of penalty (9,987 in district courts), convicts hiding out (4,076 in district courts), arrest warrants issued (21,624 in district courts) and “other reasons”, e.g. due to exceeding of formal time-limits by courts. For the last five years, the number of convicted persons waiting to serve their sentence fluctuates around 70,000 which demonstrates the scale of outstanding sentences of imprisonment to be served.³⁷

The said situation violates one of the fundamental functions of the penal law, namely its repressive function. This function involves not only the necessity to clearly define the penal sanction for the committed crime, or the necessity of individual and general prevention achieved by means of reaction to a crime under the penal law, but first of all the inevitability of penalty for the committed crime.

³⁵ Report from 2012, p. 27.

³⁶ <http://legislacja.rcl.gov.pl/lista/2/projekt/194900/katalog/194909>

³⁷ Detailed data for the years 2000-2012, see: rationale for the draft of 10 December 2013, p. 119.



While the principle of definiteness of sanctions is reflected in the judgments pending execution, the same cannot be said about inevitability of sanctions specified therein and about their preventive role. As a result, this situation may encourage to commit crimes by enhancing the belief about impunity of convicted perpetrators due to inefficiency of executive penal proceedings.

The change of the penal policy³⁸, advocated by the HRD for a long time, seems even more obvious given the rationale for the draft of 10 December 2013. Therefore, the legislator's intention to "reverse the structure of adjudicated penalties to make fines the most often adjudicated penalties, followed by restriction of liberty" should be praised.

It should also be noted that a worrying trend has been observed with regard to the conditionally suspended penalty of imprisonment, where courts pass longer sentences of imprisonment when the penalty is suspended than they would if the penalty was not suspended. This fact and the information that in the year 2012 alone the execution of conditionally suspended penalties was ordered towards 54,226 persons (in 2011 towards 49,848, in 2009 towards 48,476, in 2008 towards 46,822) explain why, despite a relatively small percentage of persons sentenced to unconditional imprisonment (which has for years oscillated around 9%-10%, and in absolute terms – ca. 40,000), penitentiary establishments are close to overpopulation and the incarceration rate in Poland is one of the highest in Europe (217 prisoners per 100,000 population, while in Germany – 79, France – 101, Spain – 147, Czech Republic – 154, Romania – 155, Hungary – 186).

Mass adjudication of various types of penalties of probation (approximately 301,000 in 2012) is unprecedented in Europe (in Poland 1,056 persons per 100,000 is under probation, while in Spain, which comes second, the number is 509, in France – 365, in Germany – 181 and in Romania – 36). Due to such a huge number of adjudicated penalties of probation, the persons subject to those penalties cannot be effectively rehabilitated due to insufficient human resources and infrastructure (in 2012, in Poland there were approximately 880,000 cases of broadly understood probation).

According to the authors of the draft, further legislative inaction in the area of substantive law, without reversing the proportion of adjudicated sanctions, may result in the paralysis of the judiciary also with regard to executive penal cases.

The judgment of the Constitutional Tribunal of 17 July 2013 (SK 9/10) is of particular importance in the context of the aforementioned data on penalty ex-

³⁸ Report of 2012, p. 27; Report of the HRD on the activity of the NMP in 2011, p. 138.



ecution. The Constitutional Tribunal ruled that “Article 75 § 1 of the Penal Code, insofar as it does not provide for the possibility for the court to refrain from ordering the execution of the penalty, when the convict was repeatedly sentenced to a conditionally suspended penalty of imprisonment, if justified by special reasons, is inconsistent with Article 45(1) of the Constitution.” The said provision will cease to be applicable after the period of 18 months from the date of judgement publication in the Journal of Laws³⁹, i.e. on 9 February 2015.

In the opinion of the Tribunal, the enforcement court should have a possibility to consider, when it establishes that the penal proceedings in another case finished with conviction for a similar intentional crime to a conditionally suspended custodial sentence, whether there are any extraordinary circumstances justifying the staying of the execution of the penalty towards the convicted person, since the unconditional penalty of imprisonment is to constitute *ultima ratio*.⁴⁰

Poland still has a long road ahead to eliminate overpopulation of penitentiary units, since **it remains far behind the EU countries in terms of surface area per prisoner which reflects the quality of penitentiary isolation (e.g. in Austria it amounts to 6 m², in Belgium to 9 m², in Bosnia and Herzegovina – 4 m², Cyprus – 9.5 m², Czech Republic – 3.5 m², Denmark – 6-7 m², Greece – 10 m², Spain – 6 m², Netherlands – 10 m², Ireland – 6-10 m², Germany – 7 m², Portugal – 7 m², Turkey – 8-9 m², Scotland – 6-8 m², Italy – 5 m²). The need to aim at ensuring at least 4 m² surface area per inmate has been underlined in each report of**

³⁹ Dz. U. of 2013, item 905 of 8 August 2013.

⁴⁰ The said judgment of the Tribunal corresponds to the draft of 10 December 2013. Pursuant to the statement of reasons: “granting the court, which makes a decision, apart from the situation described in Article 75 § 1, ordering the execution of a custodial sentence which was suspended in the sentence (Article 75 § 3a of the Penal Code), the possibility to reduce the penalty compared to the penalty adjudicated with conditional suspension which is to be served by the convict, seems to be reasonable for several reasons.. Before the occurrence of the reason for ordering the execution of penalty, the convicted person could perform the obligations which that person would not have to perform, if the penalty had not been adjudicated as conditionally suspended. It should also be noted that the court adjudicating the penalty treats the decision on conditional suspension as an integral element of the penalty, which results in its sentencing being higher than in the case of unconditional penalty. The new Article 75a provides for the possibility to order the execution of a conditionally suspended custodial sentence or a substitutive penalty in the form of restriction of liberty consisting in the obligation to perform unpaid, controlled social work. This is aimed at increasing the flexibility of the court’s decisions in a specific case and giving preference to non-custodial penalties – in particular with regard to perpetrators sentenced based on the existing regulations, under which the conditionally suspended custodial sentences are used in excess. The lack of this provision could have considerable negative consequences for the ongoing reform of the system of sentencing and execution of penalties. The substantive law regulation is supplemented by the amendment of Article 178a of the Executive Penal Code, providing for the possibility to appeal against judicial decisions in this area.



the CPT (1996, 2000, 2004, 2013⁴¹). If 4 m² were ensured for each prisoner in line with the European standards, Polish prisons could accommodate approximately 60,000 prisoners.

Therefore, the electronic tagging system is an undoubtedly good solution, since as at the end of 2013 it was used in the case of 4,864 convicted persons (i.e. 64% of the maximum number of 7,500 persons which can serve their sentence under the system at the same time) who could serve their sentences in non-custodial conditions. Since 2008, when the implementation of the system started, until now, almost 25,000 convicted persons served their sentences under the system, of whom 12,000 were persons who left penitentiary units.

2. Insufficient or ineffective supervision of penitentiary judges over serving the penalty of deprivation of liberty

The analysis of selected reports of penitentiary judges from pre-trial detention centres and prisons visited in the NPM in 2013⁴² allows to conclude that **penitentiary supervision still does not function properly**. Apart from two visits⁴³ of judges which concerned selected aspects of execution of the penalty of deprivation of liberty, other visits were comprehensive visits compliant with the scope of inspection defined in the Ordinance of the Council of Ministers of 26 August 2003 on the method, scope and procedure of exercising penitentiary supervision.⁴⁴ **Only 3 out of 9 reports from the visits of judges to penitentiary units⁴⁵ included information about interviews with inmates during the visit and about the inspection of residential cells by the judge. Other reports included the description of living conditions without stating explicitly whether the description was based on the inspection of the unit.** The analysis of personal background records of inmates constitutes the basis for verification of all issues covered by the visit (in particular in the units where no interviews with inmates took place). The right to complain was verified only statistically by quoting the data prepared by the penitentiary unit for the Central Board of Prison Service in the reports of the judges.

⁴¹ Information from the working summary of the CPT's visit to Poland in 2013, sent by the Committee to the National Preventive Mechanism for information.

⁴² Pre-Trial Detention Centre in Bytom, Pre-Trial Detention Centre in Bydgoszcz, Prison in Iława, Prison in Goleniów, Prison in Gdańsk-Przeróbka, Prison in Biała Podlaska, Prison in Kłodzko, Prison in Braniewo, Prison in Dębica.

⁴³ Prison in Iława, Prison in Kłodzko.

⁴⁴ Dz. U. No 152, item 1496, as amended.

⁴⁵ Pre-Trial Detention Centre in Bydgoszcz, Prison in Braniewo, Prison in Biała Podlaska.

Regular visits of penitentiary judges to penitentiary units are of extreme importance for appropriate execution of penalties and penal measures. The representatives of the Mechanism emphasize that the presence of judges should not be limited and visible only to administrative staff of the units, but should be visible primarily to inmates, since it is the appropriate execution of their sentences that the judges are to verify during their visits.

Despite the universal application of the regulation of the Executive Penal Code providing for a possibility of granting an award in the form of so-called conjugal visits in each penitentiary unit, in practice such awards are possible only in very few units due to the lack of places where such visits could take place.⁴⁶ The judges seem to ignore this issue and do not recommend designating such rooms, if they find that such rooms are non-existent.

The analysed reports did not describe the situation of inmates who are foreigners in terms of their access to basic information in a language they understand about e.g. terms and rules of serving the sentence, not to mention the issue of foreign language books in prison libraries.⁴⁷

They also do not describe the adaptation of penitentiary units to the needs of persons with disabilities, in terms of both cells appropriate for such persons and other infrastructure allowing them to exercise other basis rights of inmates (walk, cultural and educational activities, etc.). The reports also lack information about prisoners with mobility problems and about their placement in the units.

The penitentiary supervision was the subject of the petition of the Human Rights Defender in 2011⁴⁸ which said that the penitentiary supervision fails to eliminate irregularities in serving the penalty of deprivation of liberty in terms of individual complaints, and it fails to cover all issues significant from the point of view of serving the penalty of imprisonment during visits to places of detention. The Minister of Justice did not agree with the Defender's view and position.⁴⁹ However, the analysed reports seem to confirm the persistent nature of problems reported by the Defender in the said petition.

⁴⁶ More in the section: Right to contact with the outside world.

⁴⁷ More on the situation of foreigners in the section: Right to information.

⁴⁸ RPO-599333-II-710/08/JM of 15 July 2011.

⁴⁹ The reply of 24 August 2011 stated that the judges appointed for penitentiary visiting judges are selected from among judges with extensive expertise and experience in supervision from a given regional and appellate court. Meetings of penitentiary judges are held on a regular basis, during which they exchange their experience.



3. Lack of the possibility on the part of remand prisoners to call their defence attorneys or attorneys

Due to the lack of amendment (announced by the Minister of Justice) of executive penal regulations to enable the remand prisoners to call their defence attorneys or attorneys, on 15 November 2013 the Human Rights Defender filed a motion to the Constitutional Tribunal to declare Article 217c of the Executive Penal Code to be incompatible with the Polish Constitution.⁵⁰ In the justification of her motion, the Defender stated that imprecise formulation of the regulation in question resulted in its established interpretation being inconsistent with the Constitution in terms of the remand prisoners' right to defence.

4. Absence or a poor offer of cultural and educational activities for remand prisoners and convicts

Thematic visits carried out by the NPM representatives in 2013 proved that apart from the possibility to go to community rooms (only in establishments where community rooms have been set up), there are no other activities outside residential cells for remand prisoners. They do not have the possibility to take up work (according to the data of the Central Board of Prison Service, only 19 remand prisoners out of 6,589 were employed as at 31 December 2013) or education. In view of the constitutional principle of presumption of innocence applicable to those persons, it is of utmost importance to enable their access to various activities outside their cells to prevent the consequences of penitentiary isolation.

5. Insufficient provision of hygiene products to inmates and insufficient frequency of showers for men

Although the Ministry of Justice took note of the problem of insufficient provision of hygiene products to inmates, the regulations on living conditions of inmates in penitentiary units were not amended as expected in the previous year. The situation changed, in line with the suggestions from the HRD's petitions, when the Minister of Justice issued the Ordinance of 28 January 2014 on living conditions of inmates in prisons and pre-trial detention centres⁵¹, which will enter into force after 6 months from its publication, i.e. 14 August 2014. The new regulation increases the allocation of some hygiene and sanitary products to persons deprived of liberty.

⁵⁰ <http://www.rpo.gov.pl/pl/content/wniossek-do-trybuna%C5%82u-konstytucyjnego-w-sprawie-braku-mo%C5%Bcliwo%C5%9Bci-telefonicznego>

⁵¹ Dz. U. item 200.



Another persisting problem in 2013 is insufficient frequency of showers for men. In reply of 26 September 2013, the Minister of Justice said that the ministry monitored the issue. The letter of 27 February 2014 stated that until the state budget financing of the Prison Service was adequate to the needs, it would not be possible to ensure two showers for men a week.

6. Serving penalty of deprivation of liberty in the therapeutic system

The thematic report on serving penalty of deprivation of liberty in the therapeutic system for inmates with non-psychotic mental disorders, which is being drawn up by the representatives of the National Preventive Mechanism, will discuss in detail the areas in need of improvement. During their visits, the members of the National Preventive Mechanism were supported by experts in psychology and psychiatry.

7. Prisoners' access to public information

The issue has been discussed in detail in the Report for 2012.⁵² Pursuant to Article 10(1) of the Act on access to public information, *public information that has not been published in the Public Information Bulletin is provided upon request*. In accordance with the provision in its current form, the body which has the obligation to provide public information may refuse to provide it upon request if the information requested by the applicant has been published in the Bulletin. **Inmates indeed have no access to public information as the information published in the Bulletin does not have to be provided to them upon their request and they have no access to the Internet and thus to the Bulletin.**

The situation has not changed compared to the previous year and inmates are still deprived of access to public information published in the Public Information Bulletin. It must be reiterated that the status quo may breach sentence 1 of the Article 61(1) of the Polish Constitution which stipulates that “a citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions.”

8. Non-adjustment of penitentiary units to the needs of persons with disabilities

An important issue examined during every visit to places of detention by the National Preventive Mechanism representatives is their adaptation to the needs of the disabled. Verification of preparedness of places of detention in such terms in

⁵² <http://www.rpo.gov.pl/pl/content/raport-rpo-z-dzia%C5%82alno%C5%9Bci-w-polsce-kmp-w-roku-2012-0>



2013 revealed a need for extensive changes, not only architectural, but also transformation of outlook. The lack of architectural adjustments may still be explained by the relatively short time elapsed from the entry into force of the Convention on the Rights of Persons with Disabilities⁵³ and insufficient resources to finance the elimination of architectural barriers, but the **attitudes of the management of individual penitentiary units to the problem of disabled inmates raise concerns of the NPM representatives**. It is frequently the case that when asked about the reason why there is not a single cell adapted for the needs of persons with disabilities, prison directors seem not to notice the problem as there are no disabled prisoners at a given point in time.

The discussion on the adjustment of penitentiary units to the needs of disabled persons must take into account the judgment of the European Court of Human Rights in Strasbourg from 2006 in the case of *Vincent v. France*⁵⁴, where the Court found the violation of Article 3 of the European Convention on Human Rights by placing an inmate on a wheelchair in a cell not adjusted to the need of disabled persons, which he could not leave on his own.

Complaints from disabled persons staying in prisons and lack of awareness of the needs of such persons on the part of prison authorities were the basis of petitions of the Human Rights Defender. In her petition of 21 October 2013 to the General Director of the Prison Service⁵⁵, the Defender emphasized that in relation to the principle of individualisation of serving the imprisonment penalty, disability is a reason for even further individualisation of the conditions of serving time in prison. The task of public authority bodies is to create adequate conditions for the implementation of programmes to provide equal opportunities to disabled persons. This is also the task of the Prison Service. The Human Rights Defender also petitioned the Minister of Infrastructure and Development⁵⁶, on 11 December 2013, emphasising that in the current legal situation, there is no obligation for prisons and pre-trial detention centres to ensure appropriate conditions for disabled inmates, which is contrary to the Convention on the Rights of Persons with Disabilities ratified by Poland. The Act – Building Law does not provide a definition of a “public utility building,” which in practice makes it impossible to unambiguously specify buildings to which the obligation to adapt to the needs of disabled persons applies.

⁵³ Poland ratified the Convention on 6 September 2012 (Dz. U. of 2012, item 1169).

⁵⁴ Application No 6253/03.

⁵⁵ RPO-727955-II-702/13/JN.

⁵⁶ RPO-744194-II/IV-702/13/EB/AT.

2.3. Areas requiring improvement

2.3.1. Treatment

The representatives of the National Preventive Mechanism received reports from prisoners in 3 penitentiary units⁵⁷ about violation of their bodily integrity by the Prison Service officers. In all three units, the inmates did not want to undertake actions to alert the law enforcement authorities and, therefore, the information they provided was treated as “signals” of alleged inappropriate behaviour. The directors of visited units were requested to investigate those cases.

The representatives of the Mechanism also analysed the treatment of persons with disabilities by prison authorities. In several units, they found cases of inappropriate treatment of such persons which consisted in placing a person on a wheelchair in a cell not adjusted to his needs⁵⁸; placing such person in a cell adjusted for the disabled, but on a higher floor from which the inmate could not move on his own to e.g. prison yard⁵⁹; and the disabled persons being forced to “buy themselves out” of the obligation to clean the cell by paying their inmates with cigarettes and coffee⁶⁰.

New problems related to broadly understood treatment of prisoners include the requirement of wearing prison uniforms by inmates escorted for medical consultation to civil health care service centres.⁶¹ The representatives of the National Preventive Mechanism emphasize that, pursuant to Article 111 § 2 and Article 216a § 1 of the Executive Penal Code, dressing inmates in prison uniforms is allowed only as an exception to the rule which is to use their own clothes. The requirement to wear prison uniforms when visiting public places unrelated to the judicial system leads to unjustified stigmatisation of the inmates, in particular in the case of remand prisoners who are always presumed innocent. The right of inmates to wear their own clothing or other inconspicuous clothing when outside the place of deprivation of liberty is formulated i.a. in the *Standard Minimum*

⁵⁷ Pre-Trial Detention Centre in Białystok, Pre-Trial Detention Centre in Bydgoszcz, Prison in Jastrzębie-Zdrój.

⁵⁸ Pre-Trial Detention Centre in Bytom, Pre-Trial Detention Centre in Białystok, Pre-Trial Detention Centre in Bydgoszcz, Pre-Trial Detention Centre in Częstochowa, Pre-Trial Detention Centre in Lubań, External Ward in Pionki, External Ward in Przywary, Prison No 1 Wrocław, Prison in Goleniów.

⁵⁹ Pre-Trial Detention Centre in Świdnica.

⁶⁰ External Ward in Przywary.

⁶¹ The said practice was found in: Pre-Trial Detention Centre in Bytom, Prison No 1 in Wrocław, Pre-Trial Detention Centre in Lubań, Pre-Trial Detention Centre in Świdnica, External Ward in Grodzisk Mazowiecki, External Ward in Przywary.



*Rules for the Treatment of Prisoners*⁶² (Rule 17) and the *European Prison Rules*⁶³ (Rule 20). Therefore, the representatives of the National Preventive Mechanism recommended that inmates be allowed to wear their own clothing when being escorted outside the unit, and that prison uniforms should be used only on a case-by-case basis justified by specific circumstances.

2.3.2. Access of inmates to health care

The comparison of 2013 and 2012 in terms of access of inmates to health care and conditions in which health care is provided does not reveal any significant changes.

There are still units where inmates interviewed by the representatives of the Mechanism complain about brusqueness of medical personnel in contacts with inmates, the failure to take the reported ailments seriously, no basic examination during the visit to the doctor, long waiting time for medicines when their supplies are over, being brushed aside by doctors and long waiting time for a visit to a specialist.

The prisoner-doctor relations are a systemic problem⁶⁴ intrinsic to treatment of inmates by medical personnel which stems from the fact that **doctors are often and nurses almost always the officers of the Prison Service. Therefore, doctors-officers have the instruments to discipline the inmates, i.e. the right to request a disciplinary penalty for a patient. In the opinion of the representatives of the NPM, such situation does not allow for an egalitarian relation between a doctor and a patient which determines the quality of provided care.**

In two prisons⁶⁵, an important problem in 2013 was the insufficient personnel of prison health care service to provide regular health care to persons deprived of liberty. The reason was the fact that penitentiary units are not competitive as employers for doctors. The phenomenon is particularly marked with regard to medium-level medical personnel, ophthalmologists and psychiatrists.

As regards the access to doctors, the NMP representatives are of the opinion that the presence of non-medical staff during the provision of health care services to inmates should be exceptional and should take place only when it is required to ensure safety of the person providing the health care services, upon explicit request of the medical personnel. In comparison with the previous years, the situation in this regard in 2013 has improved, with the presence

⁶² Resolutions of the UN Economic and Social Council 633C [XXIV] of 31 July 1957 and 2076 [LXII] of 13 May 1977.

⁶³ Recommendation Rec(2006)2 of the Committee of Ministers of 11 January 2006.

⁶⁴ See: Report from 2012, p. 38.

⁶⁵ Prison in Iława, Prison in Żytkowo.



of an officer during the provision of health care services to persons deprived of liberty recorded only in 4 out of 29 visited penitentiary units.⁶⁶

The CPT also expressed its doubts concerning the issue. The Committee acknowledged that *special security measures may be required during medical examinations in a particular case. However, there can be no justification for prison guards being systematically present during such examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in each case of a security threat. The steps should be taken to bring practice in line with the above considerations. If necessary, the law should be amended accordingly.*⁶⁷

In her motion addressed to the Constitutional Tribunal on 18 October 2010⁶⁸, the Human Rights Defender requested to declare Article 115 § 7 of the Executive Penal Code to be incompatible with Article 47 in conjunction with Article 31(3) of the Polish Constitution. In its judgment of 26 February 2014 (file No K 22/10), the Tribunal agreed with the reservations of the Defender ruling that the first sentence of Article 115 § 7, insofar as it requires the presence of a non-medical officer during the provision of health care service:

- a. also to persons deprived of liberty with respect to whom it is unnecessary;
- b. and does not stipulate the grounds for withdrawal of this requirement;

is incompatible with Article 47 in conjunction with Article 31(3) of the Constitution of the Republic of Poland.

The said provision will cease to be applicable after the period of 12 months from the date of judgement publication in the Journal of Laws of the Republic of Poland.

2.3.3. Disciplinary procedure

The employees of the National Preventive Mechanism found only several cases where the persons using disciplinary measures failed to inform the inmates about the possibility to appeal against their decisions.⁶⁹ The frequency of using disciplinary measures by prison authorities and the proportion of those measures to rewards did not raise any doubts.

⁶⁶ Pre-Trial Detention Centre in Bytom, Pre-Trial Detention Centre in Chojnice, Prison in Krzywaniac, Prison in Nysa

⁶⁷ Cf. § 123 CPT/(2011)20.

⁶⁸ RPO-637905-VII-10/MC.

⁶⁹ Prison in Goleniów.



2.3.4. Right of access to information

Some remand prisoners and first-time prisoners in the pre-trial detention centres visited in 2013 pointed out that they have not received comprehensive information about their rights and obligations during initial interviews with correction officers.⁷⁰

2.3.5. Right to file complaints, requests, applications

In general, the opinion of the NPM representatives on providing the prisoners with the possibility to exercise one of their basic rights was positive. In the previous year, the NPM representatives continued to verify how the inmates were informed about the result of their requests. In several establishments, the employees of the Mechanism revealed the practice incompliant with § 9(1) and (2) of the Ordinance of the Minister of Justice on handling the applications, complaints and requests of inmates of prisons and pre-trial detention centres⁷¹ and consisting in placing the information about the results of the inmates' requests in the corridors of residential wards⁷² or providing the information orally⁷³. In view of the need to protect personal data of prisoners, the said practice must be eliminated and inmates must be informed about the results of their requests individually, orally or in writing, in line with the relevant regulations.

2.3.6. Right to contact with the outside world

During the visits, the representatives of the NPM found that in 10 establishments there were no separate rooms where the reward stipulated in Article 138 § 1(3) of the Executive Penal Code, i.e. a visit in a separate room, without any supervising person present, could be provided. The lack of such a room in an establishment means that this reward cannot be granted, even if inmates meet all criteria for obtaining the reward. A recommendation was made to assign such rooms in all places lacking them.⁷⁴

⁷⁰ Pre-Trial Detention Centre in Bydgoszcz, Pre-Trial Detention Centre in Luban

⁷¹ Dz. U. of 2013, item 647 (as from 5 June 2013). Previously: Dz. U. of 2003 No 151, item 1467, as amended.

⁷² Prison in Nysa.

⁷³ Pre-Trial Detention Centre in Bytom, Pre-Trial Detention Centre in Chojnice, Pre-Trial Detention Centre in Lubsko, External Ward in Przywary, Prison in Dębica, Prison in Krzywaniac, Prison in Medyka. The reservations concerned the situation when a request was not examined immediately, but after several days, in which case the reply to the inmate should be made in writing.

⁷⁴ Pre-Trial Detention Centre in Bytom, Pre-Trial Detention Centre in Bydgoszcz, Pre-Trial Detention Centre in Częstochowa, Pre-Trial Detention Centre in Elbląg, Pre-Trial Detention Centre in Lubsko, Pre-Trial Detention Centre in Szczytno, Pre-Trial Detention Centre in Szamotuły, External Ward in Grodzisk Mazowiecki, Prison in Jastrzębie-Zdrój, Prison in Nysa.

As in the previous years, also during the last year's visits the employees of the NPM found cases of using CCTV in rooms for unsupervised visits.⁷⁵ It should be emphasized that the issue was the subject of the motion of the Human Rights Defender.⁷⁶ The Human Rights Defender is of the opinion that cameras in those rooms are in contradiction to the intention of the legislator introducing the reward.

2.3.7. Living conditions

Apart from the clear need to carry out ongoing repairs in the visited establishments, the representatives of the NPM noted **the lack of cells adjusted to the needs of disabled persons.**⁷⁷

Another recommendation still occurring in the reports by the NPM is to equip upper bunk beds with ladders and safety rails. According to the representatives of the NPM, the lack of such elements may result in falls (i.a. of persons who did not reveal that they suffer from such conditions as epilepsy) and potential injuries of persons who climb the beds using available structures, which are not adjusted to such use, or who try to jump onto the bed. For persons with reduced physical fitness, it may be very difficult or virtually impossible to climb up to a bunk bed.

The employees of the Mechanism found that patient rooms were not adjusted to the needs of persons with disabilities in 10 penitentiary units.⁷⁸ Apart from the lack of such adjustment, the rooms did not meet the requirements laid down in the Ordinance of the Minister of Justice of 5 July 2012 on detailed requirements to be met by the rooms and facilities of an entity providing medical treatment for persons deprived of their liberty (*Annex 2 Detailed requirements to be met by the rooms and facilities of outpatient department with patient room*)⁷⁹ and

⁷⁵ Pre-Trial Detention Centre in Świdnica, Pre-Trial Detention Centre in Szamotuły, Prison in Nysa, Pre-Trial Detention Centre in Bytom, External Ward in Pionki.

⁷⁶ Motion of the HRD of 6 September 2012 (RPO-680042-II-704.3/11/PM).

⁷⁷ Pre-Trial Detention Centre in Białystok, Pre-Trial Detention Centre in Chojnice, Pre-Trial Detention Centre in Szczytno, Pre-Trial Detention Centre in Częstochowa, Pre-Trial Detention Centre in Świdnica, Pre-Trial Detention Centre in Lubañ, Pre-Trial Detention Centre in Szamotuły, Pre-Trial Detention Centre in Bytom, Pre-Trial Detention Centre in Lubsko, Prison in Medyka, Prison in Braniewo, Prison in Nysa, Prison in Biała Podlaska, Prison No 2 in Grudziądz, External Ward in Grodzisk Mazowiecki, External Ward in Pionki, External Ward in Czernsk.

⁷⁸ Pre-Trial Detention Centre in Bydgoszcz, Pre-Trial Detention Centre in Chojnice, Pre-Trial Detention Centre in Częstochowa, Pre-Trial Detention Centre in Szamotuły, Prison No 1 in Wrocław, Prison in Biała Podlaska, Prison in Ilawa, Prison in Jastrzębie-Zdrój, Prison in Kłodzko, Prison in Nysa.

⁷⁹ Dz. U. of 2012, item 808.



the standards concerning the furnishings which are laid down in Table 13 Annex 3 to the Ordinance of the Minister of Justice of 17 October 2003 on the living conditions of inmates in prisons and pre-trial detention centres⁸⁰.

2.3.8. Work

In 2013, the Defender filed a request to the Minister of Justice to undertake a legislative initiative aimed at eliminating the restriction on payment of allowances for increased costs of employment of persons deprived of liberty only to entrepreneurs, since the regulations in place allow for employment of such persons also by other entities, such as non-governmental organisations. The current wording of the said regulation raises doubts as to its compliance with the constitutional principle of equality. It seems that the entities other than enterprises, which employ persons deprived of liberty, are discriminated in terms of obtaining the allowance. The Minister did not agree, stating that entities other than entrepreneurs may apply for a loan or a grant from the Fund for Occupational Activation of Convicts and Development of Prison Industrial Workshops. Therefore, none of the entities is discriminated against. The Defender did not fully accept the presented arguments and asked non-governmental organisations interested in employing persons deprived of liberty to present their opinion on the issue and requested the General Director of Prison Service to provide information about the use of resources from the said fund in 2012 and 2013. The Defender will decide about the further course of action after receiving and analysing the requested information.

3. Centres for juveniles

Necessity to draw up a new Act on juvenile delinquency proceedings⁸¹

In the opinion of representatives of the National Preventive Mechanism, the Act on juvenile delinquency proceedings, despite another amendment in 2013,⁸² still does not match the current level of legal protection due to juveniles and re-

⁸⁰ Dz. U. No 186, item 1820.

⁸¹ The Ministry of Justice agrees with this postulate in principle, but also points to certain problems, among others that the Act on juvenile delinquency proceedings is subject to the competence of five ministries. See: letter of 27 February 2014: <http://www.rpo.gov.pl/pl/content/raport-rpo-z-dzia%C5%82alno%C5%9Bci-w-polsce-kmp-w-roku-2012-0>

⁸² Act of 30 August 2013 amending the Act on juvenile delinquency proceedings and certain other acts (Dz. U. of 2013, item 1165).



mains insufficient. **As a result of the visits of centres for juveniles, the representatives of the NPM noticed the use of many practices which interfere with the rights of minors to liberty and privacy, not regulated by the Act.**

According to representatives of the Mechanism, **actions should immediately be taken to regulate the following issues in a legal act of the statutory rank: access of minors to medical care (including specialist care for pregnant minors), contacts of minors with their parents/legal guardians and a lawyer (including contact by phone) and the procedure of isolating minors in police emergency centres for children, performing personal searches in juvenile detention centres and the use of CCTV in places of detention for minors.**

The situation of pregnant juveniles and juveniles and their children after birth is a systemic problem which remains unsolved.

This problem, indicated in the *2012 Report*, has not been resolved yet. Analysis of the materials collected by the staff of the Office of the Human Rights Defender, including those presented during debates on the motherhood juveniles, confirmed the earlier position that the current solutions are insufficient. The juvenile mothers for whom it is possible to stay with their children leave the juvenile detention centre or the care centre and thus interrupt the process of rehabilitation. They return to the family home, which is often pathological, or are referred to homes for single mothers, which do not provide adequate influence or support. It is very rare that a minor mother with her child is referred to a specialised foster family. In other cases, however, the mother and her baby are separated: the mother stays in the facility, while the child is adopted, placed in a foster family or in a children's home. In the opinion of the Human Rights Defender, expressed *inter alia* in correspondence with the Ministers of National Education and of Justice,⁸³ rehabilitation establishments should have homes (or wards) for mothers with children where juveniles could stay together with their children in adequate conditions. **The creation of wards for juveniles with children is therefore addressed to girls and their offspring for whom it is impossible to return to their family home because of its dysfunction or because they have none, and who require further rehabilitation influence, assistance and support. This solution aims primarily at protecting the value of family and maternity in accordance with Article 18 of the Constitution of the Republic of Poland.**

⁸³ RPO-742891-VII-720/13/KG/MMa.



3A. Youth care centres

3A.1. Introduction

In 2013, the representatives of the National Preventive Mechanism visited 15 youth care centres.⁸⁴

3A.2. Systemic problems

Absence of generally binding regulations on disciplining juveniles.

This problem was indicated in the 2012 Report.

3A.3. Areas that require improvement

3A.3.1. Treatment

It should be emphasised that, **in general, the charges of the visited youth care centres expressed positive opinions on the staff and relations between the employees and themselves.** There are however reports from charges on the use of physical violence against them (hitting on the nape of the neck)⁸⁵ and the use of profanity by some employees.⁸⁶

In many centres it was moreover discovered that the personnel used practices that went beyond their authority, i.e. performing personal searches of juveniles⁸⁷ and carrying out the tests for the presence of drugs in their body and/or testing with a breathalyser.⁸⁸ Mechanism representatives each time remind Youth Care Centre staff that the law does not grant them with the right to carry out personal searches. Therefore, always when it is required to subject a charge to such a check, e.g. in case of a justified suspicion that he/she tried to bring illegal substances to the centre and refused to produce them voluntarily, the Police should be called to carry out a search. The situation is similar in the case of testing for the presence of drugs or alcohol in the body.

⁸⁴ Youth Care Centres in: Polanów, Pogroszyn, Wrocław, Jaworek, Goniądz, Warsaw (No 3), Lidzbark Warmiński, Babimost, Nysa, Borowie, Wola Rowska, Podgłębokie, Samostrzel, Rudy, Józefów near Otwock.

⁸⁵ Youth Care Centres in: Nysa, Lidzbark Warmiński.

⁸⁶ Youth Care Centres in: Lidzbark Warmiński, Pogroszyn.

⁸⁷ Youth Care Centres in: Wola Rowska, Borowie, Nysa, Polanów, Rudy, Lidzbark Warmiński, Podgłębokie.

⁸⁸ Youth Care Centres in: Lidzbark Warmiński, Warsaw (No 3), Goniądz, Wrocław, Rudy, Polanów, Jaworek, Józefów, Borowie, Wola Rowska.

3A.3.2. Medical care

The most frequent recommendation on medical care was to ensure preventive examinations, including dental check-ups, to juveniles.⁸⁹ Each time the visitors emphasised the need to subject newly arriving charges to medical examinations to evaluate their health condition and detect possible diseases, especially of the locomotor system, circulatory and respiratory system.⁹⁰

In their recommendations, NPM representatives also pointed out the need to employ a nurse, to keep medicines correctly and to set up an infirmary.

3A.3.3. Disciplinary procedure

Pursuant to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles: (a) Conduct constituting a disciplinary offence; (b) Type and duration of disciplinary sanctions that may be inflicted; (c) The authority competent to impose such sanctions; (d) The authority competent to consider appeals (Rule 68). Employees of the NPM verified whether this Rule is reflected in the internal documents of the care centres, and more importantly if it is applied in practice in connection with imposing discipline. **Yet, it was repeatedly discovered that the penalties the juveniles received did not comply with the rules,⁹¹ such as additional duties, physical exercise, locking the bathroom, prohibition to go out or wearing a reflective vests, which is incompatible with the above Rule 68.** Collective sanctions, also often applied to juveniles,⁹² is in contradiction with UN Rule 67 which says: *Collective sanctions should be prohibited* and may trigger a sense of injustice among juveniles, and often even hostility towards tutors.

The visitors also had reservations about any penalties that consist in limiting contacts with people from outside the centre, e.g. restriction or suspension of receiving and sending mail, a ban on contact with friends, limitation on using the phone, non-provision of a pass for holidays, a ban on visits of people from outside the centre, checking mail, etc.⁹³

⁸⁹ Youth Care Centres in: Nysa, Jaworek, Podgłębokie, Warsaw (No 3), Samostrzel, Goniądz, Pogroszyn, Polanów, Babimost, Józefów.

⁹⁰ Youth Care Centres in: Nysa, Borowie, Jaworek, Babimost, Polanów, Rudy, Pogroszyn, Goniądz, Warsaw (No 3), Józefów.

⁹¹ Youth Care Centres in: Jaworek, Lidzbark Warmiński, Borowie, Polanów, Rudy.

⁹² Youth Care Centres in: Jaworek, Podgłębokie, Lidzbark Warmiński, Samostrzel, Babimost, Wrocław, Pogroszyn, Rudy, Nysa, Józefów.

⁹³ Youth Care Centres in: Goniądz, Pogroszyn, Rudy, Babimost, Warsaw (No 3), Podgłębokie.



The penalties imposed in certain youth care centres also included other unacceptable measures, such as punishment in the form of isolation of a charge in a separate room or the use of coercive measures as a means of introducing discipline. Each time, the visitors recommended elimination of these disciplinary measures.

3A.3.4. Right of access to information

The recommendations of the visitors as to right usually concerned displaying addresses of institutions that guard human and citizen rights and the rules for charges in an available place.

3A.3.5. Right to contact with the outside world

Comments from representatives of the National Preventive Mechanism on this issue are very similar to the reservations reported in previous years. It can be assumed that this is due to the absence of detailed regulation of charges' contacts with people from outside the establishments in the Act on juvenile delinquency proceedings. **As to this provision, it should be noted that the introduction of any restrictions on charges' contacts with persons from outside a youth care centre in the form of, for example, the need to ask the director for permission to visit by people who are not family members or using the possibility to contact people from outside the family as a prize, punishing with a ban on contact or withholding mail from friends, making the possibility of using the phone dependent on behaviour, organisation of visits of people who are not family members under special control or in the presence of a tutor, violates the law.⁹⁴ Censorship of juveniles' correspondence is also incompatible with the law, i.e. Article. 66 § 3 of the Act on juvenile delinquency proceedings.⁹⁵** The NPM employees also recommended that the right of juveniles to privacy should be respected by ensuring them with intimacy and allowing them to speak freely during visits and phone calls.⁹⁶ This concerned, for example, conducting phone calls with the speakerphone mode on or within the range of hearing of a tutor, as well as arranging visits to charges in the presence of an establishment employee.

⁹⁴ Youth Care Centres in: Wola Rowska, Borowie, Jaworek, Warsaw (No 3), Samostrzel, Goniądz, Pogroszyn, Polanów.

⁹⁵ Youth Care Centres in: Jaworek, Wola Rowska, Borowie.

⁹⁶ Youth Care Centres in: Nysa, Wrocław, Warsaw (No 3), Borowie, Wola Rowska.

3A.3.6. Right to religious practices

The situations which breached the rights of juveniles to freedom of thought, conscience and denomination, discovered during the visits of representatives of the National Preventive Mechanism were of two kinds. In some establishments charges reported that they must participate in the mass and services,⁹⁷ in other centres juveniles stated that it was only possible for them to go to a church only if an appropriate number of charges wanted to go.⁹⁸

3A.3.7. Staff

Invoking Rule 85 of Resolution 45/113, which stipulates that: *The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child*, in most establishments NPM representatives recommended providing additional training for the staff in the protection of the rights of the child in international and Polish law, as well as first aid, coping with stress and aggression, etc.⁹⁹

3A.3.8. Living conditions

The most important reservations of Mechanism representatives with regard to the living conditions in youth care centres were as follows:

- **CCTV in charges' rooms**,¹⁰⁰
- **No intimacy ensured in bathrooms**, i.e. no walls between showers, no curtains,¹⁰¹
- **No infrastructure for sports activities, i.e. no sport field or hall**,¹⁰²
- **Bars on windows or instead of door**¹⁰³.

None of the visited centres was adjusted to the needs of persons with disabilities.

⁹⁷ Youth Care Centres in: Rudy, Podgłębokie.

⁹⁸ Youth Care Centres in: Samostrzel, Nysa, Babimost, Józefów.

⁹⁹ Youth Care Centres in: Jaworek, Babimost, Podgłębokie, Warsaw (No 3), Goniądz, Rudy, Pogroszyn, Polanów, Nysa, Borowie.

¹⁰⁰ Youth Care Centres in: Pogroszyn, Borowie, Wola Rowska.

¹⁰¹ Youth Care Centres in: Jaworek, Nysa.

¹⁰² Youth Care Centres in: Józefów, Warsaw (No 3), Samostrzel.

¹⁰³ Youth Care Centres in: Polanów, Borowie, Jaworek.



3B. Juvenile detention centres and juvenile shelters

3B.1. Introduction

In 2013, the representatives of the National Preventive Mechanism made seven visits to detention centres¹⁰⁴ and three juvenile detention centres and juvenile shelters.¹⁰⁵

3B.2. Systemic problems

3B.2.1. Placing juveniles in transition rooms and separate living premises

The problem tackled repeatedly, also in the *2012 Report*, is the placement of juveniles in transition rooms and separate living premises. In this case, the HRD requested the Constitutional Tribunal¹⁰⁶, by the application of 22 July 2013, for a declaration of non-compliance of § 25(1)(4) of the Ordinance in case of juvenile detention centres/juvenile shelters and § 34 of the Ordinance, to the extent that it refers to relevant application of § 25(1)(4) of the Ordinance, with Article 95 § 3 of the Act on juvenile delinquency proceedings, Article 41(1) in conjunction with Article 31(3) of the Constitution of the Republic of Poland and Article 92(1) sentence 1 of the Constitution. The application provides extensive legal argumentation and shows the operation of the provision in practice, indicating the situations where the challenged provisions were applied in isolation from the premises of their application. Juveniles were placed in establishments for formative reasons, it was treated as a disciplinary measure or used in lieu of a coercive measure. The Defender also raised the issue that in one of the establishments,¹⁰⁷ apart from separate living premises, also a room of increased formative influence was set up, both on the basis of § 25(1)(4) of the Ordinance. The rules of these rooms also included other reasons for placing juveniles there, which resulted in a situation where charges could be placed in a separate living premise for every violation of the rules.

¹⁰⁴ Juvenile Detention Centre in Trzemeszno, Juvenile Detention Centre in Kcynia, Juvenile Detention Centre in Barczewo, Juvenile Detention Centre in Gdańsk, Juvenile Detention Centre in Białystok (see: description in point 8 of the Report – Recontrols), Juvenile Centre for Social Adaptation in Koszalin, Juvenile Centre for Social Adaptation in Szubin.

¹⁰⁵ Juvenile Detention Centre and Juvenile Shelter in: Świdnica, Racibórz, Koronowo.

¹⁰⁶ For the application (RPO-724264-VII-13/MMa) and positions of the parties, see: <http://www.rpo.gov.pl/pl/content/wniosek-do-trybuna%C5%82u-konstytucyjnego-w-sprawie-systemu-izolacji-nieletnich-ze-wzgl%C4%99du-na>

¹⁰⁷ Juvenile Detention Centre in Kcynia.

In her application to the Constitutional Tribunal, the Human Rights Defender pointed out prolonged stays of juveniles in separate living premises and transition rooms, confirmed by the visits of NPM representatives. The visitors had reservations, also highlighted in the application, that during the stay of juveniles in the transition room/separate living premises juveniles do not pursue compulsory education, which was discovered on the basis of an analysis of transition room logbooks¹⁰⁸ and interviews with charges.¹⁰⁹

3B.2.2. Non-adjustment of juvenile detention centres/juvenile shelters to the needs persons with disabilities

The infrastructure of all the visited establishments was not adapted to the needs of persons with physical disabilities. While non-adaptation of youth care centres results from the lack of funds for this purpose and failure to notice the problem by centre management, in the case of juvenile detention centres and juvenile shelters the problem arises from the wording of the provisions of the Ordinance of the Minister of Infrastructure of 12 April 2002, whose § 16(2) excludes juvenile detention centres and juvenile shelters from the requirement to ensure accessibility to persons with disabilities.¹¹⁰

3B.3. Areas requiring improvement

3B.3.1. Treatment of juveniles

NPM representatives generally had a positive opinion of the atmosphere in establishments. The interviewed juveniles emphasised they had a sense of safety and were able to say which members of the staff were trustworthy. They often pointed out that their stay in the establishment has changed them for the better.

Yet, the visitors also received reports of mistreatment. During talks with NPM representatives juveniles said that security staff behaved in a provocative way, often using profanity,¹¹¹ some tutors were aggressive verbally and physically, which resulted in their negative opinion of the atmosphere of the establishment,¹¹² the staff of the dormitory and guards used physical and verbal aggression,¹¹³ the work methods of the tutor of one group come down to restrictions and threats of collective

¹⁰⁸ Juvenile Detention Centre and Juvenile Shelter in Świdnica.

¹⁰⁹ Juvenile Detention Centre in Barczewo.

¹¹⁰ For more on the said Ordinance and correspondence concerning its amendment, see: Prisons/Pre-Trial Detention Centres. Systemic Problems (point 8).

¹¹¹ Juvenile Detention Centre in Kcynia.

¹¹² Juvenile Detention Centre and Juvenile Shelter in Racibórz.

¹¹³ Juvenile Detention Centre and Juvenile Shelter in Świdnica.



responsibility.¹¹⁴ Each time, the visitors requested the directors of establishments to examine the charges of the juveniles and to eliminate the irregularities.

3B.3.2. Coercive measures

The procedures of using coercive measures in force in three establishments¹¹⁵ and the rules of an isolation room in force in one establishment¹¹⁶ were based on provisions which had been revoked¹¹⁷ or amended.¹¹⁸ In the light of the above, NPM representatives recommended their redrafting on the basis of current regulations in this regard, i.e. the Act of 24 May 2013 on coercive measures and fire-arms¹¹⁹ and amendments to the Act on juvenile delinquency proceedings introduced by the said Act.

NPM representatives also pointed to the need to supplement, *inter alia*, the rules of use of coercive measures towards the charges and the rules of the isolation room to include grounds for placing juveniles in the room,¹²⁰ and to supplement the instructions on the use of coercive measures to include restrictions on the duration of stay in an isolation room.¹²¹

3B.3.3. Disciplining

The visitors had the most serious reservation about the conditional stay group in one of the visited establishments.¹²² According to the rules for charges of the conditional stay group, *it is intended for charges who have demonstrated particularly bad behaviour*, which makes it a disciplinary measure. Staying in this group has many troublesome aspects, such as no walks or sensory deprivation due to staying in low standard rooms. NPM representatives recommended liquidating the conditional stay group.

¹¹⁴ Juvenile Detention Centre in Trzemeszno.

¹¹⁵ Juvenile Detention Centre in Gdansk, Juvenile Centre for Social Adaptation in Szubin, Juvenile Detention Centre and Juvenile Shelter in Racibórz.

¹¹⁶ Juvenile Centre for Social Adaptation in Szubin.

¹¹⁷ Ordinance of the Council of Ministers of 22 February 2011 on detailed conditions and method of using coercive measures with respect to juveniles in juvenile detention centres, juvenile shelters, youth care centres and youth sociotherapy centres (Dz. U. No 48, item 248).

¹¹⁸ Article 95a of the Act on juvenile delinquency proceedings.

¹¹⁹ Dz. U. item 628.

¹²⁰ Juvenile Detention Centre in Kcynia.

¹²¹ Juvenile Detention Centre and Juvenile Shelter in Świdnica.

¹²² Juvenile Centre for Social Adaptation in Koszalin.

Part of the above-mentioned disciplinary measures involved limiting the right to juveniles' contacts with the outside world. In the juvenile institutions visited in 2013 NPM representatives discovered the following disciplinary measures: withholding a pass and leave for six months¹²³ and in the other establishment: ban on telephone calls for a month (also with family members), restriction or suspension of the right to meet with persons from outside the establishment (with the exception of parents/guardians) for up to three months, ban on telephone conversations with a boyfriend/girlfriend.¹²⁴

Another **disciplinary measure not provided for in the rules or regulations of which the visitors were informed by juveniles was the obligation to wear a bright coloured tracksuit¹²⁵ or a red outfit (refugees).¹²⁶ In the opinion of NPM representatives, the application of such a measure has no substantive justification.**

3B.3.4. Right to complain

NPM representatives found out about restrictions on the right to complain on the basis of interviews with charges and analysis of documentation regulating the work of establishments. **Their concerns related to the absence of provisions on penalties and rewards¹²⁷ in the rules for charges¹²⁸ and the methods of appealing against disciplinary measures.**

During interviews with NPM representatives juveniles mentioned problems in communication with the staff. In one of the establishments¹²⁹ they pointed out that they fear to appeal against penalties and submit complaints or requests as in such case they are always told "feel free to write to the court," even though the rules clearly state the terms on which charges may appeal against disciplinary measures, also directly to the director. In view of the above, NPM representatives recommended adherence to the regulations of the establishment. In another establishment¹³⁰ juveniles stated that the director makes the decision to see a charge for a talk on the basis of the reason for the meeting presented by the security guard. NPM representatives were concerned with this situation, as well as with the fact that charges have no possibility to file a direct complaints to the director (they can

¹²³ Juvenile Detention Centre in Gdańsk.

¹²⁴ Juvenile Centre for Social Adaptation in Szubin.

¹²⁵ Juvenile Centre for Social Adaptation in Szubin.

¹²⁶ Juvenile Detention Centre in Kcynia.

¹²⁷ Juvenile Detention Centre in Barczewo.

¹²⁸ Juvenile Detention Centre in Trzemeszno, Juvenile Detention Centre and Juvenile Shelter in Świdnica.

¹²⁹ Juvenile Centre for Social Adaptation in Szubin.

¹³⁰ Juvenile Detention Centre in Kcynia.



do it only after exhausting all other possibilities), and complaints to institutions are forwarded by the establishment director.

3B.3.5. Contacts with the outside world

Juveniles can keep in contact with their families by letters, phone calls and visits, and during holidays and passes.

Similar to juvenile care centres, during visits to juvenile detention centres and juvenile shelters NPM representatives detected restrictions towards persons other than family members.

Another violation identified by NPM representatives is the control of correspondence, incompatible with the Act on juvenile delinquency proceedings.

Pursuant to Article 66 § 3 of the Act on juvenile delinquency proceedings, correspondence of juveniles *may be controlled by the director of the establishment, centre or shelter or by an authorised pedagogical staff member **only in case of justified suspicion** that its contents undermine legal order, compromise safety of the establishment, centre or shelter, stand in contrast to public morals or may have an adverse impact on the pending proceedings or rehabilitation of juveniles. If such contents are found, correspondence is not delivered and the fact, along with its justification, is notified to the juvenile and the family court executing the decision. The juvenile is also advised about the right to file a complaint referred to in Article 31a. The said correspondence is transferred to the personal file of the juvenile.* In the visited establishments a practice of preventive controls of correspondence was discovered, which was either a rule¹³¹ or occurred at random,¹³² checking parcels in the absence of the charges.¹³³ There was also a rule in one establishment that stipulated compulsory control of correspondence.¹³⁴

In the majority of visited establishments, the opportunity to meet with people from outside the family was associated with a privilege. NPM representatives also had reservations about the fact that visits to juveniles take place solely in the presence of adults,¹³⁵ under the supervision of a security guard¹³⁶ or in a small room next to security guard room.¹³⁷ According to the visitors, the practice is not substantiated by current provisions and as such it should be eliminated.

¹³¹ Juvenile Detention Centre in Gdańsk.

¹³² Juvenile Detention Centre and Juvenile Shelter in Koronowo.

¹³³ Juvenile Centre for Social Adaptation in Koszalin.

¹³⁴ Juvenile Detention Centre and Juvenile Shelter in Świdnica.

¹³⁵ Juvenile Detention Centre in Gdańsk.

¹³⁶ Juvenile Detention Centre and Juvenile Shelter in Racibórz.

¹³⁷ Juvenile Detention Centre in Trzemeszno.

As in the case of correspondence, **NPM representatives found irregularities in the form of control and restriction of phone contacts.**

The visitors had reservations about the fact that juveniles are forced to receive phone calls in the presence of establishment staff (tutor,¹³⁸ in the room of a security guard or a tutor,¹³⁹ in the room of a dormitory director in the presence of staff¹⁴⁰). In one of the establishments, this principle has been extended to include recording of the details of the caller and the topic of the conversation.¹⁴¹ In some establishments in addition to controls¹⁴² the staff listened to charges' conversations by using a phone in the loudspeaker mode¹⁴³ or using a separate set for listening to the conversation.

NPM representatives were concerned with the procedure of applying for a pass, whose key element was obtaining several signatures of establishment staff members who consented to granting it.¹⁴⁴ In the opinion of NPM personnel, this is a manifestation of unnecessary bureaucracy.

3B.3.6. Access to outdoor activities

Restrictions on going out were revealed on the basis of non-inclusion of walks in the daily schedule, no entries on going out in the documentation of the establishment and the practice on juvenile detention centres and juvenile shelters in this respect. The inability to go outside concerned particularly the juveniles staying outside a formation group, i.e. is placed in separate living premises and transition rooms.

3B.3.7. Medical care

Juveniles staying in juvenile detention centres and juveniles shelters are covered by basic and specialised health care. In one of the establishments the charges mentioned the long waiting time to see a specialist¹⁴⁵ and in another establishment they pointed out they received no preventive tests or examination.¹⁴⁶ NPM representatives always investigate whether a security guard is present during the provi-

¹³⁸ Juvenile Detention Centre in Gdańsk.

¹³⁹ Juvenile Centre for Social Adaptation in Koszalin.

¹⁴⁰ Juvenile Detention Centre in Barczewo.

¹⁴¹ Juvenile Detention Centre in Trzemeszno.

¹⁴² Juvenile Detention Centre in Kcynia.

¹⁴³ Juvenile Detention Centre and Juvenile Shelter in Świdnica, Juvenile Detention Centre and Juvenile Shelter in Koronowo.

¹⁴⁴ Juvenile Detention Centre in Kcynia, Juvenile Detention Centre in Gdańsk, Juvenile Detention Centre and Juvenile Shelter in Świdnica.

¹⁴⁵ Juvenile Detention Centre in Kcynia.

¹⁴⁶ Juvenile Centre for Social Adaptation in Szubin.



sion of medical services to juveniles. In one of the establishments¹⁴⁷ the presence of a guard was treated as a rule and only the doctor could decide otherwise,¹⁴⁸ while in another establishment while one of the charges said that he was accompanied by an establishment employee during a visit to the doctor's office. The National Preventive Mechanism is of the opinion that the presence of non-medical staff during the provision of health care services should take place only when the doctor requires it.

3B.3.8. Right to religious practices

The right to religious practices is respected in the establishments. It is possible for the juveniles staying in juvenile detention centres and juvenile shelters to attending church services and meetings with a Roman catholic priest. In addition, one establishment¹⁴⁹ started cooperation with Jehovah's Witnesses and a pastor of the Free Christians Church In other establishment no charges had the need to contact representatives of other denominations.

3B.3.9. Right of access to information

In most visited establishments juveniles were presented the rules of stay in a juvenile detention centre or juvenile shelter and had the opportunity to read the rules in hurry-free conditions. **NPM representatives had the most serious reservations about the way charges are informed about personal matters, which infringes the right to privacy. Juveniles were informed on the dates of cases involving them in public,¹⁵⁰ responses to charges' requests were read out during an assembly¹⁵¹ or displayed on public notice boards.¹⁵²**

3B.3.10. Living conditions

NPM representatives were concerned with the fact § 105⁵ of the Ordinance on juvenile detention centres and juvenile shelters was not observed. It stipulates that *digital records from the monitoring of residential rooms, transition rooms, isolation rooms and patient rooms shall be archived until the juveniles who live there leave the centre or shelter.*

¹⁴⁷ Juvenile Detention Centre in Trzemeszno.

¹⁴⁸ Juvenile Detention Centre in Kcynia.

¹⁴⁹ Juvenile Centre for Social Adaptation in Koszalin.

¹⁵⁰ Juvenile Detention Centre in Gdańsk.

¹⁵¹ Juvenile Detention Centre and Juvenile Shelter in Koronowo.

¹⁵² Juvenile Detention Centre in Kcynia, Juvenile Detention Centre in Trzemeszno.

The technical condition of buildings of the visited establishments was satisfactory. In only two establishments¹⁵³ NPM representatives recommended refurbishment of rooms which were in a bad condition.

NPM representatives had no reservations about the condition of furniture in most visited establishments, with the exception of two establishments¹⁵⁴ where furniture required repair or replacement.

In some establishments intimacy in sanitary areas was not ensured. The most serious identified violation in terms of no intimacy in bathrooms was the absence of curtains and cameras over showers,¹⁵⁵ due to which juveniles were forced to bathe in underwear.

However it should be emphasised that the restriction on the right to privacy¹⁵⁶ resulting from the use of CCTV is only based on the provisions of an implementing act. None of the provisions of the Act on juvenile delinquency proceedings provides for the use of CCTV in juvenile detention centres or juvenile shelters. Thus the requirement that any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, provided for in Article 31(3) of the Constitution of the Republic of Poland, is breached.

3B.3.11. Staff

During the visits, NPM representatives pay attention to adequate qualifications of the staff to work with juveniles. **In all establishments the staff had completed appropriate education and raised their qualifications by attending a variety of training courses.**

3C. Police emergency centres for children

3C.1. Introduction

In 2013, the staff of the National Preventive Mechanism Department visited four Police emergency centres for children.¹⁵⁷

3C.2. Systemic problems

Systemic problems have been presented in item 3 that concerns the necessity to draw up a new Act on juvenile delinquency proceedings.

¹⁵³ Juvenile Detention Centre in Kcynia, Juvenile Centre for Social Adaptation in Koszalin.

¹⁵⁴ Juvenile Detention Centre in Kcynia, Juvenile Detention Centre and Juvenile Shelter in Świdnica.

¹⁵⁵ Juvenile Detention Centre in Gdańsk.

¹⁵⁶ Article 47 of the Constitution of the Republic of Poland.

¹⁵⁷ Police Emergency Centres for Children in: Będzin, Białystok, Krakow, Koszalin (closed).



3C.3. Areas requiring improvement

3C.3.1. Treatment

In one of the Police emergency centres for children the visitors learned that 20 detained juveniles stayed there in excess of 72 hours (between 5 and 23 days).¹⁵⁸ In each of these cases, the reason behind prolonged stays of juveniles was waiting for a place in juvenile shelters after a judge issued a decision on placement in this type of establishment. Such a state of affairs resulted primarily from the absence of a provision setting out the duration of stay of a juvenile in a Police emergency centre for children after a court issues a decision on placement of a juvenile in a juvenile shelter. Representatives of the National Preventive Mechanism noted that a common practice of courts was to issue a decision on juveniles' stay in a Police emergency centre for children until their transport to the selected establishment. Usually it took a few days. The Human Rights Defender highlighted the problem many times in her general petitions¹⁵⁹ and in the *Report on visits to the Police emergency centres for children carried out by the National Preventive Mechanism*.¹⁶⁰ The recommendations of the Human Rights Defender were put to practice in the Act amending the Act on juvenile delinquency proceedings and certain other acts,¹⁶¹ adopted on 30 August 2013. Among a number of changes to the Act, Article 32g § 8 was introduced, which stipulates that *in the event of an order of placement of a juvenile in a juvenile shelter or temporary placement in a juvenile care centre, professional foster family or a medical establishment, the juvenile may stay in a Police emergency centre for children for a time necessary to transport him/her to the relevant professional foster family or to the relevant medical establishment, centre or shelter, yet no longer than by further five days*.

Visitors discovered no instances of ill treatment in any of the visited establishments. However, in one Police emergency centre for children NPM representatives learned, on the basis of individual interviews with juveniles, that establishment personnel inflicted punishments on charges in the form of physical exercise (e.g. “push-ups” or “press-ups”) for infractions such as swearing and inappropriate attitude towards staff members.

3C.3.2. Right to health care

In addition to the above systemic problem, during visits to one of the Police emergency centres for children the visitors found that the time of examination was not always stated on a medical certificate.

¹⁵⁸ Police Emergency Centre for Children in Krakow.

¹⁵⁹ RPO-672816-VII-720.8.1/11/JJ.

¹⁶⁰ HRD Bulletin. Źródła 2012, No 6.

¹⁶¹ Dz. U. item 1165.

3C.3.3. Right to information about the legal rights

According to § 40(2) of the Ordinance of the Minister of the Interior of 4 June 2012, a copy of the Rules of Police emergency centres for children and a list of institutions safeguarding the rights of juveniles are placed in a bedroom for juveniles, community room, isolation room and sanitary isolation room in such a way as to prevent them from being destroyed or using them to harm anyone. In one of the visited establishments, this obligation was not complied with because the information was not placed in juveniles' bedrooms.¹⁶² In view of the above, NPM representatives recommended posting the information in the rooms in accordance with the abovementioned provision.

3C.3.4. Contact with the outside world

Contacts of juveniles staying in Police emergency centres for children has been identified as requiring regulation in the Act on juvenile delinquency proceedings. It should also be noted that pursuant to Article 40 § 4 of the Act on juvenile delinquency proceedings, the Police should notify the parents or guardians of a juvenile about his/her detention immediately. Analysing randomly selected detention protocols, NPM representatives noticed that the average time from the moment of detention of a juvenile to notification of parents was 3-5 hours.

3C.3.5. Staff

In all the visited facilities part of the staff were women. When a girl is placed in a Police emergency centre for children, the activities connected with the placement can be performed by female Police officers.

Police officers serving in the visited establishments were trained primarily in the methods and forms of performing tasks in a Police emergency centre for children.¹⁶³

3C.3.6. Cultural and educational measures

Visited establishments have community rooms with, *inter alia*, TV set, ping pong table, table, benches to sit on or desks and chairs. In one Police emergency centre for children there was a sports hall,¹⁶⁴ but it was not used as it was refurbished, while in two centres there were libraries.¹⁶⁵

The *Day Agenda* of the visited establishments included the following activities: school classes, formative and care, cultural and educational, sports and lei-

¹⁶² Police Emergency Centre for Children in Będzin.

¹⁶³ Police Emergency Centres for Children in: Będzin, Białystok, Krakow.

¹⁶⁴ Police Emergency Centre for Children in Białystok.

¹⁶⁵ Police Emergency Centres for Children in: Będzin, Białystok.



sure, as well as activity in bedrooms – reading newspapers and books. In two establishments a framework day agenda was developed.¹⁶⁶

It should be emphasised that according to CPT recommendations provided in a report for the Polish government following its visit to Poland in 2004 [(CPT (2005)3], the CPT stated that in Police emergency centres for children steps should be taken to offer constructive activities to detained children, with particular emphasis on education (paragraph 44).

3C.3.7. Living conditions

The standard of living conditions in the visited establishments was similar. In two of the visited establishments the visitors described the design and furnishings of bedrooms for juveniles as austere, meeting minimum requirements only.¹⁶⁷ Rooms were not equipped, for example, with cabinets for personal belongings of juveniles, which is a non-obligatory requirement laid down in § 35(2) of the Ordinance of the Minister of the Interior of 4 June 2012.

4. Rooms for detained persons (PDRs)

4.1. Introduction

In 2013, the representatives of the National Preventive Mechanism visited 31 Police detention rooms for detained persons or persons brought to sober up within Police organisational units.¹⁶⁸

4.2. Systemic problems

4.2.1. Delegating the responsibility for care of intoxicated persons to the Police

The problem highlighted in the *Report for 2012* of delegating the responsibility for care of intoxicated persons to the Police remains topical. **In the absence of the obligation to employ medical personnel in PDRs, these establishments are not adequately prepared to care for intoxicated persons. In the absence of an adequate response to the conclusions of the aforementioned Report, the Hu-**

¹⁶⁶ Police Emergency Centres for Children in: Krakow, Będzin.

¹⁶⁷ Police Emergency Centres for Children in: Krakow, Będzin.

¹⁶⁸ PDRs in: Nowa Sól, Biłgoraj, Chełmno, Golub-Dobrzyń, Kolbuszowa, Kościan, Krapkowice, Lubliniec, Maków Mazowiecki, Morąg, Piła, Ryki, Wałcz, Ząbkowice Śląskie, Słupsk, Lidzbark Warmiński, Polanica Zdrój, Węgorzewo, Oborniki Śląskie (Room closed), Puck, Mielec (Room in modernisation), Dębica, Strzelin, Sieradz, Miastko, Bytów, Białogard, Gryfino, Łobez, Biała Podlaska, Wołomin, Garwolin.

man Rights Defender petitioned the Prime Minister on the need to develop a comprehensive system of care of intoxicated persons in her petition of 18 November 2013.¹⁶⁹ The Defender's position on this matter was fully supported by the Minister of the Interior, but the Minister of Health opposed it.¹⁷⁰ The analysis of their responses requires the Defender to take further action in this regard.

4.2.2. Medical examination of detained persons

The issue of medical examinations of persons placed in PDRs did not change in 2013 either. Only in four visited establishments all persons deprived of liberty were subject to examinations in health care centres.¹⁷¹ In other visited establishments, medical services were provided to persons brought to sober up, with visible injuries to the body and those who requested an examination.

The problem of different treatment of detained persons in this respect, depending on the basis for detention, also remains unsolved. Persons who have the status of a detained person and are under the influence of alcohol are not subject to obligatory medical examination. This means that persons in the same situation (intoxicated detainees must sober up to take part in legal proceedings and those brought to sober up must do so to be released) are, according to the law, treated differently insofar as the obligatory medical examination is concerned, although in both cases an examination should serve establishing whether a given person can stay in a PDR and not e.g. in a hospital, where specialist care would be provided.

Despite the recommendations of the CPT which, in its report for the Polish government from its 2004 visit to Poland, it recommended to *ensure that all new arrivals are medically screened without delay and that the establishments receive regular visits by a doctor or a nurse*¹⁷² UN General Assembly Resolution 43/173 of 9 December 1988, petition of the Human Rights Defender and Reports of National Preventive Mechanism representatives, the regulations have not changed.

4.2.3. Insufficient staffing of PDRs

The provisions of § 2(2) of the *Order No 130 of the Police Commander-in-Chief of 7 August 2012 on the methods and the forms of performing tasks in the room*

¹⁶⁹ RPO-738421-VII-720.7/13/MMa.

¹⁷⁰ Cf. replies of 4 December 2013 and 31 January 2014.

<http://www.rpo.gov.pl/pl/content/wyst%C4%85pienie-do-prezesa-rady-ministr%C3%B3w-w-sprawie-izb-wytrze%C5%BAwie%C5%84>

¹⁷¹ PDRs in: Kolbuszowa, Lubliniec, Puck, Walcz.

¹⁷² § 44 CPT (2005)3.



for detained persons or persons brought to sober up,¹⁷³ which stipulates that the director of the establishment organises service in such a way that there is always a Police officer in a PDR, have not been amended.

The findings of the visiting teams confirmed that also in 2013 one police officer was on duty at each PDR and he/she was, at the same time, a deputy for the duty officer at the Police headquarters and has to perform certain duties ordered by the latter. It is physically impossible for one Police officer to ensure safety and control in a PDR.

4.3. Good practices

Similar to 2012, also in 2013 a good practice applied in certain PDRs was to perform medical examination of all detained persons, regardless of the grounds for their detention. This is all the more important, as indicated at the beginning of this chapter, because regulations do not impose such an obligation.¹⁷⁴

4.4. Areas requiring improvement

4.4.1. Legality of detention

One of the most important issues analysed by the employees of the National Preventive Mechanism is the legality of detention. In order to determine whether the activities are carried out in line with the law, the analysis covers the documentation related to deprivation of liberty, e.g. protocols of detention, admission/release orders, duty log books. The analysis of those materials revealed a number of irregularities. In one of the detention rooms¹⁷⁵, only some protocols were accompanied by photocopies of the prosecutor's request to court to use this preventive measure. The irregularities found in other units included the lack of transfer and release order for the detained person¹⁷⁶, no time provided on the admission order for the detained person.¹⁷⁷ Despite those deficiencies, the duration of stay of persons deprived of their liberty could be established based on other documents drawn up in the detention rooms, but the NPM representatives in each of the above cases recommended keeping reliable documentation related to the stay of detained persons or persons brought to detention rooms.

¹⁷³ Official Journal of the National Police Headquarters of 2012, item 42.

¹⁷⁴ PDRs in: Kolbuszowa, Lubliniec, Puck, Wałcz.

¹⁷⁵ PDR in Nowa Sól.

¹⁷⁶ PDRs in: Golub-Dobrzyń, Kościan.

¹⁷⁷ PDR in Węgorzewo.

4.4.2. Treatment

In the overwhelming majority of the visited Police units, the inmates did not voice any reservations about their treatment by the Police officers on duty in the Police detention rooms.

However, the analysis of CCTV recordings in one of the units¹⁷⁸ revealed that a person brought to sober up was placed in a room for detained persons or persons brought to sober up without outerwear and shoes, but only in underwear.

As regards strip searches, the visitors still find cases of the searches being performed in the conditions which do not guarantee intimacy and respect for dignity of the searched persons. The violations of the right of detained persons to intimacy and privacy resulted from the fact that strip searches were performed in a room with CCTV surveillance¹⁷⁹, or even in a corridor with CCTV surveillance.¹⁸⁰ The employees of the Mechanism emphasized that strip search in such conditions may constitute degrading treatment and as such cannot take place.

4.4.3. Personnel

In almost all visited Police units, the training of personnel was limited to the issues related to methods and forms of performing tasks in the rooms for detained persons or persons brought to sober up. Due to the fact that the Police officers on duty in PDRs must have not only theoretical knowledge, but also a high level of interpersonal competence, there can be no doubt that it is insufficient to expand only the knowledge on the methods and forms of performing duties in the detention rooms.

4.4.4. Right to medical care

Apart from the issue of medical examinations discussed in the part devoted to systemic problem, **another area that still requires improvement is the documentation of medical services provided to detained persons and persons brought to sober up.** Frequent errors included¹⁸¹: lack of time and date of examination on a medical certificate and a stamp of the health care services provider, lack of the signature of a doctor; some medical certificates lacked the information about the lack of contraindications to placing a person in the deten-

¹⁷⁸ PDR in Lidzbark Warmiński.

¹⁷⁹ PDRs in: Białogard, Biłgoraj.

¹⁸⁰ PDR in Chełmno.

¹⁸¹ PDRs in: Biała Podlaska, Biłgoraj, Chełmno, Golub-Dobrzyń, Kolbuszowa, Krapkowice, Łobez, Morąg, Piła, Ryki, Sieradz, Strzelin, Ząbkowice Śląskie, Słupsk, Lidzbark Warmiński, Węgorzewo.



tion room. Similar deficiencies were found by the visiting team in the journals of doctor's visits.

Another persistent problem in some visited units is the participation of a Police officer during the provision of medical services to detained persons or persons brought to sober up.¹⁸² The NPM employees on each occasion recommend limiting the presence of Police officers (of the same sex as the detained person) during the provision of medical services to detainees to situations of justified concern about safety of medical personnel, or to places where medical services are provided not equipped with appropriate technical safeguards thus raising concerns that a detainee might escape. Otherwise, the detained persons' right to intimacy, right to respect their dignity and the right to keep medical secret are violated.¹⁸³

4.4.5. Right of access to information

Article 16(2) of the Ordinance of the Minister of the Interior of 4 June 2012 stipulates that a copy of the Rules of Procedure concerning the stay of persons placed in rooms for detained persons or persons brought to sober up, as well as the list of institutions protecting human rights, shall be placed in the room for detained persons or persons brought to sober up in such a way that the documents cannot be destructed or used for the purposes of an assault. Despite the explicit wording of this provision, some of the visited units did not fulfil the obligation stemming therefrom.¹⁸⁴ In other units, the required texts placed in the rooms were damaged¹⁸⁵, incomplete¹⁸⁶ or out of date.¹⁸⁷

The visits to the Police units include also a verification of the access of detainees to the list of lawyers. The access to such a list should be treated as a safeguard against ill treatment.

4.4.6. Living conditions

In the overwhelming majority of the visited Police units, the employees of the National Preventive Mechanism did not have any objections to the living conditions.

However, in three cases they criticized the condition of the rooms.

¹⁸² PDRs in: Nowa Sól, Kolbuszowa, Łobez, Strzelin, Polanica Zdrój, Węgorzewo.

¹⁸³ Cf. item 2.4.2 of this Report, which refers to the judgment of the Constitutional Tribunal of 26 February 2014 (file No K 22/10).

¹⁸⁴ PDRs in: Nowa Sól, Biała Podlaska, Biłgoraj, Puck, Ryki.

¹⁸⁵ PDR in Golub-Dobrzyń.

¹⁸⁶ PDR in Lidzbark Warmiński.

¹⁸⁷ PDR in Polanica Zdrój.

Another persistent problem found by the employees of the Mechanism is non-adjustment of the Police rooms to the needs of disabled persons.¹⁸⁸ In the opinion of the NPM employees, at least one room should be adjusted to the needs of persons with disabilities and elderly persons to enable them to move on their own around the room and to use the sanitary facilities.

5. Sobering-up stations

5.1. Introduction

In 2013, the representatives of the National Preventive Mechanism visited 4 sobering-up stations.¹⁸⁹

The Human Rights Defender has for a long time closely monitored the situation of intoxicated persons who are detained and the care for those persons. The Defender's initiatives were summed up in the *Report of the Human Rights Defender on the visits of the National Preventive Mechanism to sobering-up stations*¹⁹⁰, published in July 2013, and at the conference organised on 3 October 2013 and entitled *Sobering-up stations – law versus practice, directions of changes* which focused on the transformation of sobering-up stations into new type specialist establishments and on other issues related to sobering-up stations. In addition, the HRD was involved in a discussion with a representative of the Ministry of Health on problems relating to sobering-up stations which were described in the *Report from 2012*.¹⁹¹

5.2. Systemic problems

5.2.1. Insufficient regulations on organisation of sobering-up stations

As described in the *Report for 2012*, the optional nature of Article 39(1) of the Act of 26 October 1982 on upbringing in sobriety and counteracting alco-

¹⁸⁸ PDRs in: Nowa Sól, Biłgoraj, Chełmno, Golub-Dobrzyń, Kolbuszowa, Kościan, Krapkowice, Lubliniec, Maków Mazowiecki, Morąg, Piła, Ryki, Wałcz, Ząbkowice Śląskie, Słupsk, Lidzbark Warmiński, Polanica Zdrój, Węgorzewo.

¹⁸⁹ The following establishments were visited: the Municipal Sobering-up Station in Legnica, the Centre for Therapy and Care for Intoxicated Persons in Koszalin, the Sobering-up Station in Bytom, the Centre for Reduction of Damages and Early Therapeutic Intervention for Persons Addicted to Alcohol and Abusing Alcohol at the Wielkopolskie Voivodeship Help Thy Neighbour Centre MONAR-MARKOT in Rożnowice with its seat in Poznań (currently: Centre for Intoxicated Persons at the Wielkopolskie Voivodeship Help Thy Neighbour Centre MONAR-MARKOT in Rożnowice with its seat in Poznań). Further in the report, the term Sobering-up Station (or SS or Station) though some establishments have other names.

¹⁹⁰ See: <http://www.rpo.gov.pl/pl/content/raport-rzecznik-praw-obywatelskich-z-wizytacji-w-izbach-wytrze%C5%BAwie%C5%84-przeprowadzonych-przez-0>.

¹⁹¹ See: http://www.rpo.gov.pl/sites/default/files/raport_kmp_2012.pdf



holism¹⁹² (hereinafter: Act on upbringing in sobriety) results in very few local governments deciding to establish such stations. **As a result, care for intoxicated persons is the obligation of the Police or hospitals. This solution raises numerous reservations. Organisational units of the Police are not prepared to provide medical care to intoxicated persons. The stay of such persons in hospital disturbs the order and normal functioning of those institutions and often causes inconvenience for other patients. In the opinion of the HRD, the above arguments prove that Article 39(1) of the Act on upbringing in sobriety should impose an obligation on gminas or poviats to run sobering-up stations.**

In the opinion of the HRD, the current model of sobering-up stations needs to be modernised, also by introducing the relevant legislative changes. The stations should become specialist units of a new type, combining the functions of a sobering-up station, a therapeutic centre and a family assistance centre. The HRD is of the opinion that the functioning of the comprehensive Support Centre for People Addicted to Alcohol and Their Families is an appropriate resolution of the deadlock concerning the situation of the intoxicated persons, local authorities and the central administration.¹⁹³

The report of the Supreme Audit Office on the collection and use by voivodeship governments and gminas of the fees for permits for the sale of alcoholic beverages shows that not all expenditure classified by the audited entities as costs of performing tasks related to prevention and resolution of alcohol-related problems and counteracting drug addiction was in fact used for performing those tasks.¹⁹⁴

¹⁹² Dz. U. of 2012, item 1356, as amended.

¹⁹³ See: I. Lipowicz, *Izby wytrzeźwień w perspektywie Rzecznika Praw Obywatelskich* [Sobering-up stations from the point of view of the Human Rights Defender] (in:) T. Gardocka, J. Sobczak (ed.) *Izby Wytrzeźwień a prawa człowieka* [Sobering-up Stations and Human Rights], Wyd. Adam Marszałek, Toruń 2013, pp. 19-20.

¹⁹⁴ **Information about the results of the audit of collection and use by voivodeship and gmina governments of the fees for permits for the sale of alcoholic beverages in the years 2006-2008**, Supreme Audit Office, Poznań, May 2009, pp. 34-37. The Supreme Audit Office stated that financing other tasks than indicated in the Act on upbringing in sobriety with funds coming from the fees for permits for the sale of alcoholic beverages was illegal. The scale of irregularities is significant, since they were found in 3 out of 8 (37.5%) of audited marshal's offices and in 19 out of 32 (59.4%) audited gmina government offices. In its report, the Supreme Audit Office also stated that sobering-up stations should be financed with fees collected from detained persons (Article 42(5) of the Act on upbringing in sobriety). The above is true in principle, but according to the State Agency for the Prevention of Alcohol-Related Problems (PARPA) the estimated collection ratio of fees for the stay in sobering-up stations remains at the level of approximately 33% and this source of financing alone is insufficient to ensure appropriate functioning of the modern centres.



5.2.2. Legislative amendments to the Act on upbringing in sobriety and counteracting alcoholism

After examining the motion of the Human Rights Defender of 29 March 2011¹⁹⁵, the Constitutional Tribunal ruled, in its judgment of 3 April 2012¹⁹⁶ that Article 42(6) of the Act on upbringing in sobriety and of the Ordinance¹⁹⁷ were in-compliant with Article 92(1) of the Polish Constitution. As a result, the provisions in-compliant with the Polish Constitution ceased to be applicable after the period of 9 months from the date of judgement publication in the Journal of Laws of the Republic of Poland, i.e. on 16 January 2013.

CCTV surveillance in sobering-up stations raises numerous concerns of the representatives of the NPM. The amended Act introduces a provision imposing an obligation to install a system allowing to monitor the persons, thus fulfilling the constitutional requirement to regulate restrictions on rights and freedoms in a statutory legal act. However, the regulation is unsatisfactory from the point of view of human rights protection. During the visits, the representatives of the National Preventive Mechanism often see the CCTV surveillance systems installed in the places which by definition should guarantee intimacy to the persons staying in the stations, such as dressing rooms or bathrooms.

5.3. Areas requiring improvement

5.3.1. Treatment

All visited stations¹⁹⁸ charged a fee for the stay which raised the reservations of the representatives of the National Preventive Mechanism.

5.3.2. Use of coercive measures

During their visits to sobering-up stations, the representatives of the NPM pay particular attention to the use of coercive measures. Therefore, they each time thoroughly analyse the documentation on the use of coercive measures, watch random CCTV recordings and take other actions aimed at identifying the procedure of using coercive measures.

¹⁹⁵ RPO-571581-II-11/ST, <http://www.sprawny-generalne.brpo.gov.pl/pdf/2007/10/571581/1556153.pdf>.

¹⁹⁶ File No K 12/11.

¹⁹⁷ Ordinance of the Minister of Health of 4 February 2004 on the methods of escorting, admission and discharging intoxicated individuals and on organisation of sobering-up stations centres and other establishments established or designated by a local government unit (Dz. U. No 20, item 192, as amended; hereinafter: Ordinance of the Minister of Health of 4 February 2004).

¹⁹⁸ Sobering-up Station in Poznań, Sobering-up Station in Bytom, Sobering-up Station in Koszalin, Sobering-up Station in Legnica.



In one of the visited stations¹⁹⁹, the coercive measure in the form of restraining the patient with straps was used in the general room where other patient could be accommodated with respect to whom such measures were not used, although the station had a separate isolation room. In the opinion of the representatives of the NPM, such practice should be abandoned, since the immobilised person may be exposed to aggression of the other patient which makes his situation even more uncomfortable.

5.3.3. Right of access to information

During their visits, the representatives of the NPM analyse how the patients of the visited establishments can exercise their right of access to information. It is beyond any doubt that the access to information allows patients of sobering-up stations to exercise their rights and react when those rights are violated. The employees of the Mechanism also emphasize that, pursuant to the UN General Assembly Resolution of 9 December 1988 (*Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*), any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights (Principle 13).

Informing the patients of sobering-up stations about their right to complain to the district court competent for the place where the station is located, pursuant to Article 40(6) of the Act on upbringing in sobriety²⁰⁰, is of particular importance from the point of view of their right of access to information. Failure to inform the patients of a sobering-up station about the right to complain is each time a cause for alarm for the representatives of the NPM who issue a recommendation to place the relevant information in a place available to all²⁰¹.

5.3.4. Right to health care

Medical examination in conditions that do not ensure intimacy is an irregularity found during the visits to sobering-up stations which particularly infringes the rights of patients and also breaches the right to medical confidentiality. **There are cases when medical examination takes place in the building's hall with**

¹⁹⁹ Sobering-up Station in Koszalin.

²⁰⁰ Before the amendment (Act of 3 January 2013 amending the Act on upbringing in sobriety and counteracting alcoholism), the matter was regulated in Article 40(3a).

²⁰¹ Sobering-up Station in Koszalin, Sobering-up Station in Bytom.



CCTV cameras, although the sobering-up station²⁰² has an outpatient department and a doctor's surgery. The medical confidentiality is also breached when a Police officer is present during medical examination.²⁰³ The instructions on treatment of patients in one of the visited stations²⁰⁴ state that “the supervisor should each time participate and, if necessary, assist the doctor in examining an intoxicated person and during other medical procedures on that person”. This provision raised concerns of the employees of the Mechanism. The representatives of the National Preventive Mechanism are of the opinion that the presence of a non-medical officer during the provision of health care services to patients should be exceptional and take place only when it is required to ensure safety of the person providing health care services and is explicitly requested by the medical personnel. Such a view was expressed by CPT in its 12th General Report, stating that all medical examinations must be conducted out of the hearing and out of the sight of non-medical personnel (§ 42 in [CPT/Inf (2002)15]).

5.3.5. Right to intimacy

The visits of the representatives of the NPM reveal that in numerous stations the right to intimacy of persons brought to sober up is violated.

5.3.6. Living conditions

As regards the living conditions, the representatives of the NPM verify whether the standards observed in the sobering-up stations comply with the legislation in force. During the inspection of the stations, the employees of the Mechanism pay particular attention on adjustment of the buildings to the needs of persons with disabilities.

A frequently encountered problem by the representatives of the NPM during the visits is the non-adjustment of the visited stations to the needs of persons with disabilities.²⁰⁵ The lack of appropriate infrastructure concerned the lack of handgrips and rails enabling the persons on wheelchairs to use the toilets and the placement of the button of the call system too high, out of reach of such persons.

²⁰² Sobering-up Station in Poznań.

²⁰³ Sobering-up Station in Poznań.

²⁰⁴ Sobering-up Station in Bytom.

²⁰⁵ Sobering-up Station in Koszalin, Sobering-up Station in Poznań.



5.3.7. Personnel

The representatives of the National Preventive Mechanism recommend that apart from the compulsory training, the personnel of sobering-up stations should also undergo training on work with difficult customers and activities to prevent their job burnout.

6. Social care centres

6.1. Introduction

In 2013 the representatives of the NPM carried out visits to 20 social care centres²⁰⁶.

6.2. Systemic problems

6.2.1. Contact with the outside world

During the visits in 2013, the representatives of the Mechanism repeatedly noted the problem consisting in restrictions on the residents' going out of the Social Care Centre. The most Centres in this respect accepted the solution, that only persons not-threatening oneself or others can independently to go out Centre, while going out by residents in bad physical and mental condition are being carried out in the company of the carer²⁰⁷. Several visited Centres²⁰⁸ decided to allow going out for incapacitated persons only under the care of family members, the person from the Staff or volunteer, while in one Centre²⁰⁹ incapacitated residents can go out only under the condition of obtaining the agreement of a legal guardian.

²⁰⁶ Social Care Centre in Jaworzno, Social Care Centre in Kraków, Social Care Centre in Legnickie Pole, Social Care Centre in Poznań, Social Care Centre in Przasnysz, Social Care Centre in Radom, Social Care Centre in Węgorzewo, Social Care Centre in Gdańsk, Social Care Centre in Mysłówice, Social Care Centre in Susz, Social Care Centre in Warszawa, Social Care Centre in Olsztyn, Social Care Centre in Grajewo, Social Care Centre in Góra Kalwaria, Social Care Centre in Elk, Social Care Centre in Biłgoraj, Social Care Centre in Lubliniec, Social Care Centre in Machowinek, Social Care Centre in Przemyśl, Social Care Centre in Bytom.

²⁰⁷ Social Care Centre in Jaworzno, Social Care Centre in Kraków, Social Care Centre in Legnickie Pole, Social Care Centre in Poznań, Social Care Centre in Przasnysz, Social Care Centre in Radom, Social Care Centre in Węgorzewo.

²⁰⁸ Social Care Centre in Gdańsk, Social Care Centre in Jaworzno, Social Care Centre in Mysłówice, Social Care Centre in Susz.

²⁰⁹ Social Care Centre in Radom.

There is the lack of regulation in the legal status at present being in force, it should be noticed, which any restrictions they would implement in the scope of going out from Centres buildings and premises by residents. One should and so at present regard unlawfully reducing the personal freedom of residents solutions implemented in visited Centres. However taking the need for the safety assurance into consideration for residents, the representatives of the Mechanism notice the need of settling the moved problem on the statutory level²¹⁰. Simultaneously to accept belongs, that decision to limit going out of Centre should be dependent on the medical or the physical and mental condition of the resident, confirmed with medical opinion or of psychologist.

6.2.2. Psychological and psychiatric care

The issue of the psychological-psychiatric care provided for residents of visited centres remains still in the interest of representatives of the NPM. Pursuant to § 6(2)(2) of the Ordinance of the Secretary of Labour & Social Policy from 23 August 2012 on social care centres²¹¹, the contact with a psychologist must be provided for residents and the contact with a psychiatrist for persons staying in a centre for chronically mentally ill people. The inaccuracy of the quoted regulation causes, that standard included in it will be fulfilled both at the different forms of cooperation with the psychologist (full-time or only part-time employment, employment to the civil-legislative contract, establishing contact with the psychologist employed at the psychological clinic), as well as at the frequency very much diversified of contacts of the psychologist with residents. In the opinion of the NPM employees, one should regard insufficient above solutions, because they let exclusively an ad-hoc assistance the benefit. It is worthwhile however taking into account the importance of lines, with which he can play ensuring the permanent psychological help to persons with disabilities of different kind or also with diseases, in surviving and dealing emotions and problems with. The employed psychologist at the centre has greater work opportunities with residents, because he is acquiring the knowledge about their charges through the permanent contact with them, observation and conversations with

²¹⁰ In the response of 21 January 2014, the Ministry of Labour & Social Policy Under Secretary pointed out, that „At present it is hard to settle, whether matters of going out of residents beyond premises of the Social Care Centre will be settled with separate provisions of law, or whether applying solutions in practice is also a better exit not violating the law in force, without enforcing additional regulations. The way of settling this matter wasn't still completely determined”.

²¹¹ Dz. U. z 2012 r., poz. 964.



the staff, but first of all their confidence being one of factors increasing the effectiveness of led influences²¹².

6.2.3. Protectively-supporting services

Every social care centre, independently to the type, provides services for his residents in existential needs, protectively-supporting services. Pursuant to § 5(1) (3b) of the Ordinance of the Secretary of Labour & Social Policy from 23 August 2012 among others raising the fitness of residents is falling within the scope of supporting services. General character lets the shown regulation claim that the duty is regarding assisting the fitness of residents both of their intellectual, as well as physical sphere. Applicable regulations safeguard creating the technical back for the accomplishment at the centre of services supporting in physical streamlining, however they forgot about safeguarding the essential personal back.

In spite of very good equipping with the rehabilitation equipment, in some of visited centres²¹³, an undermanning of the staff in charge of the rehabilitation of residents was noticeable, as a result of what meeting the needs of all residents requiring physical streamlining or completion of the rehabilitation in the reduced scope was impossible.

6.3. Areas requiring improvement

6.3.1. Legality of stay

It was reported, that 45 residents at which only a mental illness was diagnosed without co-occurring intellectual disability, stayed in one of centres²¹⁴ meant for adults intellectually disabled persons. These persons were referred to the center in 2000-2008 years. It is worthwhile pointing, that pursuant to applicable regulations (Art. 56 and § 2 acts from 12 March 2004 about the welfare²¹⁵), centres for adult

²¹² In this respect one should not regard satisfying the reply of the Ministry of Labour & Social Policy Under Secretary from 21 January 2014, in which it was indicated that „according to the Art. of 58 sec. 2 acts on the welfare, social care centre enables and for residents a help in receiving health benefits it being entitled to them pursuant to separate provisions is organising. Social care centres aren't medical institutions and cannot carry benefits of the health care out, since it isn't setting them. Residents of social care centres have the same access to health benefits, like other persons". In the issue of the psychological care it was stated only, that currently in force „provisions on the welfare aren't putting to social care centres of the duty of employing the psychologist and/or the psychiatrist, even in care centres for persons with psychic disturbances”.

²¹³ Social Care Centre in Gdańsk, Social Care Centre in Przasnysz, Social Care Centre in Susz, Social Care Centre in Warszawa.

²¹⁴ Social Care Centre in Legnickie Pole.

²¹⁵ Dz. U. of 2013, item 182.

disabled persons intellectually and lengthily mentally ill centres can be linked under the condition of situating each of them in the separate building, what in this case wasn't carried out. Administration of the centre only towards one of residents filed a motion to move to institution intended for persons lengthily mentally ill, according to information provided by management of the centre. Remaining residents due to the long stay in the centre adapted themselves to his specificity and they are functional well, in the evaluation of the management.

6.3.2. Treatment

The prevailing atmosphere in visited centres was very good, in the evaluation of the representatives of the NPM. Interviewed persons in the predominating number of cases emphasized that they were feeling all right in the centre, they assessed the staff as involved in the care, the help and organising the free time for them. But the representatives of the Mechanism received some signals indicating the improper treatment of residents by persons employed in the centres. Interviewed persons handed over that the staff is turning to them on *you*, without keeping the reciprocity principle in this respect²¹⁶, the staff is involving residents for the help with working for the centre or other residents²¹⁷, or the staff is encouraging them for the help in taking care of other residents into the too persistent way²¹⁸.

6.3.3. Disciplining

During the visits, the representatives of the NPM revealed, that towards residents of some centres disciplinary methods are applied. In one centre²¹⁹ there was inserted a catalogue of penalties including the warning, a reprimand, a written reprimand, a reprimand entered into presences of inmates, moving to other residential room, moving to other centre. The analysis of the notebook of reports in the other centre²²⁰ revealed applying a physical effort as penalties, residents and workers pointed moreover for applying the ban on departures home, of the watching television and using the computer. Also at other centres visiting received signals concerning administering penalties in the form of: the ban on the departure from the room²²¹, of the ban on vacating the centre²²², several days' wearing py-

²¹⁶ Social Care Centre in Przasnysz.

²¹⁷ Social Care Centre in Susz, Social Care Centre in Węgorzewo.

²¹⁸ Social Care Centre in Legnickie Pole.

²¹⁹ Social Care Centre in Biłgoraj.

²²⁰ Social Care Centre in Poznań.

²²¹ Social Care Centre in w Kraków.

²²² Social Care Centre in Mysłowice, Social Care Centre in Susz.



jamasy by persons which wilfully will vacate the centre²²³, the ban of drinking the coffee²²⁴, clearing the canteen away or putting with intellectual disability persons about the large degree²²⁵, of the ban on the participation in the occupational therapy²²⁶. In one of centres²²⁷ consequences of the inappropriate behaviour are being established together by the community of residents.

Pointing signals of applying corporal punishments in the form of slapping, smacks in the behind or cold baths towards persons causing problems aroused biggest alarming among the representatives of NPM²²⁸.

Revealed in four from visited centres cases of punishing residents in relation to abusing alcohol by them, require the separate remark. Applied disciplinary means consisted in: particular in making impossible therapy, cultural and light classes as well as trips²²⁹, the duty of wearing pyjamas or the ban on vacating the residential building²³⁰, moving to other room, directing a proposal to County Family Assistance Centre for the repeal of decision at the centre and moving to the other²³¹.

6.3.4. Coercive measures

In spite of provided information to visitors about not-applying in the center²³² coercive measures direct, analysis of nursing reports showed that such measures were applied. The following records are attesting to it: *up to 00.00 she didn't sleep, very rude (...) she didn't want to let again button up striped and at 2.50 again she left the room and this time attacked the minder with fists (...) She was immobilised.* Cases of not-documenting applied means of the direct compulsion were also revealed at other center²³³, where in case of two residents, on account of their aggressive behaviours towards the staff, braces immobilizing while serving meals are applied. Bearing this in mind, the representatives of the Mechanism reminded about obligation to making a note in medical documentation's of everyone case applying the direct coercive measure, included in Art. 18 acts from 19 August 1994 about the protection of the mental health²³⁴.

²²³ Social Care Centre in Przasnysz.

²²⁴ Social Care Centre in Suszu, Social Care Centre in Elk.

²²⁵ Social Care Centre in Węgorzewo.

²²⁶ Social Care Centre in Elk.

²²⁷ Social Care Centre in Warszawa.

²²⁸ Social Care Centre in Elk.

²²⁹ Social Care Centre *Seniora Naftowca* in Kraków.

²³⁰ Social Care Centre in Legnickie Pole, Social Care Centre in Węgorzewo.

²³¹ Social Care Centre in Góra Kalwaria.

²³² Social Care Centre in Poznań.

²³³ Social Care Centre in Mysłowice.

²³⁴ Dz. U. of 2012, No 231, item 1375.

6.3.5. Right of access to information

In some of visited centres the representatives of the NMP made a note of the lack of signatures of residents on statements on acquainting with rights and obligations²³⁵, as well as acquainting with rights and obligations only families and legal guardians of residents. In the most of visited centres residents didn't have an ensured access to the list and addresses of the institution to which they could turn in the situation of violating their laws²³⁶.

6.3.6. Therapeutic and care services

The representatives of the NPM were critical of individual support plans for residents (isp) which they analysed in a part of the centres. In one centre²³⁷ entries included in isp were very laconic, those responsible for the implementation of a plan of the support was missing, aims of action weren't subject to an alteration. Isolated made entries in long time periods appeared in the place intended to showing *effects of conducted action*. Next at other centre²³⁸ a lack of the sequence of entries, and evaluation of plans concentrated more on the discharge of one's duties by employees than of individual implementations of his stages by the resident, was characteristic of isp prepared for residents. Moreover at two visited centres, assumptions for taking the individual care largely were limited to the issue of the self-service and interests²³⁹, of the self-service, migration and the communication²⁴⁰.

6.3.7. Living conditions

A very good standard of living conditions provided for residents stayed in the straight majority of visited centres. The exception in this respect constituted one centre²⁴¹, which during the visit of inspection didn't fulfil standards arising from effective laws and regulations. Therefore at the institution a rehabilitation

²³⁵ Social Care Centre in Biłgoraj, Social Care Centre in Góra Kalwarii.

²³⁶ Social Care Centre in Biłgoraj, Social Care Centre in Gdańsk, Social Care Centre in Góra Kalwarii, Social Care Centre in Grajewo, Social Care Centre in Kraków, Social Care Centre Seniora Naftowca in Kraków, Social Care Centre in Legnickie Pole, Social Care Centre in Mysłowice, Social Care Centre in Olsztyn, Social Care Centre in Poznań, Social Care Centre in Przasnysz, Social Care Centre in Przemyśl, Social Care Centre in Radom, Social Care Centre in Susz, Social Care Centre in Warszawa, Social Care Centre in Węgorzewo.

²³⁷ Social Care Centre in Węgorzewo.

²³⁸ Social Care Centre in Olsztyn.

²³⁹ Social Care Centre in Węgorzewo.

²⁴⁰ Social Care Centre in Legnickie Pole.

²⁴¹ Social Care Centre in Węgorzewo.



programme was carried out, of which the completion was planned for the end of 2013. The director of the centre informed, that within a few following days after the day of the visit of inspection a receipt of new buildings had been planned which were being planned moving residents to. Next the equipment and furniture for equipping new facilities in the large portion were already purchased. In new buildings, adapted for needs of disabled persons, rooms with three beds were planned with bathrooms, as well as room of the daily stay, dining room, room for exercises, support kitchens for residents.

6.3.8. Staff

At two of centres visited in 2013²⁴² an indicator determined in the regulation from 23 August 2012 of employing workers of the therapeutic-protective team, employed in whole working hours, wasn't carried out.

6.3.9. Health care

In some of visited centres, representatives of the Mechanism received pointing signals of problems in providing the proper health care for residents. These concerned the problem in the access to the child psychiatrist and the speech therapist²⁴³, the long waiting time for consultation of the cardiologist²⁴⁴, distant schedules of planned treatments, e.g. of operation of cataract²⁴⁵, the hampered access to the dental care for patients, which due to the absence of co-operation or the kind of the complaint require curing in the general anaesthesia²⁴⁶.

7. Psychiatric hospitals

7.1. Introduction

In 2013, the representatives of the NMP visited 11 psychiatric hospitals²⁴⁷: of which 4 intended for implementing preventive measures, 3 under enhanced security conditions and 3 under basic and enhanced security conditions. The visiting team paid special attention to the situation of the perpetrators of criminal

²⁴² Social Care Centre in Olsztyn, Social Care Centre in Węgorzewo.

²⁴³ Social Care Centre in Grajewo.

²⁴⁴ Social Care Centre in Jaworzno, Social Care Centre in Radom.

²⁴⁵ Social Care Centre in Radom.

²⁴⁶ Social Care Centre in Węgorzewo.

²⁴⁷ Hospitals in: Radom, Radecznica, Dębica, Międzyrzecze, Gniezno, Lubliniec, Branice, Ciborz, Węgorzewo, Lublin, Toszek.

offences, who are placed in psychiatric institution as a preventive measure (hereinafter: patients), dispatched by the court based on the article of 94 Penal Code. These are perpetrators of acts about the top level of the social harmfulness, committed in the state of an insanity caused by a mental state, which the court adjudicated putting in the psychiatric institution because of the high probability of new committing the act. Depending on the degree of the threat, the person is being put on the ward having named terms securities: basic, enhanced or maximum. Patients of the branch about conditions of the basic protection are using the same bylaws and order regulations, like others patients, what means the greater freedom e.g. in extending beyond the hospital branch. Perpetrators towards which these protective measures were applied, are being subjected to the due treatment, according to Art. 202 of Executive Penal Code. Taking the treatment doesn't require the approval cured neither of his actual or legal carers. The duration of curing at the unit isn't determined.

7.2. Systemic problems

Systemic problems concerning psychiatric hospitals were presented in *the Report of 2012* and it isn't possible to acknowledge that they stayed solved. In 2013 in the following issues a dialogue with the Ministry of Health was being led²⁴⁸:

- **insufficient funding of psychiatric wards;**
- **lack of legal regulations on persons subject to preventive measures consisting in the placement in closed psychiatric wards;**
- **lack of coherent systemic procedures allowing to place detained patients in social care centres;**
- **placement of patients in observation room/observation and diagnosis sections as an informel coercive measure;**
- **total ban on smoking in hospitals.**

In 2013 another systemic problem was also noticed: **lack of legal regulations concerning persons escorting outside hospital, while protective measures are executed.** Towards particularly dangerous patients a professional assistance of Police would be justified.

²⁴⁸ <http://www.rpo.gov.pl/pl/content/raport-rpo-z-dzia%C5%82alno%C5%9Bci-w-polsce-kmp-w-roku-2012-0>



7.3. Areas requiring improvement

7.3.1. Legality of stay

During the visit employees of the Mechanism stated, that opinions about the condition of the health of patients and about progress in curing them, not always have been transmitted to the courthouse with keeping the six-month time predicted in Art. 203 § of 1 Executive Penal Code²⁴⁹.

Apart from being at fault in this area on the side of hospitals, the functioning of very courts was also an object for interest of the the NMP representatives. Because they are happening unfortunately the cases of overdue-ness of court decisions on continued use of the preventive measure²⁵⁰ and other shortcomings.

7.3.2. Treatment

The prevailing atmosphere at hospitals visited in 2013 was friendly, what results from conversations with patients and from observations of visiting persons. The staff reacted to requests of patients and problems proposed by them. In individual conversations, patients of psychiatric hospitals in general didn't describe situations appointing them for the abuse by employees of the hospital, so as the physical aggression. In one institution²⁵¹ there was an exception, indicating the abuse of patients by the ward male nurs, which according to the relation of some interviewed persons referred to them in the uncivil way, rushing them up and pushed to do of some tasks. Peculiarly for the representatives of the NMP the reports were alarming about breaches of the personal inviolability and humiliating treating patients of the Hospital by one of employees, therefore they recommended in this matter formal explaining action to be started, aiming at eliminating described practices²⁵².

The staff of psychiatric hospitals doesn't have entitlements to punish patients. Employees of the Mechanism revealed at two of visited hospitals²⁵³, in spite of the lack of legal grounds, applying the unauthorized responsibility towards detained, among others as penalties of 1-2 hours sitting on a chair in the corridor through different offences.

²⁴⁹ Hospitals in: Lublin, Branice and Radom.

²⁵⁰ Hospitals in Ciborz. The matter is being clarified.

²⁵¹ Hospitals in Radechnica.

²⁵² It appears from the reply of the hospital administrator, that charges of patients in this matter weren't confirmed.

²⁵³ Hospitals in: Radechnica i Branice.

7.3.3. Coersive measures

At visited institutions, if the patient on account of illness committed violent attacks towards oneself, other persons and possessions, they applied – according to the domestic law – coersive measures, it is mainly an isolation, restraining them with safety straps and administration of sedatives. Documentation (patient restraint checklists) looked through by representatives of the Mechanism, was kept in general well, but at least cases of applying coersive measures direct weren't completely free from the irregularity²⁵⁴:

- in the assessment of the expert of the NMP, coincidences of the lack of grounds and clear justifying applying the coersive measure happened, in discord with Article 18 of the Act on the protection of mental health, as well as applying coersive measures direct *discretionary* of very patient, as well as applying individual interpretation of requirements of making a note of the fact of securing with strips, which is not harmonious with § 4 of the Ordinance of the Minister of Health from 21 December 2010 on kinds and the scope of medical documentation and the way for her of processing²⁵⁵;
- not always short-lived partial or total freeing has been applied, recommended in § 11 sec. 1 pt 2 of the Ordinance of the Minister of Health from 28 June 2012²⁵⁶;
- there were also cases of wrong documenting coersive measures direct;
- applying immobilizing, by using the straitjacket every time during carriage of patients for consultation specialist, apart from the hospital, e.g. dentist's, what in discord with Article 18 of the Act on the protection of mental health, which is giving the ground for applying the compulsion direct in the reaction to behaviour indicated in it of patient, without the possibility of preventive applying coersive measures direct²⁵⁷.

7.3.4. Right of access to information

All visited hospitals followed the rule that a nurse informed the newly admitted patient about the patient' rights in the admission room. Also a fact is worthy of notice, that in one of hospitals, in the moment of the entry, patients also re-

²⁵⁴ Hospitals in: Międzyrzecze, Branice, Lubliniec, Lublin, Gniezno, Radom, Toszek, Radechnica and Węgorzewo.

²⁵⁵ Dz. U. of 2010 r. No 252, item 1697 as amended. Hospitals in: Lubliniec, Branice, Radom.

²⁵⁶ Hospital in Międzyrzecze.

²⁵⁷ Hospital in Lublin.



ceived the printout of *Information about patient's rights*, and during the stay on the branch, patients had access into the file containing acts, referring to psychiatric hospitals, regulations being applicable in an institution as well as addresses of Bureau of the Commissioner for Patients' Rights and Commissioner for Psychiatric Hospital Patients²⁵⁸.

However in none of visited hospitals a collective booklet, describing principles being in force on his area was used for information purposes²⁵⁹. All at the same time no institution had handouts for foreigners and blind persons.

Patients of visited hospitals were informed in relation to recommended medicines and their possible side effects. Very patients also asked about the effect of medicines and have sometimes asked for the access to medical documentation, and their right to information in this respect was exercised.

In only some of the visited hospitals the patients' book of complaints and conclusions was led, or her availability was actual – in the assessment of workers of the Mechanism – illusory, considering it was accessed e.g. in other building. As a result in some cases the workers of the Mechanism recommended enforcing the local book of complaints and conclusions in the hospital, dedicated, apart from written complaints, for inventorying charges reported by patients orally²⁶⁰.

Restrictions were applied in none of visited hospitals in the access of detained patients to the press, of radio and television.

7.3.5. Right to health care and therapy²⁶¹

Apart from psychiatric treatment, the patients in the visited hospitals receive necessary help regarding their somatic condition (although in some establishments the are problems with Access to certain specialists, such as a dentist). On account of capacity multiprofile of him, one of hospitals²⁶² employed own consultants curing somatic illnesses with abounding diagnostic base in diagnosing them

²⁵⁸ Hospital in Radom.

²⁵⁹ The CPT emphasizes, that introductory brochure setting out of the establishment's routine and patients' rights should be issued to each patient on admission, as well as to their family. Any patients unable to understand this brochure should receive appropriate assistance [CPT/Inf (98)].

²⁶⁰ Hospital in: Toszek, Gniezno, Branice.

²⁶¹ According to the recommendations of the CPT: Psychiatric treatment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient. It should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients should have regular access to suitably-equipped recreation room and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work [CPT/Inf (98)].

²⁶² Hospital in Toszek.



(among others radio-diagnostic studio, possibility of carrying out the endoscopy, the colonoscopy and an ultrasound scan) and had an own patient transport service, what very much is facilitating the transport of patients for consultation. At other hospital²⁶³, due to physiotherapists employed in it, a possibility of the healing and motor rehabilitation existed.

Similarly to interviewed persons from 2012, patients to which the representatives talked, knew why they were in hospital and what they were diagnosed with. They had access, upon request, to information about their health and to their medical records. The majority of patients praised the availability of both basis and specialist health care services. Not always however they have been explained having the right to the refusal of acceptance of prescribed medicines, since it wasn't in the interest of a staff²⁶⁴.

Visited hospitals did not apply high risk procedures (insulin coma, atropine coma and electroconvulsive therapy).

The representatives of the NPM did not find any limitations on access to medications for patients, including new-generation psychotropic drugs and other medications.

The analysis of medical records provided to the representatives of the NMP showed, that in 5 of 11 visited establishments the records were kept inappropriately: in some of them current entries were missing (e.g. final one from last month), as well as the results of medical tests, commissioned medicines or in the scope of individual therapeutic plan. Also irregularities in documenting the drug treatment were stated; prescribed medicines were seen in the individual plan, however this fact wasn't recorded in the medical record. Moreover an evaluation of a mental state, a reason of including the medicine and a reaction of the patient were missing. Similarly – reasons for the change of the dose of medicines weren't seen.

At all institutions apart from one hospital²⁶⁵ different forms of therapy were led with omitting pharmacological. Occupational therapy and community meetings were among group forms of psychotherapy influences. Moreover, classes in psychoeducation, social skills training, health preventions and music therapy were conducted.

An occupational therapist, which conducted the individual work and group activities with them, was available to patients, to what they were encouraged to. However at some institutions an impossibility of participating of appointed patients in the occupational therapy was a problem as well as in other form of activities organised apart

²⁶³ Hospital in Radeckznica.

²⁶⁴ Hospital in Radom.

²⁶⁵ Hospital in Lublin.



from branches²⁶⁶ and deficiency of funds for the purchase of needed materials for giving classes (e.g. of plastic and office materials, articles for the do-it-yourself)²⁶⁷.

7.3.6. Right to contact with the outside world

During their stay in hospital, all patients should have ensured the contact with the outside world in the form of uncensored and unread correspondence (also by electronic means, using their own devices with access to mobile internet), unsupervised talks by phone (also using their own mobile phones) and visits without the presence of the hospital staff.

Pursuant to Article 33 of the Act of 6 November 2008 on patient's rights and the ombudsman for patients rights²⁶⁸ patient of the healing subject performing healing activity in the kind of stationary and 24-hour health benefits, as defined in provisions on healing activity, has the right to personal, telephone or correspondence contact with other²⁶⁹.

One should of course understand, that from health considerations temporary limiting contacts of patients with persons from outside the institution is necessary, in exceptional situations. Never however this restriction cannot be established into the any way, and with not taking into account the possibility of individual treating.

Above mentioned, the right to contact connected with patient's rights to the respect of the private and family life, at other visited institutions have often been violated. One should in this place notice that, more often than not, it resulted from worry about the respect for the law to the intimacy of other patients or for lack of detailed legal definitions.

For example, in none of institutions patients used the Internet, in most of them there was a ban on having telephones equipped with functions of making photographs, of the sound and the image recording, or having any telephones²⁷⁰. A ban on independent using wired battery chargers, was an additional restriction²⁷¹.

Bearing in mind the majority of mobile phones offered at present on the market is equipped into registration functions, workers of the NPM recommended

²⁶⁶ E.g. hospital w Radecznica.

²⁶⁷ E.g. hospital in Radom.

²⁶⁸ Dz. U. of 2012, item 159, as amended.

²⁶⁹ Detainees staying in the mental hospital are an exception, of which a body determines conditions of putting, for the instruction of which they stay, pursuant to Art. 213 § 1 Executive Penal Code and which conditions of the intercommunication with other persons and subjects describes provisions included in the Code of Penal Procedure and the Executive Penal Code.

²⁷⁰ It is regarding all institutions with the exception of Ciborz and Radom, where it was possible to obtain an individual consent to use the mobile phone.

²⁷¹ Hospital in: Toszek, Międzyrzecze.

using stickers of the type VOID, which putting on lens the mobile phone is making impossible carrying the photograph or the film out, as one of methods letting for safe using phones equipped with this function. As a result any attempt to tear the sticker can be easily revealed by the staff, making periodic inspections of the state of applied securities.

A lack of appropriate conditions aroused stipulations of representatives of the Mechanism for the accomplishment of the visit of patient by the family, including children, in one of hospitals, in the visit was held in a so-called lock in – the passage between the court-psychiatric branch and remaining branches of the hospital²⁷². Moreover at this institution situations happened, when during the visit also new patients were taken to the lock, in handcuffs and under the convoy of police officers.

The problem with the visit of children was also noticed in case of other institutions, in which there was ban on entry for children up to years 14, both on account of the lack of the appropriate place, like from anxiety about the condition of minors²⁷³. In some visited institutions, especially with higher than basic security level, creating conditions enabling the access to the fresh air for patients was a problem. Many times the duration of walks was made conditional on the number of people willing and from weather conditions²⁷⁴.

7.3.7. Right to participate in cultural and educational activities

It should be noticed, that at hospitals visited in 2013, patients spent time mainly on branches, similarly to situations at institutions visited in 2012. In the most of visited institutions, the only activities which weren't an element of therapy (treatments) was the watching television, listening to the music or radio broadcasts and reading the book/press.

Numerous hospitals did not have appropriate facilities to organise larger cultural events, and even if they did (e.g. big enough rooms), they were located outside the wards for patients, thus they could not take part in the events.

In this scope two institutions²⁷⁵ are a positive example of the better organisation of the functioning, during the visit of inspection at these hospitals patients had a very rich offer ensured of therapy classes, cultural, educational and sports activities. For them various undertakings were organised, e.g. *world day of the mental health*, *St Andrew's Eve party*, *nativity meeting*, *valentines day*, *day of wom-*

²⁷² Hospital in Lublin.

²⁷³ Hospital in: Międzyrzecze, Lubliniec.

²⁷⁴ Hospital in Lublin.

²⁷⁵ Hospital in: Międzyrzecze, Ciborz.



en, karaoke games and dance evenings. For classes sports, conducted under the under the qualified staff supervisory, a gymnasium was used.

At this hospital²⁷⁶ advice of patients also functioned. The staff tried to stimulate like the largest possible number of patients for the participation of this organ activity. Issues of functioning of wardes were brought up at meetings, including even amendments to the rules of procedure.

7.3.8. Living conditions

The CPT states, that *particular attention should be given to the decoration of both patients' rooms and recreation areas, in order to give patients visual stimulation. The provision of bedside tables and wardrobes is highly desirable, and patients should be allowed to keep certain personal belongings (photographs, books, etc). The importance of providing patients with lockable space in which they can keep their belongings should also be underlined; the failure to provide such a facility can impinge upon a patient's sense of security and autonomy* (§ 34 of the 8th General Report [CPT/Inf (98) 12]).

It was revealed during visitations, that the state of visited hospitals in providing for patients the good standard of living is diversified, and recommendations shown above aren't fully respected.

Some establishments require bigger repairs, or at least freshening up of the interiors and replacement of worn-out furniture, mattresses, pillows and blankets, including the need to provide the furniture enabling to store all personal belongings for patients²⁷⁷.

In this respect two institutions, in which members of the Mechanism appraised the standard of living of patients highly, were an exception, having only stipulations associated with the leaking roof and the harsh condition of the square being used for walks of patients²⁷⁸ and with long-term leaving damaged by patients elements of toilets²⁷⁹.

7.3.9. Right to religious practices

Patients did not complain much about the lack of possibility to practice their religion during their stay in hospital.

²⁷⁶ Hospital in Międzyrzecze.

²⁷⁷ Hospital in: Toszek, Radom (in storing belongings), Ciborz and Radecznicza.

²⁷⁸ Hospital in Dębica.

²⁷⁹ Hospital in Międzyrzecze.

7.3.10. Staff

In the most of visited hospitals the indicator of the employment matched with applicable regulations, according to information of directors of institutions. Improperly they were fulfilling the duty of ensuring the determined staffing level, only in one of institutions²⁸⁰.

However in the assessment of NPM experts, at some institutions, in order to guarantee adequate medical and therapeutic facilities for patients, it is necessary to recruit the additional psychologist²⁸¹, or to increase the assessment of the work of the psychologist at the court-psychiatric ward²⁸². From similar considerations, increasing the cast of the medical staff during duty as well as increasing the assessment to the work of the occupational therapist on the branch was recommended²⁸³.

At some hospitals employees were missing about the determined sex e.g. of male nurses at ward intended for men²⁸⁴. In the assessment of the NMP representatives, not-employing the staff of the same sex at the ward intended exclusively for the determined sex, is threatening the right of patients to the privacy.

8. Reinspections

Reacting to the report of representatives of the Mechanism is a duty of authorities of every visited institution, by taking a stance and referring to all recommendations issued as a result of the visit of inspection. Reinspections are one of forms of monitoring the way and the state of implementing recommendations, in the course of which KMP representatives are checking, whether official information passed on to them in writing correspond to the actual situation on the spot, and whether recommended means or action were taken. During this procedure the representatives are also asking employees of the institution and imprisoned persons, whether any sanctions and consequences didn't meet them on the part of authorities or officers, since they agreed to talk with visiting persons (such a guarantee is included in Art. 21 of OPCAT).

In 2013 the representatives of the NMP conducted reinspections of two institutions: Social Care Centre in Góra Kalwarii and Juvenile Detention Centre in Białystok.

²⁸⁰ Hospital in Lubliniec.

²⁸¹ Hospital in: Dębica, Gniezno.

²⁸² Hospital in Lublin.

²⁸³ Hospital in: Lublin, Branice.

²⁸⁴ Hospital in Radechnica.



In the case of Social Care Centre In Góra Kalwarii, they checked the state of issued implementations of the recommendations as a result of the visit of inspection conducted on 22-23 February 2010. In this reinspection took part expert of the NPM – psychiatrist. The representatives established, that they carried out of 7 orders issued in the course of the visit 5. The second reinspection was held in Juvenile Detention Centre in Białystok, on 21-23 May 2013. This institution was visited by the representatives of the NMP 3 times: in 2008, 2010 and in 2012. Activities of the conducted reinspection allowed to state, that majority of recommendations issued during three earlier visits (10) stayed carried out, the representatives regarded partly fulfilled 4 recommendations, however 5 recommendations remained uncashed.

9. NPM visiting team (in alphabetical order)

Magdalena Filipiak – a lawyer and a psychologist, graduate of the Faculty of Law and Administration and the Faculty of Social Sciences at the Adam Mickiewicz University in Poznań, currently a student of Interdisciplinary PhD Studies at the University of Social Sciences and Humanities (SWPS). She has been a staff member of the National Preventive Mechanism Department in the Office of the Human Rights Defender since 2012.

Bogumił Furche – a lawyer, trainee solicitor, graduate of the University of Gdańsk. Since 2008, employee of the Office of the Human Rights Defender. He participates in the visits of the National Preventive Mechanism within the jurisdiction of the Field Plenipotentiary of the Human Rights Defender in Gdańsk.

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

Aleksandra Iwanowska – a doctor of law, graduate of the Faculty of Law and the Faculty of Philology at the University of Białystok with major in Russian philology with English language. Since 2012, she has been a staff member of the National Preventive Mechanism Department in the Office of the Human Rights Defender.

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



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

Michał Kleszcz – a lawyer, graduate of the University of Silesia and of Postgraduate Studies in Economic and Commercial Law. A trainee solicitor since 2011. Employed in the HRD Office since 2007. Since 2008, he has participated in the visits of the National Preventive Mechanism within the jurisdiction of the Field Plenipotentiary of the Human Rights Defender in Katowice.

Natalia Kłaczyńska – a doctor of legal sciences of the University of Wrocław, university teacher. Employed in the HRD Office since 2005. She has participated in the visits of the National Preventive Mechanism within the jurisdiction of the Field Plenipotentiary of the Human Rights Defender in Wrocław.

Dorota Krzysztoń – a criminologist, graduate of the University of Warsaw. A long-time civil servant, involved in the protection of the civil rights and a mediator in criminal cases. Since 2011, she has been an employee of the National Preventive Mechanism in the Office of the Human Rights Defender.

Marcin Kusy – a lawyer, graduate of the Catholic University of Lublin and of the School of Human Rights and Freedoms at the Institute of Legal Sciences of the Polish Academy of Sciences. He has extensive knowledge of American law; holder of a certificate of Chicago Kent College of Law. Interested in case law of the European Court of Human Rights in Strasbourg and anti-discrimination law. Since 2008, he has been an employee of the National Preventive Mechanism in the Office of the Human Rights Defender.

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

Małgorzata Molak – a graduate of social rehabilitation, with a major in rehabilitation and family support, at the Maria Grzegorzewska Academy of Special Education in Warsaw. In 2011 she completed postgraduate studies in the field of



psychological, pedagogical and legal preparation for work with difficult young people at the Alcide De Gasperi University of Euroregional Economy in Józefów. Volunteer consultant at the Hotline for People in Emotional Crisis at the Institute of the Psychology of Health. Since 2011, she has been an employee of the National Preventive Mechanism in the Office of the Human Rights Defender.

Marcin Mazur – deputy Director of the National Preventive Mechanism Department in the Office of the Human Rights Defender. A lawyer, graduate of the Catholic University of Lublin. In 2011 he passed his solicitor's exam and was accepted as a member of the Circuit Chamber of Legal Counsel in Warsaw. From 2003 to 2008, he pursued PhD studies at the Faculty of Law, Canon Law and Administration in the area of legal science – penal law at the John Paul II Catholic University of Lublin. In 2014, he was admitted into a PhD programme with a thesis entitled *Penalisation of money laundering* written under the supervision of A. Zoll at the School of Law and Public Administration in Rzeszów. In 2005 and 2006 he completed his postgraduate studies in the area of pedagogical preparation. Since 2004, he has been working in the Office of the Human Rights Defender – initially at the Executive Criminal Law Department, later, in the National Preventive Mechanism Department. Author of several articles on penal law.

Wojciech Sadownik – a lawyer, graduate of the Maria Curie-Skłodowska University in Lublin. He worked, *inter alia*, at the Ministry of Science and Higher Education. Since 2010, he has been an employee of the National Preventive Mechanism in the Office of the Human Rights Defender.

Maria Sobocińska-Szeluga – physician specialising in occupational medicine. In 2004–2014 she has worked at the Office of the Human Rights Defender as the clinic director. Between 1 October 2012 and 31 March 2013, she participated in visits to places of detention as part of the National Preventive Mechanism.

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

Joanna Klara Żuchowska – a doctor of medical sciences, second degree specialist in internal medicine. Practicing physician between 1961 and 2011. Co-author of the book entitled *Myocardial Infarction* and 12 papers published in specialist Polish and foreign journals. Graduate of the School of Human Rights at the Helsinki Foundation for Human Rights. Co-author of the publication *Prawa człowieka w szpitalach psychiatrycznych i domach opieki społecznej* [*Human Rights in Psychiatric Hospitals and Nursing Homes*] (Reports, Evaluations, Opinions of



the Helsinki Foundation for Human Rights No 17/1996). Between 1996 and 2001, she was involved in monitoring activities for the Helsinki Foundation for Human Rights. Since 2009, she has cooperated with the Office of the Human Rights Defender (since April 2012 she has been employed on a ¼ FTE basis).

10. Experts of the National Preventive Mechanism

A. Psychiatrists

Leszek Asman – a psychiatrist. Currently, he is employed at the Mental Health Centre in Zabrze as a medical manager, as well as the head of day psychiatric ward and the head of the outpatient clinic complex (mental health clinic, neurotic disorders clinic, home treatment team). For many years he worked as the head of psychiatric wards (Olkusz, Rybnik). For a year he was employed in the control department within the Silesian Branch of the National Health Fund. He has many years' experience as expert witness in the field of psychiatry. He finished a postgraduate school in the field of health protection management. He runs his private medical practice in Żory.

Jolanta Paszko – a psychiatrist. Graduate of the Medical University of Lublin. She gained professional experience in the Psychiatric Hospital in Gniezno, and later in Bródnowski Hospital and Bielański Hospital in Warsaw. Between 1992 and 2008 she was a scientific assistant in the IV Clinic at the Institute of Psychiatry and Neurology in Warsaw. Author of research publications in the area of environmental and clinical psychiatry. Currently, she is working on her PhD thesis. She completed a psychodynamic psychotherapy course in Krakow.

Kama Katarasińska-Pierzgalska – a psychiatrist. Graduate of the Medical University of Łódź. She gained professional experience at the Psychiatric Hospital of the Ministry of Interior and Administration in Łódź and in Health Care Centre Łódź-Bałuty. Since 2001 she has been working at the Institute of Psychiatry and Neurology in Warsaw, and from 2008 she has also ran a private medical practice. For several years, she has been working for the Helsinki Foundation for Human Rights: she delivers lectures, workshops and participates in educational projects. She is a psychologist as well.

Anna Rusek – a doctor of medical sciences, graduate of the Faculty of Medicine at the Medical University of Silesia, second degree specialist in psychiatry. In 1989, she received the title of the doctor of medical sciences for her thesis on mental disorders in the burn disease. She completed her postgraduate studies in the field of HR management, entrepreneurship and career counselling – organi-



sation of health care centres. Between 1978 and 1992, she was employed at the Psychiatric Clinic of the Medical University of Silesia in Tarnowskie Góry. Since 1992, she has been employed in the Psychiatric Hospital in Toszek. Expert witness at the Regional Court in Gliwice, expert witness at the Episcopal Court in Gliwice.

Tomasz Szafrąński – a doctor of medical sciences, psychiatrist. Between 1994 and 2012 he worked at the Institute of Psychiatry and Neurology in Warsaw, where he was the head of the inpatient ward since 1999 and where he conducted research. He is the author or co-author of over 70 publications in journals, monographs and of chapters in psychiatry textbooks. Graduate of the School of Human Rights at the Helsinki Foundation for Human Rights. For many years the Foundation's expert, co-author of report *Human Rights in Psychiatric Hospitals and Welfare Care Homes* (1996) and *Monitoring of Forensic Psychiatry Wards* (2006). The organiser of many psychiatric scientific conferences. In the framework of his educational activities, he delivered many lectures, training courses and workshops for physicians, psychologists, nurses, social workers and welfare workers. He also delivered trainings in human rights in psychiatry in countries such as Georgia, Kyrgyzstan, Lithuania, Moldova and Russia. Member of the Polish Psychiatric Association, International Early Psychosis Association and Schizophrenia International Research Society. Since 2013, he has been the editor in chief of "Psychiatra" magazine. He runs a private practice in Warsaw.

Agnieszka Szaniawska-Bartnicka – a psychiatrist (second degree specialist since 1999). Graduate of the Medical Academy in Warsaw. She gained her professional experience at the III Clinic of Psychiatry of the Institute of Psychiatry and Neurology in Warsaw, where she has been the head of the general psychiatric ward since 1 January 2013. She finished postgraduate studies in medical rights and bioethics at the Faculty of Law of the University of Warsaw.

Maria Załuska – associate professor, PhD, psychiatrist. She received her medical diploma in 1973 at the Medical University in Warsaw. Head of the ward and of the IV Clinic at the Institute of Psychiatry and Neurology in Bielański Hospital. Lecturer at the Faculty of Family Studies at the Cardinal Stefan Wyszyński University in Warsaw.

B. Psychologists

Paweł Jezierski – a psychotherapist working in the field of psychodynamics. Graduate of the University of Social Sciences and Humanities. A last-year student of the School of Individual Psychotherapy and the School of Group Psychotherapy – trainings organised by the Psychoeducation Laboratory. He gained his clinical experience in the Psychiatric Ward of the Voivodeship Hospital in Łomża.



He worked in the Psychiatric Hospital in Choroszcz at the Forensic Psychiatry Ward with reinforced security. He cooperated with the Psychological and Educational Centre No 6 in Warsaw. He is a co-organiser of a therapeutic group in the Psyche Clinic. Since 2011 he has been employed in Nowowiejski Hospital, initially in the Psychogeriatric Ward, and currently in the XIII Ward for Neurotic Disorders Treatment and in Neuroses Treatment Clinic. He has experience in diagnosing, consultancy, short- and long-term individual therapy as well as group therapy of therapeutic, interpersonal and training nature. He also completed a one-year ISTDP (Intensive Short-Term Dynamic Psychotherapy) seminar. He also runs his private practice.

Katarzyna Kossobudzka – a certified psychotherapist (European Psychotherapy Certificate and Psychotherapy Certificate of the Psychotherapy Science Section of the Polish Psychiatric Association). Since 2003, she has been employed at the Dolnośląskie Mental Health Centre. Since 2008, she has been a lecturer at the University of Social Sciences and Humanities. She used to work in the Mental Health Clinic and Welfare Care Centre for people with mental disorders, and she delivered trainings for nurses in the psychiatry specialisation. She has recently completed her 5-year specialisation in clinical psychology.

11. Photos (examples)

I. The conditions of deprivation of liberty in places of detention that were evaluated as positive by representatives of the National Preventive Mechanism



Ramps for persons with disabilities – in a wheelchair (Social Care Centre for Children in Ełk)



Education and therapy room (Social Care Centre for Children in Ełk)



Separate stalls in the bathroom (External Ward in Grodzisk Mazowiecki)



Stall for inmates with physical incapacity (Prison in Iława)



Transition room (Juvenile Detention Centre in Racibórz)



Charges' room (Juvenile Detention Centre in Racibórz)

II. The conditions of deprivation of liberty in places of detention that were evaluated as negative by representatives of the National Preventive Mechanism



Cell for 22 inmates (Pre-Trial Detention Centre in Bytom)



Sanitary area (Pre-Trial Detention Centre in Chojnice)



Sanitary area in a cell for 19 inmates (Pre-Trial Detention Centre in Bytom)