

# NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE IN POLAND IN 2018

summary of the Ombudsman's report



RZECZNIK PRAW OBYWATELSKICH

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**Report**  
**of the Commissioner for Human Rights**  
**on the activities of the National**  
**Mechanism for the Prevention of Torture**  
**in Poland in 2018**

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RZECZNIK PRAW OBYWATELSKICH

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### Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2018 (Synthesis)

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# No one shall be subjected to torture or to inhuman or degrading treatment or punishment

## *The European Convention on Human Rights, Article 3*

The prohibition of torture is absolute and unconditional, and there exist no circumstances under which torture may be justified. The prohibition arises from international law as well as the Polish Constitution, and reflects the moral progress of nations. Any violation of the freedom from torture and other inhuman or degrading treatment or punishment constitutes, at the same time, an assault on human dignity. According to the case-law of the European Court of Human Rights in Strasbourg, the state, regardless of complainant's attitude, may not evade compliance with this prohibition, even at times of war or any other threat to national security. This should be strongly reiterated in the light of the recent discussions.

This document constitutes the latest report of the National Mechanism for the Prevention of Torture (NMPT), a group of specialists who monitor the situation in places where people are deprived of their liberty irrespective of their will. The specialists are experts of the Office of the Commissioner for Human Rights who, by visiting such places, since 2008 have been fulfilling our country's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the OPCAT) signed and ratified by Poland.

I hope that you will find the present Report of the Polish Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in 2018 an important source of information and that it will contribute to improving the operation of different types of places of detention in our country.

***Adam Bodnar, Ph.D.***

***Commissioner for Human Rights***

**The Republic of Poland is one of the 89 States-Parties that have ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in New York on 18 December 2002. Poland is also one of the 71 countries that have established their National Preventive Mechanisms to visit places of detention.**

The objective of the Protocol has been to introduce a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty. At the international level the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been established. At the national level, each State-Party is required to establish its National Preventive Mechanism. The Protocol has been founded on the assumption that the protection of people deprived of liberty against torture and other cruel, inhuman or degrading treatment or punishment may be strengthened by preventive non-judicial measures based on regular visits to places of detention. According to the Protocol, a place of detention in a State-Party is defined as 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 (Article 4(1) OPCAT). For the purposes of the Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. The definitions are very broad and, therefore, the visits cover a variety of places.

The present document constitutes the eleventh report on the activities of the National Mechanism for the Prevention of Torture in Poland, required to be drawn up and published by our country according to Article 23 of the OPCAT. I hope that the authorities of the Republic of Poland as well as representatives of the civil society see the need for comprehensive support for the system that protects the rights of persons deprived of their liberty against prohibited forms of treatment. Experience shows that there is a deep reason behind the visits conducted within the NMPT.

*Hanna Machińska, Ph.D.*

*Deputy Commissioner for Human Rights*

# PART I – what is the NMPT?

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2018 was the eleventh year of performing, by the Commissioner for Human Rights, of the tasks of the National Mechanism for the Prevention of Torture. Its representatives conducted **82** unannounced visits to various places of detention.

## **Organization of work of the national mechanism for the prevention of torture**

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*Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions<sup>1</sup>.*

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The function of the National Mechanism for the Prevention of Torture in Poland is performed by the Commissioner for Human Rights.

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*The Commissioner shall perform the role of a visiting body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (national preventive mechanism) within the meaning of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in New York on 18 December 2002. (Journal of Laws [Dz. U.] of 2007, item 192<sup>2</sup>.*

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<sup>1</sup> Article 17 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in New York on 18 December 2002. (Journal of Laws [Dz. U.] of 2007, item 192).

<sup>2</sup> Article 17(4) of the Act of 15 July 1987 on the Commissioner for Human Rights (Journal of Laws [Dz. U.] of 2018, item 2179), hereinafter: the Act on the CHR.



## **The National Mechanism for the Prevention of Torture is composed of employees of the NMPT Team as well as external experts**

- The National Mechanism for the Prevention of Torture constitutes one of the departments within the Office of the Commissioner for Human Rights. In 2018, the department's Team consisted of 10 specialists and an employee working as a secretary. Until 8 June 2018, the Director of the NMPT was Justyna Róża Lewandowska then replaced by Przemysław Kazimirski who won the competition for the position. Supervision over the activities of the Department is exercised by Deputy Commissioner for Human Rights Hanna Machińska, Ph.D. Pursuant to OPCAT provisions, employees of national preventive mechanisms should have relevant skills and diversified professional knowledge as well as constitute a representation of men and women. Staff members working for the Mechanism have relevant education in the fields of law, sociology, political sciences, rehabilitation, psychology and criminology. The NMPT Department is supported by employees of the Commissioner for Human Rights' regional representative offices located in Gdańsk, Wrocław and Katowice. Pursuant to the agreement concluded between the NMPT and CHR's regional representatives, in each regional office an employee has been designated who, apart from working for the office, also participates in 3 preventive visits under the Mechanism, held in establishments located in the area for which a given CHR's representative is responsible. Moreover, the Head of the Department for Migrant and National Minorities' Rights also participates in visits performed under the Mechanism to closed detention centres for migrants.
- During the visits, the team is supported by external experts: physicians - psychiatrists, geriatricians, internal medicine doctors as well as professionals specializing in issues that constitute the focus of NMPT visits. The focus in 2018 was on psychological assistance offered to foreign citizens placed in closed detention centres for migrants as well as the identification of torture victims among residents of those establishments. The visits were carried out in the presence of a psychologist.

- The scope of tasks and issues covered by the National Mechanism for the Prevention of Torture in many cases requires specialist knowledge and professional experience. Therefore, since 2016 the CHR's Expert Committee on the National Preventive Mechanism has been in operation. In 2018 the NMPT Committee met twice in its full composition. The NMPT experts also took part in the regional debates and in the 2<sup>nd</sup> Congress on Human Rights.
- In order to improve their professional qualifications, all members of the NMPT participated in a training course on the monitoring of direct coercion measures used in places of detention visited by the NMPT<sup>3</sup>.

### ***Financing of the NMPT***

Expenditures on the activities of the National Mechanism for the Prevention of Torture are covered from the state budget allocation received by the CHR. According to the Annual Report on the Activity-Based Expenditures of the State Budget and of the European Funds Budget, in 2018 the Office of the Commissioner for Human Rights disbursed **2.265.537.93 PLN**.

### ***Methodology of the NMPT'S work***

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

**THE NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE CARRIES OUT PREVENTIVE VISITS WHICH DO NOT RESULT FROM COMPLAINTS. SUCH VISITS ARE UNANNOUNCED.**

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<sup>3</sup> The training was organized by ODIHR/OSCE in cooperation with the experts from the Omega Research foundation and the University of Exeter.

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

In all the establishments visited, the NMPT follows the same methodology. The first stage is to establish the composition of the visiting team<sup>4</sup>.

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

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

Every visit of the NMPT comprises the following stages:

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

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

Yet, if the person does not consent to addressing the issue officially, the visiting team shall only use the information for the purposes of analysing the operation of mechanisms intended to protect persons deprived of their liberty

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<sup>4</sup> According to OPCAT provisions, experts of the national preventive mechanisms should have the required capabilities and professional knowledge.

against degrading, inhuman treatment or punishment as well as from torture and for the purpose of presenting relevant recommendations.

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

During the visits, NMPT employees use the following measuring and recording devices: CEM DT-8820 multimeters, Makita LD060P laser rangefinders and digital cameras.



## PART II – how does the NMPT work?

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The powers of the National Mechanism for the Prevention of Torture are laid down in Article 19 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: OPCAT). Although the primary method of work indicated by OPCAT is the conducting of preventive visits to places of detention, such visits constitute only a part of the process aimed at better treatment of persons deprived of their liberty. In order to prevent torture and inhuman treatment it is also necessary to take other measures including education, training and actions increasing public awareness, as well as advisory activities such as recommendations of changes in law.

### ***Educational activities***

#### ***The NMPT regional debates***

- ***2018: 4 regional debates***

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***The key objective of the NMPT's activity should be to influence the system not only "from the top to the bottom" by changing the law, but also through educational measures at the grassroots level. That is why such meetings are so important.***

*Prof. Zbigniew Lasocik*

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In 2018 the National Mechanism for the Prevention of Torture concluded the series of 16 regional debates that were held in the voivodeship (region) capitals. In Łódź, Kielce, Poznań and Warsaw representatives of the NMPT discussed the key issues relating to the operation of places of detention in Poland. The meetings were addressed to representatives of all types of such places, as well as to representatives of public prosecutors' offices, judges, voivodeship (regional)

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

The debates provided a platform for the exchange of experience in the cooperation of heads of the detention places with the NMPT in the field of protecting the rights of persons deprived of their liberty. They also aimed to provide an insight into the systemic problems identified during the preventive visits to places of detention, and to highlight the role of the National Mechanism for the Prevention of Torture as a partner for the heads of the visited establishments in building the culture of non-acceptance of torture and other cruel, inhuman or degrading treatment or punishment.

On behalf of the CHR Office the debates were attended by: Deputy Commissioner for Human Rights Hanna Machińska, Ph.D.; Director of the National Mechanism for the Prevention of Torture Justyna Lewandowska, her deputy Przemysław Kazimirski who moderated all of the debates, as well as Klaudia Kamińska and Marcin Kusy. The participants also included the invited speakers - members of the NMPT Expert Committee: Lidia Olejnik in Łódź, and attorney Piotr Senddecki in Kielce. The last debate that concluded the whole series of the events was held at the Forensic Psychiatry Clinic in Warsaw. It was attended by Commissioner for Human Rights Adam Bodnar, Ph.D.; Prof. Zbigniew Lasocik (D.Sc.) who, in the period 2007-2012, was a member of the UN Subcommittee for the Prevention of Torture (SPT) in Geneva; and Prof. Janusz Heitzman, M.D., Director of the Institute of Psychiatry and Neurology in Warsaw.

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***This sharing of opinions is very important to us. We are not another “special entity” that comes with a sudden unexpected inspection. We want to have a discussion with you about the standards and the need for meeting them. Also, thanks to the information provided by you, we intend to directly influence the legislator.***

***Commissioner for Human Rights Adam Bodnar, Ph.D.***

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## **Statements of the NMPT: a tool for building the attitude of non-tolerance towards torture and cruel or degrading treatment**



**The prohibition of torture is unconditional and not subject to any limitations. Torture is one of the gravest violations of human rights, it constitutes an assault on human dignity and degrades the society which accepts it.**

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

In 2018 the NMPT issued **5** statements that were published on the NMPT website and concerned: the judgment of the European Court of Human Rights in Strasbourg on the case Sidiropoulos and Papakostas v. Greece (application no. 33349/10); a judgment of a Polish court which, in the verbal statement of grounds, for the first time referred to the definition of torture; a judgment of the ECtHR on the case Danilczuk v. Cyprus (application no. 21318/12); the case of torture of Tomasz Komenda; as well as the disclosed case of torture at a police station in Siedlce and the related court judgment<sup>5</sup>.

## **The NMPT social campaign state without torture**



**30 years ago Poles clearly demonstrated that they wanted to live in a free independent country. Now it is time to strongly say *No for torture*, to feel ultimately safe and not to hesitate to say that Poland is a state without torture.**

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<sup>5</sup> See: <https://www.rpo.gov.pl/tagi/o%C5%9Bwiadczenia-krajowego-mechanizmu-prewencji-tortur>



In December 2018, the Commissioner for Human Rights together with the Council of Europe launched the social campaign entitled *State without torture*<sup>6</sup>. Within the action, the National Mechanism for the Prevention of Torture seeks to make the society aware of the problem of torture and conduct training courses and lectures on the issue. The first training which launched a series of meetings with university students was held on 8 December 2018 for students of the Jagiellonian University. It concerned the *role of the National Mechanism for the Prevention of Torture and the Commissioner for Human Rights in the prevention of torture in Poland - the practical and legal aspects*. The NMPT representatives spoke to students from the Comparative Law scientific group of the SWPS University in Warsaw about how not to become a victim of torture.



<sup>6</sup> Campaign partners are: Council of Europe, Office for Democratic Institutions and Human Rights / Organization for Security and Co-operation in Europe, Association for the Prevention of Torture in Geneva (APT), Kantar Millward Brown, Supreme Bar Council, National Chamber of Legal Advisers.

The campaign, carried out since December 2018, is important not only for the NMPT itself but also for building the culture of non-acceptance of torture and ill-treatment in the society. Instances of torture are noticed by Poles themselves. In the survey *Torture: Poles' opinions*, that was conducted at the turn of September and October 2018 by Kantar Millward Brown on the initiative of the Commissioner for Human Rights, as many as 71% of the respondents indicated that after 1989 in Poland there have been cases of torture. At the same time, citizens emphasize that the problem of the use of torture in public-sector facilities should be given more public space, as concluded by as many as 86% of the respondents. It is also of great concern that as many as 41% of the respondents believe that the use of torture may be justified in specific cases<sup>7</sup>.

### **PRESS CONFERENCE ON THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)**

On 26 July 2018 at the CHR Office a report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) was presented to journalists. The Committee visited the places of detention in Poland from 11 to 22 May 2017. The report, published on 25 July 2018, concerned the implementation stage of the recommendations of the Committee's previous visits to Poland. It was emphasized that despite Poland's openness, the cooperation should not be limited to the positive climate that accompanies the implementation of the CPT's tasks but should consist mainly in implementing the recommendations of the previous visits. A number of them have not been implemented for many years. These include the insufficient fulfilment of the rights of persons placed in police facilities for detainees, such as immediate access to a lawyer, the possibility to notify other persons about detention, or access to medical examinations.

Treatment of persons detained by the police was generally positively assessed by the Committee. However, there were respondents who indicated that direct coercion measures had been in situations where no resistance was

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<sup>7</sup> The survey results are available at [www.kmpt.rpo.gov.pl](http://www.kmpt.rpo.gov.pl)

demonstrated. In three cases, detainees' reports suggested the use of torture by the police:

- beating a detainee, beating and kicking a handcuffed detainee who was pushed and was lying on the floor;
- beating a detainee pushed to the floor by seven police officers; the detainee had to keep his hands on his head, was hit on the lumbar area and on the face. He was told to kneel down and threatened that if he falls on the ground he would be hit. He was taken to hospital but before he was told to carefully wash away the blood. The detainee demanded a medical examination but the police refused.
- putting on a plastic bag on a detainee's head and beating him on the feet with a baton.

In the context of the case of Igor Stachowiak the Committee recommended reminding all police officers of the instructions to be followed when using electroshock guns. The Committee stressed that such guns may only be used by officers in the case of real and immediate risk of serious injury or risk to life. The use of such weapons solely to make sure that a detainee follows orders is unacceptable. Furthermore, the use of an electroshock gun should be permitted only when less severe coercive measures are ineffective or impractical, and if it constitutes the only alternative to using a method that entails a higher risk of injury or death (e.g. firearms).

As regards police emergency facilities for minors, the Committee noted that the presence of a police officer during a minor's meeting with a lawyer constituted a violation of the right to defence.

With regard to closed detention centres for migrants, the CPT report indicated, among others, that medical examinations of newly placed migrants should also include the process of identification of victims torture.

The treatment of prisoners by Prison Service officers has been assessed positively. Few prisoners mentioned being verbally insulted. The Committee appreciated the efforts aimed at reducing the overcrowding of penitentiary facilities. Yet, it was disappointed by the unchanged standard of floor space per prisoner. The Committee also took note of the reform that included the

employment of convicts but stated that professional activation should more broadly cover people in temporary detention.

The Committee called on the Polish government to cause discontinuation of the use of straitjackets in relation to minors as their use is stigmatizing and degrading.

As regards psychiatric facilities, the Committee noted that there were many patients in the rooms, called for reducing their numbers and for more friendly decoration of the rooms.

When referring to the use of direct coercion in psychiatric hospitals, the Committee pointed to the case of restraining minor patients who were undergoing court-ordered observation in the hospital in Toszek. It was pointed out that the only form of coercion should be the use of physical power to administer a treatment that makes the patient less aggressive. The use of restraint belts on minors entails a greater risk of undesired impact on the psychological system of young people.

To the report, a replying opinion of the Polish government has been attached<sup>8</sup>.

## ***National and international cooperation***

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

On 22 May at the CHR Office, on the initiative of the Office of the Commissioner for Human Rights and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, a round table meeting entitled *State without torture* was held. It focused on discussing the international standards of preventive monitoring of places of detention, and on the prevention of torture in Poland. It provided an opportunity

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<sup>8</sup> The CPT report together with the replying opinion of the Polish government is available at: <https://www.coe.int/en/web/cpt/poland>. The report's translation into Polish: [https://bip.ms.gov.pl/Data/Files/\\_public/ogloszenia/raport\\_tlumaczenie.pdf](https://bip.ms.gov.pl/Data/Files/_public/ogloszenia/raport_tlumaczenie.pdf)

to sum up to-date achievements of the National Mechanism for the Prevention of Torture in Poland and the challenges for the next years. The discussion was attended by representatives of national and international institutions and non-governmental organizations engaged in the prevention of torture, including experts and practitioners whose work involves contacts with victims of inhuman and degrading treatment<sup>9</sup>.

In the meeting Katarzyna Gardapkhadze, Deputy Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) presented an opinion on the Polish legislation regarding the prohibition of torture, and provided examples of other countries' legislation that includes a definition of the offence<sup>10</sup>. The opinion related to key components of the unconditional prohibition of torture and other ill-treatment, that had been identified by the Committee against Torture. The document pointed out that every state, in its national legislation, is required to define torture and other ill-treatment as serious crimes, to introduce and impose adequate sanctions, but also to investigate, prosecute and penalize any act of torture or ill-treatment (Article 12 of the UN Convention), to ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation (Article 14 of the UN Convention), as well as to fully implement the principle of non-refoulement (Article 3 of the UN Convention) and the principle of non-exclusion of evidence (Article 15 of the UN Convention)<sup>11</sup>.

On 18 July, within the International Prisoners' Justice Day that commemorated the hundredth anniversary of Nelson Mandela's birth, the NMPT representatives met with prisoners of the pre-trial detention facility in Białystok. The Deputy Commissioner for Human Rights spoke to the prisoners gathered in the meeting room about the idea of the International Prisoners' Justice Day and pointed to the Nelson Mandela's Rules. A member of the NMPT emphasized the importance of increasing public awareness and building the culture of non-acceptance

<sup>9</sup> More on the round table: <https://www.rpo.gov.pl/pl/content/panstwo-bez-tortur-konferencja>

<sup>10</sup> On 9.04.2018 Deputy Commissioner for Human Rights requested the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to assess the Polish legislation from the point of view of the prohibition of torture, and to provide examples of other countries' legislation that includes a definition of the offence.

<sup>11</sup> The opinion is available at: <https://www.rpo.gov.pl/pl/content/opinia-odihr-dotycz%C4%85ca-definicji-tortur-i-bezwzgl%C4%99dneho-zakazu-ich-stosowania-w-polskim>

of torture. She reminded that the NMPT seeks to implement international standards regarding persons deprived of their liberty.

An important event was the 2<sup>nd</sup> Congress on Human Rights held on 14-15 December at the Polin Museum in Warsaw. During the 43 discussion sessions attended in total by 200 panellists and about 1500 participants from all over the country, important issues were discussed that relate to the protection of human rights and civil liberties in Poland. As part of the congress, the National Mechanism for the Prevention of Torture organized a panel entitled *Poland: a state without torture*. The discussion on preventing torture and inhuman or degrading treatment was attended by: Prof. Zbigniew Lasocik, until 2012 a member of the UN Subcommittee for the Prevention of Torture (SPT) in Geneva, who has established the country's first scientific unit that works on the subject (the Human Trafficking Research Centre); attorney Mikołaj Pietrzak, head of the Warsaw Bar Council and member of the Board of Directors of the United Nations Voluntary Fund for Victims of Torture; Justyna Kopińska, author of many reports on the scale of violence in Poland; Maria Książak, a co-founder of the Polish Centre for Rehabilitation of Torture Victims; and Przemysław Kazimirski, the NMPT director. The discussion was moderated by Deputy CHR Hanna Machińska, Ph.D.

All panellists agreed that the problem of torture in Poland is still encountered. As they pointed out, the most frequent victims of torture are people who have low legal awareness and are thus unable to defend themselves effectively; often these are persons with disabilities, migrants or minors.

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***We cannot deny torture still exists. It is up to us our common effort to make people aware that torture should be condemned and that such practices may not be used in the 20<sup>th</sup> century.***

*Deputy Commissioner for Human Rights Hanna Machińska, Ph.D.*

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International activity is an important component of work of the National Mechanism for the Prevention of Torture. Therefore, representatives of the Mechanism took part in numerous international meetings on the prevention

of torture. They concerned: the monitoring of social care homes<sup>12</sup>, developing standards to monitor the situation of LGBT detainees<sup>13</sup>, strengthening the role of national preventive mechanisms in introducing positive changes in places where people are deprived of liberty<sup>14</sup>, developing a common position on the existence in the EU member states of effective systems to monitor cases of expelling foreign citizens to their countries, the protection of and the NMPs' mandate to monitor their return flights<sup>15</sup>, the protection of persons in closed detention centres for migrants<sup>16</sup> and implementing the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)<sup>17</sup>.

In connection with the plan to establish a national preventive mechanism in the Republic of South Africa, on 7 May CHR Adam Bodnar, Deputy CHR Hanna Machińska and representatives of the NMPT met with a delegation of human rights institutions from South Africa. The delegation included representatives of the South African Defender of Civil and Political Rights, the Independent Police Investigative Directorate<sup>18</sup>, the Judicial Inspectorate for Correctional Services<sup>19</sup> and the Department of Justice and Constitutional Development<sup>20</sup>.

On 25-27 June the NMPT hosted a meeting with employees of the National Preventive Mechanism from the Republic of Kosovo. The Mechanism's members were accompanied by representatives of the country's NGOs. The aim of the visit was to exchange experience in the implementation of the OPCAT. Joint visits were conducted at the Warsaw Bemowo unit of the Warsaw-Białołęka Pre-Trial Detention Centre and the Clinical Psychiatry Department of the Wolski Hospital in Warsaw.

On 10 August the NMPT met with representatives of the National Centre for Human Rights from Kazakhstan. The participants shared their experience in the work of their countries' national preventive mechanisms. The guests,

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<sup>12</sup> 12-13.03.2018 in Trier

<sup>13</sup> 15-16.03.2018 in Geneva

<sup>14</sup> 7-9.11.2018 in Kopenhagen

<sup>15</sup> 15.10.2018 in Athens

<sup>16</sup> 3-4. .12.2018 in Milan and on 12.12.2018 in Podgorica

<sup>17</sup> 11.09.2018 in Warsaw

<sup>18</sup> Independent Police Investigative Directorate

<sup>19</sup> Judicial Inspectorate for Correctional Services

<sup>20</sup> Department of Justice and Constitutional Development

in whose country the national preventive mechanism operates according to the Ombudsman plus model (Ombudsman + NGOs), wanted to learn about the activities of the Polish preventive mechanism that operates according to the Ombudsman model.

### ***Visit of the UN subcommittee on prevention of torture and inhuman or degrading treatment or punishment (SPT)***

In 2018, for the first time, Polish places of detention were visited by the UN Subcommittee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (SPT). Its members also met with the Commissioner for Human Rights, members of the National Mechanism for the Prevention of Torture, as well as representatives of relevant authorities, human rights institutions and non-governmental organizations. During the meeting at the CHR Office, key issues related to OPCAT implementation in Poland, including the activities of the NMPT, were discussed. In addition, the UN delegation observed the work of the Mechanism during its visit to the Warsaw I District Police Unit. Representatives of the NMPT were also invited by the SPT to participate as observers in its visit to a place of detention in Warsaw.

The SPT's visit to our country has been of great significance in terms of its educational and preventive value. It has encouraged the authorities to reflect on how people deprived of their liberty are treated, on the compliance with the guarantees of protection against torture and on cooperation with human rights organizations.

## ***Advisory activities***

### ***General interventions***

According to Article 14(2) of the Act on the Commissioner for Human Rights, the Commissioner may file a motion with an agency, organization or institution whose activity has been found to have caused an infringement of the liberties and rights of an individual and a citizen. In 2018, as the National Mechanism for the Prevention of Torture, the CHR submitted 6 general interventions in which he pointed out to the following issues:



## **ENSURING TO DETAINEES THE ACCESS TO A DEFENCE COUNSEL FROM THE BEGINNING OF DETENTION<sup>21</sup>**

The Commissioner for Human Rights did not receive a reply to his intervention letter to the Minister of Justice, which concerned a legislative initiative to guarantee that all persons detained by the police or other authorized services have the possibility to contact a defence counsel from the very beginning of detention. Detainee's access to a defence counsel from the time of detention is considered a basic guarantee of the prevention of torture, as indicated by relevant international standards, monitoring institutions and experts. Therefore, the Commissioner postulates to introduce such a guarantee in the Polish legal system, and has appealed to the Prime Minister to personally look into the matter.

## **FAILURE TO INCLUDE THE CRIME OF TORTURE AND A DEFINITION OF TORTURE IN THE POLISH LEGISLATION<sup>22</sup>**

Poland still lacks legal instruments to effectively combat torture and ill-treatment. Polish penal law does not refer to all components of the definition of torture, as contained in Article 1 of the UN Convention against Torture. The law penalizes acts of ill-treatment of citizens by security services or persons acting pursuant to their instructions. However, the regulations fail to refer to involvement of other persons e.g. public officials or persons acting with their implied or tacit consent, as indicated by the UN Convention. Polish regulations do not refer either to the crime of torture or other ill-treatment on the grounds of any form of discrimination. Thus, the Commissioner has requested the Minister of Justice again to include in the Polish legislation a definition of torture as well as penalties for using it. The Ministry has, until now, been of the opinion that the penal law sufficiently implements the country's relevant international obligations. Therefore, in his intervention the Commissioner indicated instances of torture and other forms of ill-treatment in Poland, diagnosed by the NMPT, and pointed to international institutions' and organizations' recommendations on penalizing torture (including the opinion of the OSCE Office for Democratic

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<sup>21</sup> KMP.570.3.2017

<sup>22</sup> KMP.570.3.2018

Institutions and Human Rights regarding the definition and the unconditional prohibition of torture in the Polish legislation<sup>23</sup>.

### **LACK OF LEGISLATIVE GROUNDS FOR LIMITING SOCIAL CARE HOME RESIDENTS' POSSIBILITY TO FREELY LEAVE THE HOME<sup>24</sup>**

In 2017, after the publication of the NMPT's report entitled *Rights of residents of social care homes: how to jointly ensure dignified life to seniors, ill persons and persons with disabilities?* the Commissioner for Human Rights requested the Minister of Family, Labour and Social Policy to express her opinion on the systemic problems diagnosed in the document. During the conducted visits, people relatively frequently reported the problem of restricting residents' possibility to freely leave the home, which, in the opinion of Commissioner, finds no grounds in the current legislation. However, some residents, due to their physical and psychological condition, should not leave their social care homes by themselves as this might pose a risk to their lives or health. Therefore, it seems justified to take action to regulate the issue by means of an act of the Parliament.

### **PROVISION OF PSYCHOLOGICAL AND PSYCHIATRIC ASSISTANCE TO RESIDENTS OF SOCIAL CARE HOMES<sup>25</sup>**

Another problem discussed in the aforementioned report and presented to the Minister is the provision of psychological and psychiatric assistance to residents of social care homes. The current legal regulations set out only general standards of access to psychologists and psychiatrists but do not specify forms or frequency of their cooperation with residents of social care homes.

### **LACK OF LEGAL REGULATIONS ON THE USE OF VIDEO SURVEILLANCE IN SOCIAL CARE HOMES<sup>26</sup>**

The CHR's intervention also referred to the use of video surveillance systems in social care homes. This issue is not covered by the regulations that govern the work of such homes. The operation of cameras in the facilities may interfere

<sup>23</sup> The opinion is available at: [www.kmpt.rpo.gov.pl](http://www.kmpt.rpo.gov.pl).

<sup>24</sup> KMP.575.7.2016

<sup>25</sup> see above

<sup>26</sup> see above

with the privacy of their residents, employees and other people who stay in monitored buildings. The use of such surveillance systems should meet the requirements set out in the Constitution, including the requirement, provided for therein, to limit their use.

The Minister of Family, Labour and Social Policy replied that there exist no binding legal regulations imposing on social care homes the obligation to employ psychologists or psychiatrists within their structures, and that the provision of psychiatrist or psychological assistance is not a requirement for social welfare facilities. As regards the use of video surveillance systems in social care homes, the ministry is of the opinion that general-level regulations are needed, that would be applicable e.g. to all public utility entities including health care facilities and social welfare institutions, in particular residential ones. The issue of social care home residents' right to freely leave their facilities has been taken into account in the bill amending the Act on social welfare and the Act on mental health protection, that is currently subject to inter-ministerial consultations.

### **LACK OF LEGAL REGULATIONS ON THE USE OF VIDEO SURVEILLANCE IN PSYCHIATRIC HOSPITALS AND PSYCHIATRIC WARDS<sup>27</sup>**

The Commissioner has again requested the Minister of Health to propose, within his legislative initiative, a bill to regulate the use of video surveillance systems in hospitals. According to Article 31(3) of the Constitution such a regulation, which would restrict civil rights and freedoms, should have the status of a parliamentary act. The interference with people's right to privacy by using video surveillance systems without legislative grounds in the form of a parliamentary act constitutes a violation of individuals' constitutional right to legal protection of their privacy. However, taking into account the need to restrict this right to ensure the safety of patients and hospital personnel, a relevant parliamentary act should be adopted.

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<sup>27</sup> KMP.574.8.2015

## **LACK OF LEGAL REGULATIONS ON ESCORTED TRANSPORT OF PATIENTS OF PSYCHIATRIC FACILITIES<sup>28</sup>**

The existing regulations fail to determine procedures of escorted transport of patients held at psychiatric hospitals and wards pursuant to adjudicated preventive measures, outside the premises of the institution for the purpose of medical consultations, examination or treatment. At present, the responsibility for their transport lies with psychiatric facilities' managers. The Commissioner has reported the issue again to the Minister of Health.

Until the date of this report, no reply has been received from the Minister of Health.

## **LACK OF LEGAL MEASURES TO PROTECT WHISTLE-BLOWERS – MEMBERS OF UNIFORMED SERVICES AND SPECIAL SERVICES<sup>29</sup>**

Officers of those services, who suspect that detained persons may be ill-treated by other officers, refrain from reacting and reporting such cases. This is often caused by the fear of negative consequences and ostracism on the part of their peers. Therefore, in the Commissioner's opinion, it is necessary to draw up appropriate regulations and procedures to make it possible for whistle-blowers to professionally report irregularities without fear about their safety or professional consequences.

In reply, the Secretary of the Board on Special Services informed<sup>30</sup> that the Commissioner's comments on the bill on transparency of public life, regarding the protection of whistle-blowers - members of uniformed services and special services, within the mechanism of protection against torture, have been taken into account during the internal analysis of the bill.

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<sup>28</sup> see above

<sup>29</sup> KMP.570.1.2018

<sup>30</sup> Letter of 13 June 2018.

## **LACK OF PROCEDURE OF ADMISSION, TO GENERAL-PROFILE NURSING FACILITIES, OF PERSONS WHO ARE NOT LEGALLY INCAPACITATED BUT ARE PHYSICALLY UNABLE TO SIGN THEIR ADMISSION APPLICATION FORMS<sup>31</sup>**

The problem consist in the lack of legal regulations on admission to such facilities of persons who are not legally incapacitated, are at least eighteen and, due to their health condition, are physically unable to sign their admission application forms but have not appointed any legal representatives authorized to sign the forms for them.

As a result, applications for such persons' placement in nursing facilities are signed by their family members or relatives because the patients are objectively not able to sign their applications due to their health condition. The facilities' managers, bearing in mind the health of the patients, accept the practice which may be subject to legal consequences.

The Minister of Health informed the Commissioner<sup>32</sup> that he sees no need to change the existing legal regulations in this area. According to the minister, the current regulations e.g. regarding the system of legal incapacitation properly protect the rights and needs of patients, also those not able to sign by themselves the consent to care and treatment in nursing homes. The issue remains within the NMPT's scope of interest.

## ***The Commissioner's successful actions***

### ***Body search of detained persons***

The issue of compliance with the Constitution of the regulations on body search was examined during the proceedings conducted before the Constitutional Tribunal at the request of the Commissioner (case ref. no. K 17/14). On 14 December 2017<sup>33</sup> the Tribunal ruled that the failure to define the terms "personal search" and "body search" in any act of the Parliament was against the Constitution. Therefore, on 14 December 2018 the **Sejm adopted an**

<sup>31</sup> KMP.573.18.2018

<sup>32</sup> Letter of 16 January 2019.

<sup>33</sup> S. Ruling of the Constitutional Tribunal of 14 December 2017, file no. K 17/14, issued pursuant to the application of the Commissioner for Human Rights; case ref. no. II.519.344.2014.

amendment to the Act on the Police, Border Guard, Military Police and armed forces' law enforcement bodies<sup>34</sup>. As a result of the amendment, the terms "body search" and "preventive search" have been precisely defined<sup>35</sup>.

However, the implementing regulations for the Act also need to be amended. At present, no legislative activities are carried out which makes the regulations inconsistent.

### ***Legality of patients' stay in social care homes***

After 1 January 2018, thanks to the engagement of the Commissioner, numerous amendments were introduced to regulations regarding the rights of residents of social care homes. For instance, the Mental Health Protection Act has been amended.

Before the amendment, a legally incapacitated person could not disagree to his/her placement in a social care home. This happened in the case of Mr Kędzior who was placed in such a home at the request of his brother who was his guardian. The case was examined by the European Court of Human Rights which ruled that Poland had violated the provision of Article 5(1) of the European Convention on Human Rights<sup>36</sup>. In 2016, the issue, following the Commissioner's application, was also examined by the Polish Constitutional Tribunal<sup>37</sup>. The Tribunal ruled that the possibility for the court to permit a person's legal guardian to place the incapacitated person in a social care home against his/her will (when the person is able to communicate his/her needs and decisions) constitutes the person's

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<sup>34</sup> See: the Act of 14 December 2018 amending the Act on the Police and certain other acts (Journal of Laws of 2018, item 2399).

<sup>35</sup> Preventive search is a manual search of a person, his/her clothing, other items worn on his/her body, and items that the person has with him/her. To this end it is possible to use technical equipment, biochemical tests, trained dogs. The search has to be adequate to the circumstances and has to be performed in a manner ensuring the lowest possible violation of the person's rights. If during the preventive search weapons or other dangerous objects have been discovered, the search shall be followed by body search and the provisions on body search shall apply accordingly.

<sup>36</sup> The case Kędzior v. Poland; application no. 45026/07; judgment issued on 16 October 2012

<sup>37</sup> The judgment of 28 June 2016, ref. no. K 31/15.

treatment as an object and thus violates his/her dignity. After the judgment, the applicable regulations were changed. Starting from January 2018:

- a person (also a legally incapacitated one) admitted to a social care home may apply to a guardianship court for reversing the decision on his/her placement in the home;
- a person who does not consent to his/her further stay in a social care home may apply to a guardianship court for annulment of the decision on his/her placement there;
- the obligation to hear the legally incapacitated person who is to be admitted to a psychiatric hospital or a social care home has been provided for in the relevant parliamentary act;
- in order to provide additional and full legal protection to persons with mental disorders or intellectual disabilities, who are admitted to social care homes or psychiatric hospitals without their consent, the relevant is required to appoint ex-officio a lawyer or legal advisor, even without an application submitted to this end;
- if a person is admitted to a social care home without his/her consent but with the consent of his/her legal representative, a guardianship court's judgment is required. Persons admitted under this procedure should undergo mental health examinations at least once per six months.

**THE ABOVE-MENTIONED AMENDMENTS ARE IN LINE WITH THE POSTULATES THAT HAD BEEN RAISED BY THE COMMISSIONER FOR HUMAN RIGHTS FOR MANY YEARS.**

# PART III - situation in places of detention

## *Police units - police stations and rooms for detained persons*

In 2018 the NMPT visited **15 rooms** for detained persons or sobering-up stations within the organizational units of the Police<sup>38</sup> as well as **12 police stations and one police headquarters**<sup>39</sup> - the first visit was monitored by the members of the UN Subcommittee for the Prevention of Torture (SPT)<sup>40</sup>.

### *Systemic problems*

#### *Failure to provide medical examinations to all detained persons*

There is no obligation in Poland to subject every detained person to a medical examination. The list of individuals who are obligatorily subject to such an examination is specified in the regulation of the Minister of the Interior<sup>41</sup>. In practice, therefore, police officers bring to examinations only those individuals who are required by law to undergo such a procedure.

<sup>38</sup> RDP Poznań - Nowe Miasto (KMP.570.4.2018); RDP Radzyń Podlaski (KMP.570.8.2018); RDP Wysokie Mazowieckie (KMP.570.7.2018); RDP Włoszczowa (KMP.570.13.2018); RDP Złotyryja (KMP.570.12.2018); RDP Gdańsk (KMP.570.15.2018); RDP Sopot (KMP.570.16.2018); RDP Poddębice (KMP.570.19.2018); RDP Ryki (KMP.570.21.2018); RDP Szamotuły (KMP.570.23.2018); RDP Giżycko (BPG.570.1.2018); RDP Tarnów (KMP.570.25.2018); RDP Mińsk Mazowiecki (KMP.570.27.2018); RDP Białystok (KMP.570.28.2018); RDP Włocławek (KMP.570.29.2018).

<sup>39</sup> District Police Headquarters Warszawa I (KMP.570.18.2018); Police Station Warszawa Żoliborz (KMP.570.17.2018); VIII Police Station in Kraków (KMP.570.22.2018); Police Station Warszawa Targówek (KMP.570.20.2018); Police Station Warszawa Wilanów (KMP.570.24.2018); Police Station Warszawa Włochy (KMP.570.30.2018); Police Station Warszawa Ursus (KMP.570.31.2018); The Warsaw Metro Police Station (KMP.570.32.2018); Warsaw Railway Police Station (KMP.570.36.2018); Police Station Warszawa Bemowo (KMP.570.37.2018); Warsaw Neighbourhood Police Station V and VI (Police Station Warszawa Mokotów) [KMP.570.35.2018]; Warszawa Okęcie Airport Police Station (KMP.570.33.2018); Police Station Warszawa Wesoła (KMP.570.34.2018).

<sup>40</sup> Warsaw District Police Headquarters I KMP.

<sup>41</sup> Cf. Regulation of the Minister of the Interior of 13 September 2012 on medical examinations for persons detained by the Police (Dz. U. of 2012, item 1102), Article 1(3). 3.





## All detained persons should be subject to compulsory medical examinations.



Independent medical examination and proper documentation of injuries established in the course of such an examination constitute, in the opinion of the SPT and CPT, a fundamental guarantee for the prevention of torture. It also protects officers as such from false allegations that injuries were sustained during one's stay in the police unit. Furthermore, the awareness that possible signs of violence may be determined and documented may act as a deterrent to those considering the use of violence<sup>42</sup>.

### *Lack of access to a defence counsel from the beginning of detention*

In practice, not every detained individual has access to a defence counsel from the moment of detention (e.g. due to lack of funds). The request for the appointment of a public defender may, in turn, only be submitted following the first hearing as a suspect and not immediately upon detention. Prior to the establishment of the first contact between the defence counsel and the client, police officers conduct their duties involving the detained (e.g. interrogation, preliminary hearing). Such a situation results in a high risk of torture.

Detainee's access to a defence counsel is a broad concept that goes beyond the provision of legal aid and ensuring defence in criminal proceedings. It constitutes a fundamental torture-prevention guarantee. Additionally, a defence counsel has a positive impact on the quality of proceedings and professional conduct of officers, he/she improves the relationships and cooperation with the police and detainees, which proves beneficial for the investigation.

<sup>42</sup> Cf. Report from the SPT visit to Ukraine, CAT/OP/UKR/1, Art. 45-48; Report from the SPT visit to Ukraine, CAT/OP/UKR/3, Art. 57-61; Report of the SPT visit to Peru, CAT/OP/PER/1, Art. 20; Report from the SPT visit to Sweden, CAT/OP/SWE/1, Art. 62-64; Second General Report, CPT/Inf (92) 3, Art. 36-38; CPT report from the visit to Poland, CPT/Inf (2014) 21, Art. 26, 30.



**Every detained individual, irrespective of the reason for detention and his/her financial situation, should have a practical access to a public defender from the moment of detention and in the course of the whole period of deprivation of freedom.**



#### CPT

The possibility to exercise the right to a defence counsel by persons detained by the police is still a problem in Poland. Polish legislation lacks, namely, regulations that provide for the appointment of an *ex-officio* defender prior to the initiation of court proceedings. As a result, detained individuals, who are not able to afford legal aid, are virtually deprived of the access to a defence counsel<sup>43</sup>.



#### SPT

Access to a lawyer in combination with the supervision of places of detention exercised by independent authorities, court and the prosecution as well as the possibility to lodge complaints to an independent body dealing with examination of ill-treatment charges constitute key safeguards against torture<sup>44</sup>.

The aforementioned systemic problem has already been brought to the attention of the Minister of Justice by the Commissioner for Human Rights<sup>45</sup>. Unfortunately, the Minister failed to respond to the general interventions submitted by the Commissioner. This situation is a cause of concern since pursuant to the OPCAT, national authorities should maintain an ongoing dialogue with the NMPT aimed at the implementation of recommended solutions.

<sup>43</sup> CPT report from the visit to Poland, CPT/Inf (2018) 39, Art. 23.

<sup>44</sup> SPT report on the visit to the Maldives, CAT/OP/MDV/1, Art. 63.

<sup>45</sup> General Intervention of the CHR to the Minister of Justice of 18.04.2017 and 27.09.2018, KMP.570.3.2017.RK.



#### Article 22 OPCAT:

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.



#### SPT

National mechanisms for the prevention of torture and public authorities should establish an ongoing dialogue concerning presented recommendations and actions undertaken in response to such recommendations, pursuant to Article 22 OPCAT<sup>46</sup>.

### ***Shifting the responsibility to take care of intoxicated individuals to the police***

Currently there is no requirement in place to ensure ongoing medical care to intoxicated persons brought to RDPs (with the exception of the obligation to subject to medical examination of detained individuals brought to the RDPs for sobering-up). National legislation fails to impose an obligation to employ medical personnel in police units. Therefore, there is a shortage of qualified persons who could monitor the health status of individuals placed in police facilities for sobering-up as well as those detained in connection with the suspicion of committed crime who are additionally under the influence of alcohol or drugs. The responsibility for the safety of the above-mentioned individuals rests on the shoulders of police officers who, in case of emergency, are only capable of providing first aid and calling an ambulance in the hope for a quick and effective proper medical intervention. This problem has been signalled by the National Mechanism for the Prevention of Torture since 2013<sup>47</sup>.

<sup>46</sup> SPT First Annual Report, CAT/C/40/2, Art. 28, item I).

<sup>47</sup> Cf.: General Intervention of the Commissioner for Human Rights addressed to the President of the Council of Ministers of 18 November 2013.



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## Such a solution fails to ensure sufficient safety of intoxicated persons placed in RDPs and needs to be immediately changed.

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### **Lack of appropriate staff in RDPs**

It is the officer on duty in the facility who needs to ensure safety to individuals placed in RDPs and at the same time allow them to exercise their rights. Pursuant to current legislation, the head of the unit needs to organize work in such a way to make sure that there is at least one police officer on duty in the RDPs<sup>48</sup>. The findings of the NMPT made in the course of performed inspections indicate, however, that one person is not able to carry out procedural duties (completing documentation), control tasks and at the same time make sure that detainees can exercise their rights (e.g. to use a sanitary facility). Under such circumstances it may also be particularly difficult to respond to extraordinary incidents, including suicide attempts. The current work organization may result in restricted exercise of detainees' rights and their ill-treatment. Therefore, the National Mechanism for the Prevention of Torture has consistently been arguing for amending applicable regulations.

### **Detention of juveniles**

In 2018 the National Mechanism for the Prevention of Torture inspected **12 establishments** for juveniles. They included: four youth care centres<sup>49</sup>, six police emergency centres for children<sup>50</sup>, one juvenile detention centre<sup>51</sup> and one juvenile shelter<sup>52</sup>.

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<sup>48</sup> 48 Article 2(2) of the order no.130 of the Commander-in-Chief of the Police dated 7 August 2012 on the methods of performing work in the room for detained persons or intoxicated persons who are placed there for the purpose of sobering up (Dz. U. KGP of 2012, item 42, as amended)

<sup>49</sup> YCC Jaworze (KMP.573.1.2018), YCC Kielce (KMP.573.7.2018), YCC Ostrowiec Świętokrzyski (KMP.573.8.2018), YCC Zawichost (KMP.573.13.2018).

<sup>50</sup> PEC Bydgoszcz (KMP.573.4.2018), PEC Bielsko-Biała (KMP.573.6.2018), PEC Białystok (KMP.573.9.2018), PEC Gdańsk (BPG.573.1.2018), PEC Opole (KMP.573.14.2018), PEC Łódź (KMP.574.5.2018).

<sup>51</sup> JDC Koronowo (KMP.573.2.2018).

<sup>52</sup> JS Koronowo (KMP.573.2.2018).

## Police emergency centres for children

### Systemic problems

#### Access to a lawyer

What still remains to be solved is the problem of police officers' presence during meetings with a defence counsel and the lack of possibility for the lawyer or a legal counsel to initiate such meetings. It is especially important in terms of an effective realization of the right to defence, protection of legal professional privilege, the right to freedom and the protection of the confidentiality of communication. Every time an officer is present during a visit Article 49 of the Constitution of the Republic of Poland, which guarantees the right to freedom and protection of the confidentiality of communication, is violated. Furthermore, pursuant to legal regulations<sup>53</sup> a defence counsel may contact a juvenile residing in the centre only at the juvenile's request. However, a juvenile may not be even aware that he/she already has a defence counsel, or may think that he/she does not need that type of professional assistance. In some cases, a juvenile may yield in to the pressure exerted by officers who may attempt to discourage or force him/her not to use such legal aid.



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

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<sup>53</sup> Article 32 g (3) of the Act of 26 October 1982 on juvenile delinquency proceedings (consolidated text: Dz. U. of 2018, item 969) and the provision 8 (1)(9) of the Rules and Regulations.

## No obligation to examine detained juveniles



**Every newly-admitted juvenile should be subject to a medical examination.**

Medical examination prior to the placement in the centre is provided to juveniles with visible bodily injuries, those under the influence of alcohol or drugs as well as minors who request such an examination.

Medical examination of detainees and proper documentation of injuries established in the course of such an examination constitute a fundamental and minimal guarantee protecting such individuals from torture and violence, which is strongly advocated by institutions monitoring the treatment of persons deprived of their liberty<sup>54</sup>.



### UN General Assembly Resolution

**A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his/her admission to the place of detention or imprisonment; thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge<sup>55</sup>.**

Medical examination aimed at determining possible signs of violence and torture should meet two basic criteria - it needs to be performed in the shortest time possible after the incident and it needs to respect the principles concerning effective documentation of torture. The moment of carrying out the examination in question cannot be underestimated given the requirement to determine, as accurately as possible, the time of sustaining injuries or experiencing reported ailments.

<sup>54</sup> Cf. e.g.: The Second General Report of the CPT, CPT/Inf (92) 3, Art. 36-38; CPT report from the visit to Poland in 2013, CPT/Inf (2014) 21, Art. 26, 30; CPT report from the visit to Poland in 2017, CPT/Inf (2018) 39, Art. 27.

<sup>55</sup> Set of principles aimed at protecting all persons under any form of detention or imprisonment - Resolution of the General Assembly of the UN 43/173 of 9 December 1988, principle 24.



**The basic tool comprising information and guidelines on the identification and documentation of cases of torture or other cruel treatment or punishment is the Istanbul Protocol - Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

Just like in case of rooms for detained persons also during the inspection of police emergency centres for children the NMPT members also discovered an alarming practice of **examining juveniles with mental disorders by doctors specializing in other fields than psychiatry**<sup>56</sup>.



**ECHR**

Positive obligation arises when it can be established that authorities knew or should have known about a real and imminent threat to the life of the identified person posed by a third person or the person in question as such and failed to undertake actions, within their competencies, considered justified an expected to avoid such a threat<sup>57</sup>.

## ***Youth care centres, juvenile shelters, juvenile detention centres***

### ***Systemic problems***

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

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

<sup>56</sup> For further information see: Police units, Right to the protection of health.

<sup>57</sup> Judgement of the ECHR of 17 October 2013 in case Keller v. Russia, application no. 26824/04.

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

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



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

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When the attitude of a juvenile mother shows that she is not ready to take full care of her child, the court should not permit her to exercise parental custody. Applicable legislative solutions should, however, make it possible for juvenile mothers to take full care of their children.

Regrettably, this problem still remains to be solved despite the fact that since 2012 the NMPT has been repeatedly mentioning it in its annual reports and reporting the need for its resolution in general interventions addressed to the Ministry of National Education, the Ministry of Justice and expert opinions prepared with regard to various legal acts<sup>58</sup>.

The problem that juvenile detention centres and shelters struggle with is **body searches**. They are not performed pursuant to the provisions of the act, but

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<sup>58</sup> Cf. KMP.573.52.2014; KMP.022.2.2017; Report of the Commissioner for Human Rights concerning the activities of the National Mechanism for the Prevention of Torture in Poland in 2012, p. 46; Report of the Commissioner for Human Rights concerning the activities of the National Mechanism for the Prevention of Torture in Poland in 2013, p. 68-69; Report of the Commissioner for Human Rights concerning the activities of the National Mechanism for the Prevention of Torture in Poland in 2014, p. 35; Report of the Commissioner for Human Rights concerning the activities of the National Mechanism for the Prevention of Torture in Poland in 2015, p. 36-37; Report of the Commissioner for Human Rights concerning the activities of the National Mechanism for the Prevention of Torture in Poland in 2016, p. 56-59.



the regulation<sup>59</sup>. That regulation, additionally, fails to indicate persons authorized to perform body searches, premises for their performance as well as the means of appeal against decisions in that regard.



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**Body searches performed in juvenile detention centres and juvenile shelters should be regulated in the act.**

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What still remains to be solved is the **problem of an effective mechanism for lodging complaints** by juveniles. That issue was discussed in the NMPT's report for 2015.<sup>60</sup>

### ***Detention of migrant foreigners***

In 2018 the National Mechanism for the Prevention of Torture conducted inspection visits to **3 Closed Detention Centres for Migrants<sup>61</sup> and 3 Rooms for Detained Persons of the Border Guard<sup>62</sup>.**

### ***Systemic problems***

#### ***Failure to effectively identify torture victims***

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



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**Even though there is an internal Border Guard algorithm in place in centres for migrants, which specifies the “Rules of proceeding with foreigners requiring special treatment by the Border Guard”, in the opinion of the NMPT, it is non-compliant with Polish law, the Istanbul Protocol as**

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<sup>59</sup> The discussion concerns the regulation of the Minister of Justice of 17 October 2001 on juvenile detention centres and juvenile shelters (consolidated text: Dz. U. of 2017, item 487).

<sup>60</sup> Cf. Report of the Commissioner for Human Rights concerning the activities of the National Mechanism for the Prevention of Torture in Poland in 2015, p. 37.

<sup>61</sup> CDC in Lesznowola (KMP.572.2.2018), CDC in Białą Podlaska (KMP.572.3.2018), CDC in Białymstok (KMP.572.4.2018).

<sup>62</sup> RDP of the BG in Janów Podlaski (KMP.570.9.2018), RDP of the BG in Terespol (KMP.570.11.2018), RDP of the BG in Bohukały (KMP.570.10.2018).

**well as other well-established international standards. The said algorithm does not, namely, provide for the “immediate release” from the closed detention centre of foreigners who are the alleged victims of violence. Moreover, treatment and therapy offered on the premises of the centre to identified torture victims only deepens mental injuries of migrants in detention.**

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Furthermore, despite the implementation of the said algorithm there have still been instances of conduct incompliant with the “Rules”.



*a) A foreigner in relation to whom a decision was taken to extend his detention despite a reasonable basis for believing that he had been subjected to violence (determined by a psychologist) and despite persistent threat to his life and health (determined three times by a doctor and recognized in the psychiatric opinion stating that the stress experienced in detention may increase the frequency of epileptic attacks as well as confirmed in two opinions issued by a psychologist stating that the said foreigner should not reside in the centre due to his mental state). Since reporting being the victim of physical and mental violence, the foreigner had spent 4,5 months in the centre. In the opinion of the expert, information providing reasonable grounds to believe that he had experienced violence was available to the staff already in the first week after foreigner’s placement in the Centre, which can be confirmed by the notes of the psychologist and entries in the medical records. In case of doubts in that regard and the need for further verification, appropriate steps should have been taken without any delay. Yet, the request for a psychiatric consult made successively by the doctor, patient and psychologist was only granted after 4 weeks and after over 7 weeks since the patient reported being a victim of violence. Despite the fact that ultimately the foreigner was released from the Centre, interventions initiated in relation to him, in the view of the expert, were incompatible with the Border*

*Guard algorithm - no comprehensive actions were taken in relation to the presumption that he had experienced violence, which constitutes a counter-indication to being placed in the Centre, not all data from available sources was analyzed and no conclusions were drawn from the data that was gathered. All actions were taken in huge intervals of time, which delayed the identification and implementation of adequate measures; the foreigner was kept in the Centre despite the risk to his life or health, which was confirmed in the doctor's certificate.*

*b) A foreigner from a country that has been plagued by an armed conflict for many years, where torture and violence directed at civilians is common, resided in the establishment for 5 months and 15 days and was in the end released on the grounds of reasonable presumption of being a violence victim. During his stay in the CDC the foreigner failed to be qualified by the Educational Section to the sensitive group and the psychological and psychiatric identification took place only after more than 4 months since placement in the centre, despite numerous psychological consultations and three psychiatric examinations as well as reported symptoms indicative of past violence experience alongside with systematic deterioration of the foreigner's mental state.*

*c) A foreigner whose native language is Urdu - was qualified by his social counsellor to the special treatment group and subjected to video surveillance. Despite the fact that the video surveillance footage clearly indicated possible past violence experience and the psychiatrist diagnosed post-traumatic stress disorder alongside with adaptation and anxiety disorders, no steps were taken to release the foreigner from the Centre. The foreigner was kept in detention for the whole period designated by the court, until he returned to the country of origin.*

## **Detention of juveniles**

The permissibility of detaining juvenile migrants has been repeatedly questioned by non-governmental organizations<sup>63</sup>, international institutions<sup>64</sup> and the Commissioner for Human Rights.



### **CPT**

**Detention of juveniles is rarely justified and with certainty cannot be explained by the lack of a residence permit<sup>65</sup>.**



### **ECHR**

**The court ruled that by placing children in closed detention centres for migrants Poland violated Article 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms which grants children the right to family life. When deciding on the placement of the family in the closed detention centre the well-being of three children was ignored, which stands in opposition to the obligations imposed on Poland by, among others, the UN Convention on the Rights of the Child and the EU Charter of Fundamental Rights. According to the court, the fact that children are placed in the closed detention centre together with their parents is not in the child's best interest. Polish authorities should have considered applying the so called non-custodial supervision measures which constitute an alternative to detention. The court emphasized that detention should be the last resort<sup>66</sup>.**

<sup>63</sup> Cf. Position statement of the Association for Legal Intervention of 30 March 2015: <http://interwencjaprawna.pl/stanowisko-sip-w-sprawie-detencji-dzieci-cudzoziemskich/>

<sup>64</sup> E.g. ECHR' judgment of 19 January 2010 in the case *Muskhadzyhiewa v. Belgium* (41442/07)

<sup>65</sup> CPT report from the visit to Poland in 2009, CPT/Inf (2011) 20, Art. 48.

<sup>66</sup> Case *Bistieva v. Poland*, application no. 75157/14.



**Regardless of how well the juveniles are looked after during their stay in a CDC, such stays, in every instance, have a very negative impact on their psychological condition and their normal functioning thereafter. Legislation and practice should evolve in such a way as to make sure that all juveniles can stay in local communities during the proceedings aimed at regulating their migration situation.**

### ***Bars in windows***

On numerous occasions the Mechanism has emphasized the need to abandon that practice, particularly in those centres where children are staying.



#### **CPT**

Conditions in detention centres for migrants should reflect their legal status. Given the fact, that migrants placed in the CDC are not prisoners, all analogies to penitentiary establishments should be eliminated<sup>67</sup>.

### ***Access to VoIP (Voice over Internet Protocol) technology***

Despite the fact that foreigners residing in closed centres have access to the Internet, they cannot make free international calls, using the VoIP technology.



#### **CPT**

The Committee would like to encourage Polish authorities to consider allowing residents of the Closed Centre in Lesznowola to use the VoIP technology free of charge to communicate with the outside world and offering poor foreigners the possibility to make at least one free phone call a month<sup>68</sup>.

<sup>67</sup> CPT report from the visit to Malta in 2008, CPT/Inf (2011) 5, Art.51.

<sup>68</sup> CPT report from the visit to Poland in 2017, CPT/Inf (2018) 39, Art. 54.

## **Social care homes**

In 2018 the National Mechanism for the Prevention of Torture visited **5 social care homes**<sup>69</sup>.

### **Systemic problems**

Regrettably, not all problems of systemic nature have been eliminated. Many of them, despite being reported for many years, remain valid. The NMPT is still awaiting proper legislative steps in that regard<sup>70</sup>.

### **THE PROBLEM OF SCH STAFF ACTING AS LEGAL GUARDIANS OF INCAPACITATED PERSONS**

One of the tasks of legal guardians should consist in monitoring whether their wards are provided with due care in a given establishment and reside in conditions that do not violate their dignity. In such a situation it is difficult for social care home employees to remain objective. Furthermore, the performance of the function of legal guardians by social care home personnel only adds to their workload, which may compromise their free time and private life. It may, as a result, lead to lower motivation to properly and conscientiously fulfil the duties they had been entrusted with.

### **THE ISSUE OF CCTV MONITORING**

The issue of installing CCTV monitoring, e.g. in common areas of the social care homes, has not been in any way regulated in legal provisions. Yet, installing cameras in these types of establishments may constitute intrusion into the privacy of residents, employees and other persons on the premises of the monitored facility. The application of such technological solutions should, thus, be clearly regulated in an act. Lack of legal provisions regulating the application of CCTV

<sup>69</sup> Jan Paweł II SCH in Piła (KMP.575.1.2018); SCH in Chełmno run by the Sisters of Charity of Saint Vincent De Paul (BPG.575.1.2018); SCH in Ciechanów (ul. Krucza 32) (KMP.575.2.2018); SCH „Kombatant” in Legionowo (KMP.575.3.2018); SCH in Zachcinek near Opatów (KMP.575.4.2018).

<sup>70</sup> On 30.01.2018 the Commissioner for Human Rights addressed the Minister of Family, Labour and Social Policy with respect to the protection of the rights of social care home residents and requested a stance on the existing systemic problems related to the operation of social care homes; KMP.575.7.2016.

monitoring in social care homes was the subject of a general intervention of the Commissioner for Human Rights to the Minister of Family, Labour and Social Policy<sup>71</sup>.

### ***The issue of alcohol abuse of some residents and insufficient number of homes for people with alcohol problem***

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

The problem certainly cannot be considered a marginal one. According to the findings of the NMPT, in most social care homes for senior persons or persons with chronic somatic diseases there are some residents with alcohol problems. In some of the visited facilities, the share of such persons in the total number of residents was as high as around 10%.

Despite introducing an amendment to legal regulations, allowing for the establishment of social care homes for alcohol addicts, the number of such institutions is still too low to meet all the needs. Therefore, individuals with alcohol problems are placed in remaining institutions, which badly affects both, the therapeutic process as well as other residents and employees of SCHs who often need to deal with their aggression and agitation.

### ***The issue of restricting residents' contact with the external world***

The provisions which are currently in force fail to contain any regulations permitting the introduction of any restrictions to resident's freedom of leaving the building and facility premises.

It should be noted that the institution of incapacitation imposes restrictions on the individual in question only in the legal aspect and not with respect to personal freedom. In the opinion of the NMPT incapacitated individuals should be treated by social care home employees on a par with other residents in all aspect of life, with the exception of the legal aspect. It should additionally be observed that currently there are also no legal grounds for restricting the

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<sup>71</sup> Cf. chapter: Advisory activities, General interventions.

possibility to leave the premises by individuals placed in the SCH on the basis of a court ruling.



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**The possibility to freely leave the premises of the SCH should only be dependent on the physical and mental fitness of a given resident. Therefore, the only criteria taken into account when issuing a decision concerning one's capability to leave the premises without any supervision should be: the will of the resident and his/her health status. The opinion on the health status of a resident that can constitute grounds for restricting his/her freedom of movements as far as leaving the facility is concerned may be drawn up by a doctor (e.g. internal medicine doctor or geriatrician) or a psychiatrist after a consultation with a psychologist, if needed. All relevant opinions should be placed in resident's personal files.**

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### ***The issue of SCHs' cooperation with psychologists***

One of the key pillars of proper care for residents of social care homes is providing them with permanent and unrestricted access to a psychologist. In practice, only a psychologist employed by the facility can provide such access.

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

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

Pursuant to Article 43 (1) of the Act on mental health protection<sup>72</sup>, the court supervision over the legality of placement and stay of people with mental disorders in social care homes and over the observance of their rights and living

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<sup>72</sup> Act of 19 August 1994 on mental health protection (Dz.U. of 2018, item 1878).



conditions in the facilities, is required only in the case of social care homes for persons with mental illness or mental retardation.

Residents with mental disorders whose well-being should be of concern to a public court, however, may also stay in other types of care homes. In practice therefore, due to the nature of the quoted provision, there can be care homes not supervised by a court although they have some mentally ill residents.

This puts some residents of social care homes in a more disadvantaged position. It allows, namely, for unverified deprivation of liberty for an undetermined period of time of mentally ill individuals who reside in other types of care homes. It also ignores the necessity to guarantee to every person his/her personal freedom and the possibility to seek, through a visiting judge, the verification of the person's situation.

## **24-hour care facilities**

In 2018 the representatives of the National Mechanism for the Prevention of Torture visited **6 24-hour care facilities**<sup>73</sup>. One of the facilities was re-inspected<sup>74</sup>.

The representatives of the NMPT were also going to conduct an inspection of the "Pogodna Przystań" Care Facility in Stara Wieś near Warsaw. After the initiation of the inspection procedure, however, they established that the establishment is not present under the address mentioned in the register maintained by the province governor. The said address is now occupied by the Agnieszka Kaczyńska Family Care Facility.

The NMPT shared relevant information pertaining to that case with the Social Policy Department of the Mazowieckie Province Office in Warsaw with a request to clarify that situation and conduct an inspection of the indicated facility.

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<sup>73</sup> Pensjonat Dla Osób Starszych „Opieka” in Alwernia (KMP.573.11.2018); Dom Opieki „Senior” in Kraków (KMP.573.12.2018); Dom Pielęgnacyjno-Opiekuńczy Dworek in Józefów near Legionowo (KMP.573.15.2018); Dom Seniora „Przystań” w Ścinawa (BPW.573.1.2018); „Domek z Sercem” in Radwanice (KMP.573.16.2018); Dom Opieki „Florans” in Stare Babice (KMP.573.18.2017).

<sup>74</sup> The control results are presented in the chapter on reinspections.

It could be established from the response of the Mazowieckie Province Office<sup>75</sup> that the establishment fails to meet the definition of a family care facility specified in the provisions of the regulation of the Minister of Labour and Social Policy of 31 May 2012 on family care homes. Inspectors determined that the building is housing a facility providing 24-hour care to the disabled, chronically ill as well as the elderly. **Yet, the owner does not hold a relevant permit from the Mazowieckie province governor for conducting such an activity.** Therefore, the province governor informed about plans to instigate administrative proceedings striving to impose a fine for running the facility without a relevant permit. Following the information from the NMPT, steps were also taken to remove “Pogodna Przystań” care facility from the governor’s register.

## **Systemic problems**

### **Legality of stay**

The manner of concluding agreements in 24-hour care facilities and often the subject matter of those agreements raise some concerns among the representatives of the NMPT. It is particularly evident in two cases:

- 1. Residents who are fully incapacitated prior to the admission to the facility.**

In such an instance, the signature under the agreement for the provision of care services should be placed by a legal guardian who received a court’s consent for the ward’s placement in the facility.



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**The NMPT encourages staff to verify the legal status of individuals signing the agreement. If legal guardians are the ones to sign the agreement one should add a copy of the court’s ruling or certificate of the appointment of a legal guardian to the resident’s files.**

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<sup>75</sup> WPS-II.431.4.2.2019.MR.

## 2. Residents, who are not incapacitated but whose health status prevents them from concluding the agreement.

Persons acting on behalf of a resident, who is not incapacitated, are not in any way authorized, in the light of the regulations in force, to make decisions to place the resident in a 24-hour care facility, even if this person's psycho-physical condition is bad and he/she is not able to place a signature under the service provision agreement.

It would be desirable, therefore, to regulate the issue in the generally applicable regulations, e.g. by introducing solutions similar to the consent of a custody court for the provision of a health service, specified in the Act on the Professions of Physician and Dentist<sup>76</sup>, or consent for the placement in a psychiatric hospital<sup>77</sup>. The solutions could include, among others, granting a family member or other persons the right to apply to a court for consent for the person's placement in a care facility. Thanks to the supervision by courts, the status of persons admitted to such facilities would be significantly strengthened, as at present such persons often have no possibility to have any influence on their future.



**During the visit to Poland in 2009, the CPT indicated that numerous residents placed in care homes “voluntarily” were not able to legitimately decide about their stay there or lacked a court-appointed guardian. In fact, those individuals were deprived of liberty and had no possibility to enjoy guarantees provided for by legal regulations. The Committee instructed national authorities to take measures to report residents who are not able to give a valid consent for placement or those who have no guardian and are unable to leave the facility to a competent court<sup>78</sup>.**

<sup>76</sup> Cf. Art. 32 of the Act of 5 December 1996 on the profession of a doctor and dentist (Dz. U. of 2018, item 617; consolidated text).

<sup>77</sup> Cf. Art. 22 and 23 of the Act of 19 August 1994 on the mental health protection (Dz. U. of 2018, item 1878; consolidated text).

<sup>78</sup> S. CPT report from the visit to Poland in 2009, CPT/Inf (2011) 20, Art. 166.

## ***Use of direct coercion measures in 24-hour care facilities***

In the opinion of the NMPT, there is a lack of legal regulations on the use of direct coercion measures in such facilities. According to the current regulations, the use of such measures in places other than psychiatric hospitals is permitted only in organizational units that are operated by the social welfare system, in social care homes and, in the case of specifically authorized authorities e.g. the police, at any place as required. If direct coercion measures are used in 24-hour care facilities, then in the opinion of the NMPT, they may constitute actions that are prohibited (violation of bodily integrity, or unlawful deprivation of liberty).

The Commissioner has applied to the Minister of Family, Labour and Social Policy for regulating the use of direct coercion measures in 24-hour care facilities<sup>79</sup>. The Minister shared the Commissioner's opinion and ensured that the Ministry is working on introducing, into the Act on Social Welfare, provisions that would require employment, by such facilities, of medical personnel that would be authorized to use direct coercion measures. Unfortunately, despite the Minister's announcements the amendment has not been introduced yet.



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**Currently, 24-hour care facilities are not formally permitted to use coercion measures in relation to their residents but they are, at the same time, required to keep registers of cases of use of direct coercion (by other entities, e.g. ambulance staff or the police), including the date and scope of using such measures.**

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## ***CCTV monitoring***

Installing cameras in these types of establishments may constitute intrusion into the privacy of residents, employees and other persons on the premises of the monitored facility. To ensure that the application of this type of supervision is legal, it is vital for it to meet the criteria specified in Article 31 (3) of the

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<sup>79</sup> KMP.575.13.2016.

Constitution, including the statutory form of the restriction. Currently, there are no provisions that would regulate this issue and sometimes it happens that cameras are installed in corridors, common rooms or even rooms of residents.

## **Psychiatric hospitals**

In 2018 the National Mechanism for the Prevention of Torture inspected **3 hospitals and 1 psychiatric ward**<sup>80</sup>.

What was of particular interest to inspectors during inspection visits to those facilities was the observance of rights of adult persons who were placed there against their will, i.e. admitted without their consent as well as those who expressed their consent for admission to the facility but withdrew it in the course of their stay there.

The visit to the Psychiatric Hospital of the Independent State Healthcare Facility in Węgorzewo was a re-inspection<sup>81</sup>.

## **Systemic problems**

### **Monitoring in psychiatric hospitals**

What is still missing in the legislation are regulations concerning CCTV monitoring in rooms other than those serving the purpose of patient's isolation<sup>82</sup>. For this reason, in 2018 the Commissioner for Human Rights repeated his request to the Minister of Health to submit, as part of his legislative initiative, draft provisions regulating the use of CCTV monitoring in hospitals<sup>83</sup>.

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<sup>80</sup> Voivodeship Psychiatric Hospital in Złotoryja (BPW.574.1.2018); Psychiatric Hospital of the Independent State Healthcare Facility in Toszek (BPK.574.1.2018); Clinical Psychiatric Ward of the Wola Mental Health Centre in Anna Gostyńska Wola Hospital in Warsaw (KMP.574.3.2018); Psychiatric Hospital of the Independent State Healthcare Facility in Węgorzewo (KMP.574.5.2014).

<sup>81</sup> Findings from that repeated control in the facility are described in the chapter entitled *Re-inspections*

<sup>82</sup> Cf.: Article 18e(2) of the Act of 19 August 1994 on the protection of mental health (Dz.U. of 2018, item 1878; consolidated text).

<sup>83</sup> General Intervention of the CHR to the Minister of Health of 5 October 2018, KMP.574.8.2015.



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

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

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



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

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The NMPT believes that it is necessary to take legislative action to determine the escorted transport procedure, i.e.: situations in which it should be used, responsible entities, escorting team composition, means of transport, and measures to be taken in order to prevent aggression and uncontrolled departure of the escorted person. At present, it is the sole responsibility of psychiatric hospitals to organize escorted transport and to ensure its safety and security, in cases when it is necessary to transport a patient beyond the psychiatric hospital for the purpose of an important medical consultation, examination or treatment procedure.

The last time that the Commissioner for Human Rights requested the Minister of Health to take a stance of the presented issue was in the letter of 5 October 2018<sup>84</sup>.

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<sup>84</sup> Cf. General Intervention of the CHR to the Minister of Health of 5 October 2018, KMP.574.8.2015.

## ***Emergency call system***

Patients' safety is one of the elements of the protection of patient rights that deserves priority treatment. Therefore, it is subject to verification by the NMPT during every inspection visit to a psychiatric establishment.

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



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

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Emergency call systems are also of particular importance for persons with disabilities who, according to the requirements laid down in the Convention on the Rights of Persons with Disabilities should be provided with broadly understood mobility measures to ensure that they can function freely, just like other patients without disabilities.

The Regulation of the Minister of Health of 26 June 2012 on specific requirements to be met by premises and equipment of medical service provider<sup>85</sup> does not require the installation in hospital wards of emergency call systems that can be accessed from patient rooms, bathrooms and other rooms used by patients.

## ***Nursing facilities***

Incapacitated persons may also be placed in nursing facilities and convalescent homes. Therefore, the NMPT decided to cover such institutions by the NMPT monitoring.

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<sup>85</sup> Dz. U. of 2012, item 739.

In 2018 the National Mechanism for the Prevention of Torture held visits to **4 nursing facilities** (hereinafter also NF, CH, facilities)<sup>86</sup>.

## **Systemic problems**

### **Rules of admission to nursing facilities**

The regulation of the Minister of Health of 25 June 2012 on referrals to nursing facilities and convalescent homes<sup>87</sup> stipulates that every application for admission to a nursing facility should be signed by the person who is seeking admission to the facility or by his/her legal representative.

The problem highlighted by the NMPT refers to the lack of legal regulations on the admission to nursing facilities of adult persons who are not incapacitated but who, due to their health condition, are not able to independently sign their applications and, at the same time, do not have their established legal representatives who could do this on their behalf. In the opinion of the NMPT representatives, the problem is of systemic nature. It consists in the fact that in case of patients who are not legally incapacitated but, at the same time, who are unable to express their will because of their somatic diseases, their family members have no authorization under the law to apply to a court for ordering to place such a patient in a nursing facility. It should also be emphasized that the problem concerns only those nursing facilities that are targeted at all types of residents. As regards psychiatric nursing facilities, the placement of persons who are not legally incapacitated but, at the same time, are unable to express their will because of their somatic diseases is done on the grounds of Article 21 in conjunction with Article 3(1) and (2) of the Act on Mental Health Protection. In the General Intervention of 9 December 2018 the Commissioner for Human Rights requested the Minister of Health to take a stance of the issue and consider taking steps to regulate the aforementioned problem in an act<sup>88</sup>.

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<sup>86</sup> NF in Warsaw, ul. Mehoffera 72/74 (KMP.573.5.2018); NF Veni, Vidi, Vici in Grębiszew (KMP.573.17.2018); NF „Przyjazny Dom Seniora” at the Hospital of the Ministry of the Interior and Administration in Łódź (KMP.573.10.2018); NF „Bona-Med.” in Cracow (BPK.575.1.2018).

<sup>87</sup> Dz. U. of 2012, item 731

<sup>88</sup> Cf. General Intervention of the CHR to the Minister of Health of 9 December 2018, KMP.573.18.2018.



## Penitentiary establishments

In 2018 the NMPT visited **12 penitentiary establishments**<sup>89</sup>: six prisons, two pre-trial detention centres and four field units of the pre-detention centres and a prison.

Visits to the Prison in Bydgoszcz - Fordon as well as to the Pre-trial Detention Centre in Lublin constituted re-inspections<sup>90</sup>.

Inspection to the Bemowo Field Unit of the Pre-trial Detention Centre in Warszawa-Białołęka was conducted in the presence of the representatives of the mechanism for the prevention of torture from Kosovo, who were on a study visit to Poland at that time. Due to their attendance the inspection was announced in advance.

The visit to prison in Wronki, in turn, aimed at verifying how the authorities of the inspected places observe the prohibition of repression, described in OPCAT. That visit was a follow-up to the inspection held by the UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) which was visiting Polish places of detention between 9-18.07.2018.



### Article 21 (1) - Prohibition of repression

**No persons (e.g. inmate, establishment's employee, family member, another individual) or organization that provided the NMPT with information shall be subject to any sanctions or harm for that reason, regardless of whether the information in question was true or false.**

<sup>89</sup> Prison no. 1 in Wrocław (BPW.571.1.2018); prison in Wronki (KMP.571.6.2018); prison in Tarnów (KMP.571.7.2018); prison in Łupków (KMP.571.8.2018); prison in Włocławek (KMP.571.10.2018); PTDC Warszawa-Grochów (KMP.571.5.2018); FU Rosnowo of the PTDC in Poznań (KMP.571.1.201); FU Golesze of the PTDC in Piotrków Tryb. (KMP.571.3.2018); FU Bemowo of the PTDC Warszawa-Białołęka (KMP.571.4.2018); FU Moszczaniec of the prison in Łupków (KMP.571.9.2018); prison in Bydgoszcz-Fordon (KMP.571.7.2016); PTDC in Lublin (KMP.571.6.2016).

<sup>90</sup> Findings from that repeated control in the facility are described in the chapter entitled Re-inspections.

## **Systemic problems**

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

The plea made by the Mechanism in annual reports for 2016 and 2017 concerning the need for the Prison Service to adopt procedures specifying the method of conduct in case a prisoner reports being a victim of torture or violence or when there is a suspicion that torture or violence was used against him/her still remains valid. Prison personnel, including medical staff, do not have any procedures in place in that regard. Injuries are often documented in a superficial fashion and medical staff lacks sufficient knowledge about the provisions of the Istanbul Protocol.

The Istanbul Protocol, which acts as a manual for effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, is an official UN document drawn up by a group of experts and comprising practical information about the methods of torture, their consequences, ways of identifying them for the purpose of criminal proceedings and conducting effective investigations concerning torture. Its application is recommended by the UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)<sup>91</sup>.

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

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<sup>91</sup> Cf.: Report of the SPT visit to Peru in 2013, CAT/OP/PER/1, Art. 20; Report from the SPT visit to Ukraine in 2011, CAT/OP/UKR/1, Art. 46-48; Report from the SPT visit to Brazil in 2011, CAT/OP/BRA/1, Art. 38-39.



## CPT

Newly admitted prisoners should undergo a detailed medical examination. Moreover, the CPT recommends that Polish authorities should make sure that documentation drawn up after a medical check-up comprises the following information:

- (i) description of comments made by the patient undergoing the check-up which are significant from the point of view of medical examination (including own remarks on his/her health status and any allegations concerning ill-treatment);
- (ii) full, objective medical findings, resulting from the thorough examination;
- (iii) doctor's comments on information specified in items i) and ii) indicating correspondence between presented allegations and objective medical findings.

Documentation should also include all results of additionally performed examinations, detailed results of specialist consultations, description of the method of treating injuries as well as information about all other procedures.

The results of medical examinations performed in case of very serious injuries should be presented on special forms dedicated to that purpose and contain a body map for marking areas of serious injuries which will be kept on file in prisoner's medical records. What should also be added to prisoner's medical records are photographs, if they were taken. Furthermore, each penitentiary establishment should maintain a register of traumas for entering all types of injuries.

Furthermore, the Committee also recommends a review of existing procedures to make sure that every time when recorded injuries correspond to prisoner's reports on ill-treatment (also when no ill-treatment was reported but injuries are indicative thereof) competent prosecutor is systematically and immediately notified, regardless of whether the prisoner wishes to make such a notification or not. Examination results should also be available to the prisoner in question or his/her lawyer<sup>92</sup>.

<sup>92</sup> CPT report from the visit to Poland in 2013, CPT/Inf (2014) 21, Art. 78.

### **Limited living space for prisoners in cells**

Regrettably, despite efforts made by the Mechanism to increase the living space available to each prisoner in a cell described in the annual report for 2017, the Ministry of Justice fails to notice the need to implement a relevant change.

In accordance with Polish law minimum 3 m<sup>2</sup> of living space need to be ensured to every prisoner in a cell. The law also provides for the possibility to go below that standard<sup>93</sup>, **even though one is not able to normally function in such conditions**. The Polish norm fails to comply with international standards and practices that are in place in most European countries.

#### **Living space in a cell in selected European COUNTRIES:**

- *France - from 4,7 to 9 m<sup>2</sup>,*
- *Great Britain - from 4,5 to 7 m<sup>2</sup>,*
- *Spain- from 9 to 10 m<sup>2</sup>,*
- *Italy - from 7 to 9 m<sup>2</sup>,*
- *Poland – 3 m<sup>2</sup>*

Since 1996 the European Committee for the prevention of torture and inhuman and degrading treatment or punishment (CPT)<sup>94</sup> as well as the UN Committee against Torture (CAT)<sup>95</sup> have been arguing for ensuring at least 4m<sup>2</sup> of living space in cells in Poland. During the first visit of the UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) that was held between 9 and 18 of July 2018 delegation members also highlighted the problem of living space in a cell available to each prisoner, that has not been solved for dozens of years. In the view of delegation members, such limited living space fails short of European standards.

<sup>93</sup> Article 110 of the Act of 6 June 1997 Executive Penal Code (Dz.U. of 2018, item 652; consolidated text).

<sup>94</sup> S. CPT report from the visit to Poland in 2013, CPT/Inf (2014) 21, Art. 7-8, 41-42.

<sup>95</sup> Cf. Committee's remarks on the V and VI periodic report on Poland's implementation of the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/POL/CO/5-6, Art. 19.

The minimum standard recommended to Council of Europe countries by the European Committee for the prevention of torture and inhuman and degrading treatment or punishment (CPT) is at least **4 m<sup>2</sup>** in single-person cells and **6 m<sup>2</sup>** in multi-occupancy cells, not including the cell's sanitary areas<sup>96</sup>.

CPT standards are taken into consideration by the European Court of Human Rights in Strasbourg<sup>97</sup> while assessing possible violation by a given state of Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (prohibition of torture)<sup>98</sup>.



#### **ECHR**

**If a prisoner in a cell has less than 3 m<sup>2</sup> to his/her disposal there occurs a strong presumption of the violation of Article 3 of the Convention.**

**In case of living space amounting to 3-4 m<sup>2</sup> - space factor remains a significant aspect considered by the Court when evaluating the adequacy of detention conditions<sup>99</sup>.**

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

Having served their sentences, prisoners will be released and the conditions in which they were serving their sentences will have impact on their rehabilitation and future relations with others<sup>100</sup>.

- Such small space in a cell fails to ensure even a minimum level of privacy, it becomes the source of frustration, mental suffering, conflicts and violence.
- In such conditions it is hugely difficult for the Prison Service to ensure safety to prisoners.

<sup>96</sup> Cf. Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015) 44; 26th CPT General Report, CPT/Inf (2017) 5, Art. 56.

<sup>97</sup> Judgement Muršić v. Croatia of 20 October 2016 [Grand Chamber], application no. 7334/13; Judgement Orchoński v. Poland of 22 October 2009, application no. 17885/04; Judgement Sikorski v. Poland of 22 October 2009, application no. 17599/05.

<sup>98</sup> The Convention on the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950 (Dz. U. of 1993, no. 61, item 284).

<sup>99</sup> Judgement Muršić v. Croatia of 20 October 2016 [Great Chamber], application no. 7334/13.

<sup>100</sup> Cf. CHR's General Intervention of 24.05.2016 and 29.07.2016 to the Minister of Justice, KMP.571.5.2016.RK.

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

### ***Prisoners' body searches should be subject to court's assessment***

Request that was submitted in 2016 by the Commissioner for Human Rights to the Constitutional Tribunal to ascertain the non-compliance of Article 116 (6) of the Executive Penal Code in conjunction with Article 7 (1) of the Executive Penal Code with the Constitution in the scope, in which it does not provide for the issuance of a decision concerning a body search performed on a prisoner, is still awaiting consideration (court's file no. K 5/16)

Despite NMPT's appeals, the legislator did not decide to amend provisions in that scope. The Minister of Justice informed the Commissioner that work is in progress in the National Headquarters of the Prison Service with respect to the development of comprehensive procedures aimed at specifying in which

situations and in what manner body searches should be performed and in which case the decision about the search should be documented<sup>101</sup>.

Draft guidelines concerning the performance of body searches on prisoners and persons entering the premises of penitentiary units were analyzed by the National Mechanism for the Prevention of Torture and the Team for Punishment Execution. Opinion in that case was forwarded to the National Headquarters of the Prison Service on 28 November 2018. Apart from the preparation of draft guidelines 2018 failed to bring other desirable changes with respect to body searches.

Subjecting the prisoner to a search does not require the issuance of a decision that the inmate can challenge in a court, pursuant to Article 7 of the Executive Penal Code. The court cannot, therefore, verify whether it was a legitimate decision or not. Such a situation creates room for abuse. **It is imperative, therefore, that the legitimacy and the method of performing prisoners' body search be subject to external verification. Possible judicial control is of preventive nature and may be a deterrent to those willing to use the search without justification.**

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



#### ECHR

**Body searches performed on prisoners on a daily basis, combined with the obligation to remove all clothes, did not stem from any specific safety needs and were not associated with any suspicions arising from the claimant's behaviour. Such a practice must have caused the sense of embarrassment, torment and depression which exceeded the inevitable sense of suffering and abasement, resulting from serving the punishment of deprivation of liberty<sup>102</sup>.**

<sup>101</sup> Letter of the Minister of Justice of 14 April 2018, file no. DWMPC-III-850-2/18.

<sup>102</sup> Judgement in the case Świdorski v. Poland of 16 February 2016, application no. 5532/10, Art. 60-61.

The national law, which was applicable in practice, failed to provide detainees with an effective appeal measure allowing them to challenge the decision concerning the performance of a body search. Given the lack of such an effective appeal measure, it is difficult to ensure, at the national level, the obligation to sufficiently justify body searches or searches with undressing<sup>103</sup>.

### *Failure to adapt prison facilities to the needs of persons with physical disabilities*



#### **NMPT will soon present a thematic report on the matter**

The NMPT has drawn up a thematic report assessing penitentiary establishments' adaptation to the needs of persons with physical and sensory disabilities. The findings of the thematic monitoring leave no doubt that the process of eliminating architectural barriers and introducing other solutions serving the needs of prisoners with disabilities, still constitutes a challenge for the penitentiary establishments in Poland.

As mentioned at the beginning of this chapter, two visits performed by the NMPT were, in fact, re-inspections during which the mechanism's representatives verified the implementation level of their recommendations issued as a result of the previous visits in the PTDC in Lublin and the prison in Bydgoszcz - Fordon. It is worth mentioning that both establishments were designated as places for serving punishments by prisoners in wheelchairs. Despite the unquestionable progress observed by the inspectors with respect to the improvement of the conditions of serving the sentence by persons with physical and sensory disabilities in those institutions, there are still areas to be improved in order to more strongly guarantee the protection of the rights of this group of prisoners.

<sup>103</sup> Judgement in the case Milka v. Poland of 15 September 2015, application no. 14322/12, Art. 30 and 48.



It should be noted that failure to properly adapt the establishments to the needs of disabled prisoners infringes the applicable international standards and thus requires change<sup>104</sup>.



### **Mandela Rules**

**The prison regime should seek to minimize any differences between prison life and life at liberty, and prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.<sup>105</sup>**



### **ECHR**

**If the authorities take a decision to detain a disabled person, they should ensure to this person the conditions that meet his/her specific needs arising from his/her disability<sup>106</sup>.**



**The placement of a physically disabled prisoner in a facility that is not adapted to the needs of persons with physical disabilities, and the failure to provide such adaptations constitutes a serious problem, according to the Convention. Consequently, the Court concluded that there had been a violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as regards the physical conditions of detention assessed from the point of the applicant's special needs<sup>107</sup>.**

<sup>104</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Resolution adopted by the UN General Assembly on 17 December 2015, Rule 5; Convention on the Rights of Persons with Disabilities, drawn up in New York on 13 December 2006. (Journal of Laws - Dz. U. of 2012, item 1169); Resolution of the Sejm of the Republic of Poland of 1 August 1997 - Charter on the Rights of Persons with Disabilities (M. P. of 1997 item 475); publication of the UN Committee on the Rights of Persons with Disabilities, Guidelines on article 14, The right to liberty and security of persons with disabilities, Adopted during the Committee's 14th session, September 2015.

<sup>105</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, rule 5

<sup>106</sup> Judgment of *Farbtuhs v. Latvia* of 2 December 2004, no. 4672/02; judgment of *Price v. United Kingdom* of 10 July 2011, application no. 33394/96.

<sup>107</sup> Judgment *D.G. v. Poland* of 12 February 2013, no. 45705/07.

Therefore, the postulates raised by the Mechanism in the 2017 annual report remain valid.



**The ordinance of the Director General of the Prison Service needs to be updated to indicate facilities adjusted to the needs of prisoners with physical disabilities<sup>108</sup>.**

***Limited range of cultural and educational activities for remand prisoners and convicts***



**CPT**

The CPT calls on Polish authorities to undertake measures necessary for the development of programmes of activities for remand prisoners as well as convicts. The goal should be to ensure that each detainee can spend a reasonable part of the day (eight hours or more) outside the cell while participating in purposeful and diversified activities (work, education, vocational training, sport, etc.)<sup>109</sup>.

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

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

In the opinion of the Minister of Justice, the postulated further efforts in the field of activities for remand prisoners, to enable their longer stay outside the

<sup>108</sup> Decree No. 15/18 of the Director General of the Prison Service of April 10, 2015 regarding the determination of the purpose of prisons and detention centres.

<sup>109</sup> CPT report on the visit to Poland in 2103, CPT / Inf (2014) 21, parish 43.

cells, cannot be met on a large scale, as the system of imprisonment, by nature, entails severe restrictions. The architectural conditions in some penitentiary facilities also influence the possibility to organize such activities.<sup>110</sup>

### ***Sobering-up stations***

In 2018, the National Mechanism for the Prevention of Torture visited **three sobering-up stations**<sup>111</sup>.

### ***Detention facilities of the military police***

In 2018, the National Mechanism for the Prevention of Torture conducted a visit to the detention facility of the Mazowsze Region's Military Police Unit in Warsaw. The facility does not work on regular basis and is in use only when a detained person is placed there.

### ***RE-inspections***

In 2018, the National Mechanism for the Prevention of Torture conducted re-inspections at **four** previously visited **establishments**<sup>112</sup>.

The re-inspections of the establishments sought to monitor their adjustment to the needs of prisoners with disabilities.

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<sup>110</sup> Letter of the Minister of Justice of 14 April 2018, file no. DWMPK-III-850-2/18.

<sup>111</sup> Sobering-up station in Bydgoszcz (KMP.574.2.2018); Unit for care provision to drunk persons, which operates within the Alcoholism Prevention and Problem Solving Centre in Piła (KMP.574.1.2018); the Diagnostic and Observation Unit of the Municipal Centre for Therapies and Prevention in Łódź (KMP.574.4.2018).

<sup>112</sup> Pre-trial detention facility in Lublin (KMP.571.6.2016); Prison in Bydgoszcz-Fordon (KMP.571.7.2016); Psychiatric Hospital in Węgorzewo (KMP.574.5.2014); "Florans" social care home in Stare Babice (KMP.573.18.2017).

# SUMMARY

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The mechanism of regular visits to places of detention is considered to be one of the most effective measures of preventing torture and other forms of ill-treatment of persons deprived of their liberty. The mechanism complements the judicial system ensured by the European Court of Human Rights in Strasbourg.

It is of great concern that in 2018, the National Mechanism for the Prevention of Torture identified cases of what can be described as torture or inhuman or degrading treatment or punishment. This proves that the NMPT visits are strongly needed and should be intensified.

The NMPT welcomes the information that its numerous recommendations, issued as a result of its visits, have been taken into account by the managers of the individual facilities. The implementation of the Mechanism's recommendations increases public trust to the system of such institutions, and constitutes a tangible proof of the parties' cooperation in the spirit of dialogue and mutual understanding.

The National Mechanism for the Prevention of Torture is still facing a number of challenges. In order to fulfil its basic function of preventing torture, it would have to ensure regular visits to all places of detention, of which there are over 3,000 in Poland. The NMPT also undertakes numerous educational and advisory activities aimed at increasing the awareness of the society. However, the full-scope exercise of its powers set out in Article 19 of the OPCAT is not possible without sufficient funding allocated by the state.

In conclusion, in view of the activities carried out in 2018 by the Commissioner for Human Rights as the National Mechanism for the Prevention of Torture one should hope that the relevant authorities of the Republic of Poland see the need to support this additional function undertaken by the Commissioner. The provision of sufficient funding is an obligation of each State Party to the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.





In December 2018, the Commissioner for Human Rights launched a social campaign entitled *State without torture*. The campaign partners are: Council of Europe, Office for Democratic Institutions and Human Rights / Organization for Security and Co-operation in Europe, Association for the Prevention of Torture in Geneva (APT), Kantar Millward Brown, Supreme Bar Council, National Chamber of Legal Advisers. Within the campaign, the National Mechanism for the Prevention of Torture seeks to make the society aware of the problem of torture and conduct training courses and lectures on the issue.

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