

## **PERSONS DEPRIVED OF THEIR LIBERTY AND PERFORMANCE OF ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM**

Activities of the Ombudswoman with regard to persons deprived of their liberty, that is, persons who have been ordered into any form of detention, imprisonment or placement in a public custodial setting which they are not permitted to leave at will, include both preventive and reactive actions. Pursuant to the Ombudsman's Act, the Ombudswoman takes reactive actions and protects the rights of persons deprived of their liberty by examining individual complaints. Conversely, under the Act on the National Preventive Mechanisms against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OG 18/11, hereinafter: ANPM), the Ombudswoman takes preventive actions in order to strengthen the protection of persons deprived of their liberty from such treatment.

Although this seems like a dual role with apparently different objectives, preventive and reactive actions constitute a single, indivisible whole aimed at strengthening the protection and respect of the rights and freedoms of persons deprived of their liberty, laid down in the Constitution, laws and international legal acts on human rights and freedoms accepted by the Republic of Croatia. Consequently, the regulatory framework is very extensive and, in addition to the Constitution and national legislation, includes a number of international legal acts relating to freedoms and rights of persons deprived of their liberty, irrespective of their legal power. In order to successfully perform our tasks, we are regularly monitoring case law of the Constitutional Court of the Republic of Croatia, the European Court of Human Rights and other relevant European and international case law as well as the views, annual and individual reports of the UN Subcommittee for the Prevention of Torture (SPT) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and other mechanisms for the protection of the rights of persons deprived of their liberty.

### **1. Actions taken on complaints from persons deprived of their liberty**

In the course of 2013, we have taken actions on complaints received from persons deprived of their liberty and, as part of investigative procedures, visited Bjelovar County Prison, Požega State Prison and Turopolje State Prison. In addition, we have inspected the facilities for the accommodation of persons deprived of their liberty at Pazin Police Station. As we are visiting establishments where persons deprived of their liberty are placed, as part of preventive actions within the performance of activities of the National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: NPM), we are generally not performing inspections of prisons and penitentiaries under the powers laid down in the Ombudsman's Act, but those inspections are carried out as part of investigative procedures conducted on the basis of individual complaints.

In the last year we have opened 221 new cases related to persons deprived of their liberty and the NPM. With regard to reasons for contacting the Ombudswoman, generally there are no significant deviations from the previous year. In general, reasons for complaints related to the accommodation conditions, health care provision, conduct of judicial police officers, denial of benefits, transfers, etc.

According to the data received from the Central Office of the Prison System Directorate, on 31 December 2013 there was a total of 4,346 persons deprived of their liberty in prisons and penitentiaries, of which 44% are placed in penitentiaries and 56% in prisons. Considering that the accommodation capacity of the prison system is 3,771 persons, it is easy to conclude that the overall occupancy rate is 115%. However, the analysis of occupancy indicators in high security conditions shows that the average occupancy rate is 122%, with great variations ranging from 43% at the male juvenile prison in Požega to 208% at Osijek County Prison. Because the construction of a new block of Glina State Prison significantly increased the capacity of that penal institution (the State Prison's occupancy rate in high security conditions is 58%), the average occupancy rate was substantially affected and consequently does not reflect the actual situation in a majority of penal institutions. For instance, when calculating the prisons' average occupancy rate in high security conditions, it amounts to a high 149%. Thus, all that was stated in previous reports regarding the negative effects of overcrowding on conditions in the prison system also remains valid for 2013.

Out of the total number of complaints submitted to the Ombudswoman from persons deprived of their liberty in 2013, 54% were submitted from prison. Most of the complaints from persons deprived of their liberty relate to the accommodation conditions (19%), health care (18%), conduct of judicial police officers (12%) and transfers (11%). The largest number of complaints came from Lepoglava State Prison (19%), Zagreb County Prison (17%), Glina State Prison (14%) and Bjelovar County Prison (10%). While the reason for a higher number of complaints coming from penal institutions in Zagreb, Lepoglava and Glina can be explained by the large number of prisoners placed in those institutions, this cannot be the reason for a higher number of complaints coming from Bjelovar County Prison. In fact, out of the overall number of persons held in the prison system of the Republic of Croatia, Bjelovar County Prison holds only 2% of persons deprived of their liberty. The same trend was observed when these data were compared with the Central Office of the Prison System Directorate's data on the number of complaints pursuant to the Execution of Prison Sentences Act (OG 128/99, 55/00, 59/00, 129/00, 59/01, 67/01, 11/02, 190/03 – consolidated text, 76/07, 27/08, 83/09, 18/11, 48/11, 125/11, 56/13 and 150/13, hereinafter: EPSA). The fact that a relatively higher number of complaints is received from a specific penal institution does not necessarily indicate certain shortcomings, but in any case requires closer monitoring.

The analysis of the reasons for complaints made by persons deprived of their liberty placed in Bjelovar County Prison shows that the highest number of complaints relates to the accommodation conditions, conduct of judicial police officers and transfers. At Zagreb County Prison, complaints were mostly related to health care, accommodation conditions, conduct of judicial police officers and treatment; at Glina State Prison, to accommodation

conditions and treatment; at Lepoglava State Prison, to health care, accommodation conditions, transfers, conduct of judicial police officers and treatment.

From these figures it is clear that the accommodation conditions are still one of the most frequent reasons for lodging complaints, which are primarily related to the violation of spatial standards for accommodation referred to in Article 74 paragraph 3 of the EPSA, which prescribes that the living space per prisoner in multi-occupancy cells should be at least 4m<sup>2</sup> and 10m<sup>3</sup>. Unfortunately, with regard to such complaints all we can do is to establish a violation of the right and make a recommendation which, due to overcrowding in the prison system, generally does not result in elimination of the established violation. Moreover, both written and oral complaints from prisoners concerning the insufficient number of cabinets for personal belongings, which must be provided in accordance with the Ordinance on standards for prisoners' accommodation and meals (OG 92/02), are frequent. In fact, due to the prison system overcrowding, certain prisoners, generally those held in detention on remand or serving prison sentences for misdemeanours, do not have their own cabinet, so they keep their personal belongings in bags under the bed. This situation is additionally aggravated by the fact that during walks, which generally occur in open walking yards, they cannot have an umbrella, so wet clothes are dried in overcrowded rooms or stuffed wet under the bed.

Furthermore, a number of complaints, both written and oral, were received from prisoners claiming that they were, against their will, placed in rooms with smokers, despite the fact they are non-smokers, so they are constantly exposed to passive smoking and fear for their health.

Numerous research studies have shown that exposure to passive smoking may pose a serious risk to health, and for these reasons the Republic of Croatia passed the Act on Restriction of Usage of Tobacco Products (OG 125/08 and 119/09). The prohibition of smoking in enclosed public places is based on Article 16 (human health) in conjunction with Article 70 of the Constitution of the Republic of Croatia (right to a healthy life, and everyone's duty to, within the scope of their powers and activities, accord particular attention to the protection of human health, nature and the human environment). Despite the fact that prisons and penitentiaries are exempt from the Act on Restriction of Usage of Tobacco Products and the Ordinance on standards for prisoners' accommodation and meals prescribes that prisoners who are smoking will be, in line with the capabilities of each penitentiary or prison, placed separately from non-smoking prisoners, our position is that it is urgently required to find ways of ensuring protection from passive smoking to those prisoners who demand it, regardless of whether they are non-smokers or smokers. Moreover, exemption from the smoking ban of prisons and penitentiaries, as listed in the Act on Restriction of Usage of Tobacco Products, may be discriminating against prisoners on the basis of their social position. We are aware that the implementation of a complete ban on smoking in the prison system would be very difficult and that a large percentage of prisoners are smokers (according to the Council of Europe's report on the prevalence of tobacco smoking amongst prisoners from April 2008, it is estimated that smokers represent 64 to 88% of the male prison population). We are also taking into consideration the fact that, because of the prison system overcrowding, it is very difficult to provide specially designated rooms for smokers within prisons and penitentiaries, but

consider this is not sufficient cause to release the prison system from its obligation to protect the health of prisoners.

When the state deprives its citizens of their liberty, it assumes the responsibility of providing for their health in terms of conditions in which they are imprisoned, particular procedures that might be required due to those conditions, and in terms of providing medical treatment as well as health care measures and activities, the quality and scope of which is equal to the public health standards set for mandatory health insurance policy holders. Consequently, it was recommended to the Central Office of the Prison System Directorate of the Ministry of Justice to undertake appropriate measures to ensure the protection from passive smoking in the prison system. For example, this may be achieved by separating smokers from non-smokers or, when that is not possible, by designating special rooms for smokers which will be available to them throughout a larger part of the day. This is also supported by the ECHR's view expressed in the judgment *Elefteriadis v. Romania* (2011), in which it ruled that forced exposure to fellow prisoners' tobacco smoke, which results in health problems, constitutes a violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Central Office replied that, whenever possible, prisoners who smoke are separated from non-smokers, but our position is that this, without taking appropriate measures in the situation of the prison system overcrowding, does not constitute satisfactory protection of non-smokers from passive smoking.

In accordance with the relevant regulations, prisoners are provided at least three meals a day with calorific value of at least 3,000 kcal. In investigative procedures instigated on the basis of complaints from prisoners concerning insufficient amounts of food and its poor quality, it was established that in certain penal institutions, on some days, the daily calorific value of meals is lower (e.g. 2,815 kcal; 2,912 kcal, and the like), although the daily average per week always amounts to more than 3,000 kcal. Taking this into account, specific institutions were warned that, under the EPSA, prisoners should be provided at least three meals per day with the total calorific value of at least 3,000 kcal per day. Moreover, the lower calorific value of individual meals in certain penal institutions is compensated with increased amounts of bread given to prisoners, which is not in line with the prescribed nutritional standards for planning daily meals of prisoners.

A part of complaints related to health care refers to long waiting periods for performing individual specialist medical examinations or recommended surgical treatments. Persons deprived of their liberty were unclear as to the reasons why previously scheduled exams or treatments are not performed or as to why they are being postponed, which generally created great dissatisfaction and feeling of helplessness and lack of concern for their health. After carrying out investigative procedures, it was concluded that examinations and treatments were postponed due to the reduced scope of work of physicians under strike and the resulting longer waiting lists. As the right to health also includes the right to timely access to essential health services, prisoners who required particular health services, as well as all other patients in Croatia, had difficulties in exercising their right to health due to circumstances related to longer waiting lists.

One of the more frequent reasons for lodging complaints relates to the conduct of judicial police officers. Although our investigative procedures are most often concluded by finding that complaints were unfounded, taking into account the description of tasks of the security ward officers, during inspections and visits to penal institutions, the heads of prisons are regularly warned about the necessity of legal and professional conduct of the security department officers and other employees of the penal institution towards persons deprived of their liberty. In this respect, during inspections special attention is paid to the performance of specific measures of maintaining order and security and the use of means of coercion as well as to complaints about the conduct of judicial police officers. For example, during the inspection of Bjelovar County Prison we were approached by a prisoner who complained that he was subjected to a specific measure of maintaining order and security – restraint, due to the risk of self-injury. This measure was applied during the night by restraining the prisoner's hands and legs with handcuffs to the bed, with two interruptions for toilet visits. In the investigative procedure it was concluded that the prisoner's threats of self-injurious behaviour were regarded as serious, so the head of the security department ordered the specific measure of maintaining order and security - restraint of hands and legs. Since after being restrained the complainant continued with his self-injurious behaviour, he was "fixated" (immobilised) to the bed, which lasted until it was determined that the complainant's behaviour no longer represents a threat to his own health. Even though the information received from the Central Office indicated that the measure in this specific case was aimed exclusively at preventing a potential suicide attempt or serious bodily harm, a violation of the right of this prisoner was established. Namely, the EPSA prescribes restraining of hands and, if necessary, legs with handcuffs or belts, but there is no provision prescribing restraining to the bed or some other object, i.e. "fixation". Additionally, considering that the seriousness of threats of self-injurious behaviour was assessed by a judicial police officer, in the warning submitted to the Central Office we pointed out that in this specific case it was required to urgently call a physician, while the measure of restraint was to be applied only for preventive purposes until his/her arrival.

Under the EPSA, other persons i.e. persons who are not family members may, subject to approval of the head of the prison, visit prisoners. During investigative procedures it was established that prisons and penitentiaries deliver the list of prisoners and other persons as well as basic information on other persons (name and surname, year and place of birth, residence, OIB or MBG), with whom the prisoner is requesting contact by phone or visit, to the County Police Administration according to the address of the prison or penitentiary, and the police provides information whether those contacts are preferable. It is indisputable that the head of the prison may deny a visit for security reasons, but there are doubts as to the legal basis for asking the police to check other persons. At the same time, information on whether the other persons were informed and whether they signed a prior consent was requested.

Although prisoners do not have the right to appeal the performance evaluation of their individual programmes for the execution of prison sentence, after receiving complaints from a number of prisoners at Turopolje State Prison concerning the procedure of their performance evaluation, which is also the basis for receiving potential benefits, we have initiated an

investigative procedure. With regard to performance evaluations of prisoners, it was established that around 60% of prisoners serving a prison sentence in that penitentiary were evaluated as satisfactory (the lowest positive grade), which leaves the impression that the method of evaluation is "strict", because such a situation is not supported by the data from auxiliary records kept by the judicial police and data from the prisoners' personal files. The head of the prison agreed with the assessment concerning the stringency of performance evaluations and received a recommendation to pay special attention to this matter in the future. After this, no further complaints were received from that penitentiary regarding performance evaluations, from which it may be concluded that the evaluation criteria were adjusted.

In accordance with our legal powers, no actions are taken in cases where judicial proceedings are ongoing, except if it is apparent that the proceedings in question are being unnecessarily delayed or that powers are manifestly abused. The significance of expedient and efficient judicial proceedings arises, *inter alia*, from the fact that its duration may sometimes limit a prisoner in exercising his/her rights or benefits. For example, according to the Central Office's view, persons serving a prison sentence before the sentence becomes final may not use benefits of leave. In such cases, the expedient receipt of the final sentence is of great importance for the person serving a prison sentence.

#### Protection of persons with mental disorders

In the course of 2013 we have taken actions on individual complaints from persons with mental disorders, their families and civil society organisations concerning the manner of accommodation and treatment of persons with mental disorders in psychiatric institutions and treatment of persons in social care homes, by examining the legality of actions of the competent bodies. In doing so, taking into account independence of the judiciary and integrity of the medical profession, we are neither commenting court proceedings nor the contents of psychiatric diagnoses, but observe events and procedures as a whole, from the perspective of the protection of human rights of persons with mental disorders. As previously mentioned, the Ombudswoman may take actions towards the courts only in cases where it is apparent that the proceedings in question are being unnecessarily delayed or that powers are manifestly abused, which has not been established in any specific cases during 2013.

After investigative procedures conducted on the basis of citizens' complaints, recommendations were submitted to the Ministry of Health and the Ministry of Justice, whose aim was to strengthen control mechanisms for the prevention of human rights' violations of persons with mental disorders.

Namely, in the investigative procedure following one of the complaints, it was established that, as the psychiatric institution in question does not have a high security unit in which the measure of involuntary medical treatment should be performed, it used that fact as one of the reasons for the use of means of physical restraint (magnetic belts on both wrists) during administration of psychopharmacological therapy.

The fact that a psychiatric institution does not have a high security unit in which the measure of involuntary medical treatment should be performed may not be one of the reasons for the use of means of physical restraint on patients. Considering the CPT's view concerning the use of means of physical restraint in psychiatric institutions and the European Court of Human Rights' view expressed in the judgment *Bureš v. the Czech Republic* (2012), means of physical restraint should be used only as a matter of last resort, for the shortest time possible, in cases when other means of trying to calm down the agitated and/or violent patient had been unsuccessfully tried. Moreover, means of physical restraint should never be applied only because that is convenient for health care workers (e.g. because of the lack of nurses in the ward, etc.) or as a means of coercion, discipline or punishment. As a consequence, for the purpose of preventing any future use of means of physical restraint because a psychiatric institution does not have a high security unit, it was recommended to the Ministry of Health that the conditions regarding premises, staffing and medical and technical equipment, which must be complied with by all health institutions or their units for specialist-consultative and hospital treatment in the field of psychiatry, which carry out involuntary confinement and involuntary placement of persons with mental disorders, should be prescribed in the Ordinance on the minimum conditions regarding premises, staffing and medical and technical equipment needed to provide health services. Until the time of drafting this report, although the period for response has expired, no feedback information regarding this recommendation was received.

We submitted a recommendation to the Ministry of Justice to consider reinstating the protective measure of mandatory psychiatric treatment in the Misdemeanour Act, because its deletion created a legal void. The protective measure of mandatory psychiatric treatment could have been applied only towards an offender who committed a misdemeanour in the condition of significantly reduced sanity, provided that there was a danger that the reasons for this condition could also instigate the committal of a new misdemeanour in the future. It is important to keep in mind that this refers to involuntary treatment, and not involuntary placement i.e. hospitalisation.

Furthermore, some complainants also complained about involuntary taking of psychopharmaceutical medications. In doing so they called upon the patients' right of co-decision provided by the Act on the Protection of Patients' Rights, that is, the right to accept or refuse a particular diagnostic or medical procedure. Moreover, the patient's right to co-decision may be limited only exceptionally, when it is justified by his/her health status and in cases and ways specifically determined by the Act on the Protection of Patients' Rights. Patients have the right to accept or refuse a particular diagnostic or medical procedure, except in cases of emergency medical interventions whose non-performance would endanger the life and health of a patient or lead to permanent damage to his/her health, which is what psychiatric institutions are invoking in these cases. Although it could be concluded that involuntary psychopharmacological therapy refers only to patients who are involuntarily hospitalised, we have also received information which may suggest involuntary medication in cases where no involuntary hospitalisation was involved.

In addition to taking actions on individual complaints, special attention is also paid to regulations which provide a legal framework for the treatment of persons with mental disorders and are therefore important for improving the rights of this group of citizens. As a result, our opinion on the draft Proposal of the Act on the Protection of Persons with Mental Disorders, which is covered in Section 2.2, was delivered to the Ministry of Justice in October 2013.

Furthermore, on several occasions we have pointed out the lack of appropriate mental health care services at the local level, whose activities would, *inter alia*, reduce the rate of institutionalisation of persons with mental disorders and facilitate their staying with their own families. Pursuant to the Health Care Act, health care at the primary level also includes mental health care, which is provided through activities of mental health care, prevention and outpatient treatment of addiction. In September 2010 the Government of the Republic of Croatia adopted the National Strategy for Mental Health Care for the period 2011 - 2016. One of the priority areas of action is the fight against the stigma and social exclusion of persons with mental illness but, based on the information available to us, so far the actions in this area were insufficient. The strengthening of mental health care services at the local level would reduce the need for committing a person into a psychiatric institution without his/her consent. Involuntary hospitalisation should be used only and exclusively in those extreme situations when a person with a more severe mental disorder is seriously and directly endangering his/her own life, health or safety, or the life, health or safety of other persons, and all actions of services and institutions in the field of mental health care for persons with mental disorders should be focused on the protection of their dignity, human rights and fundamental freedoms.

Considering the potential controversies in the field of involuntary medical treatment of persons with mental disorders, the Ombudswoman shall devote special attention to this issue within the NPM activities in 2014.

## **2. Performance of activities of the National Preventive Mechanism**

### *2.1. Visits to establishments where persons deprived of their liberty are placed*

Within the performance of activities of the National Preventive Mechanism in 2013, we carried out twelve regular visits during which we visited six establishments under the authority of the Ministry of Justice, five under the authority of the Ministry of the Interior and one under the authority of the Ministry of Defence. These are: Turopolje Correctional Institute; Glina State Prison; Commanding Company of the Croatian Navy – Sv. Nikola – Lora; Police Detention Unit of the Split-Dalmatia County Police Administration; Prison Hospital; Poreč Police Station; Rovinj Police Station; Umag Police Station; Police Detention Unit of the Istria County Police Administration; Pula County Prison; Lepoglava State Prison and Zagreb County Prison.

These visits lasted the total of twenty six days, with the shortest visit of one day and the longest of five days. In accordance with the plan established in advance, all visits were

unannounced and carried out during working days, with the exception of three visits that were conducted during a public holiday. A minimum of three and a maximum of seven persons participated in each visit.

In the light of experiences from previous visits, we have, together with representatives of associations and academic community within the NPM, agreed on a new methodology for preparing and conducting visits and drafting a final report on the visit, which significantly contributes to the efficiency of performing NPM activities.

### Visits to establishments under the authority of the Ministry of Justice

#### a) Turopolje Correctional Institute

A specific problem of Turopolje Correctional Institute is its poor transport connections. The Institute may not be reached by means of public transport, but only by personal vehicles, which makes contacts between beneficiaries and their parents more difficult.

Although it was established during the visit that the Institute is not overcrowded, the accommodation conditions are far below international and legal standards, particularly when taking into account the purpose of this sanction. Juveniles are not separated according to the severity of their behaviour disorder, which makes treatment sessions significantly more difficult. In most cases rooms are sufficiently large, with enough natural light and sufficient heating. However, in the two rooms where specific measures of maintaining order and security (up to 24 hours in duration) and a disciplinary measure of solitary confinement (up to 7 days in duration) are carried out, the accommodation conditions are absolutely inappropriate. Rooms are very small, without sanitary facilities or drinking water, extremely dark (even though the time of the visit was around noon and the day was sunny) and stuffy, while the walls are covered with graffiti. It was established during the visit that while juveniles are confined in those rooms they receive no additional treatment sessions, although the purpose of their confinement is, *inter alia*, the provision of urgent psychosocial assistance i.e. intensified individual treatment sessions.

The records of specific measures of maintaining order and security were corrected with correction fluid, their numbering is irregular and the entry relating to the date of termination of the measure has not been filled out. Furthermore, during the visit it was observed that judicial police officers, contrary to the Act on the Enforcement of Sanctions Imposed on Juveniles in Criminal or Misdemeanour Proceedings, are openly carrying batons. Judicial police officers have received no special training for work with juveniles.

The head of the prison was given a verbal warning concerning the inappropriate way of keeping the Register of specific measures of maintaining order and security, the open carrying of batons and the lack of additional treatment sessions with juveniles while using specific measures of maintaining order and security and the disciplinary measure of solitary

confinement. At the same time, we requested that individual treatment sessions during the period of applying these measures should be urgently intensified.

During the visit we performed three anonymous surveys for juveniles, caretakers and judicial police officers. The staff members are extremely dissatisfied with space-related working conditions (for example, inability of spatial separation of juveniles according to the severity of their behaviour disorder) and express the need for different work organisation. A positive attitude toward the job they are doing was emphasized in the survey. No one listed the existence of any kind of abuse of juveniles by staff members, but most of them are aware of the existence of psychological abuse among juveniles and of their own inability to provide full protection from such abuse.

The surveyed juveniles mostly complained about the amount of food per meal and being exposed to psychological abuse from other beneficiaries, while a smaller number of them also mentioned physical abuse from other juveniles (they did not ask officers for help out of fear of being called a "snitch"). Their proposals include the need for a clearer organisational structure of free time (more leisure activities and the like), separation of violent juveniles from others, introduction of clearer rules and higher discipline. In addition, a larger part of juveniles expressed their trust in caretakers and judicial police officers and consider that they would protect them if asked for help.

With regard to complaints concerning the abuse among juveniles, the head of the prison was given a verbal recommendation on the necessity of spatial separation of juveniles according to the severity of their behaviour disorder and on ensuring the everyday presence of caretakers in the wards.

#### b) Glina State Prison

During the visit to Glina State Prison we inspected the facilities where persons deprived of their liberty stay or may stay (dormitories, bathrooms, living rooms, TV rooms, kitchen and dining-room, rooms for visitors without surveillance, specially secured rooms devoid of dangerous objects, the so called "rubber-rooms", music room, library, exercise areas, walking areas, working spaces, vehicles, etc.) We also inspected all the facilities and wards and interviewed persons deprived of their liberty and employees. The occupancy rate of the State Prison is 75%, which places this State Prison in a small group of penal institutions in the Republic of Croatia that are not overcrowded. When considering that most of the prisoners are accommodated in a building that was constructed about two years ago, with the capacity of 420 persons, it may be concluded that, in general, the accommodation conditions are in compliance with international and legal standards.

During the visit, a practice of restraining all prisoners during escort, regardless of whether they are placed in a medium security ward or serve their sentence in high security wards, was established. The State Prison's officers explained that reasons for such treatment arise from organisational problems. Whilst taking account of organisational difficulties, such practice is

evaluated as unjustified. The EPSA and the Ordinance on the method of conducting activities of the security department in prisons and penitentiaries (OG 48/09) do not prescribe mandatory restraint, while the method of escort is determined by a written order which, *inter alia*, contains the prisoner's escape risk level and danger level and the specific measures of maintaining order and security from the EPSA that may be taken during escort. Therefore, automatic determination of restraint in an escort order is unjustified, and it is required to carry out an individual security assessment for each prisoner, which is why it was requested that such practice should be revised.

Furthermore, the collected information point to the existence of difficulties in providing health care at the State Prison, which are caused by the lack of physicians, dentists and psychiatrists. Likewise, during the visit it was established that the persons, who are subject to the security measure of statutory addiction treatment and treated with Suboxone (61 persons), are accommodated in a separate ward, and the given explanation was easier supervision of adherence to the treatment with Suboxone and other prescribed medications. Already during the visit we have warned about the questionable professional grounds for separating persons who are taking Suboxone in a separate ward. More precisely, separation may be justified only in cases of specific treatment programmes based on principles of therapeutic community, modified for application in the prison system, when the group itself is potentially promising in terms of therapy, which is clearly not the case here. Likewise, many interviewed prisoners stated that health and dental care is not easily available to them and that they cannot receive specialist care on time, that is, cannot visit the specialist who recommended a follow-up exam within a specific period. They further state that the waiting period for seeing a physician or dentist is up to 3 months, while the decision on who is going to see a physician is made by a medical technician who carries out the selection of their requests to see a physician. This practice is evaluated as unacceptable; a physician must be included in this process. In addition, it was established that prisoners who are taking Suboxone have no work engagements, which is in our opinion unjustified. The taking of Suboxone as well as of any other therapy which is prescribed and taken in appropriate doses may not be the reason to prevent prisoners from working. A decision on the incapacity to perform a particular work due to health reasons may be made only individually, based on the examination of a psychiatrist, who assessed the patient's condition in terms of his/her work incapacity, or of a physician.

The examination of documentation revealed that the funds approved for the State Prison as well as the employment of officers neither comply with legally prescribed standards nor with the increased number of prisoners due to the construction of a new building. It is also important to point out that, since May 2012 until the time of the visit, the State Prison did not receive any funds for the prisoners' meals, which surely has direct effects on the quality of meals. In fact, as the prisoners' complaints in this institution mostly referred to the daily amount of food provided for them, by inspecting the daily menus it was established that the average daily calorific value is below the prescribed 3,000 kcal, and this is compensated with increased amounts of bread.

### c) Prison Hospital

During the visit to the Prison Hospital, special attention was given to the accommodation conditions. In two rooms prisoners complained that, because of the vertically passing heating pipes in their rooms, it is constantly hot, which is fine in the winter, but not in the summer. This issue was immediately presented to the head of the prison. During the visit we were notified that works were scheduled for the reconstruction of the heating and hot water system that will remove the observed shortcomings. In a follow-up inspection during an unannounced visit to the Prison Hospital, it was established that reconstruction works were finalized on the day of the visit, within which the previously joint heating and hot water system was split into two separate heating and hot water systems.

As the Prison Hospital is a high security penitentiary, despite the fact that persons deprived of their liberty are here to receive medical treatment, smoking is permitted and sometimes smokers cannot be separated from non-smokers, of which several verbal complaints were received during the visit. The majority of rooms do not have a toilet so prisoners have to call judicial police officers for toilet visits. During the visit complaints were received about problems with specific judicial police officers who take much longer than the others to respond to the call, of which the Head of the Hospital Prison was warned. The hospital is still without an elevator so, when required, officers are carrying prisoners who are immobile or have seriously impaired mobility. As there are no special rooms for interviewing prisoners, other than in the forensic ward, treatment officers are performing interviews in the halls, which significantly reduces the quality of professional work.

Moreover, during the visit special attention was also given to the use of means of physical restraint, that is, the reasons for deciding to use the means of restraint, and it was established that sometimes it is unclear whether a person is restrained because of his/her aggressive behaviour caused by mental illness or because of a disciplinary violation that was not caused by mental illness. Our position is that restraint is to be used exclusively in cases that involve events caused by a mental condition, which must be prescribed by regulations governing health care. To the contrary, any decision on sanctioning disciplinary violations not caused by a mental condition of the person deprived of liberty must be made in disciplinary proceedings and the mandated disciplinary measure should be performed accordingly. In addition, we feel it is necessary to mention that, as this is a high security penitentiary, prisoners who are treated here but serve their sentence in less stringent conditions (medium or minimum security) are *de facto*, for the purpose of their medical treatment, discriminated against. Moreover, non-forensic prisoners who came for medical treatment from other penal institutions or are awaiting examination or surgery in external hospitals retain only their rights under the EPSA, but not the benefits they have attained in their original penal institutions.

Furthermore, it was established that persons deprived of their liberty had access to open air in a small (approx. 100 m<sup>2</sup>), wire-fenced, uncovered walking yard and therefore frequently do not exercise their right to two hours of stay in open air. Having in mind the size of the Prison

Hospital's garden, we consider that it is necessary to urgently provide for one more, larger walking yard.

#### d) Pula County Prison

During the visit to Pula County Prison we inspected the facilities where persons deprived of their liberty stay or may stay, examined the documentation and interviewed prisoners and employees. During the visit it was established that the County Prison's occupancy rate is 138%, which generates violations of the right of persons deprived of their liberty to accommodation guaranteeing human dignity and health standards, and causes numerous organisational difficulties. A large number of prisoners on remand complained about their visits lasting only fifteen minutes. Although the duration of visits prescribed in the Ordinance on house rules in prisons for remand prisoners is at least fifteen minutes, during the visit a verbal recommendation was made to the head of the prison to allow longer or extraordinary visits, particularly in cases when family members are coming from more distant locations.

During the visit we met only one female prisoner, who is also the only woman deprived of liberty in the County Prison. As she is the only woman in the prison, her serving of the prison sentence, in periods when there are no other women in the County Prison, has the characteristics of solitary confinement. Therefore it was required to adjust her individual programme for the execution of prison sentence (for example, provide working engagements, intensify individual treatment sessions, etc.), of which the head of the prison was immediately warned.

Even though the conduct of health care workers was generally assessed as correct and professional within the given framework and available options, during the visit a large number of complaints were received concerning the access to health care and long waiting periods. Furthermore, it was established that Suboxone therapy is still administered by judicial police officers, albeit being previously prepared by a nurse. Our position is that the administration of medical therapy by judicial police officers is unacceptable, so we repeated the verbal warning about the necessity to organise the work schedule in a way so that medical therapy may be administered by medical nurses or medical technicians.

Finally, we identified a lack of working positions for prisoners and a lack of leisure activities, which significantly restricts the possibility of organised spending of free time.

#### e) Lepoglava State Prison

Lepoglava State Prison is the largest high security penitentiary in the Republic of Croatia, with the total of 735 prisoners. During the visit it was established that the occupancy rate of the State Prison's high-security wards stands at 148% and that, despite turning living rooms into dormitories, overcrowding is still a burning issue. The negative effects of overcrowding are reflected in all segments of serving a prison sentence, but are most visible in numerous violations of the right to accommodation guaranteeing human dignity and health standards.

According to the information collected during the visit to Lepoglava State Prison, there are over two hundred final decisions from executing judges (judges responsible for the execution of prison sentences) on the violation of rights referred to in Article 74 of the EPSA in respect of the accommodation conditions. Additionally, during the visit special attention was given to provision of health care, implementation of treatment, performance of disciplinary measures and specific measures of maintaining order and security.

As the prisoners in certain wards more frequently complained about the work of treatment officers, we have examined the auxiliary records kept in the wards as well as the prisoners' personal files. It was established that particular treatment officers spend very little time in the wards, that is, in direct contact with the prisoners. As a consequence, prisoners in those wards who requested an interview had to wait longer for it, so when they are called to talk with the treatment officer, the reasons for the interview are often already outdated. All of the above contributes to the overall dissatisfaction of prisoners. The head of the prison was warned about the identified problem and given a verbal recommendation to find a suitable organisational solution for ensuring the everyday presence of treatment officers in the wards.

Furthermore, during the visit it was established that a growing number of prisoners are becoming addicts while serving their prison sentence. As a result, it was recommended that records of new Suboxone addicts should be kept in order to gain better insight as to the scope of this issue and to be able to plan potential preventive procedures. Finally, a lack of appropriate medical follow-up or support to addicts who wish to quit their Suboxone therapy was established. Prisoners who do not have a health insurance policy with the Croatian Health Insurance Fund (hereinafter: HZZO), and who suffer from hepatitis C and were recommended for medical treatment, do not receive it because the Ministry of Justice does not have allocated funds for that purpose.

#### f) Zagreb County Prison

Zagreb County Prison accommodates the highest number of persons deprived of their liberty in the entire prison system - the total of 881 persons. At the time of the visit, the County Prison's occupancy rate was 162%, which generates violations of the rights of persons deprived of liberty in terms of the accommodation conditions. Furthermore, the worst conditions were established in rooms occupied by the persons serving prison sentences for misdemeanours. For example, a dormitory of 87.80 m<sup>2</sup> in size, where misdemeanour offenders stay 22 hours a day without any organised activities has 31 beds and two auxiliary mattresses and during the visit it was occupied by 21 persons deprived of their liberty. This room has only one toilet. It is not possible to separate smokers from non-smokers. The second dormitory is 43.71 m<sup>2</sup> in size, with 16 beds and 13 residents at the time of the visit. All of them are complaining about the cleanliness of their blankets because they are, due to the lack of laundry washing machines, washed only once or twice a year. Conversely, dormitories in the County Prison's medium security ward in Vukomerec are generally in compliance with international and legal accommodation standards.

Similarly as in Lepoglava State Prison, there is a large number of prisoners who became addicts while serving their prison sentence. Moreover, women held in Zagreb County Prison are neither allowed to work nor they can use the sports hall. Despite being aware of numerous organisational difficulties arising from overcrowding, during the visit it was recommended that women should be allowed access to leisure activities, work and the sports hall.

Additionally, records of specific measures of maintaining order and security were inspected during the visit and it was established that in 2013 not a single specific measure was imposed, compared to 2012 when as much as sixty eight measures were imposed. It was explained that the reason for such discrepancy lies in the introduction of the new rules of procedure. However, the analysis of data related to persons who pose a security risk has shown that, for example, the measure of restraint when coming out of the room is still used. The County Prison management was warned about the necessity of recording each specific measure of maintaining order and security.

#### Visits to establishments under the authority of the Ministry of Defence

The purpose of visiting the Commanding Company of the Croatian Navy – Sv. Nikola – Lora was to determine the accommodation conditions in the facilities used by the Military Police as well as the treatment of persons deprived of their liberty. During the visit military police officers were interviewed, official records (Register of detained persons) were examined and the facilities where detained persons are held were inspected. The Register of detained persons is kept in an orderly manner and all information about the detained person are entered into the computer system. A progressive decline of detained persons in recent years was observed.

During the detention, a person receives a pillow, blanket and sheet, which are placed in packages in advance. If the detention lasts for several hours, the detained person has to be provided a dry meal, which is eaten in the detention unit, and in the case of a prolonged stay, the detained person is taken to have lunch. During the visit no irregularities or treatment were observed that would indicate torture or other forms of cruel, inhuman or degrading treatment or punishment.

#### Visits to establishments under the authority of the Ministry of the Interior

##### a) Police Detention Unit of the Split-Dalmatia County Police Administration

From our interview with the deputy head of the Split-Dalmatia County Police Administration during the visit to the police detention unit, it was established that no particular police officer was assigned to work in the detention unit, but they are in parallel all performing the tasks of the shift manager or assistant shift manager of the operational communications centre. The building of the Police Administration where the detention unit is located was constructed in the early 1980's and has not been renovated since. Similarly to the visits of other police

detention units carried out last year, it was established that in certain cases official records are irregularly or incompletely maintained, of which the commanding police officers were warned. Additionally, a recommendation was made to consider options for ensuring the staying of arrested and detained persons in the open air. As it was established during the visit that medical examinations are performed in the presence of police officers, a recommendation was made to consider appropriate ways of protecting the privacy of arrested and detained persons during a medical exam.

b) Police Stations Umag, Poreč and Rovinj

During the visits to Police Stations Umag, Poreč and Rovinj we have also considered the information collected during the inspection of PS Rovinj and PS Poreč in January 2012. Namely, during the inspections carried out in 2012 it was established that the accommodation conditions in both police stations do not comply with international standards, and the same condition was established again in these visits.

By inspecting the Register of persons deprived of their liberty and detained persons as well as the Register of persons placed in special rooms until the effects of intoxication wear off, it was established that records are generally kept in an orderly manner and that persons deprived of liberty are informed of their rights. However, from the data contained in the records we were unable to fully ascertain how persons deprived of their liberty are treated, especially because we did not find any such information in neither of the police stations. The accommodation conditions at PS Poreč do not comply with even the minimum legal and international standards and the use of these facilities should be discontinued. For example, rooms have no heating installed, but the heater is located in the hall, and closed doors prevent the heating of the rooms. The rooms are located in the basement; ventilation is provided through small openings above the door, which is insufficient, they are extremely dark with no artificial light, so persons are staying there in complete darkness. Artificial lighting is located in the hall, but the small openings above the door prevent the light from coming into the room. The rooms have neither a toilet nor drinking water. Persons are forced to call the police officers via the video surveillance system if they want to drink water or use the toilet and, according to the received information, rooms are not visited because the safety of persons deprived of their liberty is checked by video surveillance.

The conditions in the rooms for accommodation of persons deprived of their liberty at PS Rovinj and PS Umag are somewhat better, but also fail to comply with the international standards.

c) Police Detention Unit of the Istria County Police Administration

The Istria County Police Administration has a police detention unit and activities of the detention supervisor are performed by three police officers assigned from other organisational units. During the visit it was established that no rooms for medical exams or interviews are provided. Medical examinations are carried out in the cell or in the hall, while conversations

with lawyers take place in the office of the detention supervisor, who in such cases leaves the room. The detention supervisor's office has no bars on the window.

As in the detention unit of the Split-Dalmatia County Police Administration, police officers are present during medical examinations. Rooms are generally in order, have artificial lighting, but natural light is very weak. Each room has two mattresses (one on a wooden base and, when required, one on the floor). Heating, cooling and ventilation are provided by an air-conditioner.

## *2.2. Making proposals and observations concerning the existing laws and other regulations or their drafts*

Making proposals and observations concerning the existing laws and regulations or their drafts in order to promote the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment is undoubtedly one of the key NPM activities. By encouraging amendments to the existing and adoption of new regulations, we are trying to promote systematic solutions of observed problems and thus prevent future potential violations of the rights of persons deprived of their liberty. However, with regard to this segment of our activities, we find it necessary to point out that sometimes, because of the volume or significance of proposed amendments, the time-limits for delivery of the opinion on particular draft regulations are too short. This prevents a systematic, analytical approach to some subject matters, which certainly has negative effects considering that our initiatives are directed at preventing one of the worst forms of human rights' violations.

### Act on Amendments to the Execution of Prison Sentences Act

As the EPSA regulates the execution of prison sentences and, *inter alia*, prescribes the rights of prisoners and instruments for their protection, any amendment to that Act is considered to be exceptionally important. Within the procedure of adopting the Act on Amendments to the EPSA, we have supported the introduction of a new instrument for the protection of prisoners' rights – filing a complaint with the executing judge. However, considering the number of complaints from prisoners related to the duration of procedure by the executing judges, we proposed that a statutory time-limit of 30 days should be prescribed, in which the executing judge must respond to a complaint. In addition, we have disagreed with the proposed deletion of the provision prescribing the spatial standards for accommodation (4m<sup>2</sup> and 10m<sup>3</sup>), as it clearly arises from the European Court of Human Rights' case law that, when examining accommodation conditions and potential violations of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Court considers 4 m<sup>2</sup> as the minimum standard (e.g. *Kalashnikov v. Russia* (2003) and *Cenbauer v. Croatia* (2006)). Moreover, according to the CPT standards, 4 m<sup>2</sup> is the minimum requirement for living space per prisoner in multi-occupancy cells. Both of our proposals were accepted.

### Act on Amendments to the Criminal Procedure Act

The CPA is a material law which serves to ensure not only efficient prosecution and sanctioning of perpetrators, but also sets clear limits of the state's intrusion of fundamental human rights. Therefore, in view of the protection of human rights, it is essential that each individual provision as well as all provisions as a whole, comply with the Constitution of the Republic of Croatia and the spirit of the European Convention for the Protection of Human Rights and Fundamental Freedoms. As each novelty in the CPA is of exceptional importance and significance for ensuring the rule of law, the Ministry of Justice received our opinion on the draft of the final Proposal of the Act on Amendments to the CPA, particularly in connection with Chapter IX which prescribes the execution of detention on remand and conduct with prisoners held in detention on remand, because those provisions have not been more significantly, that is, materially changed since the CPA passed in 1997. We also proposed to include, in accordance with the CPT standards and general comments of the UN Committee against Torture, the right of the arrested person to a medical examination and not only emergency medical assistance, but our proposals were not accepted.

#### Proposal of the Act on the Protection of Persons with Mental Disorders

One of the most sensitive issues related to persons with mental disorders is definitely the issue of involuntary hospitalisation. Involuntary hospitalisation represents a restriction of a fundamental human right to freedom, so such procedures have to be prescribed by law and based on a court decision. Any mental illness cannot by itself constitute sufficient cause for involuntary placement of a person in a psychiatric institution, for which it is required to fulfil the precondition that a person with a more severe mental disorder is, due to his/her condition, seriously and directly endangering his/her own life, health or safety, or the life, health or safety of other persons.

Recognising the need to amend the existing APPMD, we joined the public discussion related to the preparation of a new text, which is certainly a positive step forward in the protection of persons with mental disorders. Firstly, the new proposal of the APPMD brings the accommodation of persons with mental disorders who are unable to give their consent back under judicial control, which is one of the control mechanisms that should significantly reduce any potential misuse of the measure of involuntary institutionalisation. However, we consider that the law should prescribe the types, purpose and conditions for the use of means of coercion on persons with severe mental disorders who are placed in a psychiatric institution, as well as any restrictions on the use of means of coercion on, for example, particular categories of persons with mental disabilities (children, pregnant women and the like), while the method of use should be elaborated by way of an ordinance.

Whilst respecting the controversies surrounding the use of electroconvulsive therapy, special attention was also paid to the assumptions for use of this method of treatment. We support the proposed solution, according to which electroconvulsive therapy is permitted only on the basis of a written consent of the person with a mental disorder, when all other methods of treatment have proven unsuccessful, and when it is expected that its use will benefit the person with a mental disorder without adverse side-effects, provided that the ethics

committee issued a positive opinion, and that any possibility of consent, in lieu of the person with a mental disorder, by his/her legal guardian is excluded. Furthermore, it is necessary to prescribe that electroconvulsive therapy may be used only in its modified form (under anaesthesia and myorelaxation). Although, according to the available information, electroconvulsive therapy in Croatia is applied only in its modified form, a legal exclusion of the possibility to use this medical procedure in another form would further improve the protection of persons with mental disorders from potential abuse i.e. inhuman treatment.

We support the introduction of the "person of trust" as a novelty in the Croatian legal system, because in this way unnecessary placement of persons with mental disorders under guardianship exclusively for the purpose of their medical treatment may be avoided.

### *2.3. International cooperation within the performance of NPM activities*

In the last year we participated in a meeting held in Belgrade, where the Declaration on Cooperation was adopted, thus establishing the South East Europe NPM Network. The meeting was attended by representatives of the NPMs of Albania, Croatia, Macedonia, Montenegro, Slovenia and Serbia, the Ombudsman from Bosnia and Herzegovina as well as by representatives of the EU, CoE, APT, CPT and SPT. Additionally, we participated in the first meeting of the SEE NPM Network's medical group, in which the inclusion and position of physicians in the performance of NPM activities was discussed. Based on past experiences, joining the Network's activities has proven to be very useful, as on two occasions we ourselves, via a prepared questionnaire, collected information about the organisation and activities of the NPM in member countries.

In the last year we have also participated at two international conferences in Strasbourg. The first conference, on the topic of protecting the rights of detained persons and prisoners, was organised by the Academy of European Law. The role of CPT and SPT as well as possible alternatives to imprisonment were among the topics discussed at the conference. The second conference, on the topic of immigration detention, was held within the Council of Europe's plenary session organised by the Council of Europe and NPM United Kingdom. The conference was attended by representatives of the NPMs from entire Europe and representatives of international institutions involved in the prevention and combating of torture. The principal topics of discussion were related to immigrants in immigration centres, with special emphasis on the access to legal aid and procedural rights, issues related to women and other vulnerable groups, health insurance and safety of immigrants placed in immigration detention centres.

Furthermore, acting in line with the CPT's request, we visited Bjelovar County Prison and Sisak County Prison and interviewed the prisoner who, during the CPT's visit to Croatia in September 2012, complained about the conditions of serving a prison sentence at Glina State Prison and Sisak County Prison. All established findings were listed in the report which was delivered to the CPT.

In line with obligations from the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OG IT 2/05), after the discussion in the Croatian Parliament, we have printed and delivered the report to the SPT, CPT, APT and NPMs from the South East Europe NPM Network, and it was published in the electronic newsletter of the European Ombudsman Network.

#### *2.4. Capacities of the Ombudsman's Office for performance of NPM activities*

With regard to the performance of NPM activities, we consider it is important to point out that, based on the Rules of Procedure of the Ombudsman (OG 99/13) from June 2013, the Service for persons deprived of their liberty and the NPM was established. However, the assignment of this new competence to the Office and the beginning of its functioning in 2012 were not followed by appropriate funding in line with the requests of international stakeholders.

More precisely, in its report on the visit to Croatia in September 2012, the CPT notes that the current staffing levels, in the part related to persons deprived of their liberty and the NPM within the Ombudsman's Office, appear insufficient, and that the expansion of the mandate to NPM activities has not given rise to any organisational or other strengthening of the Office. Moreover, the UN Committee against Torture (CAT) requested information from the Republic of Croatia on whether the resources required for the performance of NPM activities are ensured, that is, has the Office received the human, technical and financial resources required for fulfilling its mandate in terms of the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

Despite all of the above, our capacities are still at an unsatisfactory level which, *inter alia*, results in a lower than optimal number of visits and delays in drafting written reports after the visit. In fact, although the amount of HRK 212,000 was allocated in the State Budget for 2013 under the special activity within the budget of the Ombudsman's Office for the performance of NPM activities, that amount was reduced by reallocation during the year to HRK 109,150, while the amount allocated for 2014 is HRK 111,000. These amounts refer to material costs, excluding expenses for employees. With regard to the number of advisors in the office who carry out NPM activities in conjunction with their regular work on complaints from persons deprived of their liberty, and considering the ANPM's shortcomings in terms of prescribing the number of academic and civil society representatives, it is not possible for the NPM to significantly increase the number of its activities, particularly with regard to visits. As a consequence, we will, in cooperation with the Ministry of Justice, initiate amendments to the ANPM in the course of 2014.

### **3. Assessment of the current situation in terms of respecting the rights of persons deprived of their liberty**

As previously stated, we consider that preventive and reactive actions constitute an indivisible whole, within which, using different methodological approaches in accordance with our

constitutional and legal powers, we take actions aimed at strengthening the protection and respect of the rights and freedoms of persons deprived of their liberty. As a result, this assessment of the current situation is based on the data collected while performing the protective role and on the data collected while performing NPM activities.

### *3.1. Accommodation conditions*

Accommodation conditions, which include the totality of health, hygienic and spatial requirements, are still one of the main causes for violation or restriction of the rights and freedoms of persons deprived of their liberty. The overcrowding of the prison system is not only one of the primary generators of violations of the right to accommodation guaranteeing human dignity and health standards, but it also causes restrictions of numerous other rights and freedoms of persons in the prison system. Further, overcrowding causes numerous organisational difficulties and has direct effects on the security situation in penal institutions, especially when having in mind the understaffing of the security department according to the relevant systematizations. According to the data published in the annual Report on the situation and functioning of penitentiaries, prisons and correctional facilities for 2012, the prison system's occupancy rate was 154% in 2010, 134% in 2011 and 126% in 2012. According to the data provided by the Central Office of the Prison System Directorate, on 31 December 2013 the prison system's occupancy rate was 115%, which continues the trend of the declining overcrowding rate. Although this information is encouraging, we must keep in mind that the prison system's average occupancy rate in high security conditions, regardless of the trend of decline in the general overcrowding rate of the prison system, stands at 122%, while the prisons' average occupancy rate in high security conditions amounts to 149%. What this represents to a person deprived of liberty placed under high security conditions is best illustrated with an example of Zagreb County Prison, where during the visit it was established that up to seven prisoners are placed in 16 m<sup>2</sup> dormitories. The table, on which the prisoners eat because meals are distributed in dormitories, is located immediately next to the toilet, which is partially separated from the rest of the room by a barrier not reaching the ceiling. Because of the insufficient number of chairs, prisoners eat on their beds, where they in general spend the largest part of their day.

At Lepoglava State Prison, the surface of the room intended for carrying out the specific measure of maintaining order and security - placement in a specially secured room devoid of dangerous objects, amounts to only 2.60 m<sup>2</sup> and therefore is not in compliance with the minimum legal standards. However, when considering the criteria referred to in CPT standards, under which all rooms measuring less than 6 m<sup>2</sup> should be taken out of service, only two rooms out of twelve in the A1 ward would be suitable for the accommodation of prisoners.

The claim that the prison system's accommodation conditions are a systematic problem is also confirmed by the Office of the Representative of the Republic of Croatia before the European Court of Human Rights' Report for 2012, where it is stated that Croatian cases related to execution of prison sentences are characterised by a high share of repetitive cases and that in

2012, among 46 Croatian cases which were marked as "leading cases", there is also the so called Cenbauer group i.e. the group of judgments related to conditions in the prison system.

Furthermore, according to the data received, the Central Office in 2013 received a total of 412 applications for alternative dispute resolution with regard to compensation of damages, whereas the accommodation conditions and overcrowding are the most frequent reasons for seeking compensation.

When accommodation conditions are concerned, overcrowding is not the only cause for violating the rights of persons deprived of their liberty. For example, during the visit to the new block of Glina State Prison, which without question has the best accommodation conditions in the entire prison system, a prisoner, who is a person with disability moving in a wheelchair, complained that the State Prison's facilities are not adapted to persons with disabilities. As an example, he listed that he cannot open the window by himself because the window handle is too high, so he requires the help of an assistant that was provided by the State Prison. Further, he also requires the assistant's help when dialling numbers on the phone device which is set too high, so he cannot reach the dials on his own. In the Prison Hospital, despite the expiry of the period prescribed in the Constitutional Court decision of 3 November 2010 by which the Government was ordered to, within a reasonable time not longer than three years, ensure undisturbed mobility of prisoners with special needs, the elevator has yet to be installed. Moreover, despite the Constitutional Court decision of 17 March 2009, by which the Government was ordered to, within a reasonable time not longer than five years, adjust the capacities of Zagreb County Prison to the needs for accommodation of detained persons in conformity with the standards of the Council of Europe and case law of the European Court of Human Rights, which shall not be demeaning to detained persons or prisoners, the works have not even begun.

The inappropriate accommodation conditions in certain police stations and police detention units that were visited, irrespective of the fact that persons are placed there during a much shorter period, can also result in violation of the rights of persons deprived of their liberty and may constitute inhuman or degrading treatment. This is primarily related to the conditions of the rooms for accommodation of persons deprived of their liberty, the use of which should be discontinued because of numerous shortcomings.

Although we are aware of the fact that any improvement of the accommodation conditions and their harmonization with national and international standards depends upon available financial resources, which are at this moment lacking due to the lasting financial crisis, the lack of funds may not be used to justify violations of human rights of any person, including persons deprived of their liberty.

### *3.2. Quality of health care*

Under the Constitutional Court decision of 3 November 2010, the Government of the Republic of Croatia was ordered, *inter alia*, to establish and carry out efficient supervision of

the quality of health care in the entire prison system. In the last three annual reports we have highlighted the need to urgently perform health care inspection in all prisons, penitentiaries and correctional institutions. In line with the Government's response, in April 2013 the Ministry of Health started to carry out health care inspections of the quality of health care in all penal institutions. However, from the Ministry of Health's report on health care inspections carried out in 2013 in a part of penal institutions (State Prisons in Lepoglava, Turopolje, Glina and Valtura, Pula County Prison and Turopolje Correctional Institute), it appears that the performed health care inspections included only the inspection of the premises, medical-technical equipment, medical documentation and authorisations of health care workers providing health care for prisoners in the prison system, and it was established that the infirmaries of inspected penal institutions are not equipped in compliance with the relevant health care regulations. Consequently, supervision of the quality of health care provision in the prison system has yet to be established.

As a result, our expectation is that the Ministry of Health and Ministry of Justice will urgently solve the issue of establishing efficient supervision of the quality of health care in the prison system. In view of the current situation in the field of health care provision for prisoners, our position is still that the quality of health care provision would be significantly upgraded if health care would be organisationally separated from the prison system under the Ministry of Justice and placed under the authority of the Ministry of Health, because it would be an optimal way to ensure the professional independence of physicians and the autonomy of patients, which is of fundamental importance even in the prison system.

As a rule, there are still fewer health care workers employed in prisons and penitentiaries than it is required and, therefore, it is not possible to ensure 24-hour coverage of on-duty health care workers. Moreover, in some penal institutions medical therapy is still administered by judicial police officers after being prepared by a medical nurse or technician, while in others that occurs only exceptionally during the weekends when there are no on-duty health care workers.

In a majority of prisons and penitentiaries, a judicial police officer is present in the infirmary during medical examinations of prisoners, excluding psychiatric evaluations. The presence of a person who is not a health care worker in medical exams, unless required for security reasons, represents a violation of the prisoner's right to privacy. The fact that a person is deprived of liberty does not automatically deprive him/her of the patient's right to privacy.

Additionally, it was observed that a higher number of prisoners are becoming addicts while serving their prison sentence, which requires special attention. Our position is that all penal institutions should keep records of new Suboxone addicts in order to gain better insight as to the scope of this issue and to be able to plan potential preventive procedures.

Some prisoners suffering from hepatitis C, to whom medical treatment was recommended, but who do not have a health insurance policy with HZZO, so the costs should be covered the Ministry of Justice, do not receive medical treatment because of the lack of funds. Such

conduct may indicate inhuman or degrading treatment, that is, a violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as expressed in the ECHR judgment in the case *Poghosyan v. Georgia* (2009), which states that, to protect a prisoner's health, it was not enough to have him examined and a diagnosis made, but it was essential to provide treatment corresponding to the diagnosis.

However, it is expected that in 2014 there will be no further unequal treatment in terms of whether or not prisoners have the status of a mandatory health insurance policy holder with HZZO, because, under the new Mandatory Health Insurance Act, (OG 80/13), all prisoners will acquire the status of a policy holder with HZZO and exercise the rights under mandatory health insurance. Furthermore, according to the Central Office's reply, the question of supplemental health insurance, which is voluntary and personal, will be resolved with HZZO according to the criteria prescribed by the Rules for the establishment and implementation of supplementary health insurance (OG 91/13), which means that some prisoners will, along with the right to primary health insurance, also have the right to supplemental health insurance, while other prisoners will have an option to, if they want, pay for a supplemental health insurance policy. This will also harmonize the treatment of all prisoners with regard to the payment of participation. More precisely, prisoners without a mandatory health insurance policy with HZZO have previously not participated in the cost of health care (covered by the Ministry of Justice), while other prisoners, if without a contracted supplemental health insurance policy, participated in the cost, which often generated great dissatisfaction.

### *3.3. Treatment of persons deprived of their liberty*

The fact that during the visits in 2013 no treatment was identified that would indicate the most severe form of violation of human rights – torture – is certainly a positive one. However, the state in which the rule of law is one of the highest constitutional values should not be satisfied only with absence of the most severe form of violation of the rights of persons deprived of their liberty, but should constantly strive to respect the rights of each person in all its actions.

One of the key shortcomings observed this year is certainly the unequal treatment of persons deprived of their liberty. Although the unequal treatment may not necessarily constitute a violation of their rights, it is definitely harmful, unless it is based on clear and predefined criteria, which are equally applied to all persons in comparable situations. Even though the reasons for unequal treatment are multiple, they primarily arise from shortcomings in the legal framework, restrictive interpretation or inconsistent application of regulations, and the accommodation conditions.

Despite the fact that national legislation governing the treatment of persons deprived of their liberty and conditions in which they are held was generally assessed as good, there is also room for improvement. For example, the fact that the currently valid EPSA was, since its adoption in 1999, corrected, amended or supplemented as much as fourteen times, and that the last consolidated version was published more than ten years ago should by itself represent a justified cause to initiate the drafting of a new text. The reasons for drafting the new EPSA

were, however, derived from its material shortcomings related to, for example, implementation of specific measures of maintaining order and security, implementation of disciplinary proceedings, definition of disciplinary violations and many other. Based on the information collected during the visits and actions taken on complaints of prisoners, our position is that the implementation of specific measures of maintaining order and security is insufficiently clearly prescribed, particularly when having in mind that the use and performance of those measures represents a further restriction of the rights of prisoners. For instance, implementation of the specific measure of maintaining order and security - placement in a specially secured room devoid of dangerous objects, is prescribed in just one paragraph, which neither prescribes the purpose of implementing this measure nor makes it clear whether the measure is implemented for security or medical reasons and whether it is punitive or preventive in character. Therefore, it happens in practice that the measure of placement in a specially secured room devoid of dangerous objects is imposed on a prisoner who threatened to commit suicide, which is considered to be absolutely unacceptable. Additionally, despite the fact that the EPSA prescribes that placement in a specially secured room devoid of dangerous objects may not exceed 48 hours at a time, it is unclear in practice what should be the minimum time limit in which the measure could be re-imposed.

Likewise, when unequal treatment and unclear legal definition of the types, purpose and reasons for imposing a specific measure of maintaining order and security are concerned, the data collected during our visits in 2013 points to significant differences in the implementation of measures between individual institutions in the prison system. This statement is best illustrated by comparing the data on the implementation of measures in Zagreb County Prison and Lepoglava State Prison, the two high security penal institutions with the largest number of prisoners. According to the data delivered by the Central Office, in 2013 a total of 363 specific measures of maintaining order and security were implemented in Lepoglava State Prison (which on 31 December 2013 had 735 prisoners), while in the same period not a single measure was implemented in Zagreb County Prison (which on 31 December 2013 had 881 persons deprived of liberty, i.e. 146 more than in Lepoglava State Prison). As much as we tried, it was really hard to find a logical reason for such a difference in the number of implemented specific measures between the two largest penal institutions in the Republic of Croatia, and we have to emphasize that it sounds quite unbelievable that during the entire 2013 not a single measure was implemented in Zagreb County Prison, that is, there was not a single case of, for example, imposing a measure of enhanced supervision or handcuffing. Moreover, according to the data collected by inspecting the Register of specific measures of maintaining order and security, in the course of 2012 a total of 68 measures were implemented in Zagreb County Prison. These data may be interpreted in more ways than one, but it would be surely detrimental if they pointed to arbitrariness. As a consequence, our position is that the improvement of the legal framework and clear legal definition of the criteria for imposing individual measures, particularly those that additionally restrict the rights of persons deprived of their liberty, would significantly contribute to a more equal treatment and thus to the strengthening of the rights of persons deprived of their liberty.

One of the causes for unequal treatment of persons deprived of their liberty also arises from restrictive interpretation or inconsistent application of regulations. For example, during our visit to certain penal institutions, prisoners complained that during escort to court hearings they are not allowed to wear their own clothes, but go to court wearing their denim prison clothes and shoes which are sometimes of inappropriate size or without shoelaces. Such treatment needs to be observed in the context of a prisoner who came to the hearing in his prison clothes, while the two co-defendants on pre-trial release sitting next to him wore suitable clothes. Because such treatment may create a feeling of low self-esteem, and cause prisoners to feel humiliated and hurt, we warned the Central Office about the necessity to comply with the EPSA and European Prison Rules under which prisoners who obtain permission to go outside prison shall not be required to wear clothes that identifies them as prisoners. Acting on our warning, the Central Office issued an instruction to all penal institutions concerning this treatment and application of the EPSA in which, among other things, it emphasized that the denying of wearing own clothes may not be applied generally, but the head of the prison must decide upon each individual case.

Additionally, pursuant to the regulations in force and the House Rules of Lepoglava State Prison, a prisoner whose performance of his/her individual programme for the execution of prison sentence was evaluated as successful, may receive benefits such as going out with a visitor, going out to the prisoner's place of permanent or temporary residence and going out without a visitor. Nevertheless, during the visit to Lepoglava State Prison it was established that not a single prisoner serving his prison sentence in the high security ward was granted extra-institutional benefits. This is a clear case of restrictive application of the listed provisions, of which the State Prison management was warned.

During the visits in 2013 we identified cases of inconsistent application of Article 10 of the Ordinance on standards for prisoners' accommodation and meals, under which prisoners use cutlery consisting of a spoon, fork, knife and small spoon in their standard sizes. While in a smaller number of penal institutions prisoners are given the prescribed cutlery, in a majority of penal institutions they are given only a spoon. Whilst respecting the security reasons, which are always listed as those preventing consistent application of Article 10 of the Ordinance on standards for prisoners' accommodation and meals, arbitrary treatment is detrimental and thus it is required to comply with relevant regulations or, if that is actually required, amend the listed provision.

Furthermore, accommodation conditions are certainly one of the causes of unequal treatment of persons deprived of their liberty. For example, there is no specially secured room devoid of dangerous objects in Bjelovar County Prison due to which a prisoner, as previously referenced, was restrained to the bed during the entire night. According to the received information, in a similar situation in another penal institutions, the specific measure of maintaining order and security – placement in a specially secured room devoid of dangerous objects would be imposed on that prisoner and he would not be restrained to the bed.

Persons placed in a special room until the effects of intoxication wear off in, for example, PS Poreč, where these rooms do not meet even the minimum international standards, are substantially discriminated in comparison to those persons placed in, for instance, the Detention and Escort Unit of the Zagreb County Police Administration.

The EPSA prescribes, as one of the principal rights, the prisoners' right to maintain contact with family members. However, all prisoners in the Republic of Croatia are not in the same position with regard to visits from family members. In fact, female prisoners, as a rule, serve their prison sentence in Požega State Prison, which seriously aggravates the possibility of visits for family members, if they live in more distant areas. In such cases, family members are subjected to a longer and more expensive trip, which also makes the bringing of smaller children to visit more difficult. Due to overcrowding, prisoners are often placed in more distant prisons, and in such cases priority is given to the needs of the prison system over the needs of implementing the individual programme for the execution of prison sentence. Such travel distances may discourage visits from family members, irrespective of whether they fail to visit the prisoner at all, or visit him/her less frequently than to which the prisoner is entitled. During the visits both female and male prisoners often declare that they would agree to much worse accommodation conditions just to be closer to their family. According to the Ministry of Justice's data, in the last five years there is a trend of decline in the number of prisoners who were visited. As we did not receive complete data for all penal institutions for 2013, we are unable to confirm the continuation of this trend; however, from the data collected from complaints, visits and inspections, it may be assumed that the trend of decline has continued.

Pursuant to the EPSA, unsupervised conjugal visits are a benefit, and not the right of prisoners. However, prisoners held in prisons without a special room for conjugal visits (e.g. Varaždin County Prison) are deprived of the possibility to realize this benefit, which is discriminatory as compared with other prisoners located in prisons and penitentiaries which have such a room. Furthermore, prisoners on remand are not allowed unsupervised conjugal visits. In these situations, persons who are not finally convicted and who are presumed innocent are discriminated against compared with the convicted persons whose guilt was proven. Here it is important to take account of the ECHR's view expressed in the case *Varnas v. Lithuania* (2013) that the general difference in treatment of prisoners on remand and convicted prisoners, in the part related to unsupervised conjugal visits, is not justified and constitutes a violation of Article 14 in conjunction with Article 8 of the European Convention for the Protection of Human Rights.

One of the reasons for unequal treatment of involuntarily hospitalised persons with mental disorders is also the fact that some psychiatric institutions do not have a high security unit in which the measure of involuntary medical treatment should be performed. Namely, in certain cases it was established that it can also be one of the reasons for using the means of physical restraint on patients. In order to avoid such situations in the future, the Ordinance on the minimum conditions regarding premises, staffing and medical and technical equipment needed to provide health services should prescribe the conditions regarding premises, staffing

and medical and technical equipment which must be complied with by all health institutions or their units for specialist-consultative and hospital treatment in the field of psychiatry which carry out involuntary confinement and involuntary placement of persons with mental disorders.

### *3.4. Legal protection of persons deprived of their liberty*

In accordance with the regulations in force, several legal instruments are available to persons deprived of their liberty held in the prison system. Filing a complaint to the head of the prison, the Central Office of the Prison System Directorate or to the executing judge are surely those from which prisoners expect the most in the protection of their rights. However, the data we collected in 2013 by acting in accordance with the Ombudsman's Act and the ANPM, which are indicative of failure to act upon the filed legal instruments, bring into question their effectiveness. Namely, it often happens that a prisoner did not receive a response to his/her filed complaint within the prescribed period of fifteen, that is, thirty days. For example, in the procedure following a prisoner's complaint, it was established that he submitted a complaint to the Central Office on 16 September 2012, and received a response on 1 October 2013. Consequently, instead within the prescribed period of thirty days, the complainant received a response after more than one year.

The issue of questionable effectiveness of legal instruments is also illustrated by more than 200 final decisions from executing judges on the violation of rights in terms of the accommodation conditions referred to in Article 74 of the EPSA in Lepoglava State Prison. Despite the fact that everyone in the Republic of Croatia must respect and comply with a final and enforceable i.e. executable judicial decision, these prisoners are still serving their prison sentence in the same conditions. Taking account of all of the above, it is justified to ask whether this is actually an efficient legal instrument?

With regard to the protection of the rights of prisoners, we also have to mention Article 47 of the EPSA, which prescribes that the executing judge must visit prisoners at least once a year, talk with them and instruct them about their rights under the EPSA and ways to realise those rights. According to the information received from the Central Office, in 2013 not a single executing judge visited Šibenik State Prison, Šibenik County Prison, Glina State Prison, Lipovica Popovača State Prison and Prison Hospital. Prisoners frequently complain that they never talked with the executing judge over the course of several years, because he/she does not talk with all prisoners during the visit. Similarly, prisoners often contact us because of the executing judge's failure to act upon the submitted request for judicial protection. This is also facilitated by the fact that no period is prescribed by the EPSA in which the judge must issue a decision on the justifiability of the request for legal protection.

## **4. Conclusion and recommendations**

From the described situation, which is based on the data we collected by acting in accordance with the Ombudsman's Act and the ANPM, several conclusion may be made regarding the respect of the rights of persons deprived of their liberty in the Republic of Croatia.

Despite the fact that in 2013 no treatment was identified that would constitute torture, as the most severe form of violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, other violations of the rights of persons deprived of their liberty that could constitute inhuman or degrading treatment were identified.

One of the most frequent causes for violation or restriction of the rights of persons deprived of their liberty is definitely the accommodation conditions, which are still, despite the observed declining trend, characterised by overcrowding and inability to ensure compliance with legal and international standards. The efficient supervision of the quality of health care is yet to be carried out. With regard to the treatment of persons deprived of their liberty, one of the key shortcomings and causes of violations of the rights is certainly unequal treatment. Although the reasons for unequal treatment are multiple, our opinion is that they primarily arise from specific shortcomings in the legal framework, restrictive interpretation or inconsistent application of regulations, and the accommodation conditions. The level of respect of human rights of persons deprived of their liberty is directly affected by the level of legal protection and the efficiency of legal instruments, which are both insufficiently effective.

Cooperation with the state authorities in 2013 was good, but we would like to point out the significant improvement of cooperation with the Central Office of the Prison System Directorate. Replies from the Ministry of Health are in some cases received only after sending rush notes. As good cooperation is one of the prerequisites for successful performance of NPM activities and protection of the rights of persons deprived of their liberty, we consider it is necessary to further strengthen the dialogue with relevant state authorities and state administration bodies.

In conclusion, the current situation regarding the respect of the rights of persons deprived of their liberty is not alarming, but there is still plenty of room for improvement. We are equally aware of the state's severe financial situation, but we are again emphasizing that the lack of funds may not be used to justify violations of human rights. Therefore, having in mind the information collected by performing activities in accordance with the Ombudsman's Act and the EPSA, we make the following recommendations:

#### RECOMMENDATIONS:

1. To the Government of the Republic of Croatia, to fulfil its obligations from the Constitutional Court decisions of 17 March 2009 and 3 November 2010 in the shortest possible period;

2. To the Ministry of Justice and Ministry of the Interior, to continue improving the accommodation conditions and cease to use facilities for the accommodation of persons deprived of their liberty which are not in compliance with international and legal standards;
3. To the Ministry of Justice, to ensure the required number of health care workers and improve the quality of health care provided to persons deprived of their liberty and, with the Ministry of Health, to consider the transfer of health care provision for persons deprived of liberty from the judicial system to the health care system;
4. To the Ministry of Social Policy and Youth and Ministry of Health, to intensify activities aimed at reducing the rate of institutionalisation of persons with mental disorders, including the strengthening of mental health care services at the local level;
5. To the Ministry of Justice, to remove the listed legislative shortcomings, particularly with regard to the EPSA, CPA and APPMD;
6. To the Ministry of Justice, to carry out a study on the efficiency of instruments for the protection of the rights of persons deprived of their liberty.