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**Report
of the Human Rights Defender
on the activities of
the National Preventive Mechanism in
Poland
in 2010**

Warsaw, June 2011

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1. Introduction

The reason for introducing permanent monitoring of places of detention is the fact that persons staying in such places, which are by definition closed to the outside world, are more at risk of various malpractices. They can result from, among others, state criminal policy, lack of funds for the provision of suitable conditions, inappropriate training of the personnel or the lack of an appropriate monitoring system. Respecting the rights of detained persons depends fully on the authorities responsible for places of detention. Social processes taking place in such places' structure, as well as behaviour of persons often subject to strong stress and pressure, generate situations leading to human rights violation. Therefore, the system of detention places should be as transparent as possible and open to cooperation with the outside world, owing to which the risk of malpractices is likely to decrease.

Therefore, in 2002 the United Nations General Assembly in New York adopted an Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, hereinafter referred to as OPCAT. The Protocol was ratified by the Republic of Poland on 8 July 2005. It constitutes a part of the Polish legal order and is directly applicable, pursuant to Article 91 of the Constitution of the Republic of Poland. Moreover, by ratifying the abovementioned Protocol, Poland has undertaken to designate or establish the independent National Preventive Mechanism for the prevention of torture at the domestic level (Article 17 of OPCAT). Therefore, on 18 January 2008 the Human Rights Defender was officially entrusted with the function of the National Preventive Mechanism (hereinafter referred to as NPM, Mechanism). The performance of the tasks of the Mechanism by the Polish Ombudsman guarantees its functional independence and the independence of its personnel required by the Protocol.

The present Report is the third report of the National Preventive Mechanism in Poland, which Poland is obliged to prepare and publish, pursuant to Article 23 of the OPCAT.

The Report of the Human Rights Defender on the activities of the National Preventive Mechanism in Poland in 2010 was drawn up in two languages in order to disseminate it among international institutions and national preventive mechanisms in other countries.

2. The organisation of the activity of the National Preventive Mechanism within the Office of the Human Rights Defender

In 2010, as in the previous year, the tasks of the National Preventive Mechanism were performed mainly by six employees of the Criminal Executive Law Department, delegated to carry out the tasks of the Mechanism. Others members of the Department (ten persons, including the Director) participated in the NPM preventive visits where necessary.

The employees of the Criminal Executive Law Department visited prisons, pre-trial detention centres, juvenile detention centres, juvenile shelters, youth care centres and sociotherapy centres, police emergency centres for children, rooms for detained persons within the Police organisational units and sobering stations.

In addition, the tasks of the Mechanism were performed by four employees of the Public Administration, Healthcare and Protection of Aliens Department, who carried out visits to centres for aliens applying for refugee status or asylum, deportation centres, guarded centres for foreigners and psychiatric hospitals. The employees of that Department also supported the Labour Law and Social Insurance Department on visits to social care centres (two employees).

The abovementioned employees of the Office of the Human Rights Defender are employed full time, and the majority of them have performed NPM tasks from the moment this function was entrusted to the Human Rights Defender. In addition, the tasks of the National Preventive Mechanism were performed by: two employees from the Local Group in Katowice, one from the Local Group in Wrocław and two from the Local Group in Gdańsk. All of them have been trained in the methodology of visits.

It should nevertheless be pointed out that until the end of December 2010 all employees mentioned above had also performed statutory tasks of the Defender, i.e. examined numerous motions sent by citizens.

On 14 October 2010, the “National Preventive Mechanism” Group was sectioned off based on the new statute of the Office of the Human Rights Defender granted by the Marshal of the Sejm. Since 2011, the Mechanism activity has been carried out by one Group visiting all places of detention referred to in Article 4 of OPCAT. The Group comprises eight persons, including the Director and a secretary.

3. Financing of the National Preventive Mechanism in Poland

Along with entrusting the Polish Ombudsman with the tasks of the National Preventive Mechanism as of 18 January 2008, the Government of the Republic of Poland did not allocate funds necessary for the performance of tasks stemming from the Optional Protocol to the UN Convention Against Torture, Inhuman or Other Degrading Treatment or Punishment, which is its obligation pursuant to Article 18(3) of the OPCAT. Only on 1 July 2008 did the Minister of Finance, pursuant to the Decision amending the state budget for 2008, allocate PLN 426 thousand from the budget reserve to finance the activity of the National Preventive Mechanism in 2008. It allowed to facilitate preventive visits to various places of detention located throughout the country.

Last months of 2008 were devoted to gaining funds for the activity of the Mechanism in 2009. The draft budget of the Human Rights Defender for 2009 allocated PLN 2.5 million for the functioning of the Mechanism. It was assumed that the activity of the Mechanism would be intensified in the second year of its functioning in Poland by, *inter alia*, increasing the number of staff, which at the same time would allow to check regularly how persons deprived of their liberty were treated in places of detention, with the aim to strengthen, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment. During its work on the 2009 budget, the Sejm Public Finance Committee cut funds for this objective completely. Therefore, the Human Rights Defender exercised his constitutional right and presented his position on this matter at the plenary session of the Sejm of the Republic of Poland. It had a positive result in the form of PLN 1400 thousand being allocated for the activity of the National Preventive Mechanism in Poland. However, it was just a drop in the ocean and it did not allow to develop the

activity of the Mechanism in 2009 to the extent that had been expected. Thus, Article 18(3) and Article 18(4) of the OPCAT were violated again. The Human Rights Defender addressed the Secretary General of the Association for the Prevention of Torture (APT), as well as the Subcommittee on Prevention of Torture (SPT) through the High Commissioner for Human Rights. On 17 December 2008, in Geneva, Dr Janusz Kochanowski met the representatives of the APT in person and presented problems with proper implementation of the OPCAT in Poland. This organisation considered the fact of the performance of tasks of the National Preventive Mechanism in Poland by the Human Rights Defender to be a negative example. In its publication from 2008, the APT emphasized that there had been no increase in the number of the National Preventive Mechanism employees, which would have otherwise reflected the performance of new tasks resulting from the Mechanism operation¹.

In the course of work on the state budget for 2010, the budget of the Office of the Human Rights Defender was reduced by PLN 1.3 million, i.e. by almost the same amount as the one allocated for the NPM operations in 2009. The state budget for 2010 did not allocate any funds to the Office of the Human Rights Defender for the performance of tasks of the Mechanism. Its operations had to be financed from general resources of the Office. This meant that NPM tasks had to be executed at the expense of other activities of the Office and it also entailed significant limitations of the Mechanism's operations. Thus, it violated Article 18(3) and Article 18(4) of the OPCAT. The Human Rights Defender sent a relevant letter informing about serious financial difficulties of the Mechanism to the Secretary General of the Association for the Prevention of Torture (APT), the Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT).

In 2011, the Sejm reduced the expenditure related to the functioning of the Office of the Human Rights Defender from PLN 36.477 million to PLN 35.424 million. The reduction of the Office's budget triggered the reduction of the funds to cover the operational costs of the National Preventive Mechanism in 2011, from PLN 1.740 million to PLN 1.265 million.

Undoubtedly, the abovementioned Article 18(3) and (4) of the OPCAT were violated also in 2011.

4. International cooperation

Due to the development of National Preventive Mechanisms in Europe, their members see a growing need to exchange their experience. International cooperation between NPMs is aimed at elaborating a common position regarding the broadly understood protection against torture and other cruel, inhuman or degrading treatment or punishment, as well as at standardizing the methodology of preventive visits.

On 27 and 28 January 2010 in Padua, as part of the "*European NPM Project*"², the first meeting of national mechanisms' contact persons took place. The meeting was

¹ *National Human Rights Commissions and Ombudspersons' Office / Ombudsmen as National Preventive Mechanisms under the Optional Protocol to the Convention against Torture*, APT 2008.

² The project for active cooperation between European NPMs, co-financed by the Council of Europe and the European Union. The subject of the workshop is "Organising, conducting and reporting preventive visits to various detention places: Exchange of experiences between the National Preventive Mechanism and experts of

attended by the experts of the United Nations Subcommittee on Prevention of Torture (SPT), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Association for the Prevention of Torture (APT), the representatives of the European Commission, the Council of Europe and 20 contact persons appointed by national mechanisms, operating in the Council of Europe Member States. The representative of the National Preventive Mechanism appointed as a contact person in Poland also took part in the meeting. During the meeting, the tasks of SPT, CPT and national preventive mechanisms in the field of preventive activity were debated. The representative of the NPM discussed the role of national preventive mechanisms based on Polish experience. During the meeting, attention was drawn to the need of distinguishing between visits carried out upon an individual complaint and preventive activity of the national preventive mechanisms. Moreover, a decision was made that the National Preventive Mechanism in Poland would be the first to participate in the „*On-site Visit & Exchange of Experience*” training scheme³.

Therefore, between 4 and 7 May 2010 in Warsaw, the APT, CPT, SPT and Council of Europe experts debated on the details concerning the National Preventive Mechanism activity and visits to various places of detention with employees performing the NPM tasks. Particularly significant issues concerning, among others, the methodology of visits, the essence of prevention, the role of external experts in visits, the way of interviewing persons deprived of liberty and formulating recommendations were discussed during the training course. In addition, experts of the abovementioned institutions, carried out visits to three various types of places of detention with the representatives of the National Preventive Mechanism (psychiatric hospital; pre-trial detention centre; juvenile detention centre and juvenile shelter), taking part therein as observers, which then allowed to analyse the methodology of visits and problems faced at such units.

On 24 and 25 March 2010 in Padua, the first workshop for the national preventive mechanisms, entitled “*The role of national preventive mechanisms in preventing ill-treatment in psychiatric institutions*”⁴, took place. The representative of the National Preventive Mechanism from the Public Administration, Healthcare and Protection of Aliens Department took part in the workshop.

On 9 and 10 June 2010 in Tirana, another thematic workshops were organised for the representatives of European NPMs. They were dedicated to the *Role of National Preventive Mechanisms in protecting individuals’ key rights upon deprivation of liberty by the police*. The representative of the National Preventive Mechanism from the Criminal Executive Law Department took part in the workshop. During the meeting, attention was drawn to international legal standards regarding persons deprived of liberty by the Police and the issue of providing medical care for the detained was discussed. Issues concerning the access to an attorney gained much coverage.

the European Committee for the Prevention of Torture (CPT), Subcommittee on Prevention of Torture (SPT) and the Association for the Prevention of Torture.

³ Training course financed by the Council of Europe and European Commission.

⁴ Thematic workshops take place under the project “Setting up an active network of national preventive mechanisms against torture, an activity of the Peer-to-Peer Network”. In 2010 workshops were organized in Padua (Italy), Tirana (Albania) and Yerevan (Armenia).

The third thematic NPM workshop took place in Yerevan on 13 and 14 October 2010. The workshop was entitled “*Methodology: Preparing and planning strategies for an NPM visit*”. The following issues were discussed during the workshop: gathering and analysis of information concerning places of detention, selection criteria of establishments to visit, selecting the objectives and form of the visit, composition of the visiting team and distribution of work. Much attention was paid to the involvement of non-governmental organisations’ representatives in the visits. According to experts, their participation strengthens the social supervision over places of detention and thus helps develop the civil society. Moreover, the length and frequency of visits and strategies of interviews with individuals deprived of liberty were discussed. During the workshop, an employee of the National Preventive Mechanism presented arguments in favour of unannounced visits. The Polish NPM does not notify directors of selected establishments about the visits planned in a given period.

Another opportunity to exchange experience concerning practical activities undertaken during visits to places of detention by NPMs was provided by a seminar in Chisinau (Moldova), organised under the project “*Eastern Partnership Countries’ Ombudsman Cooperation 2009-2013*”. The NPM representative provided the Moldovan party with the information concerning the organisation and functioning of the Polish Mechanism in practice and took part in a visit to one of Moldovan prisons.

As part of exchanging experiences, the NPM representative took part in a seminar *Public monitoring of places of detention: Experiences from EU Member States*, which took place on 21-22 October in Ankara. The seminar was organised by the European Commission. Representatives of the Prison Services and the Ministry of Justice of Turkey presented the functioning of their penitentiary system. Representatives of national preventive mechanisms from Estonia, Slovenia and Poland presented the organisation and methods of carrying out preventive visits by the NPMs in their countries. The following issues were discussed: frequency of visits, composition of visiting teams, as well as involvement of the representatives of non-governmental organizations in NPM visits. Representatives of Turkish visiting teams had a chance to pose questions to experts from the European Union Member States.

On 1-2 December 2010 in Strasbourg, the second meeting of NPM contact persons took place⁵. It was attended by experts from SPT, CPT, APT, representatives of the European Commission, the Council of Europe, as well as contact persons of the Mechanisms operating within the Council of Europe Member States. The first day of the conference was dedicated to discussing the state of play as regards *the European NPM Project*. During the meeting, the Polish representative presented conclusions and a short evaluation of the training course *On-site Visit & Exchange of Experiences* organized in May 2010 in Warsaw. During the second day of conference, draft measures for the next two years were discussed in detail, including the plan of training courses organized by the Council of Europe in 2010. Representatives of National Preventive Mechanisms presented their vision of cooperation between individual Mechanisms.

It is also worth noting that since February 2010 the University of Padua has issued a Newsletter on NPMs, based on information on the activities of NPMs provided by individual countries.

⁵ The meeting under the European NPM Project.

Since December 2010, a new database on the ratification and implementation of the Protocol in individual countries has been in operation on the Association for the Prevention of Torture's website⁶. It also contains detailed information on the functioning of national preventive mechanisms designated by individual countries.

5. Cooperation between the Defender and non-governmental organisations

In relation to the performance of tasks of the National Preventive Mechanism by the Human Rights Defender, employees of the Mechanism cooperate closely with non-governmental organizations, whose scope of interest and tasks concern broadly understood prevention of torture, inhuman or degrading treatment or punishment. The cooperation consists in, above all, the exchange of information on the situation of prisoners and detainees in various establishments in the country and the functioning of the National Preventive Mechanism.

The most important partner for the Defender performing the role of the National Preventive Mechanism in this regard is the coalition of non-governmental organisations and academic circles "Agreement on the Implementation of the OPCAT" (hereinafter referred to as Coalition), which currently comprises: Amnesty International Poland, Polish Section of the International Commission of Jurists, Association for Legal Intervention, Helsinki Foundation for Human Rights, Sławek Foundation and the Department of Criminology and Criminal Policy of the University of Warsaw.

Since its formation, the Coalition has supported the establishment of the National Preventive Mechanism in Poland, whereas currently, its guidance concerning the NPM functioning and visiting reports serve as a valuable tool for its development.

Following her predecessors, the Human Rights Defender of the VI term of office, Professor Irena Lipowicz met with the Coalition representatives. On 27 October 2010, during the conference with representatives of competent authorities and non-governmental organizations, organized at the Office of the Human Rights Defender, the second annual report on the activities of the Mechanism in 2009 was jointly discussed. Cooperation organized as described above demonstrates the transparency and openness of NPM members to remarks of non-governmental organisations.

The National Preventive Mechanism also makes use of reports from visits drawn up by non-governmental organizations, such as *"Dealing with convicts at admitting them at establishments where they are to serve the penalty of deprivation of liberty. A monitoring report"*. (Maria Niełacznna in: Analizy, Raporty, Ekspertyzy No 2/2010 of the Polish Association for Legal Intervention). They are an important source of data and opinions for the NPM.

NPM cooperation with non-governmental organizations as regards seminars and training courses is also very important. In 2010, several education and information projects were implemented, in which NPM members played an active role.

NPM representatives also took part in various meetings. On 13 April 2010, the Department of Law and Administration of the University of Silesia hosted a conference entitled *"Infringement of civil rights and liberties during penalty execution"*. On 27 May 2010, an expert seminar entitled *"Prison and after"* organized

⁶ www.apr.ch/opcat

by the Association for Legal Intervention took place as part of Watch 24 project founded by the Open Society Institute – Budapest.

An NPM representative also delivered one of the specialist training courses for students of the Institute of Social Prevention and Resocialisation of the University of Warsaw and the Maria Grzegorzewska Academy of Special Education as regards monitoring of the observance of international standards concerning rights and liberties of persons staying at Polish penitentiary establishments.

On 5 October 2010, an NPM representative participated in an annual conference of the Organisation for Security and Cooperation in Europe, entitled *Human Dimension Sessions of the 2010 Review Conference*, which took place in Warsaw. During a panel dedicated to the prevention of torture, the representative presented actions undertaken by the Defender under the National Preventive Mechanism.

The cooperation between NPM and non-governmental organizations enables an open discussion among experts and serves as a tool allowing the Mechanism to reach a broader audience with information concerning, among others, the standards established by the National Preventive Mechanism.

6. Reviewing legal acts

The role of National Preventive Mechanisms also consists in submitting proposals and observations as regards the existing or drafted legislation. Therefore, the Office of the Human Rights Defender receives all draft legal acts which refer to individuals deprived of liberty.

In 2010 the Defender, performing the tasks of the National Preventive Mechanism, issued his opinion concerning, among others, *draft Ordinance of the Council of Ministers on the application of coercive measures and the use of firearms or service dogs by Prison Service officers of 7 May 2010*. In a petition of 21 May 2010⁷ the Defender indicated that the wording of certain solutions formulated in the project raised doubts, particularly when it came to a guarantee of a lawful application of coercive measures in practice. The petition was motivated by the fact of abandonment of many proven procedures reinforcing such guarantees, being the result of long-term cooperation between the Prison Service and institutions working for the protection of human rights in Poland, including the Human Rights Defender. The draft also considerably limited the scope of documenting the use of coercive measures. It refrained from the obligation of drawing up protocols on the use of coercive measures (except for the need to draw up a protocol after the use of firearms and a service dog) in favour of a vague memo. Compared to the existing legal situation, these draft regulations significantly limit the possibility to verify the legitimacy of complaints lodged by inmates on the use of coercive measures against them. The draft Ordinance does not include (except for the time of placing in a security cell) the obligation to register the course of applying coercive measures. However, the results of NPM visits indicate the need to continue such actions. Film material is a perfect confirmation of actions described in the coercive measures protocol for the persons carrying out the visits.

⁷ RPO-641871-VII/10

In the reply of 18 June 2010, the Minister of Justice informed the Defender that most remarks had been taken into account in a reformulated draft Ordinance of 15 June 2010. Additional elements were introduced to a memo documenting the use of coercive measures, such as the information on the warning about the use a coercive measure, and the obligation to fire a warning shot, if service firearms are used, was reinstated. However, the Minister of Justice also presented detailed explanations concerning issues where he had dismissed doubts raised in the opinion, including those concerning the obligation to put on handcuffs on hands held at the back, as well as to record the course of applying coercive measures. Referring to the latter issue, the Minister of Justice stated that the rules of recording the picture and sound had been specified in regulations in force⁸. In accordance with these regulations, the entire area of a penitentiary unit can be monitored by an internal recording system, whereas cells with particularly dangerous inmates are subject to obligatory monitoring. Thus, in the opinion of the Minister of Justice, the legislator had prejudged in the Executive Penal Code that all activities undertaken towards aggressive prisoners and those posing a threat to safety and order of the penitentiary establishments or safety of other prisoners need to be recorded.

The Defender also presented an opinion concerning the *draft Ordinance of the Council of Ministers on detailed conditions and method of using coercive measures with respect to juveniles in juvenile detention centres, juvenile shelters, youth care centres and youth sociotherapy centres*. In the petition of 1 September 2010⁹, the Defender indicated the need to clarify certain provisions of the Ordinance, at the same time expressing hope that the implementation of suggested solutions would significantly reinforce the guarantee of the lawful use of these measures.

As regards issues concerning juveniles, it is also worth mentioning Defender's remarks and proposals regarding the *draft assumptions for the draft Act amending the Act on juvenile delinquency proceedings* of 26 March 2010 and the *draft Act amending the Act on juvenile delinquency proceedings* prepared in line with these assumptions. In the letter of 11 June 2010¹⁰, the Defender proposed, among others, to reduce a seven-week period for juveniles to stay in a Police emergency centre for children during the performance of activities ordered by the court, to guarantee appropriate methods of verifying the results of medical tests not requiring a laboratory test in order to establish the presence of alcohol or another intoxicant (as a result of granting the right to a probation officer to force a juvenile to subject themselves to such tests).

⁸ Executive Penal Code (Dz.U. of 1997 No 90, item 557, as amended) and Ordinance of the Minister of Justice of 16 October 2009 on technical devices and measures used to transmit, play back and record images or sounds from monitoring systems of penal institutions (Dz.U. No 175, item 1360).

⁹ RPO-629059-VII/10

¹⁰ R-071-13/10

7. Establishments visited by the National Preventive Mechanism in 2010

Table 1 below contains a review of all establishments visited by the National Preventive Mechanism, including the structure and number of visits between 2008 and 2010. It needs to be noted, though, that the total of visits in 2008 and 2009 may be different from the figures included in previous annual reports on the National Preventive Mechanism (of 2008 and of 2009). The abovementioned differences result from changes in the statistical presentation of some visits:

- since 2010 NPM statistics have had a separate category of: juvenile detention centres and juvenile shelters operating jointly (under the same address and with the same administration). In 2008 and 2009, visits to such institutions were treated as two separate categories (juvenile detention centre, juvenile shelter);

- since 2010 a visit to a penitentiary establishment and its separate external ward have been treated as one. In 2008 and 2009, as in the previous case, such visits were recorded in two separate categories.

For the needs of this publication, the number of establishments in Table 1 in 2008 and 2009 has been unified, taking into account the abovementioned changes. However, two categories of establishments not visited by NPM in 2010 are not included therein, namely, Military Custodial Establishment (1 visit in 2008) and Military Disciplinary Detention Centres (2008 – 2 visits, 2009 – 1 visit).

Table 1.

Visits under the National Preventive Mechanism in the years 2008 – 2010.

Units	Total number of units to be visited (as of end 2010)	Number of units visited by NPM – 2008	Number of units visited by NPM – 2009 (number of repeated controls in brackets)	Number of units visited by NPM – 2010 (number of repeated controls in brackets)	Number of units visited by NPM (2008-2010) (number of repeated controls in brackets) ¹¹	Number of non-visited units (as of end 2010)
Prisons	87	13	16	5 (1)	34 (1)	54
Pre-trial detention centres	70	16	10	9 (1)	35 (1)	36
Juvenile shelters	8	3	3	0	6	2
Juvenile detention centres	17	2	2	2 (1)	6 (1)	12
Juvenile shelters and juvenile detention centres (operating jointly)	10	2	2	4	8	2
Youth care centres	74	3	7	12 (1)	22 (1)	53
Youth sociotherapy centres	61	1	4 (1)	1	6 (1)	56
rooms for detained persons within the police headquarters	339	11	21	15	47	292
Police emergency centres for children	27	4	5	4	13	14
Sobering stations	43	2	11	14 (1)	27 (1)	17
Social care centres*	793	0	1	6	7	786
Psychiatric hospitals**	218	8	9	5	22	196
Deportation centres***	8	4	2	2	8	0
Guarded centres for foreigners	6	3	2	1	6	0
Centres for foreigners applying for a refugee status or asylum	15	0	4	0	4	11
Rooms for detained persons within Border Guard centres.	50	1	0	0	1	49
Total	1826	73	99 (1)	80 (5)	252 (6)	1580

*) According to information from the Ministry of Labour and Social Policy, there were 793 **social care centres** (hereinafter referred to as SCC) in Poland in 2009¹². This number includes all institutions financed from the Voivode's budget, out of which 587 are centres managed by poviats governments and 206 by private entities. However, this figure does not include establishments managed by natural persons as part of a business activity. An estimated number of such SCCs in 2010 was 24. Complete information in this regard is available at individual Social Policy Departments at Offices of the Voivode.

¹¹ Repeated controls carried out by the National Preventive Mechanism are given in brackets (which means that the same institution has been visited twice). Until now, repeated controls have been carried out in: Juvenile Detention Centre in Białystok, Youth Care Centre in Trzciniec, Prison in Tarnów, Pre-trial Detention Centre in Wrocław (all in 2010). Two visits per year (2009 and 2010) also concern a Youth Sociotherapy Centre “Kał” and a Sobering Station in Gdańsk, however, these were not repeated controls by NPM. The reason for a repeated visit to the same unit in 2010 was discussed in detail in the chapter concerning sobering stations.

¹² Data from the Ministry concerning the situation in 2010 will be published in September 2011, thus, the Table includes data for 2009.

***) According to data obtained in April 2011 from the Ministry of Health, the total number of **psychiatric hospitals** in Poland amounts to 218, including 138 health care centres registered in the Register of Health Care Centres as psychiatric and detoxification hospitals and 80 psychiatric wards at general hospitals.

****) Deportation custody takes place in the facilities of the **Police and Border Guard organizational units** for detained persons and in rooms of **guarded centres** established at Border Guard organizational units. Voivodeship Police Commanders and Border Guard Commanders are responsible for sectioning off rooms dedicated exclusively to deportation custody within these units¹³. According to the information obtained from the National Border Guard Headquarters in March 2011, 4 deportation centres (in Przemyśl, Kętrzyn, Biała Podlaska and Białystok) are located in rooms within guarded centres, whereas the remaining ones are located in Border Guard organizational units.

On the basis of data obtained from individual ministries and other available sources¹⁴ accessed by the employees of the National Preventive Mechanism, it has been established that the total number of places where persons are or may be deprived of liberty, within the meaning of Article 4 of OPCAT, that is, by order of any judicial, administrative or other authorities, amounts to **1826**. In the years 2008-2010, the National Preventive Mechanism carried out 252 preventive visits to 246 places of detention¹⁵, which constituted 13.5% of all units to be visited, whereas in 2008 this percentage was 4%, in 2009 – 5.4% and in 2010 – 4.4%.

In 2010 the National Preventive Mechanism carried out 80 visits to 79¹⁶ places of detention.

Figure 1.

Places of detention in Poland in 2010 – structure and number of units (total).

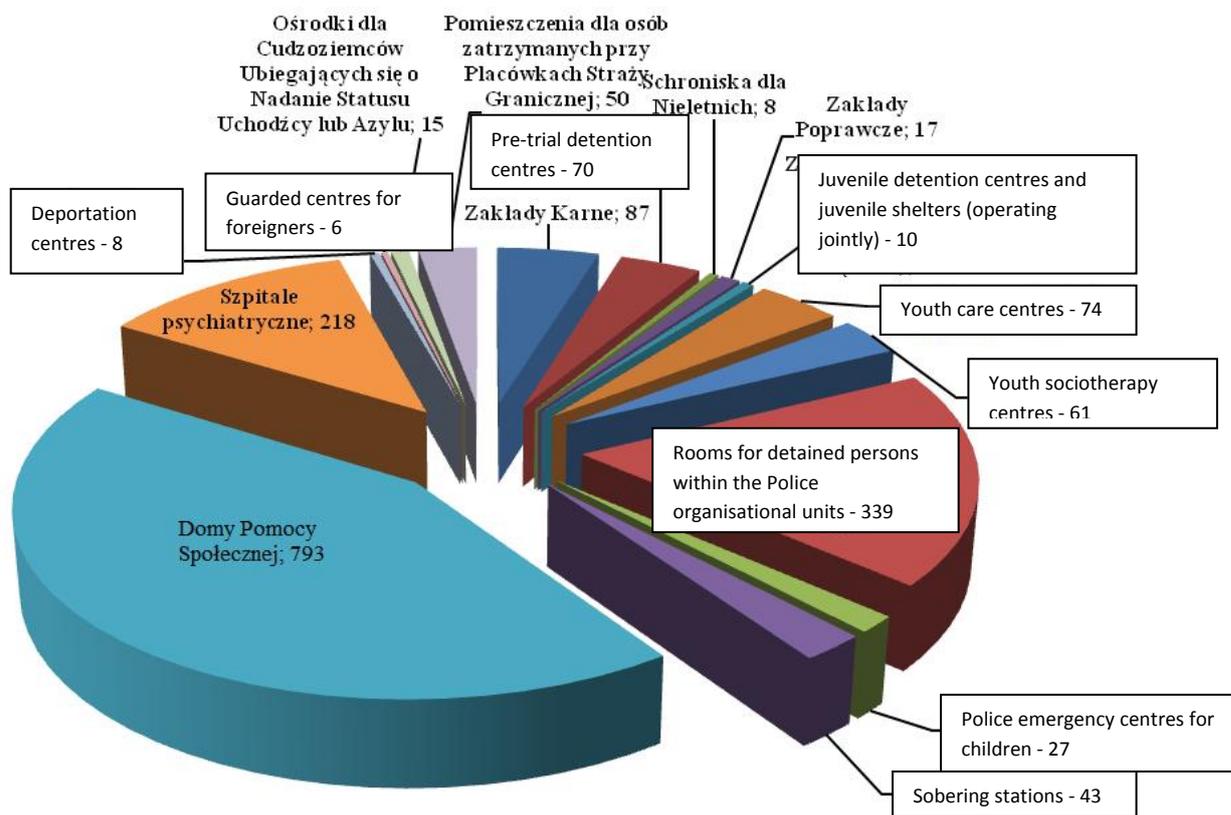
Centres for foreigners applying for refugee status or asylum - 15

¹³ Order No 61 of the Minister of the Interior and Administration of 3 September 2007 on determining rooms for deportation custody (Official Journal of the Ministry of the Interior and Administration 07.9.43, as amended).

¹⁴ Data obtained from: Ministry of Justice, Ministry of Health, Chief Police Headquarters, Centre for Education Development, Ministry of National Education, Ministry of Health and Social Policy, National Border Guard Headquarters. Some data have been taken from Statistical Yearbooks issued by the Chief Statistical Office.

¹⁵ The difference between the number of visits and the number of visited establishments results from the fact of repeated controls carried out by the National Preventive Mechanism (thus, the same establishment has been visited twice). Until now, repeated controls have been carried out in: Juvenile Detention Centre in Białystok, Youth Care Centre in Trzcinec, Prison in Tarnów, Prison in Czerwony Bór, Pre-trial Detention Centre in Wrocław (all in 2010).

¹⁶ Twenty-four-hour social emergency station for intoxicated persons in Gdańsk (sobering station) was visited twice in 2010.



Analyzing the structure of detention places within the area of NPM's interest, it needs to be noted that social care centres are most numerous. 793¹⁷ social care centres operate in Poland (43.5% of all units to be visited), with the average of ca. 75 927 residents¹⁸. The number of institutions includes social care centres managed by local government units, the Catholic Church, other churches, religious associations, as well as social organisations, foundations and associations.

The second largest category of places of detention covers rooms for detained persons within the police organizational units – 339 (17.8% of all units to be visited), whereas the third category includes psychiatric hospitals - 218 (11.4% of all units to be visited). Moreover, 157 penitentiary establishments¹⁹ (8.2%), including 87 prisons and 70 pre-trial detention centres, operate in Poland. The number of prisoners in the analysed year amounted to 80 728²⁰, including: 71 867 convicts (89% of all prisoners of penitentiary units), 8 389 persons detained on remand (10.4%), 472 punished persons (0.6%).

Juvenile centres constitute approximately 10.7% of all places of detention. NPM preventive visits are carried out, among others, to juvenile detention centres and juvenile shelters, whose total number is 35. In 2010 the limit of places in juvenile

¹⁷ As of 31.12.2009

¹⁸ As of 31.12.2009

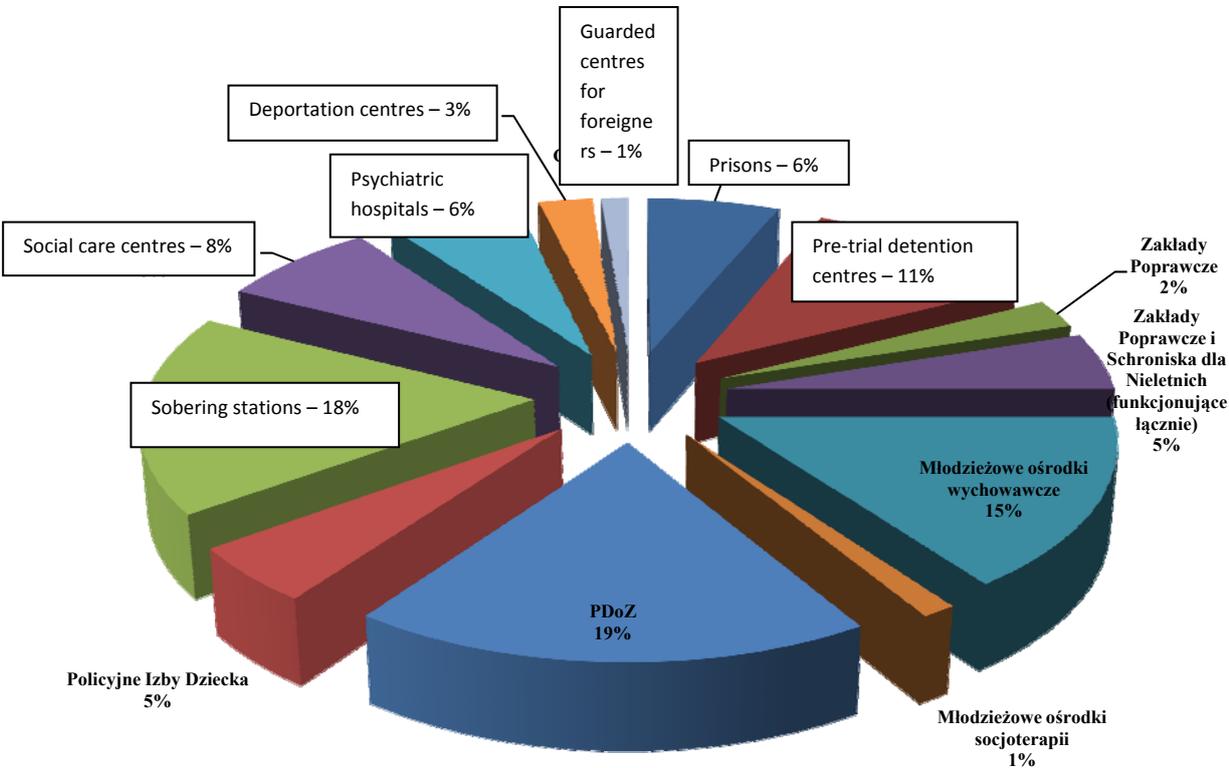
¹⁹ As of 31.12.2010

²⁰ As of 31.12.2010

detention centres amounted to 1 277, with 1 219 juveniles residing in those centres. Juvenile shelters offered 626 places, while 422 juveniles were registered to have been staying therein²¹. NPM also carries out visits to youth care centres (74 institutions – 4 578 places), youth sociotherapy centres (61 institutions – 2 933 places)²² and police emergency centres for children (27).

79 establishments for foreigners are also within the area of NPM's interest, including: guarded centres, deportation centres, rooms for detained persons within Border Guard headquarters and centres for foreigners applying for refugee status or asylum.

Figure 2. Detention places in Poland visited by the National Preventive Mechanism in 2010²³ - structure of units (percentage of all visited units).



²¹ As of 30.12.2010 - data obtained from the Department of Statistics of the Ministry of Justice.

²² It needs to be noted here that as regards educational care proceedings, placement of a juvenile person in a youth care centre amounted to 3.6% of all educational care measures applied to juveniles in 2009, while in a youth sociotherapy centre - 2.4%. In most cases non-isolating measures were adjudicated, such as reprimand (31.7%), probation officer's supervision (30.4%), parent or counselor supervision (10.9%).

²³ Due to the fact of no visits to certain establishments in 2010, the figure does not take into account: Juvenile shelters, centres for foreigners applying for refugee status or asylum (all 4 were visited in 2009) and rooms for detained persons within Border Guard organizational units.

In 2010, the National Preventive Mechanism carried out 80 preventive visits (that is almost one-fifth less than in 2009) to 79 units²⁴. The most frequently visited places of detention included: rooms for detained persons within the police organisational units (15 units, 4.4% of all rooms for detained persons within the police organisational units) and sobering stations (13, 30% of all stations). In addition, around 11.8% of all places of detention for juveniles were visited (most visits were to youth care centres – 6.2%), as well as 8.9% of penitentiary establishments (pre-trial detention centres - 5.7%, prisons - 3.2%).

In 2010, NPM also carried out visits to 5 psychiatric hospitals, 6 social care centres, 3 detention places for foreigners (2 deportation centres and 1 guarded centre for foreigners).

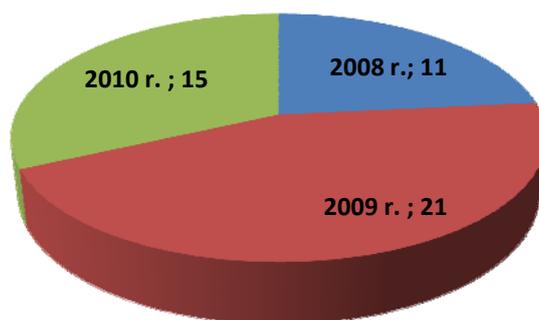
The chapters below present the results of visits to individual places of detention visited by the National Preventive Mechanism in Poland in 2010. Unlike previous annual reports of the National Preventive Mechanism, each chapter contains the most important standards and regulations included in international and domestic legal documents, based on which the NPM representatives carried out visits and formulated recommendations.

7.1. Rooms for detained persons within the police headquarters

In 2010, employees of the National Preventive Mechanism visited 15 rooms within the Police organisational units (hereinafter referred to as Chambers)²⁵, where detained persons or persons brought to sober up may be held.

Figure 3.

Number of visits of the National Preventive Mechanism in rooms for detained persons within the police organizational units in the years 2008-2010.



At the beginning of the chapter on preventive visits carried out in 2010 by the National Preventive Mechanism in rooms for detained persons within the Police

²⁴ A sobering station in Gdańsk was visited twice in 2010.

²⁵ Rooms for detained persons within **Municipal Police Headquarters** in: Bytom, Wrocław, Koszalin, Gdynia, Legnica, Gliwice, Chełm, Jaworzno, Kielce; rooms for detained persons within **Poviat Police Headquarters** in: Legionowo, Nowy Dwór Mazowiecki, Kutno, Środa Wielkopolska, Mogilno; rooms for detained persons within the District Police Headquarters Warsaw I.

organizational units, we need to point at an incident of hampering the execution of one of the basic tasks of a visit, that is, interviews with detained persons under conditions guaranteeing the freedom of speech. This incident took place at the Poviát Police Headquarters in Kutno. A phone intervention to the Chief Police Headquarters was necessary to confirm that NPM employees had the right to talk with detained persons. This incident was a one-off situation. However, it was a great surprise to NPM employees. It was all the more surprising, since in 2009 the Police Commander in Chief drew attention of all his subordinate units to Defender's rights related to performing the tasks of the National Preventive Mechanism. Visits to all other Police units were undisturbed.

Activities carried out as part of the visit showed differences in the basic aspects of staying in such detention places, examined each time by NPM employees.

a) Living conditions

European Code of Police Ethics (Recommendation (2001) 10 of the Committee of Ministers of Member States on the European Code of Police Ethics adopted by the Committee of Ministers on 19 September 2001, No 765 on the deputy Ministers' meeting) § 56 *The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.*

2nd General Report of CPT [CPT/Inf (92)3]

§ 42 *All police cells should be of a reasonable size for the number of persons they are used to accommodate. Moreover, they should have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.*

Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.

Ordinance of the Minister of the Interior and Administration of 14 September 2001 on admissibility of using tobacco products in the premises subordinate to the minister competent for internal issues (Dz.U. No 106, item 1163)

§ 2. 1. *Smoking tobacco products within establishments is acceptable only in places determined by directors (commanders, commandants, heads) of these establishments.*

2. *Places where smoking tobacco products is permitted shall be delimited in separate and closed rooms and shall be visibly marked.*

§ 3. 1. *In establishments referred to in § 1(1), (2), (4) and (6)²⁶, smoking tobacco products by persons deprived of liberty, hereinafter referred to as "prisoners", is acceptable in cells and residence rooms.*

2. *Head of the Police or Border Guard organisational unit where facilities referred to in Paragraph 1 are located, shall determine cells and residence rooms for prisoners smoking tobacco products.*

3. *If the condition specified in Paragraph 2 cannot be met, smoking tobacco products can be accepted outside cells and residence rooms, in separated and adequately adapted rooms, in time determined by the head of the Police or Border Guard organizational unit.*

²⁶ among others, rooms for detained persons

Ordinance of the Minister of Interior and Administration of 13 October 2008 on the rooms in the Police premises for detained persons or persons brought to sober up and the regulations concerning the stay in such rooms (Dz.U. of 2008 No 192, item 1187).

Regulations concerning the stay in rooms for detained persons or persons brought to sober up (Dz. U. of 2008, No 192, item 1187)

§ 10. 5. A person placed in a room receives gratuitous personal care goods necessary for personal hygiene, including in particular a soap and a towel, for the time necessary for their use.

§ 11. 1. A person placed in a room has the right to: (...)

4) use sanitary equipment and personal care goods necessary to keep personal hygiene; (...)

9) smoke tobacco in a determined place – upon permission of a police officer on duty in a room. (...)

§ 12. 1. A detained person or a person brought to sober up, placed in a room, is obliged to: (...)

5) keep personal hygiene and the room's cleanliness; (...)

Living conditions in rooms for detained persons or persons brought to sober up within the Police organizational units visited by the National Preventive Mechanism in 2010 varied. An overall image of such places of detention is, **in the opinion of NPM, unsatisfactory and fails to comply with national and international legal standards.**

As regards the evaluation of living conditions of Chambers, vast disproportions between establishments in Bytom, Koszalin, Chełm, Jaworzno, Wrocław and Gdynia have been observed.

Technical condition of rooms for detained persons within the first three establishments has been evaluated by NPM as requiring immediate refurbishment due to their excessive wear and tear. As regards rooms in Bytom and Koszalin, appalling living conditions in those establishments **may lead to inhuman treatment of persons placed in them.** The following added to a very bad image of rooms in these premises: lack of cleanliness (Bytom)²⁷, failure to comply with legal requirements concerning the equipment and lighting which was unsuitable to read and write (Jaworzno, Koszalin)²⁸. Dreadful sanitary conditions were also found – one of washing facilities was out of order due to renovation works, while in the other one, two shower stands were out of order due to their bad condition (Chełm). The Mechanism intervened as regards bad living conditions in the abovementioned establishments by addressing competent authorities and recommending the allocation of funds for capital repairs. In the reply concerning the establishment in Bytom, the Deputy Voivodeship Police Commander in Katowice stated that due to limited funds it is impossible to undertake capital repairs in this establishment in the near future. In adequate funds are received, the relevant works will begin immediately. A similar response was sent by the Municipal Police Commander in Chełm, who informed the National Preventive Mechanism that the

²⁷ Rooms where nobody was staying during the visit were not tidied up. Full ashtrays and food leftovers were left on tables. Officers on duty could not indicate the hours when rooms are tidied up by persons employed to clean up headquarters and rooms for detained persons.

²⁸ Artificial lighting in rooms for detained persons was one low-watt bulb over the entrance door covered with a metal mesh.

renovation of bathroom facilities had been completed, whereas further repairs would be carried out after receiving necessary funds. As regards the Chamber in Jaworzno, the Voivodeship Police Commander in Katowice informed that on 1 December 2010 the facility in Jaworzno had been closed down due to the opening of a “regional” room for detained persons or persons brought to sober up within Municipal Police Headquarters in Katowice²⁹.

The representatives of the National Preventive Mechanism saw radically different conditions in rooms for detained persons in Wrocław and Gdynia. Conditions in both Chambers were recognized as model. Recommendations of the National Preventive Mechanism were only limited to, respectively: painting walls with a humidity and clarifier-resistant coating during the next renovation and a proper organisation of a first aid kit along with instructions concerning the provision of first aid³⁰.

Irregularities observed by the National Preventive Mechanism in the remaining 9 rooms for detained persons within the Police headquarters mostly concerned an incomplete equipment of those rooms (establishments in Legionowo, Nowy Dwór Mazowiecki, Warsaw I, Kutno and Środa Wielkopolska). Shortcomings observed in the abovementioned Chambers indicate the failure to comply with the provisions of the Ordinance of the Minister of the Interior and Administration of 13 October 2008 on the rooms in the Police premises for detained persons or persons brought to sober up, which explicitly specify the equipment of such rooms.

NPM employees also observed the problem of the failure to determine places where detained persons could use tobacco products (establishments in Nowy Dwór Mazowiecki, Bytom and Kutno), as well as the lack of substitute clothing for persons referred to in Article 10(2) of Regulations concerning the stay in rooms for detained persons or persons brought to sober up (hereinafter referred to as Regulations), as well as substitute clothing specified in Article 10(3) of the Regulations (establishments in Kutno and Środa Wielkopolska). As regards the aforementioned recommendations, the Poviát Police Commander in Kutno and the Poviát Police Commander in Środa Wielkopolska informed the NPM that they had undertaken actions leading to the elimination of the irregularities found.

In several other establishments NPM also recommended equipping shower stands with antislip mats (e.g. establishments in Legionowo, Nowy Dwór Mazowiecki), removal of toilet bowls from rooms for detained persons or installing fixed, easily washable and humidity and clarifier-resistant floors (Warsaw I establishment). To respect the right to intimacy of persons staying in rooms for detained persons, NPM recommended a relevant reconstruction of sanitary facilities, leading to at least partial isolation of shower stands (establishment in Nowy Dwór Mazowiecki), as well as equipping bathrooms with appropriate curtains guaranteeing intimacy at taking a shower and using a toilet (establishments in Gliwice, Koszalin and Kielce).

²⁹ Establishment of such a room was possible after the complete reconstruction of a room for detained persons and adaptation of rooms regained after a liquidated deportation centre within the Municipal Police Headquarters in Katowice. As a result of this undertaking, current capacity of the room for detained persons within Katowice amounts to 56 persons at one time.

³⁰ This recommendation, issued by the National Sanitary Inspection of the Ministry of the Interior and Administration, has been entered into post-visit information by the National Preventive Mechanism since it was found that it had not been executed.

b) Right to medical care

12th General Report of CPT [CPT/Inf (2002)15]

§ 42 *Persons in police custody should have a formally recognised right of access to a doctor. In other words, a doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests. Further, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).*

All medical examinations of persons in police custody must be conducted out of the hearing of law enforcement officials and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials.

It is also important that persons who are released from police custody without being brought before a judge have the right to directly request a medical examination/certificate from a recognised forensic doctor.

United Nations General Assembly Resolution 43/173 of 9 December 1988

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Principle 24 *A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.*

European Code of Police Ethics (Recommendation (2001) 10 of the Committee of Ministers to member states on the European Code of Police Ethics adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies)
§ 57 *Persons deprived of their liberty by the police shall have the right to (...) have a medical examination by a doctor, whenever possible, of their choice.*

Ordinance of the Minister of the Interior and Administration of 21 June 2002 on medical examination of persons detained by the Police (Dz.U. No 97, item 880)

§ 1. 1 *A person detained by the Police, hereinafter referred to as a "detained person", shall be provided with immediate first aid or undergo a necessary medical examination if the person's health or life is at risk, in particular, if such person:*

- 1) has visible bodily harm or lost consciousness,*
- 2) informs about suffering from an illness requiring permanent or periodic treatment,*
- 3) requests first aid and necessary medical examination.*

2. *Aid referred to in Paragraph 1 shall be also provided if it results from the information gathered by the Police or detention circumstances that a person might suffer from an infectious disease.*

Regulations concerning the stay in rooms for detained persons or persons brought to sober up (Dz.U. of 2008, No 192, item 1187)

§ 5. 1 *A person brought to sober up shall be immediately subject to medical examination and, in justified cases, such person shall be provided with sanitary treatment and first aid.*

§ 11. 1. *A person placed in a room has the right to: (...)*

- 3) enjoy medical care.*

Order No 1061 of the Chief Police Commander on methods and forms of executing tasks in rooms for detained persons or persons brought to sober up of 2 September 2009 (Dz.U. KGP No 12, item 56)

§ 18 *A police officer admitting a person to a room is in particular obliged to: (...)*

2) *interview: (...)*

b) *an admitted person to gain additional information concerning health condition of that*

person and the possible need to perform a medical examination.

In the course of visits, employees of the National Preventive Mechanism have found no irregularities concerning the exercise of the detained persons' right of access to a doctor. Persons detained and placed in rooms for detained persons, meeting the requirements of regulations conditioning the performance of a medical examination (visible bodily harm or loss of consciousness; conditions requiring permanent or periodic treatment; request for first aid and necessary medical examination; pregnancy; state after alcohol consumption or insobriety; influence of intoxicating or psychotropic substances; participation in a fight; symptoms of mental disorders) were subject to medical examination where necessary. The examinations were carried out by emergency care doctors, with whom the Police headquarters had concluded agreements.

In the vast majority of visited establishments, as a result of unreliable completion of medical visits register by doctors, NPM recommended to instruct doctors about the need to appropriately complete such registers, in a way allowing to establish unambiguously and without any doubts the date of consultation, personal data of a doctor providing medical services and of their recipient.

The abovementioned irregularities were found in 11 out of 15 visited rooms for detained persons (establishments in Bytom, Legionowo, Nowy Dwór Mazowiecki, Warsaw I, Wrocław, Kutno, Środa Wielkopolska, Gliwice, Koszalin, Legnica, Mogilno).

In rooms for detained persons with medical facilities³¹, a superficial control of medications stored in a first aid kit revealed medications past the expiry date (establishments in Legionowo, Kutno and Koszalin).

The reaction of the management of individual establishments to irregularities found by the Mechanism with regard to exercising the detained persons' right of to medical care must be evaluated positively. The National Preventive Mechanism was assured that officers on duty in rooms for detained persons will instruct doctors about the need for a reliable documenting of medical services provided and will remove expired medications found during the review of first aid kits in medical facilities.

c) Right to information about the legal rights

United Nations General Assembly Resolution 43/173 of 9 December 1988

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Principle 10 *Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.*

Principle 13 *Any person shall at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.*

European Code of Police Ethics (Recommendation (2001) 10 of the Committee of Ministers to member states on the European Code of Police Ethics adopted by the

³¹ Establishments in Bytom, Legionowo, Nowy Dwór Mazowiecki, Warsaw I, Wrocław, Kutno, Środa Wielkopolska, Koszalin, Legnica, Gliwice, Chełm, Jaworzno, Kielce.

Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies)

55 The Police shall, to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.

12th General Report of CPT [CPT/Inf (2002)15]

44 Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. Consequently, it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language which they understand. In order to ensure that this is done, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.

The Code of Criminal Procedure of 6 June 1997 (Dz.U. No. 89, item 555, as amended)

Article 244(2) *A detained person shall be promptly informed on the reasons for detention and of his rights, including the right to enjoy the solicitor's assistance and the right to be heard.*

Regulations concerning the stay in rooms for detained persons or persons brought to sober up (Dz. U. of 2008, No 192, item 1187)

1. 1. *A detained person or a person brought to sober up admitted to a room, shall be promptly:*

1) informed about his rights and obligations. (...)

Order No 1061 of the Chief Police Commander on methods and forms of executing tasks in rooms for detained persons or persons brought to sober up of 2 September 2009 (Dz.U. KGP No 12, item 56)

15. 1 *Obligations of the officer on duty include, in particular: (...)*

11) *making the person admitted to a room and, where necessary, on the person's request, familiar with regulations concerning the stay in the room and making a note thereof in a duty log book. (...)*

Two principal obligations rest upon the Police officers on duty in rooms for detained persons or persons brought to sober up:

The first one is an obligation to *instruct a detained person about their rights from the moment of detention*, i.e. about the right to: lodge a complaint within 7 days from detention, in which a detained person may apply for an examination of legitimacy, legality and propriety of detention (Article 244(2), 245, 246(1) and (2), 248, 278 of the Code of Criminal Procedure, Article 46(1) and (4), 47 (1) and (2) of the Petty Offences Procedure Code); lodge a complaint to the prosecutor's office against the method of detention (Article 15(7) of the Police Act); first aid and medical examination, where necessary (Article 15(5) of the Police Act); contact the consular office or diplomatic representation (Article 612(2) of the Code of Criminal Procedure). The Police officer must meet this requirement in order to require from the detained person to sign the abovementioned instruction in the protocol from detention . Along with the instruction about the abovementioned rights, an officer on duty should instruct a detained person about the fact that the establishment is equipped with a 24/7 video monitoring system (if applicable). Verification of knowledge about the said rights among detained persons interviewed by the employees of the National Preventive Mechanism demonstrated that the Police officers failed to meet the above

obligation in 5 visited establishments³². The relevant findings were reflected each time in the ex-post information from a given establishment. Heads of Chambers, in response to recommendations sent by the National Preventive Mechanism, undertook to remind Police officers about the unconditional need to fulfil this obligation.

Another obligation of Police officers on duty in rooms for detained persons or persons brought to sober up is to guarantee the exercise of *the right to get acquainted with the contents of Regulations concerning the stay in rooms for detained persons or persons brought to sober up*. Instruction on the rights should take place in conditions allowing to understand the contents of the abovementioned act. In practice, in as many as 11 Police organizational units visited by employees of the National Preventive Mechanism, this rights was provided for by, for example, placing the contents of Regulations on a corridor wall, duty officer's room wall, a hall leading to the proper part of the Chamber or on an external side of the doors to rooms for detained persons³³. Summing up, such actions must be considered as only illusory fulfilment of the said obligation. Employees of the National Preventive Mechanism pointed this fact out to the management of the visited rooms for detained persons, at the same time suggesting other ways of ensuring this right that are practiced in other Chambers (placement of Regulations on an internal side of the door to the room for detained persons, provision of Regulations to detained persons for a specified period of time, in the form protected against damage³⁴). As in the case of the right to be instructed about legal rights, responses to NPM recommendations coming from the Police organizational units contained commitments to modify methods of presenting the Regulations to detained persons.

d) Right of a detained person to inform relatives about detention

2nd General Report of CPT [CPT/Inf (1992)3]

36 The CPT attaches particular importance to three rights for persons detained by the police: (...) the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate).

The Code of Criminal Procedure of 6 June 1997 (Dz.U. No. 89, item 555, as amended)

Article 245 (2) *Provisions of Art. 261 (1) and (3) shall apply accordingly, however, the notification takes place upon the detained person's request.*

Article 261 (1) *The court is obliged to promptly notify an immediate family member of a culprit about temporary custody; it can be a person indicated by a culprit.*

§ 2. *Upon the culprit's motion, another person can be notified instead or apart from the person indicated in Paragraph 1.*

§ 3. *The Court is obliged to promptly notify an employer, school or a higher education institution about temporary custody of a culprit and, as regards a soldier, his commander.*

During each visit to rooms for detained persons within the Police organizational units, employees of the National Preventive Mechanism asked detained persons about

³² Chamber in Kutno – all (2) persons interviewed indicated the lack of such instruction; Chamber in Koszalin – 5 out of 6 persons interviewed indicated the lack of such instruction; Chamber in Gdynia - the only person interviewed indicated the lack of such instruction; Chamber in Kielce – 1 out of 2 persons interviewed indicated the lack of such instruction.

³³ Establishments in Nowy Dwór Mazowiecki, Warszawa I, Wrocław, Kutno, Koszalin, Gdynia, Mogilno, Gliwice, Chełm, Jaworzno, Kielce.

³⁴ Establishments in Legionowo and Środa Wielkopolska

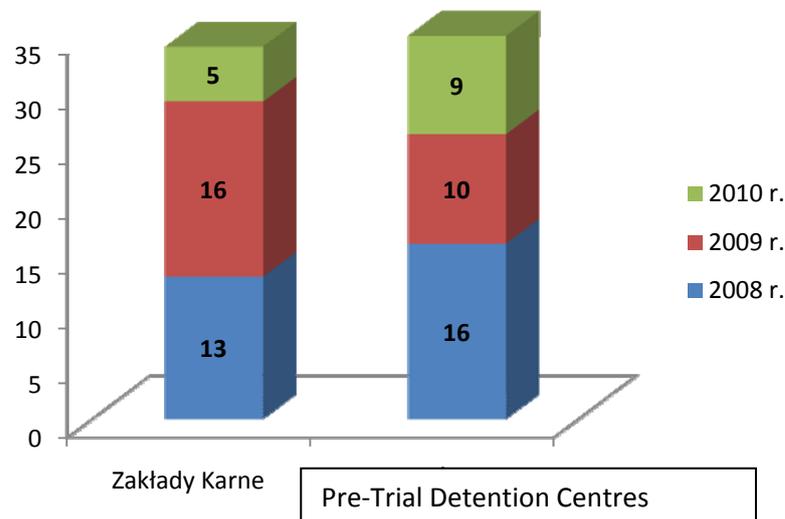
the exercise of their right to request the notification of third persons about their stay in the room for detained persons. In 7 Chambers visited by NPM, officers on duty fulfilled the obligation to inform the detained persons about the abovementioned right, while in the remaining 4 Chambers this obligation was not met³⁵.

7.2. Prisons and pre-trial detention centres

In 2010, the representatives of the National Preventive Mechanism visited five prisons³⁶, including two establishments as part of repeated visits³⁷, and nine pre-trial detention centres³⁸ (hereinafter referred to as PDC).

Figure 4.

Number of visits of the National Preventive Mechanism to prisons and pre-trial detention centres in the years 2008-2010.



1. Living conditions

Standard Minimum Rules for the Treatment of Prisoners [New York 1984]

Rule 11 *In all places where prisoners are required to live or work*

(a) *The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;*

(b) *Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.*

Rule 20.1. *Every prisoner shall be provided by the administration at the usual hours with*

³⁵ Chamber in Kutno – all (2) interlocutors indicated the lack of such instruction; Chamber in Koszalin – 5 out of 6 interlocutors indicated the lack of such instruction; Chamber in Gdynia - the only interlocutor indicated the lack of such instruction; Chamber in Kielce – 1 out of 2 interlocutors indicated the lack of such instruction.

³⁶ Prisons in Tarnów, Czerwony Bór, Hrubieszów, Goleniów, Rzeszów-Załęże.

³⁷ Prisons in Tarnów and Czerwony Bór.

³⁸ Pre-trial detention centres in Choszczno, Środa Wielkopolska, Warszawa-Grochów, Wrocław, Koszalin, Wejherowo, Zielona Góra, Gliwice, Katowice.

food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

2. Drinking water shall be available to every prisoner whenever he needs it.

European Prison Rules [Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules]

Rule 18.1 *The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.*

Rule 18.2 *In all buildings where prisoners are required to live, work or congregate:*

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards;

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

Rule 18.10 *Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others.*

Rule 19.3 *Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.*

Rule 22.1 *Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.*

2. The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.

3. Food shall be prepared and served hygienically.

4. There shall be three meals a day with reasonable intervals between them.

5. Clean drinking water shall be available to prisoners at all times.

2nd General Report of CPT [CPT/Inf (92)3]

§ 49 *Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment. In this connection, the CPT must state that it does not like the practice found in certain countries of prisoners discharging human waste in buckets in their cells (which are subsequently "slopped out" at appointed times). Either a toilet facility should be located in cellular accommodation (preferably in a sanitary annex) or means should exist enabling prisoners who need to use a toilet facility to be released from their cells without undue delay at all times (including at night).*

11th General Report of CPT [CPT/Inf (2001)16]

§ 30 *The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners. However, the imposition of measures of this kind should be the exception rather than the rule. This implies that the relevant authorities must examine the case of each prisoner in order to ascertain whether specific security measures are really justified in his/her case. Further, even when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy. Moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis.*

Executive Penal Code (Dz.U. of 1997 No 90, item 557, as amended)

Article 102. *A convict has the right to, in particular:*

1. appropriate nutrition, clothing, living conditions, rooms, as well as health services and appropriate hygienic conditions to preserve his health (...).

Article 109. (1) *A convict shall receive three meals a day, each of an appropriate nutritional value, including at least one hot meal, taking into account convict's employment and age and, where possible, religious and cultural requirements, as well as beverages to quench his thirst. A convict, whose health condition requires that, shall receive food according to physician's recommendations.*

Article 110. (1) *A convict shall be placed in a shared or single cell.*

§ 2. *The area of a cell per convict shall amount to no less than 3 m². Cells shall be equipped with appropriate accommodation devices providing a separate place to sleep, appropriate hygienic conditions, sufficient inflow of air and temperature adequate to a season, according to norms specified for residence rooms, as well as lighting adequate for reading and working.*

Ordinance of the Minister of Justice of 25 August 2003 on the regulations concerning the execution of deprivation of liberty [Dz.U. No 152, item 1493].

§ 30. 1. *A convict is obliged to keep a due personal hygiene and tidy appearance.*

2. A convict is entitled to a haircut, at least once a month.

3. A convict shall enjoy a warm bath at least once a week. A convict employed at dirty work shall enjoy correspondingly more frequent baths. A sick convict should take a bath upon physician's recommendation.

4. A female convict shall use hot water at least daily and shall enjoy a warm bath twice a week.

Technical conditions of visited rooms were very diverse. Nevertheless, in no case have the findings allowed to state that such conditions had been severe enough to indicate cruel, inhuman or degrading treatment of the detained persons. Apart from a few exceptions regarding particular pavilions, a number of visited establishments provided very good living conditions to prisoners. All cells were connected to a sewerage system and had cold water, while some of them had also hot water. A vast majority of cells had fully separated sanitary facilities. Technical condition of sanitary devices and their cleanliness did not raise any reservations. Bathrooms looked aesthetic and guaranteed standard baths, as well as changing underwear and clothes (PDCs in Środa Wielkopolska, Koszalin, Wejherowo, Zielona Góra and Goleniów).

Technical condition of cells and bathrooms in PDC Warsaw-Grochów was also evaluated as good. A similar opinion on the matter was given by NPM with regard to PDCs in Gliwice and Hrubieszów. However, in some cells the NPM saw the need for refurbishment, particularly due to damp walls and ceilings. In these units the NPM visitors recommended the continuation of repairs, ventilation improvement and window replacement. In reply to ex-post report, the Director of Pre-Trial Detention Centre in Gliwice indicated that repairs in cells and other rooms aimed at enhanced aesthetics and functionality had been regularly carried out.

In some establishments it was difficult to form an unambiguous opinion on living conditions of the entire unit, since technical conditions of particular pavilions varied greatly. For example, all cells in the prison in Rzeszów-Załęże were connected to a sewerage system, whereas hot water was available only in two residential pavilions (A and D). Ventilation, daylight and artificial light were provided. The best living conditions were observed in a residential pavilion E. Cells in pavilion C and D

did not raise any reservations either. Living conditions in other pavilions (A and B) were assessed as average. In the visiting persons' opinion, cells in these pavilions required both current and capital repairs. NPM representatives recommended that modernization works planned by the administration should be carried out.

In numerous establishments repairs were under way in cells and passageways during the visits. It needs to be noted though, that all modernization works are hampered by the lack of funds. Even in units where overall living conditions were evaluated as good by NPM, the visiting persons saw the urgent need for repairs of certain rooms within these units, e.g. capital repairs of bathrooms in the prison in Tarnów, certain kitchen facilities in PDC Warszawa-Grochów (the unit management also stated that renovation of kitchen facilities was one of the priorities, therefore the commencement of renovation works was planned for the second half of 2010).

Most ex-post recommendations concerning living conditions issued by the National Preventive Mechanism concerned PDC in Wrocław, PDC in Choszczno and the External Ward of this Detention Centre. Despite a gradual implementation of recommendations following the visit of 19-20 November 2008 and the ongoing process of infrastructure renovation in the PDC in Wrocław, repainting of walls in most cells, removal of mould and floor repairs were recommended again (only the cells refurbished after the flood of July 1997, situated on the lowest floor, as well as certain cells located on the upper floors raised no reservations). However, due to financial shortcomings, the renovation process is extremely slow. When it comes to PDC in Choszczno and its External Ward (further: EW) of this Detention Centre, it was judged legitimate to carry out modernization works planned by the unit administration both in PDC (bathroom and cells) and EW (bathroom, washroom, cells), as well as to gradually replace worn out accommodation equipment and sanitary facilities. The information obtained from the Director of the unit shows that arrangements concerning the construction of a new External Ward building are under way. Therefore, repairs in EW have been limited to most urgent ones. Moreover, the Director of PDC explained that refurbishment of all cells was planned. He also informed NPM representatives that the need to provide adequate cubic area to detained persons was an obstacle to large-scale renovations. In each case, renovation is related to the exclusion of cells under refurbishment from use, which implies the transfer of prisoners to other rooms.

When analysing the living conditions, representatives of the National Preventive Mechanism also pointed to the lack of separate lighting of sanitary facilities in cells. Already in the fourth quarter of 2009, the Human Rights Defender, performing the functions of the National Preventive Mechanism, filed a relevant petition to the General Director of the Prison Service³⁹. He indicated that persons deprived of their liberty complain that due to the lack of power supply to the cells in the nighttime, there is no light in sanitary facilities. The administration bodies of numerous establishments do not see the need for a separate lighting system for sanitary facilities, and consider the previous solutions sufficient, indicating that at nighttime sanitary facilities are lit by external, artificial lighting system from outside of the building. In other cases, the prison administration suggests that prisoners who want to use the toilet informed about it a Prison Service officer who can put on the light in

³⁹ RPO-628927-VII/09

their cell. **Such treatment of prisoners is not a solution to the problem and may even be considered degrading.** Therefore, the Human Rights Defender asked the General Director of the Prison Service to change the relevant practice. In reply, the General Director of the Prison Service assured that actions aimed at introducing separate lighting of sanitary facilities in cells would be continued, however, efficiency of these actions depends on funds allocated for renovations and modernisation.

Recommendations formulated by NPM with regard to the visited units also concerned the issue of separating sanitary facilities in cells with walls and ensuring intimacy for persons deprived of liberty (one pavilion at PDC Warsaw-Grochów, PDC Wrocław, II and III Ward of PDC in Koszalin, pavilion A of PDC in Zielona Góra, cells in residential wards I-IV and VII in Rzeszów-Załęże). **Bearing in mind the recommendations of the Committee for the Prevention of Torture in Strasbourg (CPT) and case law of the European Court of Human Rights⁴⁰, the National Preventive Mechanism would like to emphasize that the use of an open sanitary facility in a situation where more than one inmate is in the cell, may be considered degrading treatment.**

As regards living conditions, it was also recommended to equip bunk beds with ladders and safety devices or replace bunk beds with other guaranteeing the safety of prisoners (PDC in Środa Wielkopolska, PDC in Wrocław, PDC in Choszczno, PDC in Koszalin, Prison in Goleniów, Prison in Rzeszów-Załęże). As regards recommendations included in the post-visit report, the directors of units declared that they were planning to modernize bunk beds, if funds are available. They also considered their gradual replacement with new ones with adequate safety devices and ladders.

During the visits, NPM employees also drew attention to places where strip searches of inmates are carried out. The lack of a room for carrying out such searches raised reservations of the persons conducting the visit. Strip searches were carried out in empty cells, service rooms, entertainment rooms or behind curtains in corridors, which could not guarantee intimacy during such controls since these rooms were available to third persons (PDC in Gliwice, Prison in Hrubieszów, PDC in Choszczno). The National Preventive Mechanism recommended the separation of rooms for the performance of strip searches. In response, the Director of Pre-Trial Detention Centre in Gliwice informed NPM representatives that by decision of 1 October 2010 additional strip search rooms, guaranteeing intimacy during a strip search, had been designated. On the other hand, the Regional Director of the Prison Service in Lublin indicated that it was impossible to separate such rooms in the Prison in Hrubieszów. However, to avoid the access of third persons to places where strip search is performed, each time the door to service rooms is locked, which makes it impossible for anyone to get in from the corridor, whereas windows are equipped with blinds or curtains, which protect the room from being looked into from the outside.

The need to adapt cells and washrooms to the needs of the disabled persons has been found in the visited units. For example, in the External Ward of the Pre-Trial Detention Centre in Choszczno, an isolated shower stand for disabled persons was sectioned off, however, it was not properly adjusted to their needs. The adjustment of the cell for sick prisoners to the needs of disabled persons was recommended at PDC

⁴⁰ Sentence of 19 April 2001, ECHR 28524/95.

Warsaw-Grochów. Each time when the visiting persons did not find such a cell, they recommended the adjustment of at least one cell for women and men to the needs of such persons, as well as the adjustment of some shower stands (PDC in Koszalin).

The visiting persons each time verified also whether the prisoners were not accommodated in overcrowded cells. According to information obtained from Directors of visited units, overcrowding did not take place or was minimal. Prisoners were accommodated in conditions meeting the standard of 3 m² of the cell area per person, in accordance with Article 110 of the Executive Penal Code. **Findings made by NPM employees during visits often showed that overcrowding does not exist only in statistical terms. Such situation triggers other improper practices.** For example, seven entertainment rooms at the PDC in Wrocław were transformed into cells. Only one entertainment room functioned in PDC in Koszalin and entertainment rooms in Wards II, III and IV of PDC in Wejherowo were temporarily transformed into cells as well. Infirmaries, isolated cells and transition cells were also adapted for the purpose of prisoners' accommodation (PDC in Choszczno). In the prison in Rzeszów, rooms of Ward IX for prisoners posing a serious threat to the society or a threat to prison safety (the so-called "dangerous prisoners") were used for prisoners not qualified to this group. According to information obtained from the Director of the establishment, such actions were undertaken due to limited area and were supposed to provide adequate living space to prisoners. **In the view of NPM, due to special discipline and safeguards in the ward for "dangerous prisoners", prisoners from other groups should not be accommodated there.** PDC in Wejherowo did not have a ward for persons in pre-trial detention. The information provided by the Director of the establishment reveals that such practice facilitated the appropriate accommodation of prisoners according to administering bodies' recommendations and mitigates the problem of overcrowding. During the inspection, the persons visiting the establishment also found cases where prisoners from different classification subgroups were accommodated in the same cell (e.g. P-1 with P-2 and P-3, R-1 with R-2 and R-3). Such practice, **in the view of the National Preventive Mechanism, also requires verification, since it leads to an ungrounded limitation of the rights of persons qualified by the penitentiary commission to serve the penalty in half-open or open establishments.**

Due to the overcrowding observed during the NPM visit, on 1 April 2010 the Human Rights Defender filed a petition to the Minister of Justice⁴¹ requesting the Ministry of Justice to take action aimed at eliminating overcrowding in prisons and pre-trial detention centres. The Defender indicated that new legal acts⁴² had introduced procedures to prevent overcrowding in penitentiary establishments, however, the performance of this task met with considerable obstacles. In the Defender's view, constant and high financial expenditure is needed to improve conditions in the penitentiary sector. On the other hand, current jurisprudence of criminal courts and the lack of creating an adequate number of new accommodation places in prisons, as well as the application of the provisions of both abovementioned legal acts may entail the

⁴¹ RPO-515967-VII/10

⁴² Act of 9 October 2009 amending the Act – Executive Penal Code (Dz.U. of 2009, No 190, item 1475) and Ordinance of the Minister of Justice of 25 November 2009 on the mode of competent authorities dealing with the situation where the number of prisoners in prisons and pre-trial detention centres exceeds the overall capacity of these establishments in the national scale (Dz.U. of 2009, No 202, item 1564), resulting thereof.

mass adjournment of penalties of up to two years of deprivation of liberty. Moreover, during interviews with the representatives of the National Preventive Mechanism, persons deprived of liberty indicated that in order to implement regulations specifying the maximum period of staying in an overcrowded cell, numerous transfers of prisoners between penitentiary units take place, which hinder the contact with family members or exercise of other rights. In the response of 28 April 2010, the Deputy General Director of the Prison Service, authorised by the Minister of Justice, stated that the inspection made at the Central Administration of the Prison Service by the Supreme Chamber of Control indicated that as a result of the implementation of the *Programme for acquiring 17 000 places in penitentiary organisation units in the years 2006-2009*, the conditions of serving penalties by prisoners, both as regards the living space in cells and an adequate number of officers in proportion to the number of prisoners, had improved. Funds allocated to the penitentiary sector for capital expenses in 2010 will allow to complete 8 investment projects, as a result of which the number of accommodation places for prisoners will increase by 1 275. The Central Administration of the Prison Service submitted proposals for further investments under the Programme, as well as following investments resulting from the current status of penitentiary organizational units and actions related to the proper distribution and protection of prisoners. A relevant document is evaluated by the Ministry of Justice. The Ministry of Justice carries out periodic analyses of the number of inmates in penitentiary establishments and the reasons for overcrowding. The Ministry also prepared the *draft Act amending the Act on serving the deprivation of liberty sentence outside a penal institution under an electronic surveillance system*, aiming at increasing the number of convicts to serve the said penalty under an electronic surveillance system.

Summing up the issue related to overcrowding of penitentiary establishments, a fragment from concluding observations of the Human Rights Committee made after the examination of the sixth periodic report of Poland⁴³ should be cited. In point 17 of the concluding observations, the Committee expressed concern that overcrowding in pre-trial detention centres and prisons continues to be a problem. **The State party should take urgent measures to address overcrowding in detention centres and prisons, including through increased resort to alternative forms of punishment, such as electronic monitoring and parole, and reduce the use of pretrial detention.** CPT took a similar position: **To address the problem of overcrowding, some countries have taken the route of increasing the number of prison places. For its part, the CPT is far from convinced that providing additional accommodation will alone offer a lasting solution. Indeed, a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison**

⁴³ Sixth periodic report of Poland (CCPR/C/POL/6) submitted in accordance with Article 40 of the International Covenant on Civil and Political Rights, considered at the meetings of the Committee (CCPR/C/SR.2746 i 2447), that took place on 12 and 13 October 2010. Concluding observations adopted at 2766th meeting on 26 October 2010.

population at a manageable level⁴⁴. The National Preventive Mechanisms continues to monitor those issues.

2. Right to medical care

Standard Minimum Rules for the Treatment of Prisoners [New York 1984]

Rule 22 *Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.*

Rule 24 *The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.*

European Prison Rules [Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules]

Rule 42.1 *The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.*

Rule 42.2 *The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.*

Rule 42.3 *When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:*

- a) observing the normal rules of medical confidentiality;*
- b) diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;*
- c) recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;*
- d) dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol;*
- e) identifying any psychological or other stress brought on by the fact of deprivation of liberty;*
- f) isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;*
- g) ensuring that prisoners carrying the HIV virus are not isolated for that reason alone;*
- h) noting physical or mental defects that might impede resettlement after release;*
- i) determining the fitness of each prisoner to work and to exercise;*
- j) making arrangements with community agencies for the continuation of any necessary medical and psychiatric treatment after release, if prisoners give their consent to such arrangements.*

3rd General Report of CPT [CPT/Inf (93)12]

§ 33. *When entering prison, all prisoners should without delay be seen by a member of the establishment's health care service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports*

⁴⁴ § 14 of the CPT 7th General Report CPT/Inf (97) 10.

to a doctor. This latter approach could be considered as a more efficient use of available resources.

It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.

Executive Penal Code (Dz.U. of 1997, No 90, item 557, as amended)

Article 79b. (1) *A convict admitted to a prison shall be placed in a temporary cell for a necessary period, however no longer than 14 days, to subject him to initial medical examination (...).*

Article 115 (1) *A convict shall be provided free of charge health services, medications and sanitary articles (...)*

§ 6. *In particularly justified cases, Director of a penitentiary unit, having consulted a prison medical practitioner, may allow a convict, at his own expense, to be treated by a practitioner of choice, other than the one specified in Paragraph 4 and to use additional medications and other medicinal products.*

During the visits, the National Preventive Mechanism paid particular attention to respecting the prisoners' right to medical care and the functioning of prison outpatient clinics. As in the case of living conditions, the situation regarding the access of prisoners to health care varied. A factor limiting the access of prisoners to medical care is insufficient number of medical personnel employed in penitentiary establishments. In several establishments, the persons conducting the visit recommended to eliminate the shortage of staff employed at the position of doctors or nurses (PDC Warsaw-Grochów, PDC in Zielona Góra, Prison in Rzeszów-Załęże). On the other hand, prisoners raised reservations concerning the routine approach of medical practitioners to their health problems, their trivialisation and failure to take actions to better diagnose their health problems. Opinions that "a doctor examines only by looking at the patient" or performs a "remote examination" occurred. Prisoners also complained about long waiting periods for a visit to specialists and the lack of painkillers, as well as no access to vitamins (PDC in Wejherowo). Interviewed inmates stated that vitamins were unavailable at the canteen and doctors refused to provide them without clear medical indications. They also stated that they were not allowed to receive vitamins in parcels. A director of an outpatient clinic informed NPM representatives that she did not allow sending vitamins from the outside due to safety precautions, since it is virtually impossible to check the contents of pills. Therefore, the Mechanism recommended to provide prisoners with the possibility to purchase vitamins at the canteen.

In the External Ward of the Pre-Trial Detention Centre in Choszczno NPM found the irregularity consisting in paying for HIV tests in case when a prisoner wants to undergo such tests on his own initiative. If such tests are performed on the unit's initiative (e.g. after gaining significant information concerning the prisoner) - then they are performed at the unit's expense. **In the view of the National Preventive Mechanism employees, denying prisoners the HIV tests or charging them for their performance is an improper practice. In accordance with the position of NPM representatives, as well as the General Director of the Prison Service (included in the letter sent to the Office of the Human Rights Defender on 17**

November 2009), a sufficient condition to perform HIV test is a wish of the prisoner, which does not need to be justified by any medical indications.

The persons conducting the visit found that access to medical care, including specialists, was very broad in PDC in Wrocław. Prisoners confirmed this during interviews. None of the prisoners complained about difficulties in access to doctors, in particular, for the waiting period. In the opinion of the Director of the Health Care Institution, there is a need to employ general physicians in this establishment.

While discussing the medical care issues, it is worth noting the petition⁴⁵ of the Human Rights Defender to the Minister of Justice on undertaking legislative action to regulate the rules of providing health services to persons deprived of their liberty in the presence of the Prison Service officer. The Defender indicated that provision of Article 115(7) of the Executive Penal Code, in accordance with which – in principle – an officer not employed as medical practitioner in a closed establishment is present during the provision of health services, infringes the right to intimacy and dignity of prisoners, as well as the right to medical confidentiality. For these reasons, in the Defender's view, the provisions of the Executive Penal Code should precisely indicate circumstances allowing for the presence of a person not providing medical services. The current wording of regulations also raises doubts when it comes to compliance with the proportionality rule included in Article 31(3) of the Constitution of the Republic of Poland. Presence of an officer not performing a medical profession during the provision of health services should be an exception and take place only if the need to guarantee security of a person providing health services so requires. In response of 1 July 2010, the Secretary of State in the Ministry of Justice did not agree with the Defender's position in this regard, indicating, among others, that providing health services in isolation may raise concerns about prison medical personnel's security, the presence of non-medical staff is there to guarantee. Therefore, limited right to health care for the period of deprivation of liberty caused by the presence of Prison Service officers during the provision of health services to a person deprived of liberty, resulting from the Act, is indispensable to guarantee the security of medical practitioners, that is, to execute the rule of sustainable growth (Art. 5 of the Constitution). Therefore, the Secretary of State in the Ministry of Justice found no grounds to undertake legislative work to amend legal norms in force in this scope.

On 18 October 2010 the Human Rights Defender filed an application to the Constitutional Tribunal on legal regulations concerning the conditions for providing health services to persons serving the sentence of deprivation of liberty.

It is also worth noting that upon the Defender's motion, the Central Administration of the Prison Service prepared and distributed a consolidated collection of the rights of the prison health care patient to all penitentiary units countrywide, entitled *Information of the rights of a patient – a person deprived of liberty* (hereinafter referred to as *Information*). In most establishments, this document has been made available to prisoners.

⁴⁵ RPO-637905-VII/10

3. Right to contact an attorney or a proxy being a barrister or a solicitor

Convention for the Protection of Human Rights and Fundamental Freedoms

Article 6(3)(c) *Everyone charged with a criminal offence has the following minimum rights: (...) c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*

Executive Penal Code (Dz.U. of 1997, No 90, item 557, as amended)

Article 8(3) *A convict deprived of liberty can contact his attorney or proxy being a barrister or a solicitor without the presence of other persons. Correspondence with these persons shall not be subject to censorship and detention, while conversations during visits or on the phone shall not be subject to control. Supervision on the correspondence with an attorney may take place by means of opening the mail only in case of reasonable suspicion that a letter contains objects whose possession, storage, transfer, sending or turnover is banned. The opening shall be performed in the presence of a convict and the penitentiary judge shall be informed about this activity, by providing the reason and results. The provision of Article 225 § 3 of the Code of Criminal Procedure shall apply accordingly.*

Article 102 *A convict has the right to, in particular: (...)*

7) communicate with an attorney, proxy, competent probation officer and a representative of choice, referred to in Article 42 (...).

During preventive visits, the representatives of the National Preventive Mechanism pay particular attention to the way of executing the right of persons deprived of liberty to contact an attorney and a proxy (Article 8 § 3 of the Executive Penal Code). In many establishments persons in pre-trial detention stated that they had no possibility to contact an attorney by phone (e.g. PDC in Wrocław and Koszalin). Directors of units confirmed that such form of contact was temporarily unavailable.

On 24 February 2010, the Human Rights Defender filed a petition to the General Director of the Prison Service⁴⁶, in which he indicated that the provision of Article 102 (7) of the Executive Penal Code guarantees the right of a convict to contact an attorney and a proxy. It includes, above all, freedom from control in the scope of contacting frequency and respect for confidentiality. The provision of Article 8(3) of the Executive Penal Code also provides that a convict deprived of liberty can contact his attorney or proxy being a barrister or a solicitor without the presence of other persons. Correspondence with these persons is not subject to censorship and detention and conversations during visits and on the phone are not controlled. In the Defender's view, previously gained experience leads to a conclusion that the regulations concerning phone conversations with entities referred to in Art. 8 (3) of the Executive Penal Code were insufficient and should be made more precise in internal rules of procedure of penitentiary units. The vast majority of rules of procedure do not specify the procedure for the exercise of right to contact these entities. It is clear that proper fulfillment of the norm included in Art. 8 (3) of the Executive Penal Code serves the purpose of exercising the right to defence, guaranteed by Article 42(2) of the Constitution of the Republic of Poland. The Defender also addressed the Minister of Justice⁴⁷ with regard to the same case, appealing for legislative action leading to repeal

⁴⁶ RPO-111649-VII/10

⁴⁷ RPO-637904-VII/10

the complete prohibition of contacts with an attorney or a proxy, referring to the results of the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the delegation of which raised reservations concerning this prohibition in Poland in December 2009. In reply, the Minister of Justice, by letter of 5 May 2010 indicated that the prohibition specified in Article 217c of the Executive Penal Code, does not apply to contacts between the person detained on remand and his attorney or a proxy being a barrister or a solicitor, referred to in Article 215(1) of the Executive Penal Code.

In another address in this scope, the Human Rights Defender, invoking the results of visits carried out by the National Preventive Mechanism, as well as complaints lodged by persons in pre-trial detention and their attorneys at law, stated that they confirmed that the prohibition of making phone calls also covered contacts referred to in Article 215 of the Executive Penal Code. In the Defender's view, such situation is a consequence of the interpretation of regulations adopted by administrations of pre-trial detention centres, which recognize Article 217c of the Executive Penal Code as *lex specialis* in relation to solutions previously included in Article 8(3) and Article 215(1) of the Executive Penal Code, but at the same time, in accord with Article 1(2) of the Executive Penal Code, they reject the possibility to apply regulations of the Code of Criminal Procedure. Therefore, the Human Rights Defender expressed the opinion that it would be legitimate for the Ministry of Justice to introduce changes to the practice of executing pre-trial detention in compliance with the adopted interpretation of Article 217 of the Executive Penal Code. In the response of 28 June 2010, the Minister of Justice indicated that information presented by the Human Rights Defender concerning divergent interpretations of the provisions of the Executive Penal Code in the scope of contacts between a person on remand and his attorney made by pre-trial detention centres' administration officers, indicates that regulations in that scope are insufficiently explicit. Therefore, the Minister of Justice decided to address the Criminal Law Codification Commission to analyse the discussed issue and present possible proposals for amending norms in force.

4. Right to information about the legal rights

Standard Minimum Rules for the Treatment of Prisoners [New York 1984]

Rule 35 *Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.*

If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

European Prison Rules [Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules]

Rule 30.1 *At admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison.*

Rule 30.2 *Prisoners shall be allowed to keep in their possession a written version of the information they are given.*

Rule 30.3 *Prisoners shall be informed about any legal proceedings in which they are*

involved and, if they are sentenced, the time to be served and the possibilities of early release.

Executive Penal Code (Dz.U. of 1997, No 90, item 557, as amended)

Art. 79b (1) *A convict admitted to a prison shall be placed in a temporary cell for a necessary period, however no longer than 14 days, to (...) make him familiar with basic legal acts concerning the execution of a sentence of deprivation of liberty and the house rules of the prison (...).*

§ 3. *A convict shall be informed on the calculated period of serving the sentence. Acknowledgment of this information shall be confirmed by a convict's signature.*

Each time the persons conducting the visits analysed the access of persons deprived of liberty to information on house rules of a given establishment, as well as their rights and obligations. In the majority of visited units, *House Rules* had been edited in a clear manner (e.g. PDC in Środa Wielkopolska, PDC in Koszalin, Prison in Hrubieszów). While visiting cells, NPM representatives verified whether prisoners were in possession of *House Rules* texts, particularly in temporary cells. The *House Rules* were found missing in certain temporary cells of the Prison in Rzeszów.

Prisons in Goleniów and Rzeszów-Załęże were recommended to increase funds for the purchase of new books, including updated Executive Penal Codes, to libraries. During the inspection of establishments it was found that each library contained copies of outdated Executive Penal Code of 2003 and 2006.

NPM representatives also postulated the provision of access to regulations concerning the sentence of deprivation of liberty and translated to foreign languages to foreigners, alongside with extracts from the Executive Penal Code (e.g. PDC Warszawa-Grochów).

National Preventive Mechanism also recommended to inform prisoners (e.g. as part of cultural education classes) about legal and practical effects of the judgments of the Constitutional Tribunal or the European Court of Human Rights in cases directly concerning persons deprived of liberty (PDC in Wejherowo, Prison in Rzeszów-Załęże, Prison in Goleniów). Directors of penitentiary units positively responded to such recommendations.

5. Right to lodge complaints

Standard Minimum Rules for the Treatment of Prisoners [New York 1984]

Rule 36.1 *Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.*

2. It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

3. Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

4. Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

2nd General Report of CPT [CPT/Inf (92)3]

§ 54 *Effective grievance and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them both within*

and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority. The CPT attaches particular importance to regular visits to each prison establishment by an independent body (e.g. a Board of visitors or supervisory judge) possessing powers to hear (and if necessary take action upon) complaints from prisoners and to inspect the establishment's premises. Such bodies can inter alia play an important role in bridging differences that arise between prison management and a given prisoner or prisoners in general.

Executive Penal Code (Dz.U. of 1997, No 90, item 557, as amended)

Article 6. (1) *A convict may file applications to initiate proceedings before the court and take part therein as a party, as well as lodge complaints against decisions issued in executive proceedings, unless the law provides otherwise.*

§ 2. *A convict may file applications, complaints and requests to decision executing bodies.*

Article 102. *A convict has the right to, in particular: (...)*

10) *file applications, complaints and requests to bodies competent for their examination and present them, without the presence of third persons, to the penitentiary unit administration, directors of Prison Service organisational units, a penitentiary judge, a prosecutor or the Human Rights Defender.*

During the visits of the National Preventive Mechanism, the persons conducting the visits positively assessed the possibility to lodge complaints and file applications to the director of the establishment and other competent authorities by prisoners. The vast majority of complaints in visited penitentiary establishments concerned inappropriate medical care and living conditions. The remaining ones concerned the treatment by Prison Service officers, overcrowding and dealing with correspondence.

6. Treatment of persons deprived of liberty and application of coercive measures

European Convention for the Protection of Human Rights and Fundamental Freedoms [OJ 1993, No 61, item 284]

Art. 3. *Nobody can be subject to torture and inhuman or degrading treatment or punishment*
The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) [Dz.U. of 1989, No 63, item 378]

Article 1. *For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. This term does not include pain or suffering arising only from, inherent to or incidental to lawful sanctions.*

Standard Minimum Rules for the Treatment of Prisoners [New York 1984]

Rule 33 *Instruments of restraint, such as: handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:*

(a) *as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;*

(b) on medical grounds by direction of the medical officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

European Prison Rules [Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules]

Rule 64.1 *Prison staff shall not use force against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order and always as a last resort.*

Rule 64.2 *The amount of force used shall be the minimum necessary and shall be imposed for the shortest necessary time.*

Rule 65 *There shall be detailed procedures about the use of force including stipulations about:*

- a) the various types of force that may be used;*
- b) the circumstances in which each type of force may be used;*
- c) the members of staff who are entitled to use different types of force;*
- d) the level of authority required before any force is used;*
- e) the reports that must be completed once force has been used.*

Rule 66 *Staff who deal directly with prisoners shall be trained in techniques that enable the minimal use of force in the restraint of prisoners who are aggressive.*

2nd General Report of CPT [CPT/Inf (92)3]

§ 56 *The CPT pays particular attention to prisoners held, for whatever reason (for disciplinary purposes; as a result of their "dangerousness" or their "troublesome" behaviour; in the interests of a criminal investigation; at their own request), under conditions akin to solitary confinement.*

The principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary confinement-type regime, which is a step that can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.

In the event of such a regime being imposed or applied on request, an essential safeguard is that whenever the prisoner concerned, or a prison officer on the prisoner's behalf, requests a medical doctor, such a doctor should be called without delay with a view to carrying out a medical examination of the prisoner. The results of this examination, including an account of the prisoner's physical and mental condition as well as, if need be, the foreseeable consequences of continued isolation, should be set out in a written statement to be forwarded to the competent authorities.

Executive Penal Code (Dz.U. of 1997, No 90, item 557, as amended)

Article 4. (1) *Punishments, disciplinary and preventive measures shall be executed in a humane manner, respecting a convict's dignity. Torture or inhuman or degrading treatment and punishment of a convict shall be banned.*

§ 2. *A convict shall retain civil rights and liberties. Their limitation may result exclusively from the law or a valid court decision issued on its basis.*

In most visited units no reports on unacceptable forms of treatment were received. The majority of both the prisoners interviewed in private and those interviewed during visits to cells saw their treatment by Prison Service officers as

good (PDC Warszawa-Grochów, PDC in Wrocław, PDC in Środa Wielkopolska and PDC and EW in Choszczono, Prison in Tarnów). However, in several establishments, the persons conducting the visits recommended the elimination of improper forms of behaviour towards prisoners and reminded about the obligation to treat prisoners with due respect to human dignity. Prisoners reported that every now and then, cases of provocative behaviour of officers, use of vulgar vocabulary and verbal degrading (e.g. using such words as “freak” or “psycho” in presence of other prisoners) take place, mainly from prison warders (e.g. Prisons in Rzeszów-Załęże, Goleniów and Hrubieszów, PDC in Wejherowo and Koszalin).

An external expert – doctor of medical sciences – taking part in a visit to a Pre-Trial Detention Centre in Gliwice, noticed the lack of a chair for a patient, as a result of which the medical examination required a standing position. The National Preventive Mechanism recommended to abandon such practices. According to the information provided by the Director of Pre-Trial Detention Centre in Gliwice, the possibility to use a chair by prisoners visiting a doctor had been provided.

7. Disciplinary responsibility

Standard Minimum Rules for the Treatment of Prisoners [New York 1984]

Rule 31 *Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.*

European Prison Rules [Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules]

Rule 56.1 *Disciplinary procedures shall be mechanisms of last resort.*

Rule 56.2 *Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.*

Rule 57.1 *Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence.*

Rule 59 *Prisoners charged with disciplinary offences shall:*

a) be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them;

b) have adequate time and facilities for the preparation of their defence;

c) be allowed to defend themselves in person or through legal assistance when the interests of justice so require;

d) be allowed to request the attendance of witnesses and to examine them or to have them examined on their behalf;

e) have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing.

Rule 60.2 *The severity of any punishment shall be proportionate to the offence.*

Rule 60.3 *Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.*

Rule 60.4 *Punishment shall not include a total prohibition on family contact.*

Rule 60.5 *Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible.*

Rule 60.6 *Instruments of restraint shall never be applied as a punishment.*

Rule 61 *A prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority.*

Rule 63 *A prisoner shall never be punished twice for the same act or conduct.*

Executive Penal Code (Dz.U. of 1997, No 90, item 557, as amended)

Article 7 (1) *A convict may challenge the decision of the Chief Judge or an authorised judge, penitentiary judge, director of the penitentiary unit, pre-trial detention centre, as well as regional director and General Director of the Prison Service or a person administering other penitentiary unit specified by executive penal law and penitentiary commission or a probation officer, due to its incompliance with law, unless the Act provides otherwise.*

Article 142.(1) *A convict is subject to disciplinary responsibility for the intentional violation of an injunction or prohibition arising from a legal act, the rules and regulations or other stipulations adopted pursuant to a legal act or the order established in the penal institution or in the workplace, hereinafter referred to as "offence".*

§ 2. *If a disciplinary offence bears the hallmarks of criminal offence, a convict is subject to disciplinary responsibility, unless the offence was made outside the penal institution.*

Article 145. (1) *Imposing a disciplinary penalty, the degree of culpability and an individualization rule shall be taken into account, bearing in mind, in particular, type and circumstances of an act, attitude towards the offence, previous attitude, features of character and health condition of a convict, as well as educational objectives.*

§ 2. *Before imposing a disciplinary penalty an accused person shall be heard, as well as the ward supervisor's opinion, and where necessary, also the opinion of a person filing an application for imposing a penalty and opinions of other persons, as well as testimonies of the witnesses. Proceedings may take place in the presence of other convicts, if supervisory aspects do require.*

Article 146. (1) *One disciplinary penalty shall be imposed only for one offence. If a convict committed more offences before being punished for any of them, he/she should receive one punishment, proportionally more severe.*

§ 2. *Repeated imposition of a disciplinary penalty must not take place in a way that makes it a direct prolongation of serving the same penalty, unless the total period of imposed penalties exceeds a presupposed period of the penalty.*

§ 3. *In cases justified by educational aspects, the penitentiary court may refrain from a disciplinary punishment, suspend the execution of an imposed penalty for up to three months, change it into a less severe one or pardon. After the period of suspension, an imposed penalty shall be deemed executed.*

During each visit made by the National Preventive Mechanism, particular attention was paid to the question of disciplinary responsibility. It results from interviews made, that the most frequent problem is the failure to inform convicts about the possibility to challenge a disciplinary penalty imposing decision to the penitentiary court (PDC Warszawa-Grochów, PDC in Choszczno, Prisons in Goleniów and Rzeszów-Załęże). However, in the majority of visited penitentiary units, the interviewed prisoners covered by disciplinary responsibility made no complaints. These persons indicated that before the imposition of a disciplinary penalty they had been heard by the director of a unit and instructed about the possibility to challenge the court's decision.

8. Contact with the outside world

European Prison Rules [Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules]

Rule 24.1 *Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.*

Rule 24.2 *Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.*

Rule 24.4 *The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.*

Rule 24.5 *Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.*

Rule 24.6 *Any information received of the death or serious illness of any near relative shall be promptly communicated to the prisoner.*

Rule 24.7 *Whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral or for other humanitarian reasons.*

Standard Minimum Rules for the Treatment of Prisoners [New York 1984]

Rule 37 *Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.*

Rule 78 *Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.*

Rule 92 *An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.*

2nd General Report of CPT [CPT/Inf (92)3]

§ 51 *It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations. The CPT wishes to emphasise in this context the need for some flexibility as regards the application of rules on visits and telephone contacts vis-à-vis prisoners whose families live far away (thereby rendering regular visits impracticable). For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families.*

Executive Penal Code (Dz.U. of 1997, No 90, item 557, as amended)

Article 105. (1) *A convict shall have an opportunity to keep close ties with family and other close persons by visits, mail, phone conversations, parcels and money orders and, in justified cases, upon the consent of the director of a penitentiary unit, other forms of communication and to facilitate contacts with entities referred to in Art. 38 (1).*

As a result of conducted visits, in two establishments the NPM recommended the **separation and furnishing of the visiting room without a supervising officer** (PDC and EW in Choszczno, PDC in Środa Wielkopolska).

Attention was drawn to the fact that in accordance with the provisions of the Annex to the Ordinance of the Minister of Justice of 17 October 2003 on living conditions for prisoners of prisons and pre-trial detention centres⁴⁸, a separate visiting room without a supervising person should be appropriately equipped. The lack of the room for the execution of a reward provided for by Article 138 (1) (3) of the Executive Penal Code, makes it practically impossible to execute it, even if prisoners meet the requirements to be granted a reward. In reply to the abovementioned recommendation, directors of visited establishments informed that prisoners staying in units under their supervision were mostly employed outside the units and met the requirements to visit relatives outside the establishment. Therefore, unsupervised visits in a separate room are rare. However, if appropriate facilities are available in future, the establishment of such a room will be considered. Another form of contacts of convicts with the outside world are phone conversations. Time limitations concerning the pay-per-call telephones took place in all units. Prisoners stated that the calling time per one prisoner was insufficient (PDC in Gliwice) or the number of days when an prisoner may enjoy this right was too small (Prison in Goleniów).

9. Cultural activities

European Prison Rules [Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules]

Rule 27.1 *Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.*

Rule 27.2 *When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.*

Standard Minimum Rules for the Treatment of Prisoners [New York 1984]

Rule 21 *Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.*

Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

Executive Penal Code (Dz.U. of 1997, No 90, item 557, as amended)

Article 67. (3) *The impact on convicts, respecting their rights and requiring the fulfillment of their duties, shall take into account, in particular (...) cultural and sports activities, maintaining contacts with their families and the outside world and therapeutic mechanisms.*

Art. 98 *In the regular detention system, a convict may enjoy (...) cultural and sports activities.*

Article 102. *A convict has the right to, in particular: (...)*

6) *enjoy cultural and sports equipment and activities, radio, television, books and press;*

Article 135. (1) *Convicts shall have conditions for an appropriate enjoyment of pastime. To this end, cultural and sports activities shall be organized and social activity of convicts shall be stimulated.*

⁴⁸ Dz.U. of 2003, No 186, item 1820.

Due to the liquidation of entertainment rooms and transforming them into cells, a significant problem of a limited cultural offer in penitentiary establishments has appeared. The situation was the worst in the Pre-Trial Detention Centre in Wrocław. The persons conducting the visit noticed that since the previous visit in November 2008, where one of post-visit recommendations urged to intensify cultural activities, not only had the situation not improved, but it deteriorated further. All interviewed prisoners considered the situation in this regard very bad (only two entertainment rooms were functioning during the visit). As concerns the cultural offer in other establishments, half of interviewees saw the situation as bad (PDC Warszawa-Grochów, PDC in Koszalin, PDC in Wejherowo). Among critical remarks, many prisoners indicated the lack of sports activities, a repeated lack of a ball to play, lack of entertainment rooms and low frequency of organized activities. Five entertainment rooms were at the prisoners' disposal in this establishment.

The National Preventive Mechanism recommended an intensification of cultural activities organized in visited establishments and offering the prisoners sports activities outside daily walking hours.

10. Right to religious practices

European Prison Rules [Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules]

Rule 29.1 *Prisoners' freedom of thought, conscience and religion shall be respected.*

Rule 29.2 *The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.*

Rule 29.3 *Prisoners may not be compelled to practise a religion or belief, to attend religious services or meetings, to take part in religious practices or to accept a visit from a representative of any religion or belief.*

Standard Minimum Rules for the Treatment of Prisoners [New York 1984]

Rule 41 (1) *If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.*

(2) *A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.*

(3) *Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.*

Rule 42 *So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.*

Rule 78 *Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.*

Executive Penal Code (Dz.U. of 1997, No 90, item 557, as amended)

Article 106. (1) *A convict has the right to religious practices and use religious services and to take direct part in services celebrated in a prison on holidays and listen to religious*

services broadcasted by mass media and to have necessary books, periodicals and objects.

§ 2. *A convict has the right to take part in religious teaching provided in a prison, take part in charity and social activities of the church or other religious association and to individual meetings with a priest of the church or religious association he belongs to; priests can visit convicts in rooms they are staying.*

Ordinance of the Minister of Justice of 2 September 2003 on detailed rules on performing religious practices and taking part in religious services in prisons and pre-trial detention centres (Dz.U. No 159, item 1546)

1(4) *Religious practices and services of an individual character can also take part in cells, hospital rooms and sickbays provided they do not disturb safety and order of the establishment and privacy of such practices and services is guaranteed.*

As regards the prisoners' right to religious practices, the Mechanism found no irregularities in visited establishments. Prisoners have the opportunity to participate in various religious services and receive private visits of representatives of various denominations.

11. Right to education and labour

European Prison Rules [Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules]

Rules 28.1 *Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.*

Rule 28.2 *Priority shall be given to prisoners with literacy and numeracy needs and those who lack basic or vocational education.*

Rule 28.3 *Particular attention shall be paid to the education of young prisoners and those with special needs.*

Rule 26.1 *Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.*

Rule 26.7 *The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in the community in order to prepare prisoners for the conditions of normal occupational life.*

Rule 26.9 *Work for prisoners shall be provided by the prison authorities, either on their own or in co-operation with private contractors, inside or outside prison.*

Standard Minimum Rules for the Treatment of Prisoners [New York 1984]

Rule 71. (1) *Prison labour must not be of an afflictive nature.*

(2) *All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.*

(3) *Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.*

(4) *So far as possible the work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release.*

(5) *Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.*

(6) *Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.*

Rule 77 (1) *Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.*

(2) *So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.*

Recommendation of the Committee of Ministers to Member States on Education in Prison [R(89)12 (adopted by the Committee of Ministers of the Council of Europe on 13 October 1989)]

§ 1 *All prisoners shall have access to education, which is envisaged as consisting of classroom subjects, vocational education, creative and cultural activities, physical education and sports and library facilities.*

Executive Penal Code (Dz.U. of 1997, No 90, item 557, as amended)

Article 121. (1) *So far as practicable, a convict shall be able to perform work.*

§ 2. *A convict shall be employed on the basis of referral to work or shall be provided with the possibility to perform paid work under the employment contract, contract for specific work, commission contract, home based work contract or upon other legal basis.*

§ 3. *Employment of a convict shall take place upon the consent and conditions specified by the director of a penitentiary unit, providing an appropriate course of serving the sentence of deprivation of liberty.*

Article 122. (1) *At referring a convict to work, his profession, education, interests and personal needs shall be taken into account, so far as practicable. If a convict is employed on the basis of referral to work, performing work that is onerous for health requires his written consent.*

§ 2. *The work shall be provided particularly to convicts obliged to provide maintenance benefits and in a particularly unfavourable material, personal or family situation.*

Article 130. (1) *Compulsory education in the scope of primary school and gymnasium shall be performed in prisons, as well as post-primary (post-gymnasium) and vocational education shall be provided. Vocational training may be payable in total or in part.*

§ 2. *A prison is obliged to educate, as required by capacities and aptitude of juvenile convicts referred to in Paragraph 3.*

§ 3. *The priority in gaining the opportunity to be covered with post-primary (post-gymnasium) and vocational education shall be given to convicts without an acquired profession or who will not be able to work in their acquired profession, as well as those under 21.*

§ 4. *Convicts without sufficient material resources shall be provided with coursebooks and teaching aids free of charge.*

§ 5. *In justified cases, a convict can, at his own expense, educate in schools outside the prison, upon the consent of the director of the prison. Costs of convict's education outside the prison, under special circumstances, can be incurred by the prison.*

Prisoners mainly perform work for the establishment where they are held (in laundries, kitchens, workshops, warehouses, as well as cleaning works). The percentage of employed for pay in the entire populations of prisoners of the visited establishments is low. Acquiring job offers from external entities is very difficult at the moment. In the administration's view, it results mainly from the lack of sufficient professional qualifications of prisoners and a statutory requirement of providing

minimum remuneration. Such situation is particularly afflictive for prisoners with maintenance duties, the number of whom is on the rise.

Professional qualifications of prisoners are improved by vocational courses (teaching the profession of a painter, paperhanger, bricklayer, plasterer, fast-food cook, green areas gardener, blacksmith, electrician). However, the number of organized courses is very small. For example, only three courses, which were completed by 25 prisoners, were organized in Prison in Kluczbork. Five vocational courses were organized in PDC in Grójec. An innovative e-learning method at the level of an upper secondary school deserves praise. Each of 12 women included in the programme in the Pre-Trial Detention Centre Warszawa-Grochów can use a computer in an education room. They can log in to a special portal “Zeszyt w kratkę”, from where they can download educational materials to be used both during the stay in a computer room and in a cell. The course finishes with the secondary school leaving examination. This programme has a pilot character. Experiences gained from its implementation in the abovementioned unit will decide on its potential implementation in other pre-trial detention centres and prisons countrywide. Apart from the Pre-Trial Detention Centre Warszawa-Grochów, prisoners of the Pre-Trial Detention Centre Warszawa-Białoleka have also been covered by e-learning programme.

12. Penitentiary work

European Prison Rules [Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules] **Rule 8** *Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.* **Rule 72.3** *The duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance.* **Rule 74** *Particular attention shall be paid to the management of the relationship between first line prison staff and the prisoners under their care.* **Rule 75** *Staff shall at all times conduct themselves and perform their duties in such a manner as to influence the prisoners by good example and to command their respect.* **Standard Minimum Rules for the Treatment of Prisoners [New York 1984]** **Rule 46 (1)** *The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.* **10th General Report of CPT [CPT/Inf (2000)13]** **§ 23** (...) *mixed gender staffing is an important safeguard against ill-treatment in places of detention. The presence of male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention.* **11th General Report of CPT [CPT/Inf (2001)16]** **§ 26** *The real professionalism of prison staff requires that they should be able to deal with prisoners in a decent and humane manner while paying attention to matters of security and good order. In this regard prison management should encourage staff to have a reasonable sense of trust and expectation that prisoners are willing to behave themselves properly. The development of constructive and positive relations between prison staff and prisoners will not only reduce the risk of ill-treatment but also enhance control and security. In turn, it will render the work of prison staff far more rewarding.* **Order No 2/04 of the General Director of the Prison Service of 24 February 2004 on detailed rules of performing and organizing penitentiary work and scope of activities performed by officers and employees of penitentiary and therapeutic wards [Official Journal of the Central Administration of**

the Prison Service No 1, item 2]

Persons with completed higher education work in penitentiary wards of visited establishments. Psychological care is provided by 1-2 per unit (e.g. 2 psychologists per 164 prisoners of the Prison in Kluczbork, 1 psychologist per 218 prisoners in PDC in Grójec). Administration of visited units indicated that the frequent need to transfer prisoners between cells, resulting from a constantly changing number of persons in pre-trial detention and convicts, who should be separately accommodated and the need to separate smokers from non-smokers, made the penitentiary work more difficult. Preventive and educational activity with regard to addictions was carried out in visited establishments (AA meetings, education programmes, short interventions). Administration of establishments signalled problems concerning shortages of staff conducting sessions for persons addicted to intoxicants (e.g. PDC in Grójec). However, **in the view of the National Preventive Mechanism, insufficient number of rooms to conduct penitentiary work is a significant problem.** For example, in Prison in Kluczbork, the only room to conduct group cultural, sports, preventive, social or religious events was the entertainment room. The situation will improve only after populating the new pavilion.

Summing up the results of visits to penitentiary units, we need to mention actions undertaken by the representatives of the National Preventive Mechanism in Prison in Czerwony Bór, aimed at verifying the state of implementation of recommendations issued on 17-18 May 2005. Remarks lodged at that time concerned, among others, capital repairs of one of pavilions, considering the possibility of visits on Sundays and holidays, considering the extension of the visiting time, installing a pay-per-call telephone in each ward of every pavilion, considering the possibility for prisoners to be examined by a general practitioner more frequently than only once a week, making a bathroom available to working persons after their work and increasing the amount of available detergents. After the analysis of arrangements made during the visit to the unit in 2010 it was found that all recommendations issued during the previous visit had been taken into account and implemented.

7.1. Police emergency centres for children

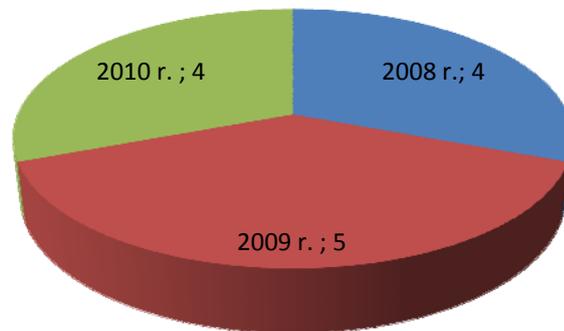
A child deprived of family environment inter alia as a result of running afoul of law requires special care and support. Difficult legal situation, detention by the Police officers, interrogation and isolation are a traumatic experience for a young person. These specific circumstances evoke fear, a sense of solitude, uncertainty and depression. A child, whose personality as well as physical and mental maturity are not fully developed, is much more susceptible to maltreatment and any kind of abuse than an adult, especially directly after detention. For that reason, the children rights should be defended regardless of the reason of detention and imprisonment.

With a view to well-being of juveniles who are detained by the Police and in order to prevent them from being tortured and subject to any other cruel, inhuman or humiliating treatment or punishment, the National Preventive Mechanism carries out

continuous inspections in police emergency centres for children (hereinafter referred to as ECC or Centre.) In total, there are 27 such centres in Poland. In 2010, the National Preventive Mechanism visited 4 of them⁴⁹.

Figure 5.

National Preventive Mechanism inspections in emergency centres for children in 2008-2009.



Main criteria for the National Preventive Mechanism during preventive visits in emergency centres for children stem from the standards specified in acts of international law⁵⁰ and internal national law⁵¹. As detention of a juvenile should be used only as a measure of last resort and for the shortest possible period of time, the first and basic issue analysed by NPM during the visit is legality and juvenile detention time in ECC. Moreover, in 2010 the visiting persons were also interested in the way how the following rights are respected: right to inform a third person about detention, right to see a doctor, protection from physical and mental abuse, as well as provision of: appropriate living conditions, appropriate personnel, cultural and educational activities, correct discipline and possibility to inform the juvenile on their rights and duties, including the right to lodge a complaint on the legality of stay.

a) Legality and duration of stay

International Covenant on Civil and Political Rights

Article 9.1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on*

⁴⁹ Police emergency centres for children in Bielsko – Biala, Gdańsk, Legnica, Rzeszów.

⁵⁰ International Covenant on Civil and Political Rights; United Nations Standard Minimum Rules for the Administration of Juvenile Justice. Resolution of General Assembly 40/33 (The Beijing Rules); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Resolution of the UN General Assembly 43/173 of 9 December 1988; Convention on the Rights of the Child; The Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures; The recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), stipulated in the report on the visit in Poland in 2004 for the Polish government (Council of Europe, Strasbourg, 11.04.2005); CPT (2005)3; Standards of the European Committee for the Prevention of Torture [CPT/Inf/E(2002)1-Rev. 2003].

⁵¹ The Act on juvenile delinquency proceedings of 26 October 1982 (Dz.U. of 2002, No 11, item . Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in the Police emergency centres for children. (Dz. U, No 10, item. Decision No 346 of KGP of 9 August 2004 on Police officers service in police children emergency centresDz. Urz. of KGP 04. 16. 101).

such grounds and in accordance with such procedure as are established by law.

Convention on the Rights of the Child

Article 37 b *No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*

The Beijing Rules

Rule 13.1. *Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.*

Rule 10.2 *A judge or other competent official or body shall, without delay, consider the issue of release.*

Recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), stipulated in the report on the visit in Poland in 2004, for the Polish government (Council of Europe, Strasbourg, 11.04.2005); CPT (2005)3.

§ 10 *Having in mind that police establishments for children are not adapted for prolonged stays, the CPT recommends that the Polish authorities make strenuous efforts to ensure that the legal provisions on the duration of custody in a police establishment for children are respected in practice..*

According to Article 40 of the Act on *juvenile delinquency proceedings* of 26 October 1982⁵²(hereinafter: j.d.p.) the Police is authorised to detain a juvenile in emergency centre for children on reasonable suspicion of having committed an offence, if there exists a justified concern that they may hide themselves or erase the traces of the offence or it is impossible to establish identity of the juvenile (then, the stay cannot exceed 72 hours.) Moreover, a juvenile can be held in ECC during an arbitrary stay outside a juvenile shelter or juvenile detention centre (up to 5 days.)

The National Preventive Mechanism paid particular attention to the period of time for which a juvenile lived in emergency children centres and the grounds on which they were held there (gathered information concerned year 2009 and 2010.) The problem of long lasting stays in this type of facilities was very important in the Police Emergency Centre for Children in Legnica, with 13% of children staying for longer than 5 days. In the Police Emergency Centre for Children in Tarnów, the longest stay of a detained person was 29 days.

In response to all the remarks of the Mechanism, the Voivodeship Police Commander in Wrocław explained that the main reason of the extended stays of detained persons is limited number of free places in juvenile shelters. It results from the lack of legal regulation determining the period of stay of a juvenile in the centre after the decision on a juvenile placement in a juvenile shelter and for that reason the juveniles have to wait for several days for being transported to another facility. **The National Preventive Mechanism is of the opinion that such a decision should be implemented immediately.**

They focused also on a juvenile placement in a Centre based on a warrant of the court concerning a juvenile compulsory appearance in a foster care centre (youth care centre and youth sociotherapy centre.) According to the Prevention Department of the Voivodeship Police Commander Office in Wrocław a relevant court warrant or decision authorizes it pursuant to Article 67 of the Act on j.d.p. (*“ When it comes to*

⁵² Dz.U. of 2002 No 11, item. 109 as amended.

enforcement proceeding, Police executes orders of a family court”.) In the assessment of National Preventive Mechanism, the grounds to place a juvenile in a Police emergency centre for children are not reflected in the principles of law.

On the other hand, there is a question of legitimacy of placement in a centre of a juvenile whose behaviour does not constitute grounds stipulated in Article 40 § 1 of the Act on j.d.p. In one of the inspected facilities (Police Emergency Centre for Children in Legnica), the visiting persons were concerned with the case of a juvenile placed in a centre for the time of court proceedings. A detailed case analysis demonstrated that it was not his first stay in the centre. Each time, the placement was based on a decision of the Regional Court. As result, in 2010 the juvenile was placed in the Police Emergency Centre for Children, for the above-mentioned reasons, 6 times, and his stay lasted 7 days on average.

The President of Regional Court in Legnica answered that it was a unique case resulting from the criminal court decision, made in relation to criminal proceedings carried out against the juvenile. The case of the juvenile was extraordinary as he was accused of attempted murder. During his stay in the Juvenile Detention Centre in X he attempted to murder one of his tutor. In result, he got an invalid sentence of 10-year-imprisonment. During the trial, from the adjudication date, the juvenile was placed in the Juvenile Shelter in Y (situated about 500km from Legnica.) For that reason, the Regional Court in Legnica was forced to place the juvenile in the Police Emergency Centre for Children in Legnica for a few days, as it was impossible to bring the juvenile each time directly from Juvenile Shelter Y. The court decided to place the juvenile in the Police Emergency Centre for Children in Legnica with view to efficient criminal proceedings and to make it possible for the juvenile to participate in the main trial. Undisturbed course of the criminal proceedings serves the interest of the harmed tutor, who became disabled and permanently incapable of work.

With view to all the above examples and on the basis on international standards, the National Preventive Mechanism stresses each time that police emergency centres for children are not suitable for longer stays of juvenile for many reasons e.g. as they are not subject to compulsory education during they stay. **In relation to that, all possible activities should be taken to place a juvenile in this kind of facilities for the shortest possible period of time.**

b) Third person notification about detention

The Beijing Rules

Rule 10.1 *Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.*

UN General Assembly Resolution 43/173 of 9 December 1988.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Principle 16.1 *Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.*

Principle 16.3 *If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians. .*

Principle 16.4 *Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.*

The Constitution of the Republic of Poland

Article 41 § 2 *Anyone deprived of liberty, except by sentence of a court, shall have the right to appeal to a court for immediate decision upon the lawfulness of such deprivation. Any deprivation of liberty shall be immediately made known to the family of, or a person indicated by, the person deprived of liberty.*

Act on Juvenile delinquency proceedings of 26 October 1982 (Dz.U. of 2002, No 11, item 109, as amended.)

Art. 40 § 4 *The Police notifies parents or legal guardians of a juvenile immediately after detention.. The notification transferred to parents or legal guardians shall contain information on the reason of detention, right to appeal and other entitlements.*

In the visited facilities, there were no irregularities concerning the realisation of the right to notify a third person on detention. The information that parents or guardians were notified, the mode (in person, by telephone) as well as the time of notification, were specified in juvenile detention protocols.

c) Informing juveniles about their rights and obligations

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. UN General Assembly Resolution 43/173 of 9 December 1988.

Principle 13 *Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.*

The Act on Juvenile delinquency proceedings of 26 October 1982 (Dz.U. of 2002, No 11, item 109 as amended.)

Art. 40 § 2 *A detained juvenile shall be immediately notified on the reason of detention, the right to appeal, mentioned in the art. 38, and other entitlements.*

Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in the Police emergency centres for children. (Dz.U., No 10 item 104 as amended.)

§ 1(2). *The manager of centre or an authorised person, immediately after placement of a juvenile in a centre, carries out a discussion during which they inform a juvenile on the rights and duties, the Schedule of activities as well as the centre regulations. A juvenile confirms it with its signature.*

In two of the visited facilities (Police Emergency Centre for Children in Gdańsk and Rzeszow) National Preventive Mechanism recorded that juveniles do not have an access to the addresses of institutions they may refer to, if they rights are not respected, i.e. to: Human Rights Defender, The Ombudsman for Children, the Helsinki Foundation for Human Rights and a family judge. Moreover, in Police Emergency

Centre for Children in Legnica, in the chapter Juvenile Rights and Duties entitled “*A juvenile has the right to (...)*” there is no mention of the entitlement to see his defender.

National Preventive Mechanism recommends to provide a constant availability of information on institutions they may refer to if their rights are not respected for each juvenile deprived of liberty. The access to the information of the institutions addresses should be unlimited regardless of the decision of police officers or other factors.

In one of the visited establishments NPM demanded a written confirmation of a juvenile under a list of their rights and duties (ECC in Bielsko-Biała.) The facility staff reported that juveniles are acquainted with their rights and duties but they do not confirm it in writing.

Police Commanders, responsible for the above-mentioned establishments informed NPM that the recommendations have been acknowledged.

Each facility created a document for juveniles, so-called: “Rights and duties of a juvenile detained in Police Emergency Centre for Children,” which each juvenile has to know.

d) Medical care

The Beijing Rules

Principle 13.5 *While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, **psychological, medical** and physical, that they may require in view of their age, sex and personalisty (13.5).*

Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), stipulated in the report on the visit in Poland in 2004, for the Polish government (Council of Europe, Strasbourg, 11.04.2005); CPT (2005)3.

§ 44 *The CPT recommends that the Polish authorities take the following steps at the police establishments for children ensure that all new arrivals are medically screened without delay and that the establishments receive regular visits by a doctor or a nurse.*

Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in the Police emergency centres for children. (Dz.U., No 10 item 104 as amended.)

§ 5(2) (6) *A juvenile during their stay in the police establishment for children should be provided with an access to: medical care, provided in the scope stipulated in national health insurance principles.*

Decision No 346 of the Chief Police Commander of 9 August 2004 on Police officers service in police children emergency centres (Dz.U. KGP 04. 16. 101)

§ 5 *A juvenile whose state of health raises any doubt should be examined by a doctor.*

§ 14 *The results of examination of juveniles placed in a centre should be registered in a register of medical consultations.*

§ 16 *Police officers are obliged to immediately inform their superior on attempted suicide, self-mutilation and an escape as well as an important life or health risk of an apprehended person and call a doctor, if needed.*

National regulations on the operation of the Police emergency centres for children do not mention the obligation to conduct psychological and medical examination of each newly arrived juvenile. There are no regular visits of a doctor or a nurse, stipulated in the recommendations of CPT. The right to medical care is realised by calling an ambulance, if the state of health of a juvenile raises any doubts.

In the majority of visited facilities, there is a doctor's room, equipped in a first-aid kit, a couch, a lavabo, a desk and a wardrobe. Only in the Police Emergency Centre in Gdansk, there is no such room and the examination is conducted in the bedroom. In the Police Emergency Centre in Rzeszów there were out-of-date drugs in the first-aid kit. National Preventive Mechanism recommended an ongoing control of drugs in the facilities.

In the Police Emergency Centre in Gdańsk, the NPM representatives recorded there was no mention on the time of a doctor examination in the book of medical consultations, whereas in the Police Emergency Centre in Gdańsk in Bielsko- Biała the name of patient was missing. In the above-mentioned cases, NPM recommended to focus on the accuracy of medical documentation. The facilities undertook activities aiming at elimination of any irregularities.

National Preventive Mechanism recommends to ensure that all new arrivals are medically screened without delay. Medical services should take place in properly prepared rooms and should be documented. Moreover, with regard to stress resulting from detention a juvenile should be under proper psychological supervision.

e) Living conditions

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 19 *Sufficient resources and staffing shall be provided to ensure that interventions in the lives of juveniles are meaningful. Lack of resources shall never justify the infringement of the human rights of juveniles.*

Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), stipulated in the report on the visit in Poland in 2004 for the Polish government (Council of Europe, Strasbourg, 11.04.2005); CPT (2005)3.

§ 44 *The CPT recommends that the Polish authorities take the following steps at the police establishments for children: improve the decoration and equipment of bedrooms, in particular by providing them with storage space for personal items; supply detained children with appropriate daytime clothes and shoes; ensure the provision of food in adequate quantity and the availability of drinking water throughout the day.);*

Extract from the 9th General Report [CPT/Inf (99) 12]

§ 29 *A well-designed juvenile detention centre will provide positive and personalised conditions of detention for young persons deprived of their liberty. In addition to being of an adequate size, well lit and ventilated, juveniles' sleeping and living areas should be properly furnished, well-decorated and offer appropriate visual stimuli. Unless there are compelling security reasons to the contrary, juveniles should be allowed to keep a reasonable quantity of personal items.*

Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in the Police emergency centres for

children. (Dz.U., No 10 item 104 as amended.)

4(1) *A juvenile during their stay in Police emergency centre obtains: food and beverages during all day, clean bed linen and personal underwear, pyjamas, a tracksuit and shoes, and cleansing means necessary for personal hygiene.*

§ 5(2). (5) *A juvenile during their stay in the police establishment for children should have an access to a shower every day.*

National Preventive Mechanism stated that the material conditions in Police Emergency Centres for Children in Gdańsk and Rzeszów are acceptable. In other facilities, the visitors had numerous reservations concerning: humidity, mould and dirt on the walls and plaster which was coming of. In the Police Emergency Centre in Legnica bad technical condition resulted in closing of one of the bedrooms (4-people), because of heavy mould and a collapsing ceiling. In response to the indication of irregularities, the Voivodeship Police Commander in Wrocław, responsible for the facility, informed that the building renovation was stopped because of the necessity to change the seat of the Police Emergency Centre for Children in Legnica. The present location was to be changed in the end of the year 2010.

In the Police Emergency Centre in Bielsko- Biała, bedrooms for juvenile were empty. If needed, mattresses, blankets and pillows were used. The condition of mattresses raised doubts of the visitors. Some of them very damaged and devoid of cotton cover. In the same establishment, juveniles had their meals in a standing position as the dining room was equipped with tall, bar tables, with no chairs.

According to National Preventive Mechanism, rooms for juvenile in police emergency centres for children should be equipped with beds in order to allow for proper night rest. What is more, the aesthetics and equipment of all other rooms used by juveniles may constitute a source of additional stress. For that reason, proper conditions for everyday activities should be provided to them.

The Police City Commander in Bielsko-Biała answered that the renovation and improvement of aesthetics of the building depends on the transfer of relevant funds. Moreover, he informed that in order to improve living conditions, 4 bedrooms were equipped with beds and the bar table in the canteen was replaced with a table with chairs.

As a result of bad living conditions stated in some centres during inspection of the National Preventive Mechanism, the Human Rights Defender in 2010 for the second time demanded the Minister of the Interior and Administration for legislative initiative to amend art. 83 § 3 of the Act on j.d.p. so as to stipulate living conditions requirements for police emergency centres for children. The Minister of the Interior and Administration replied that pursuant to Article 83 of the Act on j.d.p., police emergency centres for children are subject to a relevant minister of the interior, who sets up and liquidates police emergency centres. The said Act does not give clear grounds for the Minister of the Interior and Administration to issue a regulation on required conditions in police emergency centres for children. Bearing in mind that there is a need to regulate the question precisely, Ministry of the Interior and Administration, in a draft Act amending the Act on the Police and other acts, proposed to include a delegation for a relevant minister of the interior to determine requirements for the rooms in police emergency centres for children in form of a regulation-by

amendment to Article 15 sect. 10 of the Act of 6 April 1990 on the Police (Dz.U. of 2007, No 43, item 277 as amended.),

The proposal in question is analogical to the legal regulations concerning rooms in police organisation units for apprehended and sobering people. The issues are going to be monitored by the National Preventive Mechanism.

During its research on living conditions the National Preventive Mechanism remarked that in the Police Emergency Centres for Children in Legnica and Bielsko-Biała, juveniles (both in bedrooms and in day rooms) wore pyjamas during the day. In Bielsko-Biała a juvenile wore pyjamas with no buttons, he did not receive underwear nor a tracksuit and a toothbrush. National Preventive Mechanism stated that in the visited facilities tracksuits were available but they were not offered to the juvenile.

National Preventive Mechanism stressed each time that juvenile placed in police emergency centres should be given clothes relevant to the daytime, underwear and cleansing means necessary for personal hygiene.

In the centre in Bielsko-Biała, the NPM representatives got an information from a juvenile that as he was watching TV, tutors were smoking in their room. Such situations are unacceptable, as according to § 4(2) of the Ordinance of Minister of the Interior and Administration of 14 September 2001 on the rules of acceptability of use of tobacco products on the premises subject to the relevant minister of the interior⁵³, children placed in the Police emergency centres cannot witness smoking. In relation to that, the Police City Commander forbade to smoke in the establishment.

NPM was concerned with condition of 2 isolation rooms in the Police emergency centre in Bielsko-Biała. They were empty, with no equipment. One of them lacked working ventilation. The facility staff reported no juvenile has been placed there since 2009.

f) Protection against physical and mental abuse

Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in the Police emergency centres for children (Dz.U. No 10, item 104 as amended.)

§ 5 (1)(3) *A juvenile placed in a police emergency centre for children is entitled to: respect of their human dignity (§5(1)(2) protection from physical and mental abuse and any act of cruelty.*

§ 9 *If a juvenile behaviour may constitute a risk for his life or health or life or health of other persons, they may be placed in an isolation room in order to release the tension. A juvenile may stay in an isolation room until the tension is released. The juvenile behaviour is constantly supervised by police officers on duty. In case of particularly aggressive behaviour a doctor should be called immediately.*

The NPM representatives spoke in private with all juveniles who were present in establishments on the day of inspection. They did not report any acts of improper treatment by police officers during their detention and stay in the centre.

g) Disciplinary measures

⁵³ Dz.U. of 2001 No 106, item. 1163.

Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in the Police emergency centres for children (Dz.U. No 10, item 104 as amended.)

§6-8 When it comes to disciplinary measures an approval and reprimand are used. A juvenile may be rewarded for: positive attitude and correct behaviour, active participation in classes, keeping order and obeying the rules. A reprimand is used towards a juvenile who breaches the order and rules, has negative attitude and misbehaves.

In the visited establishments, the information on disciplinary measures is included in the document entitled Rights and Obligations of a Juvenile Detained in the Police Emergency Centre for Children. Having analysed it, the National Preventive Mechanism acknowledged that the principles concerning disciplinary measures in a centre should be rewritten. New kinds of rewards have been added to the choice of rewards and punishments stipulated in Juvenile Rights and Obligations: an approval registered in a juvenile record, an approval registered in an opinion letter sent to family courts and other foster care centres, and punishments: a reprimand registered in a juvenile acts, a notice on misbehaviour in an opinion letter sent to family courts and foster care centres and isolation. Extension of the choice of rewards and punishments are not based on legal principles as isolation of a juvenile cannot be treated as a punishment. The measure is used when a juvenile behaviour may constitute a risk for his life or health or life or health of other persons, they may be placed in an isolation room in order to release the tension.

National Preventive Mechanism recommended amendments to the content of Rights and Obligations of a detained Juvenile in the Police Emergency centre for Children. In response, the visited establishments informed on changes of the questioned principles.

h) Cultural and educational classes

The Beijing Rules

Principle 13.5 *While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical, that they may require in view of their age, sex and personality.*

Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), stipulated in the report on the visit in Poland in 2004, for the Polish government (Council of Europe, Strasbourg, 11.04.2005); CPT (2005)3.

§ 44 The CPT recommends that the Polish authorities take the following steps at the police establishments for children: develop the range of constructive activities offered to detained children, with particular emphasis on education.

§ 36 The CPT recommends that efforts be made to offer outdoor exercise on a daily basis to persons held for extended periods (i.e. 24 hours or more) in police cells. .

Ordinance of the Minister of the Interior and Administration of 21 January 2002 on detailed rules governing the stay of juveniles in the Police emergency centres for children. (Dz.U., No 10 item 104 as amended.)

§ 3 pkt 1,2 Police emergency centre for children organizes educational, cultural, sports and recreational as well as cleaning activities for juveniles in the centre. The programme

and teaching methods, mentioned in the sect. 1, as well as educational methods for a juvenile should lead to get acquainted with a juvenile and his environment, development of their interests and cooperation in a team;

§ 5(2)(1)-(4) A juvenile during their stay in the police establishment for children should be provided with an access to: everyday press, audio-visual equipment, literature, sports equipment.

According to the National Preventive Mechanism, Police emergency centre for children should provide to a juvenile proper conditions to allow them spending relevant part of a day on educational, cultural and sports classes, including 1 hour of outdoor activities. Passive leisure in bedrooms should be limited to minimum.

In the visited establishments, such activities take place in day rooms. Some of them were very well-equipped: in table-tennis table, TV, books, board games (e.g. puzzle, domino), art materials.

However, very often the NPM founds that there were no additional classes for juveniles. For example, in the Police Emergency Centre for children in Bielsko-Biała, the NPM representative got an information that a juvenile did not participate in any classes, but watched TV for an hour, he did not have any outdoor activities. He admitted, he would like to read a paper but he did not know that they are available. In the assessment of the National Preventive Mechanism watching TV by a juvenile does not constitute educational classes. They demanded to include in files of each juvenile information concerning their stay in ECC, in particular, notes on important discussions carried out by a tutor as well as types of educational, cultural and sports activities they participated in.

In the centre in Rzeszów, as a result of shortage of staff, the majority of classes was not realised, the cultural classes took place in day rooms, equipped only in: a bench, a table and TV. They were not decorated e.g. posters or wallpapers. For that reason, the number of juveniles placed there is limited, as there is only few police officers to work there. In result, there is only one police officer on duty, who is incapable of realisation of all entitlements of a juvenile due to other duties. In relation to that, the National Preventive Mechanism recommended to provide juveniles with other, than a day room, cultural, educational and sports classes, and to increase the number of staff to two police officers on duty so as to enable realisation of other activities.

The Police City Commander in Rzeszów informed that until March 2011, the number of staff will be increased.

i) Staff

The Beijing Rules

Principle 12.1 *In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose*

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 19 *Sufficient resources and staffing shall be provided to ensure that interventions in the lives of juveniles are meaningful. Lack of resources shall never justify the*

infringement of the human rights of juveniles.

Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), stipulated in the report on the visit in Poland in 2004, for the Polish government (Council of Europe, Strasbourg, 11.04.2005); CPT (2005)3.

§ 44 The CPT recommends that the Polish authorities take the following steps at the police establishments for children: ensure that staff working at police establishments for children benefit from suitable initial and ongoing training.

Extract from the 9th General Report [CPT/Inf (99) 12]

§ 26 In this respect, the CPT wishes to stress that, regardless of their age, persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender; these principles apply a fortiori in respect of juveniles

§ 33 All such staff, including those with purely custodial duties, should receive professional training, both during induction and on an ongoing basis, and benefit from appropriate external support and supervision in the exercise of their duties. Moreover, the management of such centres should be entrusted to persons with advanced leadership skills, who have the capacity to respond in an effective manner to the complex and competing demands placed upon them, both by juveniles and by Staff.

Decision No 346 of the Chief Police Commander of 9 August 2004 on Police officers service in police children emergency centres (Dz.U. KGP 04. 16. 101)

§ 2 During their stay in a centre Police officers-tutors (At least two police officers on duty) are responsible for juveniles. They should have at least college degree and pedagogical training.

§ 3 In centres where girls are placed, all searching activities should be done by women police officers.

In two facilities (the Police emergency centres in Bielsko-Biała and in Legnica) not all police officers completed pedagogical courses, which means they did not meet the requirements stipulated in the principles of law. In the Police Emergency Centre in Legnica, the staff participates in an annual training on the specificity of work in police emergency centres. The European Committee for the Prevention of Torture considers the work with juveniles deprived of their liberty to be particularly demanding. For that reason, the staff appointed to cope with the task should be carefully selected in respect of personal maturity and ability to meet the challenges of the work and to take care of this age-group. In particular, the staff should be committed to the work with young people and able to manage and motivate juveniles, for whom he is responsible for⁵⁴. Taking into consideration this criterion, the National Preventive Mechanism recommended that police officers taking care of juveniles in the Police Emergency Centre for Children in Bielsko-Biała should take part in relevant trainings, extending their knowledge and skills in the area of pedagogy. The Police City Commander in Bielsko-Biała informed that the police officers employed as tutors in the Police Emergency Centre for Children taking care of juveniles were going to undergo pedagogical training. Police officers working in the facility participate in an ongoing internal professional training including practical aspects of dealing with juveniles as well as knowledge on legal principles of juvenile proceedings. (Due to professional

⁵⁴ Extract from the 9th General Report [CPT/Inf (99) 12] 33.

limitations as well as lack of knowledge and legal regulations, there are no trainings for police officers on educational work with juveniles organised by external entities.)

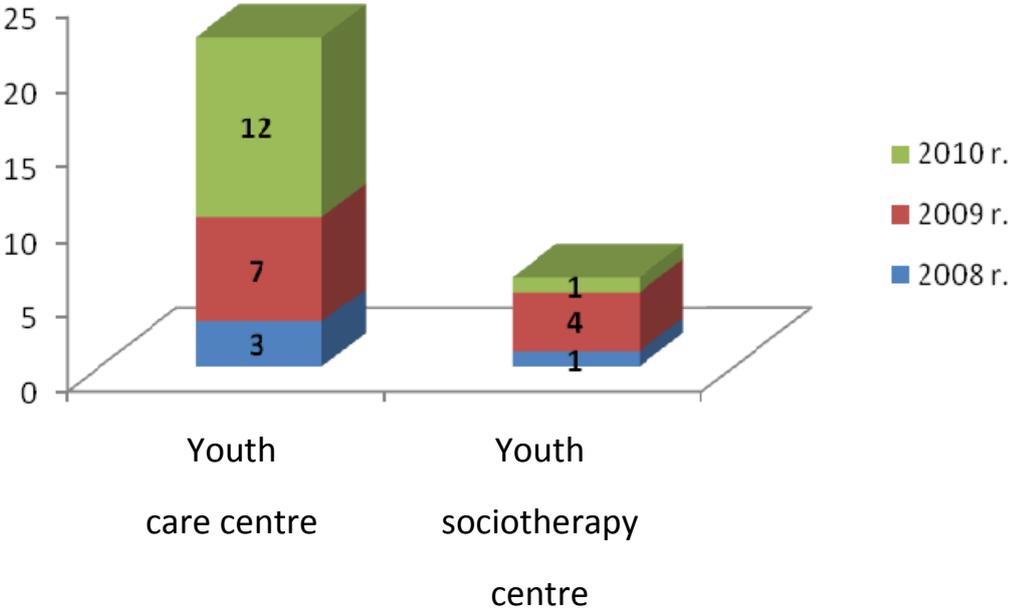
The visiting persons focused also on gender diversity of staff, who in the opinion of the Committee for the Prevention of Torture prevents ill-treatment in such facilities especially as far as juveniles are concerned. The presence of both male and female staff may have positive influence in respect of care and the sense of normality in such a facility. Gender diversity of staff allows for their proper deployment for problematic tasks as for examples searches⁵⁵.

NPM reported that in the visited facilities searchings are made by a person of the same gender. In case if only male police officers are on duty, a girl is searched by a woman police officer from other division.

7.2. Youth care centres and youth sociotherapy centres

In 2010, the representatives of the National Preventive Mechanism visited twelve youth care centres⁵⁶ (hereinafter referred to as YCC, centre), including one centre within return visit and one youth sociotherapy centre⁵⁷ (hereinafter: YSC, Centre.)

Figure 6. Number of visits of the National Preventive Mechanism in Youth Care Centres and Youth Sociotherapy Centres in 2008-2010.



⁵⁵ Ibid, 26.

⁵⁶ Youth Care Centre: No 1 in Łódź, No 3 in Łódź, in Jaworze, in Załusków, in Trzcina, in Różanystok, in Jawor, in Strzelno, in Bielice, in Szczecin, in Kielce, in Podzamcze.

⁵⁷ Youth Sociotherapy centre: No 2 in Łódź.

In relation to arising doubts concerning the entitlements of the National Preventive Mechanism to visit this type of Centres, at the beginning, it should be mentioned that according to the OPCAT definition, juveniles deprived of their liberty are not only juveniles staying at juvenile detention centre, youth shelters and the Police emergency centres for children, but also minors placed in youth care centres and youth sociotherapy centres. Although YCC and YSC are in fact not closed establishments, juveniles are placed there by a decision of a court which, on the grounds of the Article 6 of the Act of 26 October 1982 on juvenile delinquency proceedings (hereinafter referred to as: j.d.p.), decided on use of a disciplinary measure of isolation. Therefore, the minors residing in those centres are included in the definition of persons deprived of their liberty, and the centres themselves are classified as places of detention, specified in Article. 4 of the OPCAT.

a) Living conditions

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 63.1 *The accommodation provided for juveniles, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation. Specific minimum requirements in respect of these matters shall be set in national law.*

Principle 65.2 *Juveniles shall have ready access to sanitary facilities that are hygienic and respect privacy.*

Principle 68.1 *Juveniles shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the activities that they undertake in the institution.*

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§ 29 *A well-designed juvenile detention centre will provide positive and personalised conditions of detention for young persons deprived of their liberty. In addition to being of an adequate size, well lit and ventilated, juveniles' sleeping and living areas should be properly furnished, well-decorated and offer appropriate visual stimuli. Unless there are compelling security reasons to the contrary, juveniles should be allowed to keep a reasonable quantity of personal items.*

§ 30 *The CPT would add that, in certain establishments, it has observed a tendency to overlook the personal hygiene needs of female detainees, including juvenile girls. For this population in custody, ready access to sanitary and washing facilities as well as provision of hygiene items, such as sanitary towels, is of particular importance. The failure to provide such basic necessities can amount, in itself, to degrading treatment.*

During their inspection, the National Preventive Mechanism representatives focused on different living conditions in the establishments. In several of them, juveniles were provided with good living conditions, living areas were mostly renovated, they were clean and tidy, in bedrooms as well as in the corridor (e.g. YCC No 1 in Łódź, YSC No 2 in Łódź, YCC in Podzamcze.) The other needed a general or partial renovation of sanitary facilities (YCC No 3 in Łódź, YCC in Jawor, YSC in Różanystok, YSC in Jaworze,) a kitchen, a gym (YCC No 2 in Łódź) and inmates bedrooms (YCC in Załuskowo.) In the Youth Care Centre in Szczecin the visiting

persons recommended installation of working ventilation in some bedrooms because of mould on ceilings. The principal of the establishment assured that rooms will be successively renovated and re-painted. With regard to respect of the right to intimacy of a juvenile, the visiting persons recommended installation of fixed partitions between showers and curtains. They focused their attention on the necessity to add missing ladders and upper security bars in beds (e.g. YCC No 3 in Łódź, YCC No 1 in Łódź, YCC in Jaworze, YCC in Załuskowo, YCC in Kielce, YCC in Podzamcze.) According to the information given by the Principal of the Salesian Care Centre in Różanystok, during vacations, all necessary renovation works, mentioned in the mechanism representatives report, have been completed.

During a return visit in the Salesian Care Centre in Trzcinec, it has been stated that all recommendation concerning renovation works has been realised in the establishment. It was recommended to provide clothes relevant to the current season. In the opinion of the visiting persons, the juveniles clothes (shorts, T-shirts) were not warm enough for winter. They demanded to furnish bedrooms with bedside lamps, as juveniles used lamps made by themselves as an additional source of light in their rooms. The principal of the establishment informed the visiting persons that he planned to buy additional tracksuits for inmates and that the purchase of bedside lamps was under consideration.

When it comes to living conditions, financial participation of foster care centres (children's home) in living cost of inmates in youth care centres constitutes a very important issue. During the Mechanism inspection, the principals of centres often stressed that children's homes after the placement of a juvenile in YCC or YSC evade responsibility for providing them basic living conditions (food, clothes.) Therefore, on 12 February 2010, the Defender requested the Minister of Labour and Social Policy⁵⁸ to present his position concerning the foster care centres evasion of providing proper living conditions and basic accessories to inmates, placed at the same time in educational establishments. In response, the Minister informed that issues related to provision of clothes, cosmetics, pocket money etc. and payment for inmates food, were agreed between the Minister of Labour and Social Policy and the Minister of National Education. The issue was consulted with the Ministry of Finance and the Ministry of Justice. They agreed a common position, which is now transferred to powiat family assistance centres. The placement of a juvenile in youth sociotherapy centre or youth care centre does not cancel previous decision on placement in foster care centre. The establishment is still obliged to fulfil its duties in place of parents, such as satisfying living needs. Its powiat, a juvenile come from, which pays for a child placed in the establishment based on a decision of a court.

b) Protection from humiliating treatment or punishment

UN General Assembly Resolution 43/173 of 9 December 1988:

Principle 30. 1. *The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.*

2. *A detained or imprisoned person shall have the right to be heard before disciplinary*

⁵⁸ RPO-637047-VII/10

action is taken. He shall have the right to bring such action to higher authorities for review.

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 11 Sanctions or measures shall be imposed and implemented without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status (principle of non-discrimination).

Principle 66.3 Suitable clothing is clothing that is not degrading or humiliating and is adequate for the climate and does not pose a risk to security or safety.

Principle 81 All juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air, if the weather permits.

Principle 88.2 Particular attention shall be paid to protecting vulnerable juveniles and to preventing victimisation.

Principle 89.2 Searches shall respect the dignity of juveniles concerned and as far as possible their privacy. Juveniles shall be searched by staff of the same gender. Related intimate examinations must be justified by reasonable suspicion in an individual case and shall be conducted by a medical practitioner only.

Principle 94.1 Disciplinary procedures shall be mechanisms of last resort. Restorative conflict resolution and educational interaction with the aim of norm validation shall be given priority over formal disciplinary hearings and punishments.

Principle 95.4 Segregation for disciplinary purposes shall only be imposed in exceptional cases where other sanctions would not be effective. Such segregation shall be for a specified period of time, which shall be as short as possible. The regime during such segregation shall provide appropriate human contact, grant access to reading material and offer at least one hour of outdoor exercise every day if the weather permits.

Principle 95.2 Collective punishment, corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman and degrading punishment shall be prohibited.

Principle 95.6. Disciplinary punishment shall not include a restriction on family contacts or visits unless the disciplinary offence relates to such contacts or visits.

Principle 95.7 Exercise under the terms of Rule 81 shall not be restricted as part of a disciplinary punishment.

Convention on the Rights of a Child adopted by the United Nations on 20 November 1989.

Art. 37 States Parties shall ensure that:

a. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;

b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances

d. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or Her liberty before a court or other competent, independent and

impartial authority, and to a prompt decision on any such action.

Article 40(1) *States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

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§ 35 *Places where juveniles may be deprived of their liberty almost invariably make provision for disciplinary sanctions to be applied to inmates who misbehave.*

In this connection, the CPT is particularly concerned about the placement of juveniles in conditions resembling solitary confinement, a measure which can compromise their physical and/or mental integrity. The Committee considers that resort to such a measure must be regarded as highly exceptional. If juveniles are held separately from others, this should be for the shortest possible period of time and, in all cases, they should be guaranteed appropriate human contact, granted access to reading material and offered at least one hour of outdoor exercise every day.

All disciplinary procedures applied to juveniles should be accompanied by formal safeguards and be properly recorded. In particular, juveniles should have the right to be heard on the subject of the offence which they are alleged to have committed, and to appeal before a higher authority against any sanctions imposed; full details of all such sanctions should be recorded in a register kept in each establishment where juveniles are deprived of their liberty.

The persons visiting the establishments were informed about cases of improper treatment of juveniles. For example, in the Youth Care Centre in Załusków, four juvenile girls reported they were insulted by the tutors. The Mechanism representatives recommended to monitor the reported cases and encouraged to start preventive measures. Aggressive staff reactions and attitudes on their part were also communicated by the inmates of the Youth Sociotherapy Centre No 2 in Łódź, however they refused to give further information on the case. It was recommended to eliminate such behaviour. Also, in the Youth Care Centre in Strzelno, the tutors were said to use physical violence and insults. The verification of these complaints was commissioned to the head of the establishment. The heads of the above-mentioned establishments informed the National Preventive Mechanism that the issue of improper treatment of inmates was discussed directly with the tutors concerned during tutor council meeting.

The visiting people were highly concerned with the situation in the Salesian Care Centre in Trzcinec. Despite having fulfilled all the recommendations, made by the National Preventive Mechanism, after their visit on 3-4 March 2009, the juveniles are still maltreated. During the inspection of bedrooms in the establishment in Trzcinec, the inmates informed the NPM representatives they were treated improperly by a staff member. During individual interview, they complained about a tutor, who insulted and abused them physically. The mechanism representatives organised meetings with juveniles from 3 groups living in the establishment in order to determine the group of people who suffered as a result of the staff member behaviour. During the meeting, the majority of boys confirmed that the accusations were true, whereas only four of them made an official complaint. The others refused for fear of

being victimised. A part of the inmates, who spoke during the meetings, confirmed the accusations but did not regard this kind of behaviour as improper. They admitted they witnessed physical violence as well as public insulting, but they did not realise this behaviour is inadmissible. The accusations formulated by four inmates in their official complaints concerned oral insultations towards juveniles and their families, made by the staff member in public, e.g. during meetings in dining room or room searches. Three boys reported they were hit by the staff member. The complaints constituted a notification of alleged crime and were passed to the Regional Prosecutor's Office in Drawsko-Pomorskie. On 24 May 2010, the Prosecutor's Office refused to initiate an investigation on the matter. The reason for refusal was that the inmates withdrew their complaints during conducting evidence activities. The Prosecutor's Office remarked that the tutor behaviour may constitute only a typified crime, determined in Article 216 § 1 of the Penal Code and art. 217 § 1 of Penal Code - insulting and violation of bodily integrity, which constitute a prosecution on private accusation. With regard to the above findings, in the opinion of the Prosecutor's Office there were no reasons to prosecute this offence *ex officio*. Thus, they refused to prosecute the offence.

The head of the establishment, in his reply to the National Preventive Mechanism remarks, informed that after the Human Rights Defender Office representatives visit in 2009, he talked to the concerned staff member twice. He stressed that the opinion from the after-visit report: „cases of improper treatment have not been eliminated yet," should be verified by relevant judicial decisions. According to the suggestions of the Zachodniopomorskie Chief Education Officer, the testing authority in consultation with the establishment head decided to suspend the concerned staff member until the issue is resolved. Then, the staff member was dismissed by the Youth Care Centre head.

In response to the Mechanism representatives recommendations, the following actions were taken in order to improve the resocialising effects: The tutors board of the establishment and the school met 3 times so as to analyse the pedagogical situation, they made a series of meetings for inmates to explain their rights in the context of duties and respect for the rights of others. The establishment head submitted a notification to the Regional Prosecutor's Office in Drawsko-Pomorskie against three inmates, who insulted tutors and violated human dignity of the tutors and other inmates. The Prosecutor's Office refused to initiate a prosecution.

On various occasions, during the visit, examples of non-statutory penalties were stated, e.g. to spend a night in the kneeling position by a wall, to spend a night in a standing position on a corridor, for not respecting lights-out, to clean a toilet ceiling, push-ups for curling, slaps in the face, no walks, wearing pink tights (destined for runaways) and collective responsibility (e.g. to close a living room, no permit to leave the establishment, no computers, pocket money reduction, deep knee bends for all group, a financial penalty of PLN 5 for all inmates for losing a key to the establishment head room .) Some inmates complained about the practice of collective responsibility even if the guilty person is known⁵⁹. **In the opinion of the National Preventive Mechanism representatives, a slap in the face is humiliating and**

⁵⁹ The irregularities concerned YCC No1 in Łódź, YCC in Jaworze, YCC No 2 in Łódź, YSC in Rózanystok, YCC in Strzelno, YCC in Jawor, YCC in Bielice, YCC in Podzamcze, YCC in Szczecin.

should not happen. The staff of this kind of establishments should behave in such a way so as to avoid conflicts and eliminate bad examples from the environments, they were raised in. In response to the recommendations of the National Preventive Mechanism, the heads of the mentioned establishments informed the Human Rights Defender that the collective responsibility shall not be used.

Moreover, the catalogue of disciplinary measures of some establishments, have been extended by cleaning of the establishment (e.g. YCC No 1, YCC No3 and YSC No 2 in Łódź) or physical exercises. **In the opinion of the Mechanism representatives, this kind of punishments may cause a distortion of image of work as a form of self-maintenance and physical exercise as a form of getting fit.** For that reason, such provisions were erased from internal regulations. In response, the head of the Youth Sociotherapy Centre in Łódź informed that during their meeting the juveniles decided there is no need to erase the punishment consisting in working for the establishment from the punishment regulation. In relation to that Mechanism presented its position on the matter once again and, in consequence, this punishment was removed from the punishment regulation. It was erased from regulation also in other establishments, where it was recommended by the Human Rights Defender.

When it comes to the recommendations concerning non-statutory punishments, the head of the Silesian Care Centre in Rózanystok explained that daily reports and class register are constantly controlled in order to check if the punishments in use are in compliance with the punishment and awards regulation. The head tried also to examine the issue of inhuman punishment, reported to the visiting persons. In his opinion, it is improbable that an inmate was punished with „kneeling all night by a wall”, as such a punishment could be perceived by supervisors and could be communicated to other persons, including school staff. The head stated that there are no grounds to believe that kneeling all night was used as a punishment. The same situation concerned cleaning of toilet ceiling, which is impossible to verify without detailed information. Despite explanations presented by the head of the establishment, in the opinion of the Mechanism representatives, the number of signals they got during interview with inmates of SCC in Rózanystok means it is possible that this kind of punishment might have been used.

The head of YCC in Podzamcze promised to focus in particular on the way the juveniles are treated by their tutors.

c) Coercive means in use

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 90.1 *Staff shall not use force against juveniles except, as a last resort, in self-defence or in cases of attempted escape, physical resistance to a lawful order, direct risk of self-harm, harm to others or serious damage to property.*

Principle 90.2. *The amount of force used shall be the minimum necessary and be applied for the shortest time necessary.*

Principle 93.1. *If in very exceptional cases a particular juvenile needs to be separated from the others for security or safety reasons, this shall be decided by the competent authority on the basis of clear procedures laid down in national law, specifying the nature of the separation, its maximum duration and the grounds on which it may be imposed.*

Act on juvenile delinquency proceedings (Dz.U. of 2002, No 11, item 109)

Art. 95a (...)

§ 4. *Coercive measures available when dealing with juveniles:*

- 1) *physical force;*
- 2) *Isolation;*
- 3) *Restrains or straitjacket*

§ 5. *The coercive means mentioned in 4 item2 and 3 are used only against a juvenile in juvenile detention centre or youth shelter, exclusively in the case determined in § 1 item.*

As far as having recourse to coercive measures (physical violence) is concerned, no irregularities were found in the visited establishments. It should be mentioned that The Human Rights Defender in his speech of 21 December 2009 addressed to the Minister of National Education ⁶⁰, stressed the need to undertake relevant legislative activities leading to the formulation of a regulation stipulating conditions and measures concerning coercive means used against juveniles placed in detention centres, shelters, care centres and sociotherapy centres. As the former regulation lost its legal force on 22 August 2009, the Deputy Secretary in the Ministry of National Education informed that relevant action have already been taken . On 6 August 2010, a draft ordinance was submitted to the Office of the Human Rights Defender. The regulation is very similar to the former regulation of 2005. The majority of former solutions is comprised in the regulation, which is binding from 7 March 2011.

d) Right to information

UN General Assembly Resolution 43/173 of 9 December 1988.

Principle 13 *Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.*

Principle 33 *A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.*

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 33.1 *Juveniles shall be informed, in a manner and language they understand, as to how the community sanction or measure imposed on them will be implemented and about their rights and duties in regard to its implementation.*

Principle 62.3 *At admission, the rules of the institution and the rights and obligations of the juvenile shall be explained in a language and manner that the juvenile understands.*

Principle 62.4 *Notification of the placement of the juvenile, information on the rules governing the institution and any other relevant information shall be given immediately to the juvenile's parents or legal guardians.*

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§ 36 *Effective complaints and inspection procedures are basic safeguards against ill-treatment in juvenile establishments.*

Juveniles should have avenues of complaint open to them, both within and outside the

⁶⁰ RPO-629059-VII/09

establishments administrative system, and be entitled to confidential access to an appropriate authority.

The CPT also attaches particular importance to regular visits to all juvenile establishments by an independent body (for example, a visiting committee or a judge) with authority to receive - and, if necessary, take action on - juveniles complaints and to inspect the accommodation and facilities.

Every juvenile shall be informed about the regulations governing the establishment immediately on their arrival. In the majority of the visited establishments, it was confirmed during individual interviews with juveniles. They confirmed they know their rights and duties as well as the establishment charter or regulations and they have unlimited access to it (e.g. YCC in Bielice, YCC in Jaworze.) If juveniles appeared not to be acquainted with the establishment regulations, the visiting persons recommended talks on rights and duties of juveniles as well as the ways they work in practice (e.g. YSC No2 in Łódź.)

The National Preventive Mechanism representatives verified on each occasion the availability of information on the institutions defending juvenile rights, such as: The Human Rights Defender, the Ombudsman for Children, the Helsinki Foundation for Human Rights and a family court. It was necessary to recommend to make contact data of these institutions available in an accessible place (YCC No 3 in Łódź, YCC No 1 in Łódź, YCC in Załusków, YSC in Różanystok, YCC in Strzelno, YCC in Szczecin, YCC in Kielce, YCC in Podzamcze.) **Even if inmates can talk about their problems, conflicts during community meetings or directly to their tutors, psychologists, it is highly important to offer an alternative way of appeal to an external institution. In the opinion of the Mechanism supervisors, juveniles should have a constant access to the above-mentioned addressed.**

In response to the recommendations of the Mechanism representatives, the heads of the visited establishments informed that the information on the institutions of appeal have been made available.

In 2010, on request of the Human Rights Defender, a guide for inmates presenting information on legal situation of a juvenile placed in the establishment, their rights and duties as well as institutions of appeal in case of breach of their rights⁶¹ was published. On August 2010, the Education Development Centre published the guide entitled „*Rights. Obligations. A guide for YCC and YSC inmates.*”

e) Right to contact with the outside world - protection of family ties

⁶¹ Human Rights Defender's speech of 22 July 2009, RPO-614994-VII/09

UN General Assembly Resolution 43/173 of 9 December 1988.

Principle 15 *Communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.*

Principle 16 *If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians..*

Principle 19 *A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.*

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 32 *The implementation of community sanctions or measures shall respect as far as possible the existing constructive social networks of the juveniles and the relations to their families.*

Principle 83 *Juveniles shall be allowed to communicate through letters, without restriction as to their number and as often as possible by telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive regular visits from these persons.*

Principle 84 *Arrangements for visits shall be such as to allow juveniles to maintain and develop family relationships in as normal a manner as possible and have opportunities for social reintegration.*

Principle 85.1 *Institutional authorities shall assist juveniles in maintaining adequate contact with the outside world and provide them with the appropriate means to do so.*

Principle 86.1 *As part of the normal regime, juveniles shall be allowed regular periods of leave, either escorted or alone. In addition, juveniles shall be allowed to leave the institution for humanitarian reasons.*

Principle 86.2 *If regular periods of leave are not practicable, provision shall be made for additional or long-term visits by family members or other persons who can make a positive contribution to the development of the juvenile.*

UN Standard Minimum Rules for the Administration of Juvenile Justice.

Principle 26.5 *In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.*

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§ 34 *The CPT attaches considerable importance to the maintenance of good contact with the outside world for all persons deprived of their liberty. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources*

The active promotion of such contacts can be especially beneficial for juveniles deprived of their liberty, many of whom may have behavioural problems related to emotional deprivation or a lack of social skills.

The CPT also wishes to stress that a juvenile's contact with the outside world should never be restricted or denied as a disciplinary measure.

Act on juvenile delinquency proceedings

Article 66 § 3 *Letters of a juvenile placed in an establishment, centre or shelter, determined in § 1, except for the letters sent and received from national and local authorities, in particular the Human Right Defender and the Ombudsman for Children and the authorities set up on the basis of international agreements on the protection of human rights ratified by the Republic of Poland, may be controlled by the establishment principal or a person*

authorised by them, exclusively if there is a possibility it may constitute risk for legal order, security of the establishment, centre or shelter, public morality or may negatively influence the trial or the process of resocialisation of a juvenile. If case of such content, a letter shall not be delivered, which is communicated to a juvenile and relevant family court, with justification. Juvenile has the right to submit a complaint according to art.38 38. The letter is included in personal files of a juvenile.

§ 4 A principal of an establishment, centre or shelter, mentioned in § 1 may restrict or deny a juvenile contact with outsider world, only if such contact poses risk for legal order, the security of the establishment, centre or shelter or may influence negatively the trial or the process of resocialisation of a juvenile.

As a result of analysis of internal documentation of the visited establishments for juveniles, the National Preventive Mechanism representatives recommended to create internal regulation regarding the rules of visits in the establishment. In the Salesian Care Centre in Rózanystok, the visit rules were not specified in the charter nor in the regulation. Only the inmates rights comprised the right to contact family and to protect family ties, with respect to limitations resulting from the charter and internal regulations of the establishments and the right to family and friends visits, if there are no counter-indications on the part of a court. There was no special place for visitors. In the Youth Care Centre in Jawor, the question of visits was resolved in a similar way. The NPM representatives assessed positively regulation of the Youth Care Centre in Szczecin, which inter alia did not restrict the inmates contact with their families and friends.

In response to the information on the activities undertaken by National Preventive Mechanism in the Salesian Youth Centre in Rózanystok, the establishment head informed on creation of regulation on visit rules. It is available on the establishment website.

The visiting persons were concerned with the provision of one of regulations that an inmate is entitled to have guests only if they behave well. The only reasons for limiting or banning an inmate contact with outside world were enumerated in Article 66 § 4 of act on juvenile delinquency. Therefore, it is impossible to limit this right based on the behaviour.

The NPM representatives were also concerned with the over-control of inmates letters in the visited establishments (YCC in Szczecin, YCC in Kielce, YCC in Podzamcze.) The juveniles who were interviewed stated that all letters they send and receive are controlled. The practice constitutes a breach of Article 66 § 3 of the Act on juvenile delinquency. The establishments heads promised to respect the provision based on the relevant recommendation.

In one of the establishments, the inmates admitted during an interview that they may use a telephone in the tutor's Office (YCC in Bielice.) The National Preventive Mechanism representatives were informed that there is a time limit for inmate calls to

parents. Depending on the level of resocialisation, the implementation of the right and time limit were different. **Therefore, the National Preventive Mechanism acknowledges that inmates should have the right to call their parents regardless of the level of resocialisation.**

f) Right to medical care

UN General Assembly Resolution 43/173 of 9 December 1988.

Principle 24 A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 62.5 As soon as possible after admission, the juvenile shall be medically examined, a medical record shall be opened and treatment of any illness or injury shall be initiated.

Principle 69.2 The health of juveniles deprived of their liberty shall be safeguarded according to recognised medical standards applicable to juveniles in the wider community.

Principle 70.1 Particular attention should be paid to dealing with health hazards linked to deprivation of liberty.

Principle 70.2 Special policies shall be developed and implemented to prevent suicide and self-harm by juveniles, particularly during their initial detention, segregation and other recognised high risk periods.

Principle 71 Juveniles shall be given preventive health care and health education.

Principle 75 Health care in juvenile institutions shall not be limited to treating sick patients, but shall extend to social and preventive medicine and the supervision of nutrition.

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§ 40 Further, it is axiomatic that all juveniles deprived of their liberty should be able to have confidential access to a doctor at any time, regardless of the regime (including disciplinary confinement) to which they may be subjected.

Appropriate access to a range of specialist medical care, including dentistry, should also be guaranteed

§ 41 The task of the health care service in any place of detention should not be limited to treating sick patients; it should also be entrusted with responsibility for social and preventive medicine. In this connection, the CPT wishes to highlight two aspects of particular concern as regards juveniles deprived of their liberty, namely, inmates' nutrition and the provision of health education.

Health care staff should play an active part in monitoring the quality of the food which is being provided to inmates. This is particularly important for juveniles, who may not have reached their full growth potential. In such cases, the consequences of inadequate nutrition may become evident more rapidly - and be more serious - than for those who have reached full physical maturity.

It is also widely recognised that juveniles deprived of their liberty have a tendency to engage in risk-taking behaviour, especially with respect to drugs (including alcohol) and sex. In consequence, the provision of health education relevant to young persons is an important element of a preventive health care programme. Such a programme should, in particular, include the provision of information about the risks of drug abuse and about transmittable diseases.

Medical care offered to inmates did not raise any doubts. Also, inmates themselves assessed it positively. The way it is organised varies depending on establishment. In the majority of cases it is a nurse or a doctor, working in an establishment infirmary who is responsible for medical care e.g. a nurse 1-5 times a week, a doctor 1-2 times a week (YCC No 2 in Łódź, YCC No 3 in Łódź, YCC in Bielice.) If needed, inmates may consult a doctor in regional institutions of general practice, within NFZ (National Health Fund). Psychotropic drugs are prepared by a nurse and taken in the presence of tutors. In emergency, an ambulance is called.

If there is no medical staff in the establishments, in case of health problems, inmates are transported to the nearest health care institution. Drugs prescribed by a doctor are portioned by tutors and given to juveniles according to prescription (YCC in Kielce).

However, **in the opinion of the National Preventive Mechanism representatives, it is indispensable to employ a nurse on regular basis, taking into account self-harm and psychotropic drug therapy.**

g) Educational and therapeutic interventions

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 50.1 *Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending.*

Principle 77 *Regime activities shall aim at education, personal and social development, vocational training, rehabilitation and preparation for release. These may include: .*

- a. schooling;*
- b. vocational training;*
- c. work and occupational therapy;*
- d. citizenship training;*
- e. social skills and competence training;*
- f. aggression management;*
- g. addiction therapy;*
- h. individual and group therapy;*
- i. physical education and sport;*
- j. tertiary or further education;*
- k. debt regulation;*
- l. programmes of restorative justice and making reparation for the offence;*
- m. creative leisure time activities and hobbies;*
- n. activities outside the institution in the community, day leave and other forms of leave; and*
- o. preparation for release and aftercare.*

UN Standard Minimum Rules for the Administration of Juvenile.

Principle 26.1 *The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.*

9th General Report on the CPT's activities [CPT/Inf (99) 12]

§ 28 *In the view of the CPT, all juveniles deprived of their liberty because they are accused or convicted of criminal offences ought to be held in detention centres specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with the young.*

Moreover, the care of juveniles in custody requires special efforts to reduce the risks of long-term social maladjustment. This calls for a multidisciplinary approach, drawing upon the skills of a range of professionals (including teachers, trainers and psychologists), in order to respond to the individual needs of juveniles within a secure educative and socio-therapeutic environment.

Ordinance of the Minister of National Education and Sport on types and detailed rules of operation of public establishments, children and juvenile living conditions in these establishments and the amount and rules of payment made by parents (Dz.U. of 2005, No 52, item 467)

§ 13 *The responsibilities of youth care centre include elimination of reasons and symptoms of social maladjustments and preparation of inmates to life in compliance with social and legal norms.*

§ 15 *The responsibilities of youth sociotherapy centre include elimination of reasons and symptoms of social maladjustments and preparation of inmates to life in compliance with social and legal norms.*

§ 16 *The responsibilities stipulated in § 13 and 15 are realised through:*

- 1) Organisation on educational, preventive, therapeutic and resocializing activities allowing acquisition of life skills facilitating proper functioning in family and social environment;*
- 2) Help in educational and professional career planning, with regard to the possibilities and interests of inmates;*
- 3) Support for parents (legal guardians) within acquisition of skills which are indispensable to support the development of children and youth, particularly in respect of potential opportunities and elimination of risky behaviour.*

§ 18 *Youth care centre and youth sociotherapy centre allow: (..)*

1) Participation in individual or group specialistic activities within pedagogical therapy, psycho-educational classes, revalidating, socio-therapeutic, social prevention and resocialization.

The inmates in the visited establishments are offered a variety of therapeutic, preventive, learning and resocialising activities. When it comes to therapeutic activities juveniles may participate in e.g. training of abilities to control behaviour related to alcohol and drugs (TUKAN), Aggression Control Training, Assertiveness Training, Bibliotherapy, Rational Behaviour Therapy, Minesweeper School (a programme for aggressive youth), a programme on counteracting social exclusion among children and youth (We're together), relaxation, music therapy, imaginative training, autogene training, movement workshops and sociotherapeutic activities. There is usually a psychologist, working full time. There are also didactic classes,

concerning, in particular, acquisition of life skills, professional and educational career planning taking into account inmates competence and interests⁶².

There are several interest groups to help inmates develop their interests: Modelling, theatre, technical, musical, sports, touristic, fishing, literature and voluntary service. The latter means execution of different tasks pro publico bono to the benefit of the local community i.e. Clearing roads of snow, cleaning of cemeteries or preparation of anti-alcohol posters for local liquor store. They organise activities: Sports, artistic, trips and events e.g. St. Andrew's Day, Santa Clause's Day, Earth's Day, the Spring Festival.

Every tutor is obliged to elaborate individual resocialising programme for inmates. The programme is elaborated in cooperation with an inmate, a psychologist and a tutor. Its implementation is verified by a psychologist, who based on surveys and interview with inmates gathers all information on emotional lacks and needs of inmates. Then, they are used for creation of preventive and therapeutic programmes. A psychologist is also obliged to elaborate an extended psychological diagnosis.

h) Right to education

UN General Assembly Resolution 43/173 of 9 December 1988.

Principle 28 *A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.*

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 78.4 *Juveniles shall be enabled to continue their schooling or vocational training while in detention and those who have not completed their compulsory schooling may be obliged to do so.*

Act on juvenile delinquency proceedings

Article 66 § 1. *The organisation and educational system in youth care centres, youth sociotherapy centres and youth shelters as well as juvenile detention centres should allow for individual influence on juveniles depending on their personalistly and educational needs.*

Ordinance of the Minister of National Education and Sport on types and detailed rules of operation of public establishments, children and juvenile living conditions in these establishments and the amount and rules of payment made by parents

§ 17. 1 *Youth care centre and youth sociotherapy center should comprise at least one of the following schools:*

- 1) Special primary school;*
- 2) Special college;*
- 3) Special secondary school.*

2. *If it is justified, it is possible for youth sociotherapy centre to operate with no school.*

The visited establishments provide education on primary, lower secondary and sometimes vocational level (preparation for the professional tailor or cook.) A juvenile placed in the establishment may continue their education. Classrooms, in the majority of the visited establishments are clean and tidy, equipped with relevant furniture

⁶² Exemplary lesson subjects concerned: how to write a CV, covering letter, how to get an ID, basic cooking skills, conflict resolution.

(desks and chairs) and different tools (maps, charts, electronic devices.) There is a gymnasium in vicinity of the establishments for sport activities. The interviewed inmates were enthusiastic about the work of tutors. The vast majority of the interviewed inmates said that their tutors are eager to help them with their homework.

i) Right to religious practices

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 87.1 *Juveniles' freedom of thought, conscience and religion shall be respected.*

Principle 87.2 *The institutional regimen shall be organised so far as is practicable to allow juveniles to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.*

Principle 87.3 *Juveniles may not be compelled to practise a religion, follow a belief, attend religious services or meetings, take part in religious practices or to accept a visit from a representative of any religion or belief*

Convention on the Rights of a Child adopted by the United Nations on 20 November 1989.

Art. 14 item 1 *States Parties shall respect the right of the child to freedom of thought, conscience and religion.*

Act on juvenile delinquency proceedings

Article 66a. § 1. *A juvenile has the right to practise their religion and participate in services organised in detention centres and shelters on holy days, to listen to a mass transmitted by mass media and to have in their possession books or literature relating to their religion or beliefs and artefacts.*

§ 2. *A juvenile is allowed to participate in religion classes, manager in the establishments determined in art. 66 § 1, charity or social activities of a church or other religious group as well as to individual meetings with a priest of church or a representative of other religious group, they belong to. . Clergymen may visit juveniles in the areas they live in.*

In several establishments the right to participate in religious services was not respected. In one of the visited establishments, all interviewed juveniles admitted that during their stay in the establishments they cannot participate in a holy mass (YCC in Podzamcze.) Whereas, the head of the establishment informed that participation in a mass is organised by a tutor on prior request of inmates. With regard to complaints, The YCC head promised to examine the issue. In another establishment, the inmates informel that it is possible to participate in a mass only for these girls who obtain a relevant score in internal ranking (YCC in Szczecin.) The head of the establishment informed the Mechanism representatives that it happend that some inmates were refused to participate in a service for fear of their escape. The visiting persons recommanded to allow inmates participating in the religious services. The reccommandation has been implemented.

j) Right to leisure and recreation.

Recommendation of the Committee of Ministers CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 80.2 *The institution shall also provide meaningful activities on weekends and holidays.*

Principle 81 *All juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air, if the weather permits.*

Ordinance of the Minister of National Education and Sport on types and detailed rules of operation of public establishments, children and juvenile living conditions in these establishments and the amount and rules of payment made by parents

§ 18 *Youth care centre and youth sociotherapy centre allow: (..)*

2) To participate in sports, tourist, recreational and cultural activities; at least 4 hours a week.

Inmates are allowed to pass their leisure time on sports, cultural and educational activities. Living rooms are equipped with TV sets, DVD players, numerous didactic tools, board games, art. materials and other toys. Very often they are allowed to play basketball, volleyball, football, handball and go to the gym. Moreover, inmates may take part in sports events and tourist excursion. The establishments, deprived of relevant sport facilities, may use the grounds and gyms of neighbouring schools (e.g. YCC Jawor.)

In some establishments, due to lack of proper regulation juveniles could not go outside for several weeks.

, especially in winter (e.g. YCC No 1 in Łódź, YCC in Strzelno, YCC in Szczecin.) However, after relevant recommendation, action were taken in order to allow juveniles to participate in outside activities every day. In the opinion of the visitors, the establishment should guarantee a possibility of spending free time outside. It is beyond any doubts that such a stay and activities are good for young people's health.

The Human Rights Defender, who has been performing the tasks of the National Preventive Mechanism since 2008 wants to regulate the issue of juveniles' access to outdoor activities in a proper act on juvenile delinquency proceedings as one of the most basis right in case of isolation. On 12 August 2009, the Human Rights Defender requested the Minister of National Education⁶³ to consider the need for legislative initiative aimed at formulating rules and conditions of ensuring the right to everyday outdoor activities for juveniles in youth care and sociotherapy centres,. In response, the Human Rights Defender was informed that the binding regulation provides for the outdoor activities for juveniles. The physical education is conducted within general programme teaching and teaching plans of relevant types of schools, making part of youth care and sociotherapy centres. Moreover, teachers and tutors elaborate for inmates individual educational and resocialising plans, taking into account inter alia outdoor sports and recreation activities. However, the results of the inspection carried out by the National Preventive Mechanism show that the above-mentioned legal attitudes are not sufficient for the resolution of the problem. The possibility to spend time out very often depends on individual consent of inmates and the physical education is not always conducted outside the building. The limitations very often result from non-statutory disciplinary measures, related to the prohibition to

⁶³ RPO- 614994-VII/09

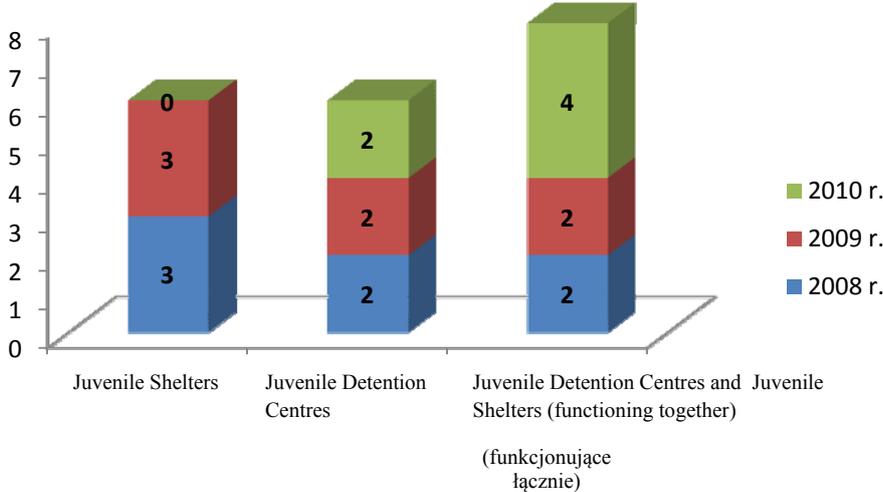
go outside the building. They are in opposition to the European Rules for Juvenile Offenders subject to Sanctions or Measures (5 November 2008)- Rule 81. In the opinion of the National Preventive Mechanism, the legal regulations should guarantee for inmates placed in youth care and sociotherapy centres the right to benefit from everyday outdoor walk lasting one hour.

As a result, it has been established that the amended Ordinance of the Minister of National Education and Sport on the framework charters of public establishments⁶⁴ shall provide for 1 hour everyday outdoor walk for inmates. The Human Rights Defender will strive for regulating this question in the Act on juvenile delinquency.

7.3. Juvenile shelters and juvenile detention centres.

In 2010, the National Preventive Mechanism representatives visited two juvenile detention centres (hereinafter referred to as: JDC, Detention Centre), including one under the revisit and four juvenile detention centres and juvenile shelters functioning together (hereinafter referred to as: JDC and JS, establishment)⁶⁵.

Figure 7. Number of visits of the National Preventive Mechanism in Juvenile Shelters and Juvenile Detention Centres in the years 2008 – 2010.



Most irregularities as regards respecting the rights of the juveniles were found by the National Preventive Mechanism members in the Juvenile Detention Centre and Juvenile Shelter in Białystok. The actions undertaken in the Juvenile Detention Centre in Białystok in 2010 were aimed at verifying the implementation of recommendations made by the NMP representatives, following the visit in 2008. Within the framework of the re-inspection carried out, the Mechanism representatives found that the majority of irregularities related to the operation of the establishment, disclosed during the

⁶⁴ of 2005, No 52, 466
⁶⁵ Juvenile Detention Centre and Juvenile Shelter in: Laskowiec, Mrozy, Pszczyna, Warsaw-Falenica and Juvenile Detention Centre in: Studzieniec and Białystok.

previous visit, had not been removed. What is more, after analysing the documentation and interviewing the juveniles and the director of the establishment it was determined that the juveniles in the Detention Centre were subject to degrading treatment and punishment. Most reservations were reported as regards placing the juveniles in transition rooms – without any legal basis, for a long period of time, under inappropriate living conditions.

The director of the Detention Centre and the head of the District Educational Supervision Team in Białystok mostly did not share the post-visit findings and recommendations and introduction of some changes suggested by the NMP representatives encountered difficulties. In the connection with the above, the Human Rights Defender applied to the Ministry of Justice for addressing the disputable – in the opinion of the director of JDC in Białystok - issues.

The report on the actions carried out in the Juvenile Detention Centre in Białystok, submitted to the Ministry of Justice, became a basis for initiating the explanatory proceedings at the Department of Decision Implementation and Probation of the Ministry of Justice, during which the director of the Detention Centre and the head of the District Educational Supervision Team in Białystok were asked for explanations. Also, the Chief Judge of the District Court in Białystok supervising the establishment was obliged to submit an opinion on the way of the implementation of the tasks by the Detention Centre. The Chief Judge of the District Court in Białystok issued a favourable opinion on the work of the director of the establishment, confirming the validity of four charges only, with the information about their immediate removal. In addition, within the framework of his powers, he obliged himself to order a comprehensive visit to the Juvenile Detention Centre in Białystok. Once the Department of Decision Implementation and Probation received the information in the course of the explanatory proceedings, it was decided to inspect the establishment, in order to assess the state of the implementation of recommendations issued by the National Preventive Mechanism as a result of the visit to the Detention Centre carried out in 2008 and to compare the results with the evaluation made during reinspection in 2010. Based on the inspection results, it was found that a number of charges specified in the post-visit information of the NMP representatives on the irregularities in the functioning of the establishment had been confirmed. Therefore, the director of the establishment was obliged to remove the irregularities found.

a) Living conditions

Recommendations CM/Rec(2008)11 of the Committee of Ministers to the Member States on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 63.1 *The accommodation provided for juveniles, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation. Specific minimum requirements in respect of these matters shall be set in national law.*

Principle 65.2 *Juveniles shall have ready access to sanitary facilities that are hygienic and respect privacy.*

Principle 68.1 *Juveniles shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the activities that they undertake in the*

institution.

Ninth General Report [CPT/Inf (99) 12] and 30

§ 29 *A well-designed juvenile detention centre will provide positive and personalised conditions of detention for young persons deprived of their liberty. In addition to being of an adequate size, well lit and ventilated, juveniles' sleeping and living areas should be properly furnished, well-decorated and offer appropriate visual stimuli. Unless there are compelling security reasons to the contrary, juveniles should be allowed to keep a reasonable quantity of personal items.*

§ 30 *The CPT would add that, in certain establishments, it has observed a tendency to overlook the personal hygiene needs of female detainees, including juvenile girls. For this population in custody, ready access to sanitary and washing facilities as well as provision of hygiene items, such as sanitary towels, is of particular importance. The failure to provide such basic necessities can amount, in itself, to degrading treatment.*

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. General Assembly resolution 45/113

Principle 31 *Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.*

Principle 32 *The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities.*

Principle 34 *Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.*

Principle 36 *To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.*

Principle 37 *Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available at any time.*

The living conditions prevailing in juvenile detention centres and juvenile shelters visited in 2010 by the National Preventive Mechanism were diversified, however, the overall image of those establishments should be assessed as good. NMP's reservations were raised by the conditions in transition rooms: the rooms had no furniture, to the floor only wooden boards were fixed on which the juveniles put their mattresses made available to them at night (e.g. JDC in Laskowiec). Also, the condition of the sanitary installation at the transition rooms and isolation room in that establishment was assessed as bad. In addition, the NMP members pointed out the need to conduct general or emergency renovations of some of the rooms for the juveniles (JDC in Studzieniec, JDC in Falenica) and workshop rooms (JDC in Studzieniec). In the majority of the visited establishments, it was recommended to equip shower cabins with anti-slip mats and curtains as well as with missing ladders and protections in the upper beds (eg. JDC in Laskowiec, JDC in Studzieniec, JDC in Mrozy).

The recommendations of the National Preventive Mechanism in terms of the living conditions were positively accepted by the directors of: JDC and JS in Laskowiec, JDC in Studzieniec, JDC and JS in Mrozy and JDC and JS in Warsaw-Falenica.

b) Protection against degrading treatment or punishment

United Nations General Assembly Resolutions no. 43/173 of 9 December 1988.

Principle 30 1. *The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.*

2. *A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.*

Recommendations CM/Rec(2008)11 of the Committee of Ministers to the Member States on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 11 *Sanctions or measures shall be imposed and implemented without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status (principle of non-discrimination).*

Principle 66.3 *Suitable clothing is clothing that is not degrading or humiliating and is adequate for the climate and does not pose a risk to security or safety.*

Principle 81 *All juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air, if the weather permits.*

Principle 88.2 *Particular attention shall be paid to protecting vulnerable juveniles and to preventing victimisation.*

Principle 89.2 *Searches shall respect the dignity of juveniles concerned and as far as possible their privacy. Juveniles shall be searched by staff of the same gender. Related intimate examinations must be justified by reasonable suspicion in an individual case and shall be conducted by a medical practitioner only.*

Principle 94.1 *Disciplinary procedures shall be mechanisms of last resort. Restorative conflict resolution and educational interaction with the aim of norm validation shall be given priority over formal disciplinary hearings and punishments.*

Principle 95.4 *Segregation for disciplinary purposes shall only be imposed in exceptional cases where other sanctions would not be effective. Such segregation shall be for a specified period of time, which shall be as short as possible. The regime during such segregation shall provide appropriate human contact, grant access to reading material and offer at least one hour of outdoor exercise every day if the weather permits.*

Principle 95.2 *Collective punishment, corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman and degrading punishment shall be prohibited.*

Principle 95.6 *Disciplinary punishment shall not include a restriction on family contacts or visits unless the disciplinary offence relates to such contacts or visits.*

Principle 95.7 *Exercise under the terms of Rule 81 shall not be restricted as part of a disciplinary punishment.*

Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989

Art. 37 *States Parties shall ensure that:*

a. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

d. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Art. 40 point 1: *States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

Ninth General Report [CPT/Inf (99) 12]

§ 35 *Places where juveniles may be deprived of their liberty almost invariably make provision for disciplinary sanctions to be applied to inmates who misbehave. In this connection, the CPT is particularly concerned about the placement of juveniles in conditions resembling solitary confinement, a measure which can compromise their physical and/or mental integrity. The Committee considers that resort to such a measure must be regarded as highly exceptional. If juveniles are held separately from others, this should be for the shortest possible period of time and, in all cases, they should be guaranteed appropriate human contact, granted access to reading material and offered at least one hour of outdoor exercise every day. All disciplinary procedures applied to juveniles should be accompanied by formal safeguards and be properly recorded. In particular, juveniles should have the right to be heard on the subject of the offence which they are alleged to have committed, and to appeal before a higher authority against any sanctions imposed; full details of all such sanctions should be recorded in a register kept in each establishment where juveniles are deprived of their liberty.*

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. General Assembly resolution 45/113

Principle 66 *Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.*

Principle 67 *All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.*

Principle 70 *No juvenile should be disciplinarily sanctioned except in strict accordance*

with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

As was said at the beginning, the most serious irregularities constituting degrading treatment or punishment were found by the National Preventive Mechanism representatives in the Juvenile Detention Centre in Białystok.

An example was "the rigour applied with respect to the juveniles staying in the transition rooms which resembled military discipline. The following descriptions of behaviours noticed during the visits illustrate the atmosphere among the juveniles placed in the transition rooms:

- ✓ when the Centre's employee was entering the room, the juvenile was obliged to stand at attention and utter the greeting: "*Good morning, sir. The juvenile (name and surname) reports his presence in the transition room and wishes you a nice day*". In the visiting persons' opinion, such a command does not involve any educational justification. Its purpose is not to teach the juvenile good manners or salutations but to stress his absolute subordination to the Centre's employees;

- ✓ during their stay in the transition rooms, (newly admitted) juveniles had to wear pyjamas all day and night. They did not get tracksuits which they could wear during the day;

- ✓ the rule was that during the day the boys could not lie on the bed, they could only stand, walk and sit on a chair;

- ✓ at night, the juveniles relieved themselves into a bucket standing in the room;

- ✓ if the juveniles did not conform to the strictly mentioned rules of conduct and those included in the Rules of procedure, they were punished. However, applied disciplinary measures were not reflected in the legislation. For example, on the day of the visit, one of the boys placed in the transition room, due to the use of improper language towards the guard was deprived of all the things that constituted the furniture of the room, i.e.: bed, table, chair, books, press. He slept on the floor by two nights, with only a blanket available. This practice was confirmed by other juveniles who also had experienced that type of punishment. The interviewed juveniles said that they had had no access to press and books. It should be definitely stated that such behaviour is unacceptable⁶⁶. "

In addition, the information about bad treatment or punishment, obtained by the National Preventive Mechanism members indicated, *inter alia*, application of collective responsibility (JDC in Laskowiec) or punishments other than set forth in the rules of procedure (e.g. JDC in Studzieniec). Highly alarming were the signals on the

⁶⁶ RPO -597667-VII-7020/11006.3/10/JJ.

use of violence in the form of pushing, pulling and beating by the personnel (JDC in Pszczyna, JDC in Laskowiec and JDC in Studzieniec)⁶⁷.

The visiting persons also recommended to eliminate interference in the intimacy of the juveniles by installing a monitoring system covering with its range the sanitary facility (JDC in Mrozy). In addition, through the Campaign Against Homophobia, the NMP representatives received the information on punishing, by isolation, the juveniles demonstrating behaviors being evidence of homosexual orientation. It was recommended to eliminate such practices. In the NMP representatives' opinion, treating the juveniles in this way is unacceptable. Punishing the juveniles for various kinds of practices likely to prove their sexual orientation (e.g. writing love letters to the people of the same sex) is unjustified. These behaviours should not be treated as disciplinary offence.

In most of the discussed centres, the juveniles felt safe and had a good opinion on the educational and psychological staff. However, some juveniles indicated the existence of the so-called second life (JDC in Laskowiec) and experiencing violence from the part of other juveniles (JDC in Mrozy, JDC in Studzieniec, JDC in Pszczyna), as well as access to alcohol or drugs in the establishment (JDC in Studzieniec, JDC in Falenica).

Degrading treatment or punishment may also be putting on the board the information on punishing a given person (JDC in Studzieniec)⁶⁸ or placing a juvenile in the isolation room in a shirt worn in the establishment, without underwear (JDC in Falenica)⁶⁹.

The visiting persons observed that the frequently occurring violation is the use of placing the juveniles in the transition rooms as a disciplinary measure (JDC in Falenica, JDC in Studzieniec, JDC in Laskowiec).

The director of JDC in Pszczyna informed the NMP about conducting a series of trainings for the staff, to help prevent future unacceptable forms of treatment of the juveniles by the personnel and ordered to increase an emphasis, in the educational work, on socio-therapeutic activities reducing the violent behaviours of the juveniles towards their colleagues. A series of actions to eliminate those violations were also taken by the directors of the establishments in Mrozy and Laskowiec.

The director of JDC in Studzieniec explained that as for placing on the board the information on punishing a given person he disagreed with the NMP's opinion. In opinion of the director of JDC Studzieniec, such a practice is preventive and for many boys it might be a form of warning, he explained that the transparency of the punishment and reward process was the element of the educational process. The director also informed that there had been no cases of using the transition rooms as a disciplinary measure and that information could be related to an unclear entry in the transition room register.

The director of JDC in Falenica informed the NMP representatives that in the establishment he managed, the sexual identity of the juveniles was respected and accepted. Nobody used discriminatory practices with regard to their sexual orientation.

c) Use of direct coercive measures

⁶⁷ The juveniles did not want to lodge a complain or give specific information on the reported cases of violence.

⁶⁸ § 32 item 12 of the Rules for Juveniles in the Juvenile Detention Centre in Studzieniec

⁶⁹ § 38 para.5 of the Rules of the Juvenile Detention Centre and Juvenile Shelter in Warsaw-Falenica

Recommendations CM/Rec(2008)11 of the Committee of Ministers to the Member States on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 90.1 *Staff shall not use force against juveniles except, as a last resort, in self-defence or in cases of attempted escape, physical resistance to a lawful order, direct risk of self-harm, harm to others or serious damage to property.*

Principle 90.2 *The amount of force used shall be the minimum necessary and be applied for the shortest time necessary.*

Principle 93.1 *If in very exceptional cases a particular juvenile needs to be separated from the others for security or safety reasons, this shall be decided by the competent authority on the basis of clear procedures laid down in national law, specifying the nature of the separation, its maximum duration and the grounds on which it may be imposed.*

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. General Assembly resolution 45/113

Principle 64 *Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.*

Act on Juvenile Delinquency Proceedings

Art. 95a § 4. *Towards a juvenile, the following direct coercive measures may be used:*

- 1) *physical force;*
- 2) *placing in an isolation room;*
- 3) *putting on restraint strap or straitjacket.*

§ 5 *Direct coercive measures, referred to in § 4 points 2 and 3 are used only with respect to juveniles placed in a juvenile detention centre or a juvenile shelter, only in case referred to in § 1 point 1 (a juvenile making an attempt on life or health, own or other person's).*

Art. 95b § 3. *A juvenile, with respect to whom a direct coercive measure was used, shall be promptly subject to a medical examination.*

The irregularities in the field of application of direct coercive measures were found, *inter alia*, in:

- JDC and JS in Falenica – placing a juvenile in the isolation room due to destruction of property;
- JDC in Laskowiec - failure to keep the required procedures involving submission to a medical examination of a juvenile with respect to whom straitjacket was used;
- JDC in Białystok - the use of a protective helmet whose application with respect to the juveniles is prohibited.

The directors of JDC in Falenica and Laskowiec took a positive attitude towards the recommendations on the above-mentioned irregularities.

d) Right to information

United Nations General Assembly Resolutions no. 43/173 of 9 December 1988.

Principle 13 *Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.*

Principle 33 *A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.*

Recommendations CM/Rec(2008)11 of the Committee of Ministers to the Member States on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 33.1 *Juveniles shall be informed, in a manner and language they understand, as to how the community sanction or measure imposed on them will be implemented and about their rights and duties in regard to its implementation.*

Principle 62.3 *At admission, the rules of the institution and the rights and obligations of the juvenile shall be explained in a language and manner that the juvenile understands.*

Principle 62.4 *Notification of the placement of the juvenile, information on the rules governing the institution and any other relevant information shall be given immediately to the juvenile's parents or legal guardians.*

Ninth General Report [CPT/Inf (99) 12]

§ 36 *Effective complaints and inspection procedures are basic safeguards against ill-treatment in juvenile establishments. Juveniles should have avenues of complaint open to them, both within and outside the establishments' administrative system, and be entitled to confidential access to an appropriate authority. The CPT also attaches particular importance to regular visits to all juvenile establishments by an independent body (for example, a visiting committee or a judge) with authority to receive - and, if necessary, take action on - juveniles' complaints and to inspect the accommodation and facilities.*

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. General Assembly resolution 45/113

Principle 24 *On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.*

Principle 25 *All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.*

Principle 62 *Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.*

Principle 75 *Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.*

Principle 76 *Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without*

delay.

Principle 78 *Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.*

One of the factors affecting the sense of security in persons deprived of liberty is knowledge of their rights, the principles of the functioning of the establishment as well as institutions which may be applied to in situations of bad treatment. In the NMP representatives' opinion, the information should be publicly accessible without a necessity to ask the staff of the establishment for its provision.

Examination of the above-mentioned issues in the visited juvenile detention centres and juvenile shelters showed that the juveniles had access to the information on the institutions supervising the observance of their rights. In the inspected establishments, the addresses of such institutions were hanging on the boards or in showcases in the places accessible to the juveniles. The exception was JDC and JS in Falenica, because the addresses of institutions were hanging in the housemaster's room, thus, they were not publicly accessible, moreover, the rules of procedure in the establishment contained an improper provision stating that: *at the juvenile's request, the director provides her with the addresses of institutions established to respect human rights.* In JDC in Mrozy, the visiting persons noticed the lack of the addresses e.g. to the Ombudsman for Children, however, the management indicated that these data were available for the juveniles but due to the carried out renovations they forgot to hang them again.

The information about the rights and duties of the juveniles was also available in those establishments. As a result of the interviews carried out by the National Preventive Mechanism representatives with the juveniles, it was found that most of them knew where the rules of procedure were available, should they wish to see them again. However, not all interviewees were able to identify the person to whom they could apply in the event of being wrongly punished (eg. JDC in Mrozy). These are alarming signals that indicate the need to establish in these types of establishments a clear and intelligible mode of appeal against the punishment imposed of which the juveniles will be informed.

In this report, it is worth to indicate that on 13 April 2010, the Ombudsman sent another letter⁷⁰ to the Under-secretary of State at the Ministry of Justice on the preparation by the Ministry of Justice of a handbook for the juveniles placed in juvenile detention centres and juvenile shelters which would include the information about the juvenile's legal situation, his/her rights and duties and the institutions, to which he/she may apply in a situation when his/her rights are being violated. In the reply of 19 May 2010 on the earlier letter of the Human Rights Defender in this case, the Under-secretary of State at the Ministry of Justice informed that the Ministry of Justice planned to develop a standard model for the information about the rights and duties of the juvenile for all juvenile centres. In addition, the manner of disseminating this information among the juveniles, which takes into account the need to ensure

⁷⁰ RPO-603898-VII/10

continuous access to it, will be specified. The harmonization will also cover other documents concerning the stay of the juveniles in juvenile detention centres and juvenile shelters, for example, the rules of procedure for the transition rooms and for the isolation room. The works on introduction of these regulations have not been completed yet, the process of developing a standard model for such information and the harmonization of certain documents relating to the stay of the juveniles in subordinate establishment is monitored by the NMP representatives.

e) Right to contact with the outside world – protection of family ties

United Nations General Assembly Resolutions no. 43/173 of 9 December 1988:

Principle 15 *Communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.*

Principle 16 *If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.*

Principle 19 *A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.*

Recommendations CM/Rec(2008)11 of the Committee of Ministers to the Member States on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 32 *The implementation of community sanctions or measures shall respect as far as possible the existing constructive social networks of the juveniles and the relations to their families.*

Principle 83 *Juveniles shall be allowed to communicate through letters, without restriction as to their number and as often as possible by telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive regular visits from these persons.*

Principle 84 *Arrangements for visits shall be such as to allow juveniles to maintain and develop family relationships in as normal a manner as possible and have opportunities for social reintegration.*

Principle 85.1 *Institutional authorities shall assist juveniles in maintaining adequate contact with the outside world and provide them with the appropriate means to do so.*

Principle 86.1 *As part of the normal regime, juveniles shall be allowed regular periods of leave, either escorted or alone. In addition, juveniles shall be allowed to leave the institution for humanitarian reasons.*

Principle 86.2 *If regular periods of leave are not practicable, provision shall be made for additional or long-term visits by family members or other persons who can make a positive contribution to the development of the juvenile.*

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

Principle nr 26.5 *In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.*

Ninth General Report [CPT/Inf (99) 12]

§ 34 *The CPT attaches considerable importance to the maintenance of good contact with the outside world for all persons deprived of their liberty. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. The active promotion of such contacts can be especially beneficial for*

juveniles deprived of their liberty, many of whom may have behavioural problems related to emotional deprivation or a lack of social skills. The CPT also wishes to stress that a juvenile's contact with the outside world should never be restricted or denied as a disciplinary measure.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. General Assembly resolution 45/113

Principle 59 *Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons.*

Principle 60 *Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.*

Principle 61 *Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.*

Act on Juvenile Delinquency Proceedings

Art. 66 § 3. *Correspondence of the juvenile placed in the establishment, detention centre or juvenile shelter referred to in § 1, except for correspondence with the state and self-government authorities, in particular with the Human Rights Defender and the Ombudsman for Children and the authorities designated pursuant to international agreements relating to the protection of human rights ratified by way of the act by the Republic of Poland, may be controlled by the director of the detention centre, establishment or shelter or by an authorized educational employee, only in cases of justified suspicion that this correspondence contains the contents threatening the legal order, the safety of the detention centre, establishment or shelter, principles of public morality or likely to have an adverse effect on the course of the ongoing proceedings or social reintegration of the juvenile. Should such the contents be found, correspondence is not delivered and both the juvenile and the family court executing the judicial decision are informed of it, with stating the reasons for such a decision. The juvenile is instructed of the right to lodge a complaint, referred to in article 38. Retained correspondence shall be included in the juvenile's personal files.*

§ 4. *The director of the detention centre, establishment or shelter, referred to in § 1, may restrict or prohibit the contacts of the juvenile with people outside the detention centre, establishment or shelter only if this contact posed a threat to the legal order, the safety of the detention centre, establishment or shelter or could adversely affect the course of the ongoing proceedings or social reintegration of the juvenile.*

An important guarantee of the protection against bad treatment is the properly exercised right of the juveniles to have contact with the outside world. Here, it should be stressed that the administration of this type of establishments is obliged to protect the family ties of the juveniles. In the majority of the visited juvenile detention centres, the juveniles were allowed to see the closest family without any restrictions. During the interviews, the juveniles did not report any problems regarding those visits. However, alarming signals appeared, pointing out to the fact that the right of the juveniles to have contact with the outside world may be violated. This refers to, *inter alia*, the reservations made by the juveniles in the course of discussions with the National Preventive Mechanism members at JDC in Białystok and JDC in Laskowiec.

The reservations related to the practice of granting consent for visits only to parents, which is an excessive restriction, unsupported by the legislation. Moreover, at JDC in Laskowiec the person authorized to determine contacts of the juvenile with the open environment is the housemaster, which, in the NMP's opinion, is a too far-reaching authorization. On the other hand, the rules of procedure do not specify the rights to contacts with the family of the juveniles placed in the transition room.

The violation of the right of the juveniles discussed in this paragraph is also the practice of controlling all the letters of the juveniles whose application was confirmed during the visits in the establishment in Falenica, Laskowiec, Białystok and Mrozy. It should be stressed that it is completely unacceptable to control correspondence of the juveniles addressed to the institutions such as the Ombudsman for Children or Human Rights Defender, which was found in JDC in Mrozy.

The practice threatening the protection of family ties was also the practice observed by the National Preventive Mechanism representatives in the Juvenile Detention Centre in Białystok – a juvenile from one of the groups, the so-called re-adaptation group, had limited contact by telephone with his parents. During the day, the juvenile had the right to make only one phone call the duration of which could not exceed 5 minutes.

The NMP recommendations to remove the above-mentioned irregularities have been implemented in accordance with the explanations of the directors of the detention centres in Laskowiec, Mrozy and Falenica. The director of JDC in Białystok negated the National Preventive Mechanism recommendations. He informed that the provisions of the Act on Juvenile Delinquency Proceedings on the implementation of the visits and control of correspondence were observed and that he had no plans to introduce any changes in that regard.

f) Right to medical care

United Nations General Assembly Resolutions no. 43/173 of 9 December 1988.

Principle 24. *A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.*

Recommendations CM/Rec(2008)11 of the Committee of Ministers to the Member States on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 62.5 *As soon as possible after admission, the juvenile shall be medically examined, a medical record shall be opened and treatment of any illness or injury shall be initiated.*

Principle 69.2 *The health of juveniles deprived of their liberty shall be safeguarded according to recognised medical standards applicable to juveniles in the wider community.*

Principle 70.1 *Particular attention should be paid to dealing with health hazards linked to deprivation of liberty.*

Principle 70.2 *Special policies shall be developed and implemented to prevent suicide and self-harm by juveniles, particularly during their initial detention, segregation and other recognised high risk periods.*

Principle 71 *Juveniles shall be given preventive health care and health education.*

Principle 75 *Health care in juvenile institutions shall not be limited to treating sick patients, but shall extend to social and preventive medicine and the supervision of nutrition.*

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§ 40 *Further, it is axiomatic that all juveniles deprived of their liberty should be able to have confidential access to a doctor at any time, regardless of the regime (including disciplinary confinement) to which they may be subjected. Appropriate access to a range of specialist medical care, including dentistry, should also be guaranteed.*

§ 41 *The task of the health care service in any place of detention should not be limited to treating sick patients; it should also be entrusted with responsibility for social and preventive medicine. In this connection, the CPT wishes to highlight two aspects of particular concern as regards juveniles deprived of their liberty, namely, inmates' nutrition and the provision of health education. Health care staff should play an active part in monitoring the quality of the food which is being provided to inmates. This is particularly important for juveniles, who may not have reached their full growth potential. In such cases, the consequences of inadequate nutrition may become evident more rapidly - and be more serious - than for those who have reached full physical maturity. It is also widely recognised that juveniles deprived of their liberty have a tendency to engage in risk-taking behaviour, especially with respect to drugs (including alcohol) and sex. In consequence, the provision of health education relevant to young persons is an important element of a preventive health care programme. Such a programme should, in particular, include the provision of information about the risks of drug abuse and about transmittable diseases.*

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. General Assembly resolution 45/113

Principle 49. *Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated.*

In accordance with the arrangements of the National Preventive Mechanism, the right of the juveniles to medical care in the juvenile detention centres and juvenile shelters visited in 2010 was fully respected. The juveniles had proper medical care. The establishments employed both family physicians and physicians of other specializations. In the centres intended for girls, a gynaecologist was employed. During the individual interviews, most juveniles did not report any reservations and assessed medical care as good.

g) Educational and therapeutic interactions

Recommendations CM/Rec(2008)11 of the Committee of Ministers to the Member States on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 50.1 *Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending.*

Principle 77 *Regime activities shall aim at education, personal and social development, vocational training, rehabilitation and preparation for release. These may include:*

- a. *schooling;*
- b. *vocational training;*
- c. *work and occupational therapy;*
- d. *citizenship training;*

- e. *social skills and competence training;*
- f. *aggression-management;*
- g. *addiction therapy;*
- h. *individual and group therapy;*
- i. *physical education and sport;*
- j. *tertiary or further education;*
- k. *debt regulation;*
- l. *programmes of restorative justice and making reparation for the offence;*
- m. *creative leisure time activities and hobbies;*
- n. *activities outside the institution in the community, day leave and other forms of leave; and*
- o. *preparation for release and aftercare.*

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

Principle nr 26.1 *The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.*

Ninth General Report [CPT/Inf (99) 12]

§ 28 *In the view of the CPT, all juveniles deprived of their liberty because they are accused or convicted of criminal offences ought to be held in detention centres specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with the young. Moreover, the care of juveniles in custody requires special efforts to reduce the risks of longterm social maladjustment. This calls for a multidisciplinary approach, drawing upon the skills of a range of professionals (including teachers, trainers and psychologists), in order to respond to the individual needs of juveniles within a secure educative and socio-therapeutic environment.*

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. General Assembly resolution 45/113

Principle 54 *Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.*

Principle 79 *All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.*

A range of therapeutic and educational interactions in the visited juvenile detention centres and juvenile shelters is, in the National Preventive Mechanism's opinion, wide and varied. An example is JDC in Laskowiec where, *inter alia*, sociotherapy, art therapy, hippotherapy and aggression replacement training are carried out. An interesting solution is to organize, as an alternative to lessons, activities for the juveniles in JDC in Białystok who completed 18 and resigned from attending school. These interactions are focused primarily on training of basic skills in the field of education and practical skills, combined with the elements of physical effort, knowledge of the world, developing the manual and entertainment capabilities.

However, in the same establishment, the NMP members found the irregularities in the matter in question. The National Preventive Mechanism representatives were worried by the rules of the functioning of the so-called readaptation group and a poor offer of preventive activities. "Undoubtedly, this is the group that has the most

stringent rules, which is also expressed by the appearance of the rooms themselves (severe design, only the necessary equipment). The juveniles wear red uniforms to underline their difference and higher level of demoralization. They are allowed to go for a walk only once a week. They receive one pair of socks and underwear per month (without an opportunity to replace) and, therefore, at the time of washing and drying, they are forced to go without underwear. In the sleeping rooms, they may not keep any personal things. When taking a bath, they use natural soap only. They are deprived of a possibility to use their own resources to maintain personal hygiene. Participation in additional activities is reduced to a minimum (e.g., once a week the activities in the therapy centre, sociotherapeutic activities, reading room and the possibility to use the gym, but only if there is time for it after its previous tidying). The interviews with the juveniles and analysis of the daily schedule confirmed the rigid manner for determining hours of individual activities, which mainly consist in the performance of duties and cleaning works (even on Sunday). In this group, it is also not possible to make full use of the rewards provided for by the regulation on juvenile detention centres and juvenile shelters. Only the juveniles with good behaviour are allowed to watch TV, once a week"⁷¹

h) Right to education

United Nations General Assembly Resolutions no. 43/173 of 9 December 1988.

Principle 28 *A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.*

Recommendations CM/Rec(2008)11 of the Committee of Ministers to the Member States on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 78.4 *Juveniles shall be enabled to continue their schooling or vocational training while in detention and those who have not completed their compulsory schooling may be obliged to do so.*

Ordinance of the Minister of Justice of 26 August 2004 on the organization of the schoolyear in schools in juvenile detention centres and juvenile shelters (Dz. U. no. 188, item 1947)

§ 7. *The juvenile placed in the transition room of the juvenile detention centre or juvenile shelter, as well as in the group of the intervention shelter, is provided by the school with participation in educational classes organized for all the juveniles and in situations of emergency - in individual classes, according to the weekly schedule determined by the director of the school.*

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. General Assembly resolution 45/113

Principle 38 *Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic*

⁷¹ RPO-597667-VII/10, letter of 21 July 2010.

needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

Principle 41 *Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.*

Principle 42 *Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.*

Based on the findings pursuant to the activities carried out by the National Preventive Mechanism representatives, it should be noted that in most establishments, the right of the juveniles to education is respected. The establishments provide education at the level of grammar school and/or primary school. In addition, they have a rich offer of the workshop activities (as part of education at vocational school or vocational courses) preparing the juveniles for practising a given profession.

However, it should be pointed out that the NMP representatives found the violation of the right to education in JDC in Białystok. The juveniles staying in the transition rooms (from 1 to 4 months) did not have the opportunity to fulfil their schooling obligation. On the other hand, the records of JDC in Falenica lacked the information on the conducted interactions and fulfilling the schooling obligation, which raised the visiting persons' doubts about whether the right of the juveniles staying in the transition rooms was respected in that regard.

The director of JDC in Falenica informed that he obliged the educational staff to record interactions with respect to the juveniles, *inter alia*, fulfilling the compulsory schooling obligation. The director of JDC in Białystok denied that the violations in that respect had taken place – he stated that the juveniles staying in the transition room fulfilled the schooling obligation.

i) Right to religious practices

Recommendations CM/Rec(2008)11 of the Committee of Ministers to the Member States on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 87.1 *Juveniles' freedom of thought, conscience and religion shall be respected.*

Principle 87.2 *The institutional regimen shall be organised so far as is practicable to allow juveniles to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.*

Principle 87.3 *Juveniles may not be compelled to practise a religion, follow a belief, attend religious services or meetings, take part in religious practices or to accept a visit from a representative of any religion or belief.*

Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989

Art. 14 point 1 *States Parties shall respect the right of the child to freedom of thought, conscience and religion.*

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. General Assembly resolution 45/113

Principle 48 *Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination.*

If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

An important aspect of education and social reintegration is to draw attention to the question of freedom of thought and religion. The obligation of the staff in the juvenile detention centres and juvenile shelters is to organize activities in such a way so that they took into account the right of the juveniles to perform religious practices as well as the right to refuse to participate in these practices. In the establishments in question, there were violations of that right by preventing the juveniles placed in JDC and JS in Mrozy from direct participation in church services. In JDC in Studzieniec, in the course of the interview the boys reported that the Intensified Educational Care group⁷², as a rule, did not attend the masses. The juvenile from another group reported that he had been forced to participate in church services. With a similar charge the NMP representatives dealt with in Warsaw-Falenica: the juvenile reported that participation in the mass was obligatory.

In other establishments, there were no reservations as to the realization of the right of the juveniles to perform religious practices. For its proper execution, it will be helpful to organize a chapel within the establishment (and in particular in the territory of the juvenile shelter), an example of which is JDC and JS in Laskowiec and Pszczyna.

The director of JDC in Falenica denied that the juveniles had been forced to participate in church services, indicating at the same time that everytime they were encouraged and motivated to do so. The director of JDC and JS in Mrozy explained that the juveniles staying at the Shelter did not have the possibility to participate in the Sunday mass because without the consent of the Court they could not leave the establishment and the establishment did not have a chapel within the Shelter.

j) Right to recreation and rest

Recommendations CM/Rec(2008)11 of the Committee of Ministers to the Member States on the European Rules for juvenile offenders subject to sanctions or measures.

Principle 80.2 *The institution shall also provide meaningful activities on weekends and holidays.*

Principle 81 *All juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air, if the weather permits.*

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. General Assembly resolution 45/113

Principle 47 *Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should*

⁷² RPO-673628-VII-10: "This group is provided for the juveniles having problems with adaptation. The maximum duration of the stay therein is, in accordance with the rules of procedure for this group, two months and is dependent on the effects of the educational interactions" (letter of 4 March 2010).

have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

Taking care of physical and cultural development of the juveniles is a very important task for the juvenile establishments. On a basis of the information gathered, it may be concluded that in the visited establishments, the educational staff seeks to fulfil this obligation through organizing interest circles (eg. JDC in Mrozy, JDC in Falenica, JDC in Laskowiec), musical or theatrical groups (JDC in Pszczyna, JDC in Falenica), educational and sightseeing trips (JDC in Laskowiec), voluntary services (JDC in Pszczyna) or "clubs" (JDC in Studzieniec).

An essential breach of the European standards with respect to the right to recreation and rest is limiting access of the juveniles to outdoor activities (JDC in Białystok, JDC in Laskowiec, JDC in Mrozy). **The National Preventive Mechanism stresses that the juveniles should be provided with access to outdoor activities every day.**

The directors of the above-mentioned establishments informed the visiting persons of undertaking actions aimed at facilitating the juveniles access to outdoor activities.

It should be mentioned here that on 11 February 2010, the Human Rights Defender, referring to previous correspondence on the lack of provisions providing the juveniles staying in the juvenile detention centres and juvenile shelters with daily access to outdoor activities, sent a letter⁷³ to the Minister of Justice. He requested in it to provide information whether the actions announced by the Minister in that regard had already been taken. In a reply of 16 March 2010, the Secretary of State at the Ministry of Justice reported that the new solutions introduced by the ordinance of the Minister of Justice of 20 July 2009, which amends the ordinance of 17 October 2001 on juvenile detention centres and juvenile shelters are to have an influence, *inter alia*, on limiting the possibilities of the occurrence of extraordinary incidents which often are a basis for restricting access to walks and staying of the juveniles outside the buildings of the detention centre or shelter. This, in turn, should affect, wider than so far, access of the juveniles to this type of activity. Currently, on a basis of the above-mentioned ordinance, the detailed rules of procedure, related to providing safety in this type of establishments, are being developed. In addition, at the Ministry of Justice, the procedures uniform for all detention centres and shelters, which will include the rules of the use of outdoor activities by the juveniles, are being developed.

⁷³ RPO-597667-VII/10

7.4. Sobering-up stations

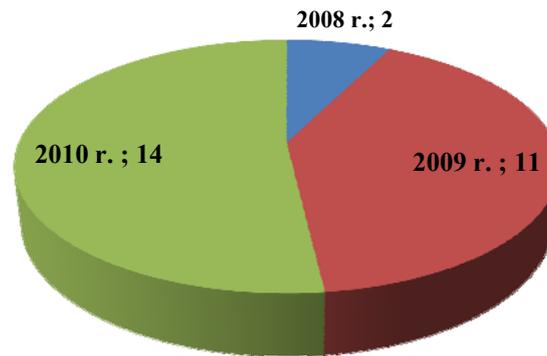
In 2010, 13 sobering-up stations⁷⁴ (hereinafter referred to as ‘the stations’) were visited by the National Preventive Mechanism. It should be emphasised that while visiting *Pogotowie Socjalne dla Osób Nietrzeźwych* (Social Assistance Emergency Unit for Intoxicated Individuals) in Gdańsk on 17 March 2010, representatives of the National Preventive Mechanism were denied access to the majority of documents held by that unit, and to the monitoring records; Any talks with people who were leaving the unit were also made impossible. Therefore, after an intervention with the Mayor of Gdańsk, the visit was repeated on 30 June 2010.

At the same time, it should be emphasised that the Bielsko-Biała station did not require any recommendations to allow the NPF visit. The station has created very good living conditions for the detained, and during the visit it was established that there were no factors at that station that may lead to the cruel, inhuman or degrading treatment of the detained.

⁷⁴ Those were the following sobering-up stations: at Bielsko-Biała, at Sosnowiec, in Wrocław, at Legnica, at Zielona Góra, at Gliwice, at Chełm, in Szczecin, in Rzeszów; as well as *Całodobowe Pogotowie Socjalne dla Osób Nietrzeźwych* (Social Assistance Emergency Unit) in Gdańsk, *Ośrodek Terapii i Opieki nad Nietrzeźwymi* (Centre for Treatment and Assistance to Intoxicated Individuals) in Koszalin, *Ośrodek Profilaktyki i Rozwiązywania Problemów Uzależnień* (Centre for Prevention and Solution of Addiction Problems) at Inowrocław, *Ośrodek Profilaktyki Uzależnień od Alkoholu oraz Pobytu Nietrzeźwych* (Centre for Prevention of Addiction to Alcohol and for Temporal Stay of Intoxicated Individuals) at Jaworzno.

Figure 8.

The number of visits at sobering-up stations by the National Preventive Mechanism in the years 2008 – 2010



It follows from the findings made by representatives of the National Preventive Mechanism that the majority of the stations visited in 2001 properly performed their tasks, as laid out in the Act of 26 October 1982 on the upbringing in sobriety and counteracting alcoholism⁷⁵ (hereinafter referred to as ‘the Act’) and in the Ordinance by the Minister of Health of 4 February 2004 on the methods of escorting, admitting and releasing intoxicated individuals and on the organisation of sobering-up stations or other similar establishments created by a local government unit⁷⁶ (hereinafter referred to as ‘the Ordinance’).

a) Living conditions

The Ordinance by the Minister of Health of 4 February 2004 on the methods of escorting, admitting and releasing intoxicated individuals and on the organisation of sobering-up stations or other similar establishments created by a local government unit (Dz. U. of 2004, No. 20, item 192 as amended)

Following the NPM visit at the sobering-up station in Gdańsk, it was recommended either to repair the building or to move the station to another location. The Mayor of Gdańsk in his answer to the post-visit report, stated that he would take that into consideration in the budget planning for the coming calendar years, and that the station would either be repaired or moved into another location.

Representatives of the National Preventive Mechanism have also recommended general repairs in the following facilities: Chełm, Racula near Zielona Góra and Jaworzno. Both exteriors and interiors of those buildings were obsolete and old. In their answers to the Ombudsman, heads of the above mentioned facilities informed that repairs will be carried out on day-to-day basis, according to the availability of financial means (Jaworzno) or that general repairs were planned for 2011 (the stations at Chełmno, Racula near Zielona Góra). The Station at Gliwice was recommended to revamp a wall near the entrance, while the station at Koszalin was recommended to revamp a moldy lavatory. According to the answer provided by the head of the station

⁷⁵ Dz. U. of 2007, No. 70, item 473, as amended.

⁷⁶ Dz. U. of 2004, No. 20, item 192, as amended.

at Koszalin, such repairs have already been done. The head of Gliwice's station informed that recommended repairs were included into the plan of repairs for the year 2011.

While visiting the sobering-up station at Chełm, NPM visitors had objections against a tap with a rubber hose installed in the shower room, and against a shower with a grating and a water switcher. Such installation could be used for forced washing of the patient, and that is considered a degrading treatment. The staff of the sobering-up station informed that the rubber hose was sometimes used to wash feet of inebriate patients. Representatives of the National Preventive Mechanism recommended to remove those installation immediately. The Mayor of Chełm informed the Ombudsman that the rubber hose had already been dismantled and construction works were started to dismantle the grating.

As regards the stations at Legnica and Inowrocław, it was considered necessary to arrange for separate toilets for men and women, as well as for separate showers (according to § 20 subparagraph 1 points 3 and 4 of the Ordinance⁷⁷) and to equip the later with an anti-sliding mat. Answering the NPM, the head of the station at Legnica explained that it would be technically difficult for the station to make separate showers for men and women, and that men and women shower separately in the same room by turns. He explained that in the lavatory there is always only one person supervised by the appropriate staff. The station is raising funds for repairs of the sanitary room in order to bring it to compliance with requirements laid out in the Ordinance.

The visitors recommended to equip the stations (Jaworzno, Rzeszów and Chełm) with equipment for the disabled, and to give a blanket with a blanket-slip (Koszalin) and clean bed-sheets (Sosnowiec) to each detained.

The management of the station at Chełm plans to adjust the facility to the needs of physically disabled during repairs of the station planned for 2011.

It was deemed necessary to equip the station in Wrocław with the call-over installation⁷⁸. As the director of the station informed the postulate had already been accomplished.

b) Information of patients of the stations on their rights

**Resolution by the General Assembly of the United Nations of 9 December 1988,
Body of Principles for the Protection of All Persons under Any Form of Detention or
Imprisonment**

Principle 13. Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

⁷⁷ Idem

⁷⁸ Idem.

According to NPM visitors, understanding of one's rights by the detained in the sobering-up station is a key guarantee against ill-treatment. Representatives of the National Preventive Mechanism recommended the stations at Chełm, Jaworzno and Rzeszów to draw up rules and regulations for the detained, and to place them in a spot visible to everybody, so that the detained could get acquainted with their rights while leaving the sobering-up station. Following these recommendations, heads of the above mentioned stations prepared such rules and regulations and attached them in a spot available to the detained.

c) Application of direct coercive measures

The Act of 26 October 1982 on the upbringing in sobriety and counteracting alcoholism (Dz. U. of 2007, No. 70, item 473 as amended.)

Art. 42. 1. In the case of persons admitted to sobering-up stations and posing a threat to their own life or health, or the life or health of third persons, destroying items in their immediate surroundings, it is admissible to use physical coercion consisting in holding or immobilising.

2. Holding is a temporary, short-term immobilisation of the person with the use of physical force.

3. Immobilisation consists in longer overpowering of the person with the use of straps, holds, sheets or a straitjacket.

4. Physical coercion may be applied only for as long as the person provides reasons for its use.

5. Being transported and placed at a sobering-up or police station is subject to fees.

5a. Enforcement of receivables specified in paragraph 5 shall be carried out in accordance with provisions on administrative enforcement proceedings.

The Ordinance by the Minister of Health of 4 February 2004 on the methods of escorting, admitting and releasing intoxicated individuals and on the organisation of sobering-up stations or other similar establishments created by a local government unit (Dz. U. of 2004, No. 20, item 192 as amended)

§ 11. 1. Decision about application/cessation of direct coercion measures shall be made by a physician or by a surgeon after consultation with the head of the shift or with other staff designated by the director of the sobering-up station.

1a. ⁽³⁾ Before application of direct coercion measures leading to immobilisation, objects which may pose a threat to life or health of that person or other persons, shall be taken away from him, especially sharp objects, glasses, denture, belt, braces, shoelaces, matches.

1b. ⁽⁴⁾ A physician may order application of direct coercion measures consisting in immobilisation for not longer than 4 hours. If needed, the physician after personal examination may extend immobilisation for more periods of 6 hours, however immobilisation may not be applied for longer than 24 hours.

1c. ⁽⁵⁾ A staff designated by the director of the station shall check the physical status of the immobilised person at least every 15 minutes, also when that person is asleep.

1d. ⁽⁶⁾ During the check referred to in paragraph 1c, the staff shall:

- 1) assess if immobilisation is correct, and especially if straps, holds, sheets or straitjacket are not too loose or too tight;*
- 2) ensure a short release from immobilisation to allow the immobilised person to change position or to alleviate his/her physiological or hygienic needs, at least every 4 hours.*

- 1e.** ⁽⁷⁾ *In case of any threat to health or life of the immobilised person, the staff shall immediately call the physician.*
- 2.** *Immediately after cessation of direct coercion measures, a physician or a surgeon shall examine the health status of the person subject to direct coercion.*
- 3.** *Application of direct coercion measures shall be marked in the patient's record where the following shall be stated:*
- 1) the reason for application;*
 - 2) the type of measure applied;*
 - 3) duration of the measure;*
 - 4) description of reaction of the person during application of the measure and after its cessation.*
- § 27 point 3 paragraph 5 letter b)** *The patient's record referred to in paragraph 1, point 2, shall contain information on the stay in the station or in the facility, including information on applied coercion measures, together with the reason for their application, duration of holding or immobilisation, as well as the name of person who decided about application of such measure.*

Representatives of the National Preventive Mechanism have postulated several times that application of direct coercive measures should take place only in case of individuals referred to in Art. 42, paragraph 1 of the Act (Legnica and Koszalin). It was also recommended to check the physical status of the immobilised (according to the Ordinance⁷⁹) not later than every 15 minutes (Sosnowiec), and to fill-in the relevant documentation more precisely (Inowrocław). The head of the station at Koszalin, answering recommendations by the visitors, informed that a training for the station's staff had been delivered regarding direct coercive measures and a check-list for the monitoring of patients had also been developed. It was decided together with physicians who work in the centre that documents regarding the stay would be filled-in much more in detail, including description of medical procedures and medication applied.

Having analysed documentation at the sobering-up station at Chełm, the visitors recommended to document cases of physical restraint in patients' records. It was found out that reports contained information about application of such measures, while there was not such information in records of patients to whom such measures had been applied. According to § 27 point 3 paragraph 5 letter b of the Ordinance⁸⁰, the patient's records shall contain information on the stay in the station or in the centre, including information on physical restraint, together with the reason for application of such measures, duration of manual holding or immobilisation, as well as the name of person who decided about application of the measure. Answering recommendations by the visitors, the Mayor of Chełm informed that the entire staff of the sobering-up station, and especially heads of shifts and the medical staff, were instructed by the Director of the station about the strict obligation to fill-in relevant documents if direct coercion measures were applied. The patient's record was supplemented with an additional form regarding such event.

⁷⁹ Dz. U. of 2004, No. 20, item 192 as amended.

⁸⁰ Idem.

However, the visitors were deeply concerned that proper documentation about checks on immobilised persons did not mean that such checks were actually executed. At the sobering-up station at Gliwice, information about application of direct coercion measures was properly noted both in the book of reports and in patient records. An additional documentation on the watching of patients provided information about checks executed every 15 minutes. The visitors watched monitoring records for one immobilisation case in order to verify the correctness of that documentation. The patient's records provided information about checks every 15 minutes while pictures from monitoring did not confirm that checks required by § 11 paragraph 1c of the Ordinance⁸¹ were actually taking place. Therefore, the visitors recommended the station to perform reliable checks of all patients to whom direct coercion measures were applied in the form of immobilisation. Answering, the head of the station informed that the staff were instructed to carry out reliable checks of the health status of such patients as required.

Representatives of the National Preventive Mechanism emphasised the importance of holding a specific register regarding extraordinary cases and application of direct coercion measures. Although the Ordinance does not expressly impose such obligation, it imposes the duty to collect and to submit statistics. Such register would not only allow for a more prompt submission of such statistics, but also would allow for an efficient tracking of data and a more prompt response to complaints. At the same time, such register would help to analyse cases of application of direct coercion measures, including justification of their application (Gdańsk). Reacting to these recommendations, the Mayor of Gdańsk informed that he had ordered the head of the station to start a specific register for such cases.

d) Protection against ill treatment – the forcible changing into disposable clothing

Case Wiktoro v Poland⁸², Decision of 31 March 2009: *if such body searches are needed, in cases when it is necessary to ensure safety in prison, or to prevent chaos or crime, they must be escorted in an appropriate way and be justified. They should be escorted in a proper way with respect for the human person and have an appropriate goal (Yankov v. Bulgaria, No. 39084/97, § 166-176, ETPCz 2003-XII; Wainwright v UK, nr 12350/04, § 42, ETPCz 2006-...). Even individual cases of body search were held as degrading treatment as regards the way they were escorted, the possibility that they were escorted to humiliate and to degrade, and the lack of justification (v. Valašinas v Lithuania No. 44558/98, § 117, ETPCz 2001-VIII). The Court also holds that when the order to undress to make a body search is not linked in a determined way to the keeping of safety or prevention of crime and disorder, Article 3 of the Convention may be infringed (Wainwright, op. cit., § 42; Wieser v Austria, No. 2293/03, § 40, 22 February 2007, where the claimant was undressed by police officers).*

Having analysed a patient's records, selected at random, containing information that physical coercion was used in order to undress the patient, NPM representatives watched the monitoring record regarding admission of that person. The picture confirmed the practice of forcible undressing. The visitors were alarmed by the

⁸¹ Idem

⁸² Complaint No. 14612/02

agresive way in which police officers brought the man into the station and in which the staff of the station took him into the room. During admission into the station, the patient was thrown on the floor, undressed, jerked, dragged into the room where he was left naked. According to NPM representatives, the behaviour seen in that film was a degrading treatment. The film provides grounds for assumption that some staff of the station are hostile towards patients. Answering, the Mayor of Chełm informed NPM that after disclosure of that case, the station's Director punished the two staff responsible for that case with an admonition registered in their files. The management of the station was obligated to make each and every effort to avoid such cases in the future.

The visitors recommend to give up the practice of forcible changing into disposable clothing if the detained is not agreeing to do that and his/her sanitary-hygienic status does not justify the must for such changing (recommendations made at Chełm, Szczecin, Rzeszów, Gliwice, Racula near Zielona Góra). Heads of all visited stations where it was obligatory to change patients into disposable clothing informed the Ombudsman they gave up that practice.

e) Right to medical care services

The Ordinance by the Minister of Health of 4 February 2004 on the methods of escorting, admitting and releasing intoxicated individuals and on the organisation of sobering-up stations or other similar establishments created by a local government unit (Dz. U. of 2004, No. 20, item 192 as amended)

§ 4. 1. *Each person escorted to the sobering station or centre shall be immediately subjected to medical examination.*

2. *A physician or a surgeon after having examined the escorted person, may state:*

- 1) the lack of intoxication symptoms which would justify stay in the station or in the centre;*
- 2) the need to provide ad hoc medical assistance which can be provided in the station or in the centre;*
- 3) the need to perform hygienic and sanitary treatment, taking into consideration intoxication, as well as the lack of contraindications to stay in the station or in the centre;*
- 4) occurrence of medical indications to direct the patient to a hospital or to other unit of health care, taking into consideration intoxication as well as occurrence of indications for hospitalisation.*

3. *If serious health disfunctions are determined or suspected in the person escorted to the station or to the centre, an ambulance service or rescue unit shall be immediately informed.*

§ 18 point 1 paragraph 5 *The station shall provide information about harmfulness of excessive drinking and encourage to start detoxification treatment.*

§ 21.1. *The station shall have a medical department, including a physician consulting room and a surgery, equipped with medical products as well as medical and diagnostic equipment, including certified equipment to measure the concentration of alcohol in the organism with the printing option.*

- 3.** *The list of medical products and the list of medical and diagnostic equipment that should be provided to the medical department is laid out in the annex to this ordinance.*

§ 27 point 3 paragraph 2 *The patient's records referred to in paragraph 1 point 2, shall contain an opinion by the physician including:*

- a) *date and hour of medical examination*
- b) *an interview with the patient which determine his state of health, circumstances, type and quantity of alcohol drunk, as well as other circumstances related to his intoxication.*
- c) *medical examination of the patient including an assessment of:*
 - *disturbances of consciousness*
 - *disturbances of behaviour*
 - *disturbances of mood*
 - *disturbances of walking*
 - *disturbances of speech*
 - *traces of vomit*
 - *pulse*
 - *pupils*
 - *skin*
 - *lungs*
 - *abdomen*
 - *other symptoms of diseases*
 - *general health status of the patient*
- d) *justification for admission into the station or into the centre or no need for admission to the station or to the centre.*

In the sobering-up station at Rzeszów, **the National Preventive Mechanism recommended to eliminate case of providing medical service in presence of people other than necessary medical staff.** An analysis of monitoring records, selected at random, during the visit confirmed the presence of police officers during medical examination of the escorted person. Moreover, the room itself did not respect privacy nor dignity of the person subjected to medical examination. The medical department was a spacious room with 3 walls made of glass, neighbouring with the admission room and two corridors leading to patients' rooms and to administration rooms. Glasses overlooking corridors were covered with blinds. The glass overlooking the admission room was not covered with blinds. The patient was visible during medical examination by everybody who was entering the station and who was present in the admission room and in the gatehouse. The central location of the medical department within the station made it also an attractive shortcut between the corridors, the gatehouse and the admission room. Moreover, thermos and disposable cups to give patients to drink were stored in there. Each time when needed, the staff were entering the medical department. Answering NPM recommendations, the Mayor of Rzeszów informed that glasses in the medical department were blinded with white film and the entrance was covered with a curtain. Moreover, unauthorised persons, including police officers, were forbidden to enter the medical department. Thermos and cups for patients were moved out into the corridor.

At the sobering-up station at Chełm, **the National Preventive Mechanism recommended to keep medical documentation in a proper way.** According to an external expert (a physician) of the National Preventive Mechanism, who reviewed 35 patient's records, preliminary medical examinations at the station were escorted in a stereotyped way. In many cases there were no notes by a physician, nor signature/stamp; the duration of stay was not stated nor the patient's health status at admission. To each record a print out from alcometer was attached (from examination

during admission into the station). NPM expert stated that medical reports are loose and not numbered pieces of paper. Patients' identification data often did not contain PESEL; the hour of examination was not recorded, the medical description usually contained one phrase 'respiratory and circulatory efficient', while the most frequent medical recommendation was 'A ban to drink alcohol', rarely a note about the need to undertake a detoxification treatment. **The medical expert recommended to tidy up the medicine cabinet, to replace expired products and to supplement the resuscitation equipment with a defibrillator.** The station at Gliwice was also recommended to furnish their medicine cabinet with non-expired products. According to information provided by the head of that station, the recommendation had already been fulfilled. The Mayor of Chełm, making reference to recommendations, informed that in the sobering-up station a physician was designated to check the status and completeness of products in the medicine cabinet and explained that a defibrillator would be purchased from the budget allocation for the following year. Moreover, the staff was obligated to keep reliable and legible records.

The sobering-up stations at Rzeszów and Chełm do not employ a psychologist. According to rules and regulations of those stations, a talk about harmfulness of alcohol and possibilities to start a detoxification treatment with persons who leave the station is escorted by either physician, surgeon or the head of the shift. According to representatives of the Ombudsman, many activities related to the release of the patient may cause that these talks are either omitted or hold in an unreliable way (in haste). Therefore it was recommended to undertake co-operation with a psychologist or a therapist with good knowledge about treatment of addictions. That person would be able to focus on prevention/motivation talks with patients. Following the issuing of such recommendation, the Mayor of Rzeszów obligated the station's Director to start co-operation with *Centrum Profilaktyki i Terapii Uzależnień* (Centre for Prevention and Treatment of Addictions) to motivate patients of the station to start treatment.

f) Respect of intimacy and privacy

The Ordinance by the Minister of Health of 4 February 2004 on the methods of escorting, admitting and releasing intoxicated individuals and on the organisation of sobering-up stations or other similar establishments created by a local government unit (Dz. U. of 2004, No. 20, item 192 as amended)

§ 24 (5). *Activities related to admission of women into the sobering-up station or into the centre as well as direct care of them during their stay may be performed only by female personnel of the station or of the centre, except for medical care.*

At the sobering station in Szczecin **the National Preventive Mechanism recommended to change location of cameras in toilets for women and men in such way that intimate parts of a person who alleviate his/her physiological needs are not visible in pictures transmitted by the camera.** The station's Director explained that, following the visit, the angle of shooting was changed and it became impossible to watch people who use the toilet.

Moreover, it was recommended to assign all activities related to direct care of women escorted to the station to female personnel only (Racula near Zielona Góra, Koszalin); it was also recommended to remove the camera from the dressing room (Koszalin, Inowrocław). The head of the station at Koszalin, answering the recommendation, informed that it had already been dismantled.

At the sobering-up station in Wrocław the visitors recommended to install a curtain at the entrance to the toilet, allowing for more intimacy to a person who alleviates his/her physiological needs. During the visit at that station it was also established that on the basis of Article 41 paragraph 4 of the Act⁸³, the station took some assets (especially mobile phones) as a pledge against payment of the fee. The practice of taking mobile phones together with SIM cards as a pledge has been considered illegal by the Chief Inspector for Personal Data Protection (GIODO) because it makes possible access to personal data by the station's staff while they are not authorised to process such data, and therefore, they are infringing the right to privacy of the patient. Therefore, the visitors recommended to give up the practice of taking mobile phones as a pledge. The station's Director presented to the visitors a letter by GIODO saying that if mobile phones are taken together with their memory card from persons escorted to the sobering-up station, but this would not lead to collection and storage of personal data kept on those, such activity shall be considered as complying with the Act of 29 August 1997 on the Protection of Personal Data⁸⁴. Considering the diverging opinion, on 22 April 2011, the National Preventive Mechanism applied to the Chief Inspector for Personal Data Protection to take a stand on that issue⁸⁵. The clarifying procedure has not been completed yet.

7.5. Psychiatric establishments

In the year 2010, representatives of the National Prevention Mechanisms visited 5 psychiatric establishments⁸⁶.

a) The living conditions

8th General Report on the CPT's activities [CPT/Inf (98) 12]

§ 32 The CPT closely examines patients' living conditions and treatment; inadequacies in these areas can rapidly lead to situations falling within the scope of the term "inhuman and degrading treatment". The aim should be to offer material conditions which are conducive to the treatment and welfare of patients; in psychiatric terms, a positive therapeutic environment. This is of importance not only for patients but also for staff working in psychiatric establishments. [...]

⁸³ Dz. U. of 2007, No. 70, item 473 as amended

⁸⁴ Dz. U. of 2002, No. 101, item 926 as amended

⁸⁵ R-071-19/11.

⁸⁶ These are the visited psychiatric establishments: *Instytut Psychiatrii i Neurologii* in Warsaw, *Wojewódzki Szpital dla Nerwowo i Psychicznie Chorych* at Lubiąż, *Samodzielny Wojewódzki Zespół Publicznych Zakładów Psychiatrycznej Opieki Zdrowotnej* in Warsaw, Nowowiejska street, *Samodzielny Publiczny Szpital Kliniczny Nr 1 Pomorskiej Akademii Medycznej im. prof. Tadeusza Sokołowskiego* in Szczecin, *Samodzielny Publiczny Szpital Wojewódzki* at Gorzów Wielkopolski

§ 34. Creating a positive therapeutic environment involves, first of all, providing sufficient living space per patient as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements.

Living conditions at visited establishments were very diversified. In two establishments they were very good (*Klinika Psychiatrii Samodzielnego Publicznego Szpitala Klinicznego Nr 1* in Szczecin and *Samodzielny Publiczny Szpital Wojewódzki* at Gorzów Wielkopolski, especially the ward of forensic psychiatry with higher security level (after repairs in 2010). In another hospital (the Institute of Psychiatry and Neurology in Warsaw) due to heavy rain just before the visit, visitors found water leaking from ceilings in some rooms, including rooms for patients. The visitors recommended necessary repairs. Moreover, according to information provided by that hospital there should have been 34 beds in one of its wards, while the National Health Fund contracted 38 beds. Thus, additional beds were placed in the corridor. One of the patients was permanently placed in the corridor because „he smokes”. In the second visited ward of that hospital, visitors noticed two more beds in the corridor. In several wards of that establishment hygiene and cleanliness were assessed as unsatisfactory. NPM visitors had also reservation as to the room equipment: some patients were sleeping on beds with sponge mattresses with no mattress-cover. Some pieces of equipment were very obsolete and old. Patients from one of such rooms asked the visitors to help them improve the situation, so that each patient could have one’s own bedside cabinet and that the lock to the wardrobe is repaired. The

The Deputy Director of the Institute of Psychiatry and Neurology in Warsaw informed the visitors that the worse rooms (damaged by the melting snow) will be repaired. A tender was being prepared for general repairs of all psychiatric clinics.

Moreover, patients said that the refrigerator at their disposal to store food products was not working. They also had no continuous access to the food they purchases. The staff was giving them that food only at certain hours. Many patients complained about the food, its quality and quantity. They also said (in *Wojewódzki Szpital dla Nerwowo i Psychicznie Chorych* at Lubiąż and as regards food also *Samodzielny Publiczny Szpital Wojewódzki* at Gorzów Wielkopolski) that meals were cold. Answering recommendations by NPM, Director of the hospital at Gorzów Wielkopolski informed that the quality of meals served to patients in visited wards fulfilled requirements as to the caloric content and nutritional value. Patients may also purchase food and receive parcels from their families.

b) The health care

8th General Report on the CPT's activities [CPT/Inf (98) 12]

§ 32 [...] Further, adequate treatment and care, both psychiatric and somatic, must be provided to patients; having regard to the principle of the equivalence of care, the medical treatment and nursing care received by persons who are placed involuntarily in a psychiatric establishment should be comparable to that enjoyed by voluntary psychiatric patients.

§ 37 Psychiatric treatment should be based on an individualised approach, which implies

the drawing up of a treatment plan for each patient. It should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; [...]

§ 40 Regular reviews of a patient's state of health and of any medication prescribed is another basic requirement. This will inter alia enable informed decisions to be taken as regards a possible dehospitalisation or transfer to a less restrictive environment. [...]

There were no experts (psychiatrists, psychologists) on the NPM team visiting psychiatric hospitals, and hence the team was not able to assess treatments offered to the patients. Representatives of the National Preventive Mechanism reviewed though access to therapy workshops in each visited establishment. In one hospital the room for therapy workshops was flooded and it was difficult to assess these activities, due to their temporary cessation. Patients could read books from modest libraries and had access to the tv room (the Institute of Psychology and Neurology in Warsaw). After the visit, the Deputy Director of the Institute informed that the room had been already repaired and that therapeutical workshops were held there.

In another hospital, patients said there were no therapeutical workshops at all and they could only watch television, while „social life takes place in the smoking room”). They also complained about limited possibilities to walk outside. According to the medical personnel, those restrictions were linked to the state of the patients, to the aggravation of their state in some cases, and to security reasons (*Klinika Psychiatrii Samodzielonego Publicznego Szpitala Klinicznego Nr 1* at Szczecin). The lack of an efficient system of social therapy and rehabilitations leads to the conclusion that only pharmacological treatment is delivered to those patients.

c) Treatment of patient and direct restraint

8th General Report on the CPT's activities [CPT/Inf (98) 12]

§ 44 [...] the CPT also pays close attention to the attitude of doctors and nursing staff. In particular, the Committee will look for evidence of a genuine interest in establishing a therapeutic relationship with patients. It will also verify that patients who might be considered as burdensome or lacking rehabilitative potential are not being neglected.

§ 47 In any psychiatric establishment, the restraint of agitated and/or violent patients may on occasion be necessary. This is an area of particular concern to the CPT, given the potential for abuse and ill-treatment.

§ 48 [...] The CPT has on occasion encountered psychiatric patients to whom instruments of physical restraint have been applied for a period of days; the Committee must emphasise that such a state of affairs cannot have any therapeutic justification and amounts, in its view, to ill-treatment.

§ 49 [...] Seclusion should never be used as a punishment.

§ 50 Every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, seclusion) should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries

sustained by patients or staff.

This will greatly facilitate both the management of such incidents and the oversight of the extent of their occurrence.

The Act on protection of mental health of 19 August 1994 (Dz. U. No. 111 item 535 as amended)

Art. 18 paragraph 1. *While performing activities referred to by this Act, direct restraint can be applied to persons with psychiatric disturbances only when this Act authorises such restraint or when those persons:*

1) make an attempt against:

a) their own life or health, or against life or health of another person, or

b) against public security, or

2) violently destroy or damage objects in their surroundings, or

3) seriously interfere with the functioning of a psychiatric establishment or a social assistance unit, or make it impossible to function at all. [...]

paragraph 6. *Application of direct restraint to the person referred to in paragraph 1, points 1 and 2, may take the form of manual holding, forced application of medication, immobilisation or seclusion; while application of direct restraint to the person referred to in paragraph 1, point 3, may take the form of manual holding or forced application of medication.*

In two establishments, practices that bore the hallmarks of cruel and inhuman treatment of patients were found. In the Regional Independent Mental Health Care Centre at ul. Nowowiejska in Warsaw, residential rooms for patients were separated from the corridor by a transparent wall, which allowed a constant unlimited observation of these rooms. Moreover, two observation rooms in the form of a booth with transparent walls were separated within the ward, where coercive measure in the form of isolation and immobility is applied. **Residential rooms and observation “booths” with transparent glass walls raised substantial doubts among the visitors, since they collided with the obligation to protect the inherent and inalienable dignity of a human patient and to respect his right to intimacy and protection of own image.** Therefore, it was recommended to take necessary steps to adjust these rooms to the requirements providing the respect for the patients' rights. In reply, the Director of the Hospital stated that the main purpose of glass walls of observation rooms was to allow the supervision over the patient's safety, in accordance with care standards at intensive psychiatric care wards, where the observation of the entire room is recommended. However, the Director admitted that this could constitute a limitation of the right to privacy to a certain degree. The hospital administration is trying to find compromise between patient's security and privacy.

In the same establishment, it was also recommended to immediately refrain from discriminatory and stigmatizing practices towards patients involuntarily admitted to the hospital, namely the obligation to wear pajamas for the whole day. In reply, the director explained that some patients are admitted to the hospital in a bad hygienic condition, in dirty, worn-out and sometimes lousy clothes. Therefore, changing these clothes into pajamas is recognized as necessary.

During interviews with visitors, patients of the Regional Psychiatric Hospital in Lubiąż complained about occasional cases of being treated in a rude and disrespectful way. Representatives of the National Preventive Mechanism observed that the

personnel entered patients' rooms without knocking and addressed patients by names. Moreover, patients placed in the observation room of one of the wards stated that they had limited access to use toilets (the same limitation was found in the Psychiatric Clinic of the Independent Public Clinical Hospital No 1 of the Pomeranian Medical Academy in Szczecin). According to patients, requests to be able to use the toilet outside specified hours were reluctantly fulfilled by the personnel. Patients also experience limitations concerning their free movement around the ward, although it is not banned by regulations, and the use of mp3 and mp4 players is prohibited. **The National Preventive Mechanism recommended that the administration of the establishment strove to improve the treatment of patients by the personnel and eliminated unacceptable limitations of patients' rights and liberties in hospitals.**

The visiting persons also saw the need to guarantee the right of patients to privacy and intimacy. There are occasional cases of toilet doors only partly covering persons using the toilet (Institute of Psychiatry and Neurology in Warsaw). The Deputy Director of the Institute explained that it was due to security reasons. The National Preventive Mechanism did not see these explanations as sufficient and addressed the Director of the Department of Science and Higher Education of the Ministry of Health with a request to undertake relevant actions in this regard. It results from the explanations obtained, that patients of the Institute of Psychiatry and Neurology suffer from neurological illnesses related with specific symptoms (e.g. loss of consciousness). Therefore, it is necessary to have constant contact with them. Toilet doors must allow the observation of patients. Given the above, the Director of the Department of Science and Higher Education stated that disputes concerning the relation between patient's intimacy and care for his life and health could become an academic discussion. In the light of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, he stated that observing patients is not reprehensible.

Representatives of the Mechanism on many occasions recommended the lawful application of coercive measures. In one of the hospitals, among others, difficult communication, disorientation, lying on beds of other patients and taking various objects from them were treated as premises that justified immobilization of patients. On the basis of records in dossiers, it was difficult to conclude whether these premises had justified the application of such measures. In addition, according to obtained information, the medical personnel does not treat isolation and forced administration of medications as coercive measures and their application is not adequately recorded. The personnel also fails to notify the administration of the hospital about this fact (Institute of Psychiatry and Neurology in Warsaw). In reply, the Deputy Director of the Institute informed that the issue of documenting cases of applying coercive measures had been discussed with the personnel. He indicated that laconic justifications were a mistake, however, immobilisation was applied each time in compliance with legal premises. When it comes to forced administration of medications, the Deputy Director explained that forced administration of medications to patients admitted to hospital without their consent cannot be understood as a coercive measure. Such statement remains contrary to a basic guarantee for a patient obligatorily placed in an establishment: a free and informed consent for treatment⁸⁷. In

⁸⁷ cf. Article 41 of CPT 8th General Report [CPT/Inf (98) 12].

another establishment, in one of the wards, the placement of female patients “persistently breaking regulations” (e.g. attempts to deliver letters outside, evading activities, provocative behaviour towards male ward patients) in a closed observation room, under the “education and therapeutic regime” was observed. In consequence, such practice is identical with the application of a coercive measure in the form of isolation. However, it results from the information provided by the personnel, that placement in an observation room was not treated as the abovementioned coercive measure. Therefore, this practice is not recorded and subject to control by the director of the establishment in a way that would be compliant with the law. Isolation was applied as punishment (Regional Psychiatric Hospital in Lubiąż). Therefore, the representatives of the National Preventive Mechanism addressed the District Prosecutor’s Office in Wołów with the request to examine the case related to the abuse of rights by the Hospital personnel. The prosecutor’s office closed the investigation in the subjective case due to the lack of features of a prohibited act specified in Article 231(1) of the Code of Criminal Procedure. It was found that it could not be assumed that the practice of applying coercive measures in the form of isolation in the observation room was perceived as a form of treatment and rehabilitation process, instead of a coercive measure. However, findings of the National Preventive Mechanism and explanations of the unit director indicate otherwise. It results from the substantiation concerning the closing of the investigation that the Director of the Hospital issued an absolute ban on practising “the placement of persons breaking the regulations of the second ward in a separate room (...) as methods of enforcing discipline”.

d) Admissions without the patient’s consent and use of security measures

8th General Report [CPT/Inf (98) 12]

41 Patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

Of course, consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition and the treatment proposed; to describe ECT as "sleep therapy" is an example of less than full and accurate information about the treatment concerned. Consequently, all patients should be provided systematically with relevant information about their condition and the treatment which it is proposed to prescribe for them. Relevant information (results, etc.) should also be provided following treatment.

51 On account of their vulnerability, the mentally ill and mentally handicapped warrant much attention in order to prevent any form of conduct - or avoid any omission - contrary to their well-being. It follows that involuntary placement in a psychiatric establishment should always be surrounded by appropriate safeguards.

Act of 19 August 1994 on the protection of mental health (Dz.U. No 111, item 535, as amended)

Article 21(1) *A person whose conduct indicates that due to mental disorders they can pose*

threat to their own life or the life or health other persons, or if the person is incapable of satisfying their basic needs can be subject to a psychiatric examination involuntarily, while a juvenile or a fully incapacitated person – also without the consent of a statutory representative. In such case Article 18 shall apply.

Ordinance of the Minister of Health of 10 August 2004 laying down the list of psychiatric and rehabilitation facilities where security measures are to be applied, as well as on the composition, appointment procedure and tasks of psychiatric commission for security measures (Dz.U. No 179 item 1854, as amended)

3 *Psychiatric facilities with basic security conditions:*

- 1) provide permanent supervision over convicts staying in an establishment;*
- 2) are equipped in doors and windows with devices making it impossible for convicts to willfully leave the facility.*

4(1) *Psychiatric facilities with reinforced security conditions meet the requirements referred to in Article 3, and additionally:*

1) are equipped with:

- a) a closed circuit television allowing the observation of entrance doors, internal windows, rooms, isolation chambers and corridors,*
- b) an electronic system signaling an uncontrolled opening of doors and windows;*
- 2) are capable of separating 10-bed to 20-bed sub-wards;*
- 3) have direct access to a fenced recreation area;*
- 4) employ at least twice as many staff members as the possible number of inmates.*

10(1) *A convict referred to a facility with basic security conditions is placed in a general psychiatric ward according to a principle of placing patients to wards applicable in a given facility.*

(2) A convict staying in a ward is obliged to observe the Rules of organisation and order applicable in a given facility.

(3) Rules of organisation and order of facilities with reinforced and maximum security conditions are specified in Annex No 6 to this Ordinance.

(4) In facilities with basic security conditions, the provisions of the rules of organisation and order of a given facility shall apply.

During the visit, the representatives of the National Preventive Mechanism verified the practice of admitting patients for psychiatric treatment or observation without their consent. In principle, it was appropriate. A competent guardianship court was informed about involuntary admissions (Institute of Psychiatry and Neurology in Warsaw, Psychiatry Clinic of the Independent Public Clinical Hospital in Szczecin, Independent Regional Public Hospital in Gorzów Wielkopolski, Hospital at Nowowiejska Street in Warsaw). Nevertheless, it occasionally occurred that patients involuntarily admitted to the hospital did not participate in court sittings concerning the legitimacy of their stay in a facility, since the facility was incapable of safeguarding their transport and care. For several years, on the other hand, the court had refused to carry out sittings in the hospital (even if a hospital had a room for this purpose). Cases of not notifying the hospital by court about the contents of a decision regarding an admission or a further stay of a person in a hospital constituted another problem. The administration of the hospital communicated with court in this regard, however, no satisfactory solutions to the abovementioned issue were obtained (Institute of Psychiatry and Neurology in Warsaw).

Each time the National Preventive Mechanism also verified the conditions and methods of observing rights of patients towards whom preventive measures were applied. The visitors found certain irregularities in this regard. It occurred in certain hospitals that patients towards whom a preventive measure was applied under basic security conditions were placed in two separate court wards with basic security conditions. In these wards separate regulations were in force and were stricter than rules of organisation and order in force in other wards. Such practice is inconsistent with binding regulations in this scope (Article 10 of the Ordinance of the Minister of Health of 10 August 2004 laying down the list of psychiatric and rehabilitation facilities where security measures are to be applied, as well as on the composition, appointment procedure and tasks of psychiatric commission for security measures (Dz. U. No 179 item 1854, as amended). In the case of preventive measures exercised under reinforced security conditions, NPM visitors found out that most requirements specified in Article 4 of the abovementioned Ordinance were fulfilled. Nevertheless, a norm regarding the employment of twice as many staff members as the number of patients was not met (Regional Psychiatric Hospital in Lubiąż, Independent Regional Public Hospital in Gorzów Wielkopolski). Moreover, the *Regulation concerning the stay of patients in a twenty-four-hour psychiatric and court ward with reinforced security conditions* was introduced in a ward for patients towards whom a preventive measure under reinforced security conditions was exercised. The Ordinance of the Minister of Health of 10 August 2004 was provided as the legal basis for the Regulations, whereas the subjective Ordinance does not entitle hospital administration to establish separate regulations in psychiatric and court wards (Article 10(3) of the Ordinance). Introduction of separate regulations, and in particular, introduction of additional restrictions and discipline, is intolerable (Regional Psychiatric Hospital in Lubiąż).

e) Right to contact with the outside world

8th General Report [CPT/Inf (98) 12]

54 *The maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint.*

Patients should be able to send and receive correspondence, to have access to the telephone, and to receive visits from their family and friends. Confidential access to a lawyer should also be guaranteed.

As regards the respect for patient rights to maintain contacts with the outside world (particularly those patients who are kept involuntarily or towards whom a preventive measure is exercised), doubts arose when it came to limitations included in house rules of visited hospitals. In one of the establishments, a document entitled “*Visits*”, contained a ban on visiting patients by children (paragraph 5). Such regulation infringes the right of “detainees” to maintain contacts with their families. Limitations concerning phone contacts with close friends and relatives were also observed. In accordance with *Regulations concerning the stay of patients in a twenty-four-hour psychiatric and court ward with reinforced security conditions*

introduced in a ward for patients towards whom a preventive measure under reinforced security conditions are applied, a patient may use a phone in a service room only in the case of an incoming call, at specified hours, three times a day and, in accordance with paragraph 22, such call can last only 3 minutes. It needs to be indicated that as regards the prohibition to use cell phones and make outgoing calls on the phone at a service room, the opportunity to maintain contacts with the family was limited (Regional Psychiatric Hospital in Lubiąż). In another hospital NPM visitors were informed that “detained” patients were not granted passes (Independent Regional Public Hospital in Gorzów Wielkopolski). The problem of granting passes to persons towards whom a preventive measure under basic security conditions is applied was many times a subject of the Human Rights Defender’s actions. It needs to be noted, that although the Ordinance laying down the list (...) does not contain regulations concerning passes or breaks in the application of a preventive measure, the "detainees" towards whom a preventive measure under basic security conditions was ordered, in accordance with Article 10(4) of the aforementioned Ordinance, should stay in general wards and observe regulations in force in a given ward, which can regulate, among others, the issues of granting passes and can entitle a director of an establishment to grant passes to detainees (cf. Decision of the Supreme Court of 28 September 2006⁸⁸). Additionally, in the same Ordinance, apart from a statement that *regulations of the Executive Penal Code, specified in Chapter XIII, concerning the application of preventive measures, [do not entitle the District Court] to examine applications (...) to adjudicate a break in the application*, the Supreme Court has ruled that *faultiness of proceedings conducted by the District Court as regards the examination of applications (...) to be granted a pass in the course of the execution (...) of a preventive measure also resulted from the failure to take into account the Ordinance of the Minister of Health of 10 August 2004 laying down the list of psychiatric and rehabilitation centres, issued pursuant to Article 201(4) of the Code of Criminal Procedure. Pursuant to Article 10(4) of the said Ordinance, in the facilities with basic security conditions, the provisions of the rules of organisation and order of these facilities shall apply. These rules can (...) entitle the director of a facility to decide in the matter of granting passes to detainees. An unfavourable decision can be appealed against before the penitentiary court (...) in the mode specified in Article 7 of the Code of Criminal Procedure.* In reply, the Director of the Hospital in Gorzów Wielkopolski indicated that the ban on granting passes to detainees is compliant with the guidelines issued by the Head of Penitentiary Department in Gorzów Wielkopolski. In his view, granting passes to patients posing a serious threat to the environment and who are detained by a court decision is contradictory to public interest and the purpose of detention. When premises for detention are removed, the medical practitioners apply for its annulment to court. In the opinion of the National Preventive Mechanism, this position is contradictory to the abovementioned regulations and the jurisprudence of the Supreme Court⁸⁹.

f) Right to complaint

⁸⁸ Case ref. I KZP 23/06.

⁸⁹ I KZP 23/06

8th General Report [CPT/Inf (98) 12]

53 (...) *as in any place of deprivation of liberty, an effective complaints procedure is a basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.*

Act of 19 August 1994 on the protection of mental health (Dz.U. No 111, item 535, as amended)

Article 10a(1) *A person enjoying health services provided by a psychiatric hospital is entitled to assistance as regards the protection of his rights.*

2. *The right to assistance as regards the protection of the rights of a person referred to in Paragraph 1 is also applicable to a statutory representative, legal or actual counsel.*

3. *A service provider shall inform persons referred to in Paragraph 1 and 2 about the scope of actions and the method of contacting the Psychiatric Hospital Patient's Rights Ombudsman, referred to in Article 10b(1).*

4. *Persons referred to in Paragraph 1 and 2 are entitled to, in particular:*

1) lodge oral and written complaints concerning the infringement of rights of a person referred to in Paragraph 1,

2) meet the Psychiatric Hospital Patient's Rights Ombudsman, under conditions guaranteeing the freedom of speech, no later than within 7 days from the date of reporting such need,

3) be notified about the decision in the subjective case.

The practice concerning the execution of the right to complaint was, in principle, correct in the visited establishments. Patients wishing to lodge a complaint could do it both orally and in writing, within a ward or at the director's office. Complaints and responses thereto were recorded and stored. In one of the establishments it was not clear if any written responses were given to complaints. NPM visitors recommended the observance of procedures in this scope (Regional Psychiatric Hospital in Lubiąż). In another hospital's ward an interesting practice of keeping a complaints and approvals book, where patients could leave their comments, was observed. The ward administration gets acquainted with these comments on a regular basis and provides adequate notes in this notebook. (Psychiatry Clinic of the Independent Public Clinical Hospital No 1 in Szczecin).

g) Right to information on patient's rights

8th General Report [CPT/Inf (98) 12]

53 *An introductory brochure setting out the establishment's routine and patients' rights should be issued to each patient on admission, as well as to their families. Any patients unable to understand this brochure should receive appropriate assistance.*

In the majority of visited hospitals patients were informed about the reasons for admission and were handed a patient rights charter. Only in one establishment it was

recommended to provide a sufficient and constant access to information concerning patient rights (Institute of Psychiatry and Neurology in Warsaw).

7.6. Social care centres

In 2010 the representatives of the National Preventive Mechanism carried out visits to six Social Care Centres (hereinafter: SCC, Centre)⁹⁰. In most cases these were centres for chronically mentally ill persons. Visits of the NPM representatives to such establishments raised doubts of the Voivode of the Mazovian Voivodeship. In a letter of 18 August 2010 the Voivode raised objections as to the legal basis for carrying out visits to social care centres. In his view, social care centres cannot be recognized as detention places and residents of these centres as persons deprived of liberty in the meaning of Article 4 of the Optional Protocol to the UN Convention Against Torture, Inhuman or Other Degrading Treatment or Punishment. He emphasized that, in principle, the placement of an individual in a social care centre does not take place upon the warrant issued by judicial or administrative authorities, but rather it is a right applicable to an individual which can be exercised upon the consent of this person or his statutory representative. Referring to cases of persons whose stay in a social care centre is executed upon the guardianship court's decision (involuntary admission or in case of a withdrawn consent), the Voivode indicated that the issues of conditions of stay and respect for these persons' rights are subject to visits by district court judges. In reply of 22 September 2010⁹¹, the Human Rights Defender agreed with the Voivode that persons staying at social care centres are not deprived of liberty in the meaning of the criminal law and that referral to such establishments takes place, in principle, upon the interested party's motion. Nevertheless, he indicated that persons whose placement in a social care centre was decided by court are also residents of social care centres. In accordance with the definition of Article 4 of the OPCAT, the other group of persons is treated as persons deprived of liberty and thus, social care centres are within the area of the National Preventive Mechanism's interest. Moreover, the Human Rights Defender informed the Voivode that the possibility of performing controls by other entities on the basis of separate regulations is of no significance to preventive visits to detention places, which are the essence of the National Preventive Mechanism's activity.

a) Living conditions

Act on social assistance of 12 March 2004 (Dz.U. No. 64, item 593, as amended)

Article 55

1. Social care centre provides living, care, assistance and education services at the level of effective standards, in the scope and forms resulting from individual needs of residents, hereinafter referred to as "residents of the centre".

2. The organisation of a social care centre and the scope and level of services provided by

⁹⁰ Social Care Centre No 3 in Łódź, Walerian Łukasiński Social Care Centre in Góra Kalwaria, "Leśny" Social Care Centre in Warsaw, Social Care Centre in Radom (Zientalów Street), Social Care Centre in Jedlanka, Social Care Centre in Bytom (Dworcowa Street).

⁹¹ RPO-641335-III/10; RPO-641336-III/10.

the centre take into account, in particular, freedom, intimacy, dignity and feeling of security of the residents of the centre, as well as their physical and mental fitness.

Ordinance of the Minister of Labour and Social Policy of 19 October 2005 on social care centres (Dz.U. No 217, item 1837)

5(1) *A social care centre, regardless of type, shall provide services:*

1) as regards living needs, guaranteeing:

a) accommodation,

b) alimentation,

c) clothes and footwear,

d) cleanness.

(...) and Article 6 (1)

Living conditions in all visited social care centres were, for the most part, compliant with the provisions of the abovementioned Ordinance. Cleanness and order were maintained in rooms equipped with basic furniture. Equipment of rooms, their aesthetics and diversity, planned by Centre's personnel, created a nearly-homely atmosphere. However, due to the fact that residents ate and spent most of the day in their rooms, the area of rooms raised objections in two visited establishments ("Leśny" SCC in Warsaw and SCC in Góra Kalwaria). Security locks installed in room windows, largely limiting their opening capacity, were also an onerous issue, especially in the case of a heat ("Leśny" SCC in Warsaw). In response, the Director of "Leśny" SCC in Warsaw agreed that window security locks make it impossible to open the windows wide, however, no alternative solution was found. Installation of window bars was forbidden by psychiatrists as illness-intensifying.

In one of the visited establishments, the representatives of the National Preventive Mechanism viewed the conditions in a room where a coercive measure in the form of isolation was applied as inhuman and degrading treatment. A person staying in this room did not have access to the toilet, but instead, only to a bucket ("Leśny" SCC in Warsaw). In another establishment, due to the refurbishment of one of the wards, residents were temporarily (for ca. 8 months) placed in dormitory rooms (SCC in Góra Kalwaria). Conditions in this building were appalling, rooms were cramped and dirty. Therapeutic activities were limited. Visitors recommended immediate actions for the placement of residents in better residential conditions, respecting their right to dignity, intimacy and provision of basic living needs (SCC in Góra Kalwaria). In response, the Mazovian Voivode informed NPM representatives that SCC in Góra Kalwaria was undergoing remedial actions aimed at meeting standards resulting from the Act of 12 March 2004 on social assistance.

In all visited centres, the administration satisfied the needs of residents who could not afford new clothes, footwear or medications.

b) Right to medical care

Social care centres are social assistance organisational units providing twenty-four-hour living, care and assistance services. Persons staying in social care centres and covered by general health insurance are entitled to health services financed from public funds on the same grounds as all beneficiaries who are in need of medical assistance within a family home. Health services are not provided within the centres, they only make it possible for their residents to make use of these services, since they

are not health care centres⁹². In accordance with findings of the National Preventive Mechanism, the right to medical services was respected. Both general practitioners and psychiatrists were employed by visited social care centres. Visits took place once to three times a week - both of a general practitioner and a psychiatrist, depending on a centre. Consultations by medical practitioners of other specialities took place outside the facility, under the National Health Fund. Residents could also take part in therapeutic activities.

c) Treatment of residents and coercive measures

Act on social assistance of 12 March 2004 (Dz.U. No 64, item 593, as amended)

Article 55(2) *The organisation of a social care centre and the scope and level of services provided by the centre take into account, in particular, freedom, intimacy, dignity and feeling of security of the residents of the centre, as well as their physical and mental fitness.*

Act of 19 August 1994 on the protection of mental health (Dz.U. No. 111, item 535, as amended)

Article 18(1) *A coercive measure towards persons with mental disorders, at performing activities provided for by this Act, shall only be applied if the provision of this Act so allows or these persons:*

1) commit an attack against:

a) own or another person's life or health, or

b) common security, or

2) violently destroy or damage objects within their surroundings, or

3) seriously disturb or obstruct the functioning of the psychiatric health centre or the social assistance organisational unit.

(...)

(6) *Application of a coercive measure towards a person referred to in Paragraph 1 Subparagraph 1 and 2 consists in holding a person, coercive administration of medications, immobilization or isolation and, towards a person referred to in Paragraph 1 Subparagraph 3 – in holding or a coercive administration of medications.*

Directors of visited establishments provided examples of personnel's dedication and involvement. On the basis of observed situations, it was hard for the visitors to assess the attitude of social care centres' employees towards residents. In one of the centres, a number of residents stated that employees yelled at them, slammed the doors, locked the rooms during the day and were aggressive. It was hard for the NPM representatives to assess whether these remarks were true, however, it needs to be emphasized that they were numerous and quite coherent ("Leśny" SCC in Warsaw). In reply, the Director of "Leśny" SCC in Warsaw admitted that the rooms were locked during the day. However, it only took place at the time of ventilation, as well as window and floor cleaning (for safety reasons). In other centres it was also recommended to treat residents with more respect (SCC in Góra Kalwaria, SCC No 3

⁹² Explanations made by the Department of Social Assistance and Integration of the Ministry of Labour and Social Policy, sent by proxy of the Office of the Patient Rights Ombudsman, letter of 24 June 2010 (RzPP-ZZp-071-2-6/TN/JS/10).

in Łódź). In addition, the structure of bathrooms, the lack of shower curtains or the location of bathtubs raised NPM representatives' concerns as regards the right to intimacy and dignity of residents ("Leśny" SCC in Warsaw, SCC in Góra Kalwaria, SCC No 3 in Łódź). In response, the Director of "Leśny" SCC in Warsaw indicated that the lack of shower curtains resulted from the fact that residents, who had illusions and fears due to their illnesses, torn the curtains down along with the racks. Such persons cannot wash themselves in closed rooms. Shortcomings are supplemented on a regular basis. The Director of SCC No 3 in Łódź explained that shower curtains were only temporarily removed due to their replacement with the new ones.

Protection against improper treatment is also related to, among others, the application of coercive measures. In this regard, in all establishments except for SCC in Radom, **the National Preventive Mechanism found the need to carry out training courses for personnel in this scope and to unconditionally observe procedures included in the Act of 19 August 1994 on the protection of mental health.** Employees of social care centres categorically denied the application of coercive measures and stated that such prohibition resulted from the Act. Such statements indicated the lack of the basic familiarity with regulations regarding coercive measures. Additionally, it results from establishment dossiers and information provided by patients that in critical situations, the employees applied coercive measures, most often in the form of holding or coercively administering medications, but the legitimacy and method of application was not subject to any verification. As a result of an analysis of documents, the NPM representatives also found an incident where isolation was not applied to an aggressive patient directly after an aggressive act but only after the supper (it was unclear whether a patient had ceased to be aggressive after the supper). Apart from the fact that a nurse report did not specify whether the behaviour of a resident had been eligible for isolation, isolating a patient after some time from the act qualifying for the exercise of such measure is contrary to the rules of applying coercive measures, which can be applied only when necessary and for a necessary period.

Referring to findings concerning the application of coercive measures, the Director of „Leśny” SCC in Warsaw stated that patients were not held at injections. Injections are administered only upon residents' consent. Holding a person at the injection would be too dangerous. When a patient refuses to have medications administered, holding is not exercised and the fact is recorded in nurse reports. The Director of SCC No 3 in Łódź explained that the centre had its own procedures for applying coercive measures and all employees were familiar with them. Moreover, the Directors invoked controls performed by a judge of the Family and Minors Division of the District Court, during which no irregularities had been found. On the other hand, the Director of SCC in Jedlanka informed the NPM representatives that a medical personnel had been trained in the scope of applying coercive measures and the procedure for the personnel applying such measures had been worked out in accordance with legal requirements.

d) Right to contact with the outside world

Ordinance of the Minister of Labour and Social Policy of 19 October 2005 on social care centres (Dz.U. No 217, item 1837)

Article 5(1) *A social care centre, regardless of type, shall provide services: (...)*

3) assistance, consisting in: (...)

e) stimulating the initiation, maintenance and development of contacts with the family and local community.

Patients could leave the visited centres having obtained a relevant pass, which was issued upon arrangement with a psychiatrist. In SCC in Jedlanka patients could leave the centre without a prior pass; only incapacitated persons could leave the centre having arranged the leave with the personnel. Correspondence was received directly in the centres.

e) Right to complaint

Ordinance of the Minister of Labour and Social Policy of 19 October 2005 on social care centres (Dz.U. No 217, item 1837)

Article 5(1) *A social care centre, regardless of type, shall provide services:*

3) assistance, consisting in (...):

k) an effective lodging and examining of complaints and applications of residents.

In all establishments, the representatives of the National Preventive Mechanism recommended to properly organize the register of all complaints and applications (both written and oral) submitted by residents. According to declarations made by administration of visited establishments, books of complaints were empty since nobody lodged written complaints. Problems were signaled orally, they were not recorded, since – in the administration’s view – there was no such need, as they were not complaints as such. According to visiting teams, such situation raises doubts, therefore they recommended recording such cases in books of complaints. Director of “Leśny” SCC in Warsaw explained that complaints contain phantasms such as radiation, tapping, introducing gas to rooms) and serve as information for a resident’s treatment. Treating them as complaints in the understaing of the law would be inappropriate since it would require the application of a relevant procedure, among others, notification on the method of dealing with a complaint, which would lead to a dynamic development of a delusional system. On the other hand, as regards the recommendations of the National Preventive Mechanism concerning the recording of complaints, the director of SCC No 3 in Łódź indicated that the current state was in accordance with relevant regulations and the empty book of complaints should be treated as a positive evaluation of the personnel's work. Directors of SCC in Radom and Jedlanka positively responded to remarks in this regard and informed the representatives of the National Preventive Mechanism that recording both written and oral complaints would be carried out on a daily basis.

7.7. Centres for foreigners

In Poland there are several accommodation centres for foreigners (open) and detention centres for foreigners (closed). It needs to be explained that persons who submitted an application for asylum during border control and have no right of entry to the territory of Poland or illegally stay in the territory of Poland can be placed in a

closed detention centre. There are two types of detention centres under Police and Border Guards (hereinafter referred to as BG), where illegal immigrants are kept: deportation centres and guarded centres for foreigners.

There is a rule of placing a foreigner first in a guarded centre and, if the stay there turns out or could turn out ineffective, only then the person is placed in a deportation centre.

If there is an obstacle which makes an escort or admission of an alien to the guarded centre or the deportation centre impossible they may be placed in the Police or the Border Guard separate facility for detained persons, until this obstacle is removed.

Issues concerning the proceedings in cases dealing with detaining a foreigner and placing him in a guarded centre or a deportation centre have been regulated by: Art. 101-123 of the Act of 13 June 2003 *on foreigners*⁹³ and Art. 87-89c of the Act of 13 June 2003 *on granting protection to foreigners in the territory of the Republic of Poland*⁹⁴. According to the first document, in the scope not regulated by the Act, the Code of Criminal Procedure shall apply to detaining a foreigner and placing a foreigner in a guarded centre.

In 2010 the employees of the Public Administration, Healthcare and Protection of Aliens Department of the Office of the Human Rights Defender visited three deportation centres (hereinafter: Deportation Centre) and one guarded centre for foreigners (hereinafter: Guarded Centre)⁹⁵.

a) Legality of placing a foreigner in a guarded centre or a deportation centre

European Convention for the Protection of Human Rights and Fundamental Freedoms (open for signature on 4 November 1950, Dz.U. 1993, No 61, item 284)
Article 5

International Covenant for Civil and Political Rights (open for signature in New York on 19 December 1966, Dz.U. of 1977, No 38, item 167)

Article 9 *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

Resolution of the United Nations General Assembly 43/173 of 9 December 1988:
Principle 2. *Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law by competent officials or persons authorized for this purpose.*

The Constitution of the Republic of Poland of 2 April 1997

Article 31.1. *Freedom of the person shall receive legal protection.*

37. 1. *Anyone, being under the authority of the Polish State, shall enjoy the freedoms and rights ensured by the Constitution.*

2. *Exemptions from this principle with respect to foreigners shall be specified by statute.*

Act of 13 June 2003 on Aliens (Dz.U. of 2006, No 234, item 1694, as amended), Article 102, Article 104, Article 106, Article 107 and Article 108.

Act of 13 June 2003 on granting protection to Aliens on the territory of the Republic of Poland (Dz.U. of 2009, No 189, item 1472, as amended), Articles 87, 88, 89, 89b, 89c.

⁹³ Dz.U. of 2006, No 234, item 1694, as amended.

⁹⁴ Dz.U. of 2009, No 189, item 1472, as amended.

⁹⁵ Deportation Centre at the Border Guard Unit in Lubań, Deportation Centre at the Border Guard Unit in Szczecin, Guarded Centre for Foreigners at the Nadodrzański Border Guard Unit in Krosno Odrzańskie.

Aliens may be detained by Border Guard or Police for a period not exceeding 48 hours. After this period, a court of competent instance shall issue an arrest warrant. This decision can be appealed against, which shall be examined by court immediately. The period of detention must not exceed 90 days, however, it can be prolonged by a specified number of days necessary to execute the decision on the expulsion if that decision was not executed due to the alien's fault. The period of stay in the guarded centre or in the deportation centre may not exceed one year.

An alien shall be placed in the guarded centre, if:

- 1) it is necessary to ensure the effectiveness of the proceedings on expulsion or on withdrawal of the permit to settle or of the long-term resident's EC resident permit;*
- 2) there is a well-founded fear that an alien will attempt to evade the execution of the decision on expulsion or on withdrawal of the permit to settle or of the long-term resident's EC resident permit;*
- 3) he/she crossed or attempted to cross the border contrary to the laws, if he/she was not escorted to the border immediately.*

An alien shall be placed in a deportation centre if any of the abovementioned circumstances take place or there is a fear that an alien will not comply with the rules of stay in force at the detention centre.

A decision on placing an alien in a guarded centre or a deportation centre shall not be issued if such decision could pose a risk to his/her life or health.

A pregnant woman up to the seventh month of pregnancy can stay at the deportation centre. Children under their parents' custody can be placed with them in detention centres. An authority responsible for detaining a juvenile alien staying on the territory of the Republic of Poland without custody may address the court of jurisdiction over the place of minor's detention with an application to place the person in a youth care centre.

Visits have not revealed the problem of unjustified placement of any foreigner in a guarded centre or a deportation centre. Foreigners were placed in visited establishments on the basis of admission warrants and decisions of competent common courts. During the visits no irregularities in applying relevant procedures have been found.

b) Protection against torture and cruel or degrading treatment or punishment

European Convention for the Protection of Human Rights and Fundamental Freedoms (open for signature on 4 November 1950, Dz.U. 1993, No 61, item 284)

Art. 3. *Nobody can be subject to torture and inhuman or degrading treatment or punishment.*

The Universal Declaration of Human Right (Resolution of the UN General Assembly 217 A (III), adopted and proclaimed on 10 December 1948)

Art. 5 *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

International Covenant on Civil and Political Rights

Art. 7 *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

Resolution of the United Nations General Assembly 43/173 of 9 December 1988:

Principle 1. *All persons under Any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.*

Resolution of the United Nations General Assembly 43/173 of 9 December 1988:

Principle 6. *No person under any form of detention or imprisonment shall be subjected to*

torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Resolution of the United Nations General Assembly 43/173 of 9 December 1988:

Principle 30.1. *The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.*

2. *A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.*

Standards of the European Committee for the Prevention of Torture. An excerpt from CPT 7th General Report [CPT/Inf (97) 10] concerning depriving aliens - illegal immigrants - of liberty:

As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.

Law enforcement officials may on occasion have to use force in order to effect such a removal. However, the force used should be no more than is reasonably necessary. It would, in particular, be entirely unacceptable for persons subject to an expulsion order to be physically assaulted as a form of persuasion to board a means of transport or as punishment for not having done so. Further, the Committee must emphasise that to gag a person is a highly dangerous measure. The CPT also wishes to stress that any provision of medication to persons subject to an expulsion order must only be done on the basis of a medical decision and in accordance with medical ethics.

Code of Conduct for Law Enforcement Officials of 1979

Resolution of the United Nations General Assembly 34/169 (1979).

Recommendation Rec(2001)10 of the Committee of Ministers to Member States on the European Code of Police Ethics.

The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws, No. 78, item 483)

Article 40. *Nobody can be subject to torture or cruel, inhuman or degrading treatment or punishment. The application of corporal punishment shall be prohibited.*

Torture or degrading treatment cannot be narrowly understood only as a positive act (e.g. beating a foreigner staying in a deportation centre). Taking into account the definition of torture and degrading treatment, provisions of the international and internal law, the National Preventive Mechanism comprehensively examines various issues (concerning, inter alia, living conditions or health care) which, in a given context, separately or together, may indicate the application of torture or cruel or degrading treatment of persons staying in visited establishments. Therefore, this problem should be presented also from the perspective of control, coercive and penalty measures⁹⁶ applied by the personnel of

⁹⁶ A foreigner displaying a negative attitude towards obligations and prohibitions imposed on him, specified in Art. 119 and 120 of the Act of 13 June 2003 on aliens (Dz.U. No 128, item 1175 and of 2004, No 96, item 959 and No 179, item 1842), as well as to provide a foreigner with security, can be placed, upon the order of the director of a guarded centre or an officer responsible for the functioning of the deportation centre, in a single

deportation centres and guarded centres, as well as their everyday relations with foreigners detained in those establishments.

There were occasional acts of applying coercive measures towards detained persons by personnel in visited establishments. Such incidents were recorded in an event log kept by officers and in service reports.

Too frequent an application of strip searches in the Deportation Centre in Szczecin raised doubts of the visitors. Both foreigners admitted to the Deportation Centre and persons enjoying a walk were subject to personal controls (the so-called hand search or by use of a metal detector). According to visitors, the character of a visited establishment, and particularly the fact that this was not a typical place of detention for perpetrators of prohibited acts, did not justify frequent personal controls of persons detained therein.

Controls, and particularly frequency of detailed inspections in residential rooms carried out by BG officers, as well as using service dogs for these activities, were also the ground to draw attention to this problem during the visit to the Guarded Centre in Krosno Odrzańskie.

Another doubt that arose was the practice of placing a list of detained persons by names at every cell by the personnel of the Deportation Centre in Lubań. These lists included personal information of foreigners, their dates of birth, citizenship, as well as dates of expected release. The lists also included detained persons' photographs.

In the view of visitors, such way of informing third parties about the identity of foreigners detained in a Deportation Centre seems unjustifiable and can also infringe the right of such persons to have their own personal data protected. Apart from BG officers, all inmates and third parties, e.g. visitors, have access to such information.

In response to remarks made by the representatives of the National Preventive Mechanism, commanders of visited units presented their written positions.

As regards the remarks concerning multiple controls of foreigners detained in the Deportation Centre in Szczecin, the Deputy Commander of Nadodrzański Border Guard Unit explained that in accordance with Article 34 and 35 of Regulations No 2 of the Chief Commander of the Border Guard of 20 March 2008 *on performing the service by Border Guard officers in a guarded centre for foreigners and in rooms of a deportation centre*, officers performing service in rooms of the Deportation Centre carry out daily cell inspections during the detained persons' walk and the foreigners are subject to personal control after the walk and in cases specified by regulations. The Commander indicated that this is particularly important since the walking area directly borders on the public road and there is a possibility for foreigners to obtain dangerous objects during their walks.

As regards similar remarks, the Commander of the Nadodrzański Border Guard Unit in Krosno Odrzańskie indicated that rooms for foreigners and other rooms of the Guarded Centre are subject to inspection at least once a week, in accordance with Article 1 of the *Regulations concerning the stay of foreigners in a guarded centre or a deportation centre*, which is an annex to the Ordinance of the Minister of the Interior and Administration of 26 August 2004 *on conditions in guarded centres for foreigners*

room or a cell (see Article 10 of the *Rules of organization and order of the foreigners' stay in the guarded centres and deportation centres for foreigners*).

and deportation centres and the regulations concerning the stay of foreigners in a guarded centre and a deportation centre. According to the Commander, the main purpose of such controls is to check the cleanness and order in rooms and other facilities and to interview foreigners about living conditions in the Guarded Centre, as well as their problems therewith.

Apart from that, the director of the security unit, in accordance with an arranged plan (normally once a week), undertakes a detailed inspection of rooms and other facilities where foreigners are staying. During such inspections, foreigners are subject to personal control consisting in an external examination, checking clothes, underwear and footwear. The abovementioned activities, in accordance with Article 11 of the *Regulations* quoted above, are performed in a separate room, without the presence of third parties and persons of an opposite sex.

Moreover, general unit officers were designated by the Head Officer to perform weekly inspections of the rooms at the Guarded Centre for Foreigners to detect damages or breakdowns, as well as equipment shortages. During such inspections, the officers are supposed to pay particular attention to objects that can pose threat to order or safety at the Guarded Centre or objects whose size or quantity may disturb the order at the Guarded Centre. If such objects are found, they are transferred to the Guarded Centre's deposit.

Security unit officers on duty during briefing are obliged to inspect the state of technical and safety measures, as well as rooms for foreigners. Apart from that, at nighttime (between 10 pm and 6 am), wardens are obliged to control the behaviour of inmates in rooms for foreigners, no less often than every two hours, at irregular intervals. This compels another inspection of the rooms for foreigners. The fact of performing such activities is recorded in a service log of the shift manager.

The Head also indicated that rooms for foreigners are sometimes preventively inspected by security unit officers in case of a well-founded suspicion that foreigners are in possession of dangerous or prohibited objects.

The National Preventive Mechanism has also received explanations concerning the issue of using service dogs at these inspections, which provide that these are incidental cases. According to Commander's assurances, in 2010 only one such case took place before the NPM visit: three months after the bombing in Moscow. A group of several Russian citizens of the Chechen nationality was staying in the Guarded Centre at that time.

In the opinion of the National Preventive Mechanism, explanations concerning inspections in the Guarded Centre in Krosno Odrzańskie only confirmed the remarks of the visitors as regards too frequent controls of foreigners and their rooms, as the situation indicates incessant inspections. It is a fact that Article 1 of the *Regulations concerning the stay of foreigners in a guarded centre and a deportation centre* obliges the director of a guarded centre to carry out inspections of the rooms for foreigners at least once a week. However, this regulation does not limit these inspections to the scope described by the Commander and cannot constitute the ground to justify further inspections. It remains unclear which regulations are the basis for obliging wardens to such frequent inspections of persons detained in rooms for foreigners, as described.

According to Article 11 of the *Regulations*, referred to by the Commander, a foreigner is subject to strip search only in cases justified by security and order requirements. It results though from the abovementioned description made by the

Commander, that in the Guarded Centre in Krosno Odrzańskie strip searches take place regularly, normally once a week and they are not justified by security and order requirements. The fact that strip searches take place without the presence of third persons is not a basis to recognize them as legitimate.

The National Preventive Mechanism recognizes the inspection carried out with a service dog as inexplicable. The fact that a serious act of aggression takes place in the country of a person's origin cannot justify actions undertaken against this person. It needs to be noted that, apart from indicating the nationality of persons staying in the Guarded Centre, the Commander failed to indicate legal basis for taking this action, despite his assurances that it was a one-off action.

c) Right of access to information

European Convention for the Protection of Human Rights and Fundamental Freedoms (open for signature on 4 November 1950, Dz.U. 1993, No 61, item 284)

Art. 5. 2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*

Resolution of the United Nations General Assembly 43/173 of 9 December 1988:

Principle 10 *Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.*

Resolution of the United Nations General Assembly 43/173 of 9 December 1988:

Principle 13 *Any person shall at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.*

Resolution of the United Nations General Assembly 43/173 of 9 December 1988:

Principle 33 *A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture and other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.*

Recommendation Rec(2001)10 of the Committee of Ministers to Member States on the European Code of Police Ethics:

55 *The Police shall, to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.*

CPT: 12th General Report [CPT/Inf (2002)15]:

44 *Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. Consequently, it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language which they understand. In order to ensure that this is done, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.*

Standards of the European Committee for the Prevention of Torture. Excerpts from

CPT 7th General Report [CPT/Inf (97) 10] concerning the deprivation of foreigners – illegal immigrants – of liberty:

Immigration detainees should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their detention, to inform a person of their choice of their situation and to have access to a lawyer and a doctor. Further, they should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them. (...) immigration detainees should be systematically provided with a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned and, if necessary, recourse should be had to the services of an interpreter.

The Code of Criminal Procedure of 6 June 1997 (Dz.U. No 89, item 555, as amended)

Art. Article 244 (2) *A detained person shall be promptly informed on the reasons for detention and of his rights, including the right to enjoy the solicitor's assistance and the right to be heard.*

Act of 13 June 2003 on aliens (Dz.U. of 2006, No 234, item 1694, as amended)

Article 10.1. *Authorities in charge of proceedings in relation to issuing or prolonging visa, granting a residence permit for a specified period of time, permit to settle or the long-term resident's EC resident permit, hereinafter referred to as "EC resident permit" and a deportation from the territory of the Republic of Poland, shall instruct a foreigner in a language he understands of the rules and mode of proceedings and of the rights and duties applicable to him.*

The National Preventive Mechanism has found that the right of foreigners to information is ensured in a flawed way.

Upon admission to an establishment, foreigners are provided with the opportunity to get acquainted with the contents of Regulations in force in the Deportation Centre, however, the text of Regulations in particular language versions, was displayed only in the corridor of the Deportation Centre in Lubań.

In the Deportation Centre in Szczecin, which appeared the worst at the time of a visit in the discussed scope, neither the lists of authorities, institutions and non-governmental organizations dealing with foreigners' cases were presented to foreigners, nor other information concerning their rights or obligations. As indicated in other chapters of this report, familiarity not only with the regulations in force in the establishment, but also with institutions to be addressed in case of bad treatment is immensely significant to detainees. **Such information should be widely available, without the need to call the personnel to grant access to it.**

Moreover, the visits have also unveiled that scarcely had the foreigners any access to additional materials in the form of brochures or leaflets that would contain information on rights and obligations applicable to them. Non-governmental organisations that could provide legal assistance or counselling usually do not find their way to the establishments.

Situation in visited establishments can hinder the enjoyment of rights by foreigners staying therein, which in consequence leads to the infringement of basic foreigners' rights.

In response to the abovementioned remarks, the Deputy Commander of the Nadodrzański Border Guard Unit informed the National Preventive Mechanism that at admission, each foreigner is provided with *Regulations concerning the stay of*

foreigners in a deportation centre in a language they understand. It includes, among others, the list of addresses of authorities, institutions and non-governmental organizations dealing with foreigner issues, as well as other information concerning rights and obligations applicable to detainees. The *House Rules* concerning deportation centre cells were displayed immediately after the visit.

The Commander of the Border Guard Unit in Lubań confirmed reservations of visitors as regards low activity of external entities in the scope of supplying materials for foreigners to Deportation Centres and Guarded Centres and indicated that the Deportation Centre in Szczecin had not received any information materials from institutions and non-governmental organisations providing assistance to foreigners for a considerable amount of time. Officers of the Deportation Centre in Lubań singlehandedly undertook actions for the delivery of brochures and materials to foreigners. This action resulted in providing detainees with: a “REFUGEE” newspaper, information materials of IOM (Voluntary Return Programme) in foreigners mother tongues, information materials of CARITAS (“*Help to migrants and refugees*”), as well as information materials of Halina Nieć Legal Aid Centre.

d) Right to contact state, non-governmental and diplomatic institutions and the right to contact/see friends and relatives and an attorney

European Convention for the Protection of Human Rights and Fundamental Freedoms (open for signature on 4 November 1950, Dz.U. 1993, No 61, item 284)

Art. 8.1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*

Resolution of the United Nations General Assembly 43/173 of 9 December 1988:

Principle 16.1 *Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer or of the place where he is kept in custody.*

2. *If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organisation, if he is a refugee or is otherwise under the protection of an intergovernmental organisation.*

3. *If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.* **4.** *Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.*

Resolution of the United Nations General Assembly 43/173 of 9 December 1988:

Principle 18.1 *A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.*

2. *A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.*

3. *The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel*

may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order. 4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Resolution of the United Nations General Assembly 43/173 of 9 December 1988:

Principle 19. *A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.*

Standards of the European Committee for the Prevention of Torture. Excerpts from the CPT 7th General Report [CPT/Inf (97) 10] concerning the deprivation of foreigners – illegal immigrants – of liberty: *The right of access to a lawyer should apply throughout the detention period and include both the right to speak with the lawyer in private and to have him present during interviews with the authorities concerned. (...) More generally, immigration detainees should be entitled to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organisations.*

Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland (Dz.U. of 2003, No 139, item 1472, as amended), Article 89a.

The Act of 13 June 2003 on aliens (Dz.U. of 2006, No 234, item 1694) Article 117.

Annex to the Ordinance of the Minister of Interior and Administration of 26 August 2004 on the requirements to be met by the guarded centres and deportation centres for foreigners and rules of organization and order of the foreigners' stay in the guarded centres and deportation centres for foreigners (Dz.U. of 2004, No 190, item 1953), entitled "Rules of organisation and order of the foreigners' stay in the guarded centres and deportation centres for foreigners - Chapter 6.

It results from the findings concerning the visited establishments, that in principle, the right of foreigners to see close friends and relatives and to communicate and receive packages has been executed.

Foreigners also had telephones located within visited establishments at their disposal. Foreigners staying in the Guarded Centre in Krosno Odrzańskie could also use cell phones that were normally stored in the deposit. They were issued upon the detainee's request, which was recorded in the event log.

Doubts arose as regards the provision of the Art. 20 of the *House Rules* of the Guarded Centre in Krosno Odrzańskie which limited the right of a foreigner placed in an isolation chamber to written communication. The Commander of the Nadodrzański Border Guard Unit in Krosno Odrzańskie has not referred to this allegation.

As regards the course of telephone conversations, irregularities have been found in the Deportation Centre in Lubań. Namely, during the entire phone conversation, the officer was standing by the phone so that he could hear the conversation. It also needs to be noticed that the fact that not only the personal data of a phoning person, but also the personal data of an interlocutor were recorded in the *Phone Calls Log* and in the case of outgoing calls, also the phone number selected by a detainee. **In the opinion of**

the National Preventive Mechanism, direct supervision over the conversation and acquiring data of interlocutors and their copying into dossiers are groundless.

As regards doubts which arose among the visitors, the Commander of the Border Guard Unit in Lubań explained that the need to perform constant supervision over foreigners, including those using a phone, results from Article 38 of the Regulations No 2 of the Chief Commander of the Border Guard of 20 March 2008 *on performing the service by Border Guard officers in a guarded centre for foreigners and in rooms of a deportation centre*. Officers' actions are directly aimed at adequately executing the task of a constant supervision over the foreigner outside a cell, but not over the contents of his phone conversations. As regards the recording the acts of phone calls by foreigners, the Commander instructed the officers to immediately refrain from this practice.

e) Living conditions

European Union Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin in all spheres of social life, inter alia, social care, including social security and health care, education and access to publicly available goods and services.

CPT Standards. Extract from the 7th General Report [CPT/Inf (97) 10] on foreign nationals detained under foreigners legislation: *such centres should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment.*

Act of 13 June 2003 on foreigners (Dz.U. of 2006 no. 234, item 1694 as amended) art. 117.

Ordinance of the Minister of Interior and Administration of 26 August 2004 on the conditions to be met by guarded centres for foreigners and deportation centres and the organizational and order regulations for the foreigners' stay in guarded centres for foreigners and deportation centres (Dz. U. no. 190, item 1953).

Ordinance of the Minister of Interior and Administration of 11 December 2007 on the conditions of receiving meals and drinks by foreigners placed in a guarded centre or in a deportation centre and the value of the daily food standard (Dz.U. no. 236, item 1742).

A room for foreigners (in case of guarded centres) and a cell (in case of deportation centres) is equipped with equipment providing a foreigner with a separate place to sleep, suitable conditions of hygiene, adequate air supply and temperature appropriate to the season as well as lighting adequate for reading. The area of these rooms may not be less than 3 m² per one man or 4 m² per woman or juvenile.

Accommodation shall be organized in a way so that families could stay together. As a general rule, foreigners of a different gender are placed in separate rooms and unaccompanied juvenile foreigners - in a separate part of the centre in a way preventing contact with adults placed in the centre.

The foreigner is provided, free of charge, with cosmetics necessary for maintaining personal hygiene. He/she may receive, also free of charge, clothes, underwear or shoes appropriate to the season if his/her own things are not suitable for use (also for reasons of hygiene) and when he/she cannot buy them on their own.

When preparing meals for foreigners, their age, condition (e.g. if this is a pregnant woman), medical recommendations and religious and cultural requirements are taken into account. Foreigners staying in centres receive three meals a day, including one hot meal and

beverages (although in case of heat, i.e. when the temperature exceeds 28°C, their amount is increased). The first meal is received by foreigners after six hours from the moment of placing them in the centre.

The visits that took place in 2010 did not reveal any derogations from the rules described above. It should be added that the rooms of the visited establishments, made available to inmates, in the opinion of the visiting persons were maintained in good technical condition and appropriate order.

The foreigners were also guaranteed meals (breakfasts, lunches and dinners prepared separately by, for example, a catering company and supplied in disposable containers) and a possibility to take care of their personal hygiene and fitness. They could also make purchases using their own cash.

It is worth to stress here that the persons responsible for the functioning of the visited establishments, to which meals are supplied by external companies or other organizational units, are not able to check whether the calorific value of meals actually corresponds to the standards set out in the Ordinance of the Minister of Interior and Administration of 11 December 2007 *on the conditions of receiving meals and drinks by foreigners placed in a guarded centre or in a deportation centre and the value of the daily food standard*⁹⁷.

Few reservations from the visiting persons as to the living conditions regarded: the need to improve the conditions in one of the sanitary facilities of the Deportation Centre in Szczecin so as to ensure that persons taking shower enjoy appropriate privacy as well as the need to renovate the sanitary facilities and equip the provisional television room with appropriate furniture in the Deportation Centre in Lubań.

In the Centre in Krosno Odrzańskie, the visiting persons negatively assessed the method of securing windows from the inside as characteristic for deportation centres and not provided for in valid legal regulations relating to guarded centres for foreigners. Another doubt of the visiting persons concerned the total lack of the sport and recreation infrastructure in the prison yard for adults. In that establishment, the foreigners also indicated that the rooms were not adequately heated.

Referring to the doubts of the persons visiting the Deportation Centre in Szczecin, the Deputy Commander of the Nadodrzański Border Guard Unit stated that the conditions to be met by washrooms were laid down in § 17 para. 6 point 5 of the Ordinance of the Minister of Interior and Administration of 26 August 2004 *on the conditions to be met by guarded centres for foreigners and deportation centres and the organizational and order regulations for the foreigners' stay in guarded centres for foreigners and deportation centres*⁹⁸. This provision indicates only that *the door to the washroom with shower and to toilets equipped with a frosted pane made of shatterproof glass or regular pane secured on both sides with a steel mesh*. The applied solution consisting in separating the shower cabins with partitions with a height of 1 m permanently fixed to the floor and walls does not constitute, therefore, in the opinion of the management of the Deportation Centre in Szczecin, a formal irregularity.

In the opinion of the National Preventive Mechanism, real professionalism of the staff in deportation centres and guarded centres for foreigners orders them

⁹⁷ Dz. U. of 2007 no. 236, item 1742

⁹⁸ Dz. U. no. 190, item 1953

to deal with the foreigners placed in these establishment in a humane manner. The shower cabins need to be separated so as to ensure the sense of privacy of persons washing themselves. Moreover, the European Court of Human Rights pointed to the need to guarantee persons deprived of liberty the conditions which ensure respect for privacy, in the context of art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In addition to the basic comfort of persons washing themselves, this issue is also important for the prevention of risks, in particular sexual acts.

The attitude of the Commander of Border Guard Unit in Lubań towards the reservations of the visiting persons was different. Despite the similar statement that the lack of appropriate equipment in the television room in the establishment he managed, in the light of the said ordinance, did not constitute a formal irregularity since such a room was not anticipated to be included in the Deportation Centre's rooms, the Commander announced improvement of the conditions for using the TV set by the foreigners. In addition, he informed that works on improving the living conditions of the inmates would be taken in accordance with the schedule which forms an integral part of the adopted plan of modernisation and certain works relating to the condition of the walls in the sanitary facilities of the Deportation Centre have already been carried out.

The Commander of the Nadodrzański Border Guard Unit in Krosno Odrzańskie explained that the heating season in the Centre began on 10 October, and thus at the time of the visit, which took place in September, the establishments could have been underheated. Referring to the reservations concerning metal meshes installed in the windows from the inside, he explained that these were the remains of safeguards of the Deportation Centre which was transformed in the present Guarded Centre for Foreigners. In the opinion of the Director of the Centre, they provided additional security, for example, against breaking the pane or damage to the window.

It should be stressed here that, in accordance with the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment⁹⁹.

As for the issue concerning the sport and recreation infrastructure for adults, apart from an indication that there was a squash court in the Centre, the Commander of the Nadodrzański Border Guard Unit in Krosno Odrzańskie informed that in the nearest future a basketball hoop backboard would be installed.

f) Right to health protection

European Convention for the Protection of Human Rights and Fundamental Freedoms (open to the signature on 4 November 1950, Dz. U. of 1993, no. 61, item 284)

art. 3 *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

European Union Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin in all spheres of social life, inter alia, social care, including social security and health care, education and access to publicly available goods and services.

⁹⁹ 7th General Report [CPT/Inf (97) 10] and the list of CPT standards available on <http://www.cpt.coe.int/lang/pol/pol-standards.pdf>

United Nations General Assembly Resolution no. 43/173 of 9 December 1988:

Principle 22 *No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.*

United Nations General Assembly Resolution no. 43/173 of 9 December 1988:

Principle 24 *A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.*

United Nations General Assembly Resolution no. 43/173 of 9 December 1988:

Principle 26 *The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefor shall be in accordance with relevant rules of domestic law.*

CPT Standards. Extract from the 7th General Report [CPT/Inf (97) 10] on foreign nationals detained under foreigners legislation: *All detention facilities for immigration detainees should provide access to medical care. Particular attention should be paid to the physical and psychological state of asylum seekers, some of whom may have been tortured or otherwise ill-treated in the countries from which they have come. The right of access to a doctor should include the right - if a detainee so wishes - to be examined by a doctor of his choice; however, the detainee might be expected to cover the cost of such a second examination. As regards regime activities, they should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.*

Act of 13 June 2003 on foreigners (Dz.U. of 2006 no. 234, item 1694 as amended) art. 118. 1 *A foreigner placed in a guarded centre or deportation centre receives health services, medicines, sanitary articles and meals and beverages. Health services, medicines and sanitary articles are received by the foreigner on conditions laid down in the Act of 6 June 1997- Executive Penal Code (Dz. U. No. 90, item 557, as amended), applied to individuals placed in prisons and pre-trial detention centres.*

Ordinance of the Minister of Interior and Administration of 26 August 2004 on the conditions to be met by guarded centres for foreigners and deportation centres and the organizational and order regulations for the foreigners' stay in guarded centres for foreigners and deportation centres (Dz. U. no. 190, item 1953).

Foreigners staying in centres receive health services, medicines, sanitary articles and meals and beverages on the conditions laid down in the Executive Penal Code, i.e. applied to individuals placed in prisons and pre-trial detention centres. The foreigner may also use health services at his/her own expense, by a chosen physician, in the establishment, with the consent of the director/officer responsible for the functioning of the guarded centre or deportation centre.

The foreigner admitted to the guarded centre is immediately subject to a medical examination and, if necessary, sanitary treatments. The foreigner shall be subjected to medical examinations not less frequently than once a month and just before being released. The foreigner has the right to benefit from medical care and be placed in a health care institution if his/her health status requires so.

It is worth noting that pursuant to art. 103 of the Act on foreigners, the foreigner shall not be placed in a detention establishment should it result in any risk to his/her life or health (physical and/or mental). In addition, art. 107 para. 1 point 2 of this Act orders to release the foreigner from the guarded centre or deportation centre, should any further stay in this establishment constitute a threat to his/her health or life.

Foreigners staying in the guarded centres and deportation centres have the right to undisturbed sleep from 22.00 to 6.00 and on holidays to 7.00 or at different times, if this is not in contradiction with the order of the stay in the Centre. They may also use sanitary facilities and cosmetics needed to maintain personal hygiene (men are entitled to take a hot bath at least once a week, women – to use hot water at least once a day and to take a hot bath twice a week) and persons placed in guarded centres shall have the right to use sport and recreation facilities in a specified time and place.

The foreigner staying in the deportation centre has the right to a one-hour walk a day unless the physician's recommendations state otherwise.

In the visited establishments, there are no permanent medical duties. If necessary, physicians are called upon by telephone. Similar rules apply to the inmates' access to a psychologist or dentist. Specialist medical assistance is provided on a basis of an agreement concluded with one of the health care institutions. The foreigners are subject to periodic medical examinations once a month.

At the time of the visit, specific doubts as to the proper medical supplies appeared only during the visit to the Guarded Centre in Krosno where the foreigners placed there at that time pointed to difficulties of access to proper medical care and some claimed that in view of the lack of financial resources they had been refused specialist treatment or examinations.

Violations regarding these issues should also include, firstly, the fact that on the day of the visit to the establishment in Lubań, in the office, in a publicly available place ***The medical consultation register*** was made available in which – as it was determined – the data of foreigners who used medical assistance were included. **Such a collective documentation, due to the nature of the data included therein, should be adequately secured against access by unauthorized persons.**

Secondly, the foreigners placed in the Deportation Centre in Szczecin used only the right to a one-hour walk in the open air and the duration of the walk was extended only occasionally. **The visiting persons concluded that limiting the possibility of walking to one hour a day and only occasional cases of extending the duration of walks may pose an excessive hardship for persons placed in the Deportation Centre. It should be mentioned here that art. 117 para. 4 point 1 of the Act of 13 June 2003 on foreigners (Dz.U. of 2006 no. 234, item 1694), while guaranteeing the foreigners the right to a one-hour walk a day specifies only a certain minimum and in no way does it limit the possibility of extending the duration of the walk.**

The Commander of the Nadodrzański Border Guard Unit in Krosno Odrzańskie, referring to the reservations concerning the establishment he managed, provided reliable information negating the charges concerning the lack of medical assistance, including - specialist medical examinations of the foreigners placed in the establishment.

The Deputy Commander of the Nadodrzański Border Guard Unit denied that the walks of the foreigners in the Deportation Centre in Szczecin were limited to a minimum of 1 hour a day and indicated that they were extended, depending on the capabilities and weather conditions.

8. Recommendations of the National Preventive Mechanism.

As a result of the activities carried out during 80 preventive visits in 2010, the National Preventive Mechanism has issued recommendations aimed at the proper implementation of the standards contained in the acts of international and internal law. Below, there are the most important and most frequently issued recommendations for the individual establishments:

8.1. Rooms within the Police organisational units for detained persons or persons brought to sober up

- Striving for improvement of material conditions in which detained persons are kept, *inter alia*: appropriate equipping the cells with accommodation equipment, systematic renovations of the rooms, provision of suitable lighting for reading and writing, taking care of improvement of ventilation in the rooms. The National Preventive Mechanism also thinks that the detained person should be ensured appropriate conditions to take care of his/her personal hygiene and provided with necessary hygiene measures.
- Paying due attention to the quality and method of providing health services, fair keeping of medical records, providing a first aid kit, disposing of old medicines. In addition, it is necessary to eliminate cases of providing health services in the presence of persons other than the required medical staff.
- The National Prevention Mechanism takes the view that it is necessary to change the way of making the detained persons familiar with the content of the rules of staying in the room for detained persons so that they will be able to get familiar with this content without haste and a need to perform other activities. The information received by the National Preventive Mechanism employees from the detained persons in terms of knowledge of their powers, definitely prove that the persons placed there only apparently are familiarized with the content of the rules.

8.2. Prisons and pre-trial detention centres

- The National Preventive Mechanism noted that despite limiting the phenomenon of overcrowding, penitentiary establishments still faced the problem with housing prisoners. The lack of overcrowding may be found, indeed, only at the statistical level while the factual state shows that this is done at the expense of many malpractices. For example, in certain visited establishments, for the needs related to housing people deprived of liberty, day rooms, infirmaries, isolation cells and transition cells were used. Furthermore, in the rooms intended for inmates posing a serious social threat or a serious threat to the safety of the establishment also those prisoners who have not been included in that group and due to the special rigour and securities in such sections should not be housed here, were placed. The need to ensure the inmates a proper living area is also an obstacle to performing larger

renovations. As every renovation involves excluding the renovated cells from the use, which results in transferring inmates to other rooms.

- The National Prevention Mechanism takes the view that the presence of an official not practising the medical profession in the course of providing health services to the inmate in each case should be of an exceptional nature and take place only when the security of the person providing health services requires so. In connection with that, the Mechanism recommends that the provision of health services should take place out of hearing and sight range of the prison service officers. Otherwise, the right to privacy and respect for dignity of inmates as well as the right to medical secrecy are violated.
- In terms of contacts with the outside world, NPM has repeatedly recommended the abolition of the total prohibition of telephone conversations of the persons detained in pre-trial custody with their lawyer or agent being a solicitor or legal adviser in the absence of other persons and allowing to have such talks with due respect for confidentiality and without limiting the frequency of contacts.
- The establishment should enable, at the inmate's request, performance of HIV tests and a sufficient prerequisite for performance of such a test is the inmate's will, without any necessity to justify it with any medical indications.
- NPM also recommended provision of the appropriate living conditions mainly in the field of: separation of the sanitary facilities and installing separate lighting systems in them, equipping bunk beds with ladders and safeguards or replacement of beds with other (whose structure guarantees the safety of the inmates), separation of rooms to carry out personal checks, adaptation of the conditions in the cells and baths to the needs of persons with disabilities.
- During the preventive visits, it was noted that there were cases of placing in one cell of inmates with various classification subgroups (eg. P-1 with P-2 and P-3, R-1 with R-2 and R-3). This practice, in the National Preventive Mechanism's opinion, also requires verification as it leads to unjustified restriction of the rights of persons qualified by the Penitentiary Commission to serve their sentence in half-open or open prisons.
- The Mechanism representatives also postulated providing the foreigners with access to the organizational and order rules, translated into foreign languages, and regarding serving the custodial sentence and provisional detention together with the extract from the provisions of the Executive Penal Code. The National Preventive Mechanism also suggested that the inmates should be informed (e.g. within the framework of cultural-educational activities) about the legal and practical effects of judgments of the Constitutional Court and European Court of Human Rights in cases which directly refer to persons deprived of liberty.
- In connection with elimination of day rooms and their transformation into cells, an important issue appeared, regarding a limited offer of cultural and educational activities in penitentiary establishments. Each time, the National Preventive Mechanism recommended intensification of cultural and educational activities as well as providing the inmates with a possibility to make use of sport activities outside the hours intended for a daily walk.
- Following the visits carried out, NPM requested to separate and equip a room for visits in a separate room, without any supervising person. The lack in the establishment of a room for the implementation of such an award, as provided for in

the Executive Penal Code, in practice makes it impossible to be granted, even when the inmates meet the conditions for its granting.

8.3. Police emergency centres for children

- All possible measures should be taken to make the stay of juveniles in this type of the establishment as short as possible. Each time, the National Preventive Mechanism stresses that Police emergency centres for children are not establishments adapted to the longer stays of the juveniles, at least due to the fact that the juveniles do not fulfil their schooling obligation there.
- Each juvenile deprived of liberty should be provided with permanent access to the addresses of the institution to which he/she may apply in a situation where his/her rights are not respected. The addresses of these institutions should be placed in a place which is publicly available and visible to the juveniles so that access to them was not conditional upon a decision of the police officers or upon other factors.
- Each newly admitted juvenile should be subject to a medical examination if possible. The provision of medical services should take place in a room adapted to that purpose and should be appropriately documented. Moreover, in view of the strong stress accompanying the juvenile immediately after arrest and during the stay in isolation, it is advisable to provide him/her with proper psychological care.
- The rooms for the juveniles should be provided with beds ensuring proper rest at night. In addition, aesthetics and equipment of all other rooms used by the juveniles may not be for them a source of further stresses and therefore it is necessary to ensure conditions to enable performance of day-to-day activities.
- The juveniles must obligatorily be provided with clothes appropriate to the time of the day, underwear and means to maintain personal hygiene.
- The juveniles must be provided with the conditions so that they could spend an appropriate part of the day participating in various educational, cultural and sport activities, including 1 hour of open-air activities. Passive spending of time in the closed sleeping rooms should be kept to a minimum.

8.4. Youth care centres and youth sociotherapy centres

- In the opinion of the National Preventive Mechanism representatives, the employees of this type of establishments should be able to deal with the juveniles in a proper way in order not to cause acute conflicts and not to copy the wrong patterns from the environment in which they were raised. All punishments likely to disturb the juvenile's sense of value and result in the loss of self-esteem should be prohibited. The Mechanism representatives state that collective punishment and punishment in a form of hitting or using abusive language towards the juveniles is an inappropriate treatment and should not happen. In addition, application of a punishment involving performance of physical exercises physical or extra work is a wrong interaction. In the opinion of the Mechanism representatives, these punishments may result in the juveniles with distortion of a proper image of work as

a basic form of earning a livelihood and exercises aimed at strengthening physical fitness.

- It is also important to provide adequate medical care to the juveniles in the centres. In the National Preventive Mechanism's opinion, permanent employment of a nurse in the establishments is necessary, taking into account e.g. self-inflicted wounds in the juveniles and the fact that some of them are subject to permanent psychotropic pharmacotherapy.
- Since 2009, the National Preventive Mechanism has sought to ensure that the question of the juveniles' access to open-air activities is regulated in the Act on Juvenile Delinquency Proceedings as one of the obligatory rights of the juvenile staying in isolation. In the National Preventive Mechanism's opinion, legal regulations should guarantee the juveniles placed in youth care and sociotherapy centres the right to make use of a necessary for health, daily, at least one-hour walk (activities) in the open air.
- The juveniles should be provided with regular contact with their family and persons from outside the centre. Any restrictions in this regard should be justified and exercised using the appropriate procedure. The National Preventive Mechanism considers situations in which this contact depends on the degree of social rehabilitation of the juvenile to be inappropriate.
- In examining the material conditions in the centres, the National Preventive Mechanism noted that the lack of their proper provision regarded mainly the juveniles staying both in special education institutions (children's homes) and youth care centres. In the Mechanism's opinion, the child's legal situation and the fact that at the same time he/she stays in two establishments subordinate to two different ministries should not affect ensuring him/her the appropriate living conditions with regard to providing him/her with the basic things. None of these establishments may avoid its obligations towards the child, what is more, they should cooperate closely so that all interactions are most adequate to his/her situation.
- The juveniles should have permanent access to the addresses of the institutions to which they may apply in situations of violations of their rights. Even if the juveniles have an opportunity to talk about their problems or conflict situations, at the meetings of the community or directly with housemasters or psychologists, the existence of an alternative and a possibility of referring with the problem to the external institution is extremely important.

8.5. Juvenile detention centres and juvenile shelters

- The National Preventive Mechanism believes that an important element of influencing the juveniles placed in juvenile detention centers and juvenile shelters is developing an appropriate system of punishments and awards. No disciplinary measures other than those laid down in national legislation may be applied. Application of collective responsibility is also unacceptable. Demonstration by the juveniles of behaviours likely to prove their different sexual orientation should not be treated as a disciplinary offence.
- Separation of the juvenile for security purposes should be as short as possible and be used as a last resort, when other interactions brought no effect. The transition rooms should be equipped in a similar way to other rooms, providing positive visual

impressions. In addition, they must contain furniture allowing the juveniles to perform daily activities, including resting. The juveniles placed in the transition rooms should be ensured the right to education and the right to contact with their family to the same extent as other juveniles. During the stay of the juvenile in the transition room, he/she should be provided with access to books and newspapers and one-hour open-air exercises. Frequent contact with the housemaster, psychologist and physician is also advisable. All these activities should be recorded in the juvenile's documentation.

- Application of direct coercive measures should be based on the legal regulations and procedures developed on their basis. It is unacceptable to use a protective helmet with respect to the juvenile.
- One of the factors affecting the sense of security of persons deprived of liberty is knowledge of their rights, the principles of the functioning of the facility, as well as the institutions to which they may apply in situations of bad treatment. In connection with that, the National Preventive Mechanism recommends the preparation by the Ministry of Justice of a handbook for the juveniles placed in juvenile detention centres and juvenile shelters which would include the information about the juvenile's legal situation, his/her rights and duties and the institutions to which he/she may apply in a situation when his/her rights are being violated. The harmonization should also cover other documents concerning the stay of the juveniles in juvenile detention centres and juvenile shelters, for example, the rules of procedure for the transition room and for the isolation room.
- In view of the fact that the stay of the juvenile in the establishment is a difficult experience for him/her, the awareness of having close relatives and maintaining contact with them is very needed and may have a favourable impact on his/her further functioning. In connection with that, the National Preventive Mechanism believes that this contact should be as frequent as possible and not only with the closest family but also with siblings, relatives or others persons from outside the establishment.
- Controlling of correspondence of the juveniles (both incoming and outgoing) should take place within the limits set by law. It is unacceptable to control correspondence of the juveniles addressed to the institutions such as the Ombudsman for Children or Human Rights Defender.
- In the opinion of the National Preventive Mechanism, each juvenile must be ensured the freedom of conscience and religion which includes the freedom to profess or adopt religion of their own choice and forcing the juveniles to participate in religious practices should be prohibited.

8.6. Sobering stations

- The National Preventive Mechanism recommends cessation of the practice of obligatory undressing of patients in sobering stations, which may lead to degrading treatment as well as making the employees of the station sensitive to dealing with persons placed in it with respect for dignity. In addition, every person whose clothes are unsuitable for use, must be provided with substitute clothes fully protecting private parts of the body.

- The condition of some visited establishments indicated high wear of buildings, both outside and inside. Therefore, the National Preventive Mechanism each time ordered to perform general overhauls which would improve the living conditions.
- The NPM's visiting persons also recommended to equip the visited rooms with facilities for persons with disabilities.
- Provision of medical services to intoxicated persons should take place in a room adapted to that purpose and should be appropriately documented. In order that the examination could be done with respect for privacy of the patient, it should be performed in the separated room, without the presence of persons other than the required medical staff. Due to the specific nature of the establishment, it is important to equip the first aid kit with medicines with appropriate shelf-life and reanimation equipment (a defibrillator).
- Awareness of rights constitutes a fundamental guarantee against bad treatment. In connection with the above, NPM recommends preparing and making available in a visible place the rules of procedure for persons staying in sobering stations.
- The use of direct coercive measures should take place in accordance with the legal regulations in this regards, in a way not humiliating intoxicated persons. All cases of application of direct coercive measures should be thoroughly documented. The National Preventive Mechanism recommends thorough check of health of the patient (not less frequently than every 15 minutes), with respect to whom direct coercion in the form of immobilization was applied.
- Due to the cases of bad treatment of patients by the staff, observed during the visit, the National Preventive Mechanism recommends systematic trainings in dealing with intoxicated persons and applying direct coercive measures.
- The National Preventive Mechanism also encourages directors of sobering stations to establish cooperation with psychologists or therapists having full knowledge in the field of treatment of addictions. The work of such persons should be directed solely towards preventive and incentive-based interviews with patients.

8.7. Social care centres

- Since the use of direct coercive measures may lead to abuse and bad treatment, the National Preventive Mechanism thinks that all employees of the care centres should participate in systematic and comprehensive trainings regarding the use of direct coercion and the procedures of conduct and the necessity of using such measures.
- In order to guarantee the adequate protection of the patients against bad treatment, NPM recommends to record all oral and written complaints and motions in a separate registry.
- It is also necessary to take required measures to eliminate the possibility of violation of the right to privacy and dignity of the patients in the process of hygienic procedures and relieving themselves.
- It is also important to verify the accuracy of booking the deposit accounts of the residents as well as to observe the rules of administering financial resources of the residents by the guardians.

8.8. Psychiatric hospitals

- It is necessary to aim at improving the way of treatment of patients by the staff of the establishment. Respect for the patients' identity and for their dignity should be strictly enforced. Any unjustified restrictions on the patients' rights and freedoms, such as: limiting visits to toilets or placing patients in glazed "cages" should be prohibited.
- In the Mechanism's opinion, special attention should be paid to the issue of using direct coercion so that its application did not threaten the patient's safety and was actually justified each time.
- The National Preventive Mechanism's recommendations regarded also ensuring the adequate living conditions to the hospital patients by: eliminating cases of placing patients in the corridors, guaranteeing the adequate conditions in sanitary facilities.
- The National Preventive Mechanism stated that the patients with respect to whom a security mean in case of basic protection is applied, should be granted passes on the same principles as the patients staying in the establishment under the mental health protection act.
- The Mechanism's reservations were also raised by the fact that some hospitals lacked the occupational therapy. The NPM representatives stressed that it was necessary to broaden the offer of therapeutic interactions so that it was not limited to pharmacotherapy only.
- An important issue is to organize a system for receiving and dealing with as well as recording written and oral complaints from the patients, which would meet the requirements resulting from the valid legislation.

8.9. Centres for foreigners

- In the National Preventive Mechanism's opinion, supervision over the course of a phone conversation conducted by the foreigners and inclusion in the service documentation of the phone numbers called by inmates is an unjustified interference in contacts with the outside world.
- A separate issue is the execution by the Border Guard officers, with the excessive frequency, of detailed controls of the rooms. The National Preventive Mechanism regards the use of a police dog for these controls as unclear. Moreover, the fact that the foreigner's country a serious act of aggression takes place (e.g. bomb outrage) may not be a basis for taking actions such as excessive controls involving a dog, with respect to that person.
- The National Preventive Mechanism considered it necessary to provide to persons deprived of liberty the conditions guaranteeing respect for privacy in carrying out the hygienic activities. So, it recommended, therefore, that the shower cabins should be separated or covered which would ensure the person washing themselves comfort and a sense of privacy.
- The National Preventive Mechanism is disturbed by the practice of putting at the doors of the cells the information about the foreigners placed there. In the opinion of the visiting persons, such way of informing about the identity of the foreigners staying in the Deportation Centre seems unjustified and in addition it

may threaten their right to the protection of personal data. This information, apart from the Border Guard officers, may also be accessed by all fellow inmates and the third parties present in the Deportation Centre as, for example, visitors.

- Extremely important for inmates is not only knowledge of the rules of the establishment functioning but also of the institutions to which they may apply in situations of bad treatment. In connection with that, the National Preventive Mechanism recommended to place the address data of authorities, institutions and NGOs dealing with foreigners and other information concerning the rights and duties of inmates. This information should be publicly available without a necessity to ask the staff of the establishment for its provision.
- Limiting the possibility of walking to one hour a day and only occasional cases of extending the duration of walks, in the opinion of the Mechanism constitute an excessive hardship for persons staying in the establishment. In this connection, foreigners should be provided greater possibilities to take daily walks, without limiting them to a minimum.

9. The team visiting establishments in 2010 under the National Preventive Mechanism (in alphabetical order)

Ewelina Brzostymowska – lawyer, graduate of the Lazarski University's Faculty of Law in Warsaw, currently a doctoral student at the Institute of Legal Sciences of the Polish Academy of Sciences. Since 2009, she has been dealing with the issues of executive criminal law in the Human Rights Defender's Office.

Magdalena Chmielak – lawyer, graduate of the Cardinal Stefan Wyszyński University in Warsaw and post-graduate of "Social rehabilitation" at the Department of Rehabilitation Psychopedagogy of the Maria Grzegorzewska Academy of Special Education in Warsaw. Since 2009, has been an employee of the National Preventive Mechanism in the Human Rights Defender's Office. Since January 2011, the Deputy Director of the "National Preventive Mechanism" Team.

Karolina Chytła – social pedagogue, graduate of the Maria Grzegorzewska Academy of Special Education in Warsaw. Since 2010, employed in the Human Rights Defender's Office, the employee of the National Preventive Mechanism.

Ewa Dawidziuk - lawyer, doctoral student at the Department of the Executive Criminal Law at the Faculty of Law and Administration of the Łódź University. In the years 2008-2010, she acted as the Deputy Director of the Executive Criminal Law Unit in the Human Rights Defender's Office.

Kinga Dękiejowska – lawyer, since 1997 the employee in the Human Rights Defender's Office where she deals with the issues of social assistance, including the issues of the care centres in the Labour Law and Social Security Unit.

Bogumił Furche - lawyer, articulated clerk, graduate of the University of Gdańsk. Since 2008, the employee in the Human Rights Defender's Office, participates in the visits of the National Preventive Mechanism within jurisdiction of the Regional Agent of the Human Rights Defender in Gdańsk.

Tomasz Gellert – pedagogue, post-graduate of the Post-graduate Administration Studies at the Faculty of Law of the University of Warsaw. From 2003 to 2005, the Director of the Health Protection Unit in the Human Rights Defender's Office, then Director of the Unit for Public Administration, Health and Protection of the Rights of Foreigners. Currently, the main specialist of the Administrative and Economic Law Unit in the Human Rights Defender's Office.

Marta Junk - lawyer, graduate of the University of Warsaw, currently, a student at the Institute of Philosophy of the University of Warsaw; the mediator of the Association of Polish Mediators. She has been working in the Human Rights Defender's Office since 2006.

Justyna Józwiak – graduate of the Institute of Social Prevention and Rehabilitation at the University of Warsaw, currently a doctoral student at the Institute of Sociology at the University of Warsaw. Since 2008, the employee of the National Preventive Mechanism in the Human Rights Defender's Office.

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

Małgorzata Kiryluk – social pedagogue, graduate of the University of Warsaw, since 1993 she has been dealing with the issues of executive criminal law in the Human Rights Defender's Office.

Michał Kleszcz – lawyer, graduate of the University of Silesia and Post-graduate Studies of Economic and Commercial Law. The employee in the Human Rights Defender's Office since 2007. Since 2008, he has been participating in the visits of the National Preventive Mechanism within jurisdiction of the Regional Agent of the Human Rights Defender in Katowice.

Natalia Kłaczyńska – doctor of legal sciences of the University of Wrocław, university teacher. The employee in the Human Rights Defender's Office since 2005. She participates in the visits of the National Preventive Mechanism within jurisdiction of the Regional Agent of the Human Rights Defender in Wrocław.

Anna Kostka – Godecka – psychologist, psychotherapist, graduate of the Clinical Social Psychology at the Warsaw School of Social Sciences and Humanities and the Teachers College in Warsaw. She graduated from the Restorative Justice School at the University of Warsaw in the field of civil mediation. Professionally linked with the

Institute of Psychiatry and Neurology in Warsaw and the "Pomost" association. She cooperates with NGOs dealing with persons threatened by social exclusion. Since 2009, she has been an expert of the National Preventive Mechanism.

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

Marcin Kusy – lawyer, graduate of the Catholic University of Lublin and the School of Human Rights and Freedoms at the Institute of Legal Sciences of the Polish Academy of Sciences. He has extensive knowledge of American law – the certificate of the Chicago Kent College of Law. He is interested in case-law of the European Court of Human Rights in Strasbourg and anti-discrimination law. The employee of the National Preventive Mechanism since 2008.

Zbigniew Kuźma – lawyer, long-time employee of the Prison Service. While working in the penitentiary system, he implemented innovations regarding the fight against addictions (Atlantis programme), dealing with "dangerous" prisoners, social rehabilitation work. He participated in committees forming a new model of the penitentiary system, preparing the acts and executive deeds relating to the functioning of the penitentiary system and executing a penalty of imprisonment. Since 1998, he has been the employee in the Human Rights Defender's Office.

Justyna Lewandowska - lawyer, graduate of the University of Warsaw. Since January 2011, the Director of the "National Preventive Mechanism" Unit in the Human Rights Defender's Office. In 2007, she completed the prosecutor's apprenticeship in Warsaw and since 2010, she has been a member of the Bar Association in Warsaw. A long-time employee of the Helsinki Foundation for Human Rights. In the Foundation, she was engaged mainly in the rights of persons deprived of liberty, persons using psychoactive drugs and also those living with HIV/AIDS. In the years 2007/2008, she was a member of the team for amendment to the act on prevention of drug abuse and certain other acts, designated by the Minister of Justice.

Marcin Mazur – lawyer, doctoral student at the Faculty of Law, Canon Law and Administration of the Catholic University of Lublin, associate solicitor. The employee in the Human Rights Defender's Office since 2004.

Janina de Michelis – lawyer, graduate of the University of Warsaw, has been dealing with executive criminal law since 1975. The employee in the Human Rights Defender's Office since 1988, since 1989, the member of the Executive Criminal Law Unit.

Przemysław Możejko – graduate of politics and law at the University of Gdańsk. In the years 1992-1994, he was employed as a housemaster of a penitentiary section, then as an inspector of penitentiary establishments. Since 2009, he has been dealing with the issues of executive criminal law in the Human Rights Defender's Office.

Jolanta Nowakowska – political scientist, graduate of the University of Warsaw. A long-time employee of a pre-trial detention centre. Participated in the project of opening therapeutic units for convicted persons addicted to alcohol - "Atlantis". In Polish consular representations in Germany, she dealt with helping Polish citizens temporarily deprived of freedom. Since 2009, she has been dealing with the issues of executive criminal law in the Human Rights Defender's Office.

Ewa Pańszczyk – lawyer, historian, graduate of the University of Warsaw. Since 1994, the employee in the Human Rights Defender's Office, where she deals with issues concerning retirees, pensioners, combatants and disabled war veterans. She works at the Labour Law and Social Security Unit.

Tomasz Rychlicki – lawyer, graduate of the University of Warsaw. He has been working in the Human Rights Defender's Office since 2009. Since January 2010, he has been the articulated clerk at the Bar Association Warsaw.

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

Marcin Sośniak – lawyer, graduate of the Jagiellonian University and post-graduate studies "International Migrations" at the Faculty of Economic Sciences of the University of Warsaw and studies "Human rights and freedoms", organized by the Helsinki Foundation for Human Rights. Since 2004, the employee of the Administration and Economic Law Unit in the Human Rights Defender's Office.

Zdzisław Szalaj – chief specialist in the Labour Law and Social Security Unit, the employee in the Human Rights Defender's Office since 1992.

Eстера Tarnowska – lawyer, psychologist, graduate of the University of Gdańsk. The employee in the Human Rights Defender's Office since 2007, participates in the visits of the National Preventive Mechanism within jurisdiction of the Regional Agent of the Human Rights Defender in Gdańsk.

Janusz Zagórski – doctor of legal sciences, President of the Polish Penitentiary Society. Until 2010, he was the Director of the Executive Criminal Law Unit in the Human Rights Defender's Office, currently the head of the Executive Criminal Law Department in the Criminal Law Unit.

Joanna Klara Żuchowska – physician, specialist for internal diseases, doctor of medicine. She is the co-author of the book "Heart Attack" and several scientific reports. The graduate of the School of Human Rights of The Helsinki Foundation for Human Rights. On behalf of the Foundation, she is a member of the many inspections at isolation institutions and psychiatric hospitals and care centres in terms of compliance with international standards of human rights and the rights of the patient.

Since 2009, she has been acting as a medical expert of the National Preventive Mechanism.

1. VISITS UNDER THE NATIONAL PREVENTIVE MECHANISM IN 2010 –by date

No	Visited unit and visiting team	Place	Date	Experts participating	Local groups of the Office of the Human Rights Defender participating
1	Juvenile Detention Centre and Juvenile Shelter - Magdalena Chmielak - Zbigniew Kuźma - Justyna Józwiak - Justyna Lewandowska	Laskowiec	08.01.2010		
2	Juvenile Detention Centre - Justyna Lewandowska - Marcin Kusy - Jolanta Nowakowska - Przemysław Możejko	Studzieniec	14.01.2010		
3	Rooms for Detained Persons at Municipal Police Headquarters - Michał Kleszcz	Bytom	14.01.2010		Katowice Local Group
4	Rooms for Detained Persons at Poviát Police Headquarters - Marcin Mazur - Justyna Lewandowska	Legionowo	15.01.2010		
5	Rooms for Detained Persons at Poviát Police Headquarters - Marcin Mazur - Justyna Lewandowska	Nowy Dwór Mazowiecki	15.01.2010		
6	Youth Sociotherapy Centre No 2 - Przemysław Kazimirski - Justyna Józwiak - Marcin Kusy - Ewa Dawidziuk	Łódź	18.01.2010		
7	Youth Care Centre (No 11) - Przemysław Kazimirski - Justyna Józwiak - Marcin Kusy - Ewa Dawidziuk	Łódź	19.01.2010		
8	Social Care Centre No 3	Łódź	18-19.01.2010		Group X and Group

	- Marta Junk - Kinga Dękierowska				III
9	Youth Care Centre (No 13) - Przemysław Kazimirski - Justyna Józwiak - Marcin Kusy - Ewa Dawidziuk	Łódź	20-21.01.2010		
10	Juvenile Detention Centre and Juvenile Shelter - Magdalena Chmielak - Janina de Michelis - Tomasz Rychlicki - Małgorzata Kiryluk	Mrozy	01.02.2010		
11	Rooms for Detained Persons at Regional Police Headquarters - Warsaw I - Przemysław Kazimirski - Przemysław Możejko - Magdalena Chmielak	Warsaw	02.02.2010		
12	Prison - Przemysław Kazimirski - Przemysław Możejko	Tarnów	04-05.02.2010		
13	Police Emergency Centre for Children - Magdalena Chmielak - Justyna Lewandowska - Justyna Józwiak - Marcin Kusy - Michał Kleszcz	Bielsko-Biała	16,18.02.2010		Katowice Local Group
14	Youth Care Centre - Magdalena Chmielak - Justyna Lewandowska - Justyna Józwiak - Marcin Kusy - Michał Kleszcz	Jaworze	17.02.2010		Katowice Local Group
15	Juvenile Detention Centre and Juvenile Shelter - Magdalena Chmielak - Justyna Lewandowska - Justyna Józwiak - Marcin Kusy - Michał Kleszcz	Pszczyna - Łąka	18.02.2010		Katowice Local Group

16	Sobering Station - Magdalena Chmielak - Justyna Lewandowska - Justyna Józwiak - Marcin Kusy - Michał Kleszcz	Bielsko-Biała	19.02.2010		Katowice Local Group
17	Institute of Psychiatry and Neurology - Marta Junk - Marcin Sośniak	Warsaw	19.02.2010		Group X
18	Walerian Łukasiński Social Care Centre - Kinga Dękiejowska - Marta Junk	Góra Kalwaria	22-23.02.2010		Group X and Group III
19	“Leśny” Social Care Centre- Kinga Dękiejowska - Marta Junk	Warsaw	24-25.02.2010		Group X and Group III
20	Sobering Station - Michał Kleszcz - Sławomir Tkacz	Sosnowiec	25.02.2010		Katowice Local Group
21	General Tadeusz Kutrzeba Youth Care Centre " Dom na Szlaku" - Justyna Lewandowska - Zbigniew Kuźma - Tomasz Rychlicki	Załusków	01.03.2010		
22	Pre-Trial Detention Centre and External Ward of the Pre-Trial Detention Centre in Choszczno - Justyna Józwiak - Jolanta Nowakowska - Przemysław Kazimirski - Przemysław Możejko	Choszczno	9-10,12.03.2010		
23	Saint Jan Bosko Salesian Education Centre - Justyna Józwiak - Jolanta Nowakowska - Przemysław Kazimirski - Przemysław Możejko	Trzcinec	11.03.2010		
24	Prison - Marcin Kusy - Janina de Michelis - Tomasz Rychlicki	Czerwony Bór	12.03.2010		
25	Rooms for Detained Persons at Municipal Police Headquarters - Natalia Kłączyńska	Wrocław	15.03.2010		Wrocław Local Group

	- Piotr Mąkosa				
26	Deportation Centre at Sudetes Department of the Border Guard- Marcin Sośniak - Tomasz Gellert - Marta Junk	Lubań	16.03.2010		Group X
27	Voivodeship Specialist Psychiatric Hospital - Marcin Sośniak - Tomasz Gellert - Marta Junk	Lubiąż	17-18.03.2010		Group X
28	Twenty-four-hour social emergency station for intoxicated persons in Gdańsk (sobering station) - Eстера Tarnowska - Bogumił Furche	Gdańsk	17.03.2010		Gdańsk Local Group
29	Rooms for Detained Persons at Poviát Police Headquarters - Marcin Kusy - Justyna Lewandowska - Małgorzata Kiryluk - Ewelina Brzostymowska	Kutno	24.03.2010		
30	Pre-Trial Detention Centre - Marcin Kusy - Justyna Lewandowska - Małgorzata Kiryluk - Ewelina Brzostymowska	Środa Wielkopolska	25.03.2010		
31	Rooms for Detained Persons at Poviát Police Headquarters - Marcin Kusy - Justyna Lewandowska - Małgorzata Kiryluk - Ewelina Brzostymowska	Środa Wielkopolska	26.03.2010		
32	Juvenile Detention Centre and Juvenile Shelter - Justyna Jóźwiak - Jolanta Nowakowska - Marcin Kusy - Bogumił Furche	Warsaw - Falenica	06.05.2010		Gdańsk Local Group
33	Pre-Trial Detention Centre - Przemysław Kazimirski - Justyna Lewandowska - Przemysław Możejko - Ewelina Brzostymowska - Magdalena Chmielak	Warsaw - Grochów	06.05.2010		Wrocław Local Group, Group IX

	- Zdzisław Szalaj - Natalia Kłaczyńska			
34	Regional Independent Mental Health Care Centre, Nowowiejska Street - Marta Junk - Tomasz Gellert - Marcin Sośniak - Anna Sosińska - Kinga Dękiejowska - Ewa Pańszczyk - Michał Kleszcz	Warsaw	06.05.2010	Katowice Local Group, Group X and Group III
35	Sobering Station - Przemysław Kazimirski - Ewelina Brzostymowska - Justyna Lewandowska - Marcin Kusy - Natalia Kłaczyńska	Wrocław	24.05.2010	Wrocław Local Group
36	Pre-Trial Detention Centre - Przemysław Kazimirski - Ewelina Brzostymowska - Justyna Lewandowska - Marcin Kusy - Natalia Kłaczyńska	Wrocław	25-27.05.2010	Wrocław Local Group
37	Social Care Centre at ul. Rodziny Zietałów - Kinga Dękiejowska - Ewa Pańszczyk - Marta Junk - Anna Sosińska	Radom	24-25.05.2010	Group X and Group III
38	Social Care Centre - Kinga Dękiejowska - Ewa Pańszczyk - Marta Junk - Anna Sosińska	Jedlanka	25-26.05.2010	Group X and Group III
39	Deportation Centre at Pomeranian Border Guard Headquarters- Marcin Sośniak - Marta Junk - Tomasz Gellert	Szczecin	16.06.2010	Group X
40	Professor Tadeusz Sokolowski Independent Public Clinical Hospital No 1 of the Pomeranian Medical Academy	Szczecin	17.06.2010	Group X

	<ul style="list-style-type: none"> - Marcin Sośniak - Marta Junk - Tomasz Gellert 				
41	Salesian Care Centre <ul style="list-style-type: none"> - Justyna Lewandowska - Justyna Józwiak - Jolanta Nowakowska - Przemysław Kazimirski 	Różanystok	21-22.06.2010		
42	Juvenile Detention Centre <ul style="list-style-type: none"> - Justyna Lewandowska - Justyna Józwiak - Jolanta Nowakowska - Przemysław Kazimirski 	Białystok	23-24.06.2010		
43	Twenty-four-hour social emergency station for intoxicated persons in Gdańsk (sobering station) <ul style="list-style-type: none"> - Estera Tarnowska - Bogumił Furche 	Gdańsk	30.06.2010		Gdańsk Local Group
44	Rooms for Detained Persons at Municipal Police Headquarters <ul style="list-style-type: none"> - Wiesław Rostkowski - Justyna Lewandowska - Przemysław Kazimirski - Przemysław Możejko - Marcin Mazur 	Koszalin	26.07.2010		
45	Centre for Intoxication Therapy and Care (Sobering Station) <ul style="list-style-type: none"> - Wiesław Rostkowski - Justyna Lewandowska - Przemysław Kazimirski - Przemysław Możejko - Marcin Mazur 	Koszalin	27.07.2010	Joanna Klara Żuchowska - specialist in internal medicine	
46	Pre-Trial Detention Centre <ul style="list-style-type: none"> - Wiesław Rostkowski - Justyna Lewandowska - Przemysław Kazimirski - Przemysław Możejko - Marcin Mazur 	Koszalin	28-30.07.2010	Joanna Klara Żuchowska - specialist in internal medicine	
47	Police Emergency Centre for Children <ul style="list-style-type: none"> - Marcin Kusy - Janusz Zagórski - Justyna Józwiak 	Gdańsk	10.08.2010		Gdańsk Local Group

	<ul style="list-style-type: none"> - Magdalena Chmielak - Bogumił Furche 				
48	Pre-Trial Detention Centre <ul style="list-style-type: none"> - Marcin Kusy - Janusz Zagórski - Justyna Józwiak - Magdalena Chmielak - Eстера Tarnowska 	Wejherowo	11-12.08.2010		Gdańsk Local Group
49	Rooms for Detained Persons at Municipal Police Headquarters <ul style="list-style-type: none"> - Marcin Kusy - Janusz Zagórski - Justyna Józwiak - Magdalena Chmielak - Bogumił Furche 	Gdynia	13.08.2010		Gdańsk Local Group
50	Police Emergency Centre for Children <ul style="list-style-type: none"> - Justyna Józwiak - Marcin Kusy - Justyna Lewandowska - Magdalena Chmielak - Natalia Kłaczyńska 	Legnica	24.08.2010		Wrocław Local Group
51	Youth Care Centre- <ul style="list-style-type: none"> Justyna Józwiak - Marcin Kusy - Justyna Lewandowska - Magdalena Chmielak - Natalia Kłaczyńska 	Jawor	25.08.2010		Wrocław Local Group
52	Rooms for Detained Persons at Municipal Police Headquarters <ul style="list-style-type: none"> - Justyna Józwiak - Marcin Kusy - Justyna Lewandowska - Magdalena Chmielak - Natalia Kłaczyńska 	Legnica	26.08.2010		Wrocław Local Group
53	Sobering Station- Justyna Józwiak <ul style="list-style-type: none"> - Marcin Kusy - Justyna Lewandowska - Magdalena Chmielak - Natalia Kłaczyńska 	Legnica	27.08.2010		Wrocław Local Group
54	Pre-Trial Detention Centre <ul style="list-style-type: none"> - Justyna Lewandowska 	Zielona Góra	08-10.09.2010	Joanna Klara Żuchowska -	

	- Wojciech Sadownik - Wiesław Rostkowski - Małgorzata Kiryluk			specialist in internal medicine	
55	Sobering Station - Justyna Lewandowska - Wojciech Sadownik - Wiesław Rostkowski - Małgorzata Kiryluk	Zielona Góra	09.09.2010	Joanna Klara Żuchowska - specialist in internal medicine	
56	Rooms for Detained Persons at the Poviatic Police Headquarters - Marcin Kusy - Przemysław Kazimirski - Justyna Józwiak - Jolanta Nowakowska	Mogilno	14.09.2010		
57	Youth Care Centre - Marcin Kusy - Przemysław Kazimirski - Justyna Józwiak - Jolanta Nowakowska	Strzelno	15.09.2010	Agata Kostka-Godecka – clinical psychologist	
58	Youth Care Centre - Marcin Kusy - Przemysław Kazimirski - Justyna Józwiak - Jolanta Nowakowska	Bielice	16.09.2010	Agata Kostka-Godecka – clinical psychologist	
59	Centre for Preventing and Solving Addiction Problems (Sobering Station) - Marcin Kusy - Przemysław Kazimirski - Justyna Józwiak - Jolanta Nowakowska	Inowrocław	17.09.2010	Agata Kostka-Godecka – clinical psychologist	
60	Guarded Centre for Foreigners at the Oder Department of the Border Guard - Marcin Sośniak - Marta Junk - Tomasz Gellert	Krosno Odrzańskie	22.09.2010		Group X
61	Independent Public Voivodeship Hospital - Marcin Sośniak - Marta Junk - Tomasz Gellert	Gorzów Wielkopolski	23-24.09.2010		Group X
62	Rooms for Detained Persons at the Municipal Police Headquarters - Magdalena Chmielak	Gliwice	27.09.2010		Katowice Local Group

	<ul style="list-style-type: none"> - Zbigniew Kuźma - Przemysław Kazimirski - Michał Kleszcz 				
63	Pre-Trial Detention Centre <ul style="list-style-type: none"> - Magdalena Chmielak - Zbigniew Kuźma - Przemysław Kazimirski - Michał Kleszcz 	Gliwice	28-29.09.2010	Joanna Klara Żuchowska - specialist in internal medicine	Katowice Local Group
64	Sobering Station <ul style="list-style-type: none"> - Magdalena Chmielak - Zbigniew Kuźma - Przemysław Kazimirski - Michał Kleszcz 	Gliwice	30.09.2010	Joanna Klara Żuchowska - specialist in internal medicine	Katowice Local Group
65	Rooms for Detained Persons at the Municipal Police Headquarters <ul style="list-style-type: none"> - Justyna Józwiak - Justyna Lewandowska - Wojciech Sadownik - Zbigniew Kuźma 	Chełm	12.10.2010		
66	Prison <ul style="list-style-type: none"> - Justyna Józwiak - Justyna Lewandowska - Wojciech Sadownik - Zbigniew Kuźma 	Hrubieszów	13-14.10.2010	Joanna Klara Żuchowska - specialist in internal medicine	
67	Sobering Station <ul style="list-style-type: none"> - Justyna Józwiak - Justyna Lewandowska - Wojciech Sadownik - Zbigniew Kuźma 	Chełm	15.10.2010	Joanna Klara Żuchowska - specialist in internal medicine	
68	Caritas Social Care Centre <ul style="list-style-type: none"> - Kinga Dękiejowska - Marta Junk - Rafał Wrucha - Michał Kleszcz 	Bytom	13-15.10.2010		Katowice Local Group, Group X and Group III
69	Rooms for Detained Persons at Municipal Police Headquarters <ul style="list-style-type: none"> - Justyna Józwiak - Janina de Michelis - Marcin Kusy - Ewelina Brzostymowska - Michał Kleszcz 	Jaworzno	16.11.2010		Katowice Local Group

70	Pre-Trial Detention Centre- Justyna Józwiak - Janina de Michelis - Marcin Kusy - Ewelina Brzostymowska - Michał Kleszcz	Katowice	17-18.11.2010		Katowice Local Group
71	Centre for Preventing Alcohol Addiction and for Intoxicated Persons (Sobering Station)- Justyna Józwiak - Janina de Michelis - Marcin Kusy - Ewelina Brzostymowska - Michał Kleszcz	Jaworzno	19.11.2010		Katowice Local Group
72	Janusz Korczak Youth Care Centre- Przemysław Kazimirski - Justyna Lewandowska - Przemysław Możejko - Wojciech Sadownik - Karolina Chyła - Bogumił Furche	Szczecin	23.11.2010		Gdańsk Local Group
73	Prison - Przemysław Kazimirski - Justyna Lewandowska - Przemysław Możejko - Wojciech Sadownik - Karolina Chyła	Goleniów	24-25.11.2010		
74	Sobering Station - Przemysław Kazimirski - Justyna Lewandowska - Przemysław Możejko - Wojciech Sadownik - Karolina Chyła	Szczecin	26.11.2010		
75	Police Emergency Centre for Children - Wojciech Sadownik - Justyna Józwiak - Magdalena Chmielak - Zbigniew Kuźma - Jolanta Nowakowska	Rzeszów	06.12.2010		
76	Prison- Wojciech Sadownik - Justyna Józwiak - Magdalena Chmielak	Rzeszów-Załęże	07-08.12.2010		

	- Zbigniew Kuźma - Jolanta Nowakowska				
77	Sobering Station- Wojciech Sadownik - Justyna Józwiak - Magdalena Chmielak - Zbigniew Kuźma - Jolanta Nowakowska	Rzeszów	09.12.2010		
78	Youth Care Centre- Marcin Kusy - Przemysław Kazimirski - Małgorzata Kiryluk - Justyna Lewandowska - Michał Kleszcz	Kielce	13.12.2010		Katowice Local Group
79	Youth Care Centre - Marcin Kusy - Przemysław Kazimirski - Małgorzata Kiryluk - Justyna Lewandowska - Michał Kleszcz	Podzamcze	14.12.2010		Katowice Local Group
80	Rooms for Detained Persons at Municipal Police Headquarters - Marcin Kusy - Przemysław Kazimirski - Małgorzata Kiryluk - Justyna Lewandowska - Michał Kleszcz	Kielce	15.12.2010		Katowice Local Group

2. VISITS UNDER THE NATIONAL PREVENTIVE MECHANISM IN 2010 – table by units

No	Prisons		Pre-Trial Detention Centre		External Ward of a Penitentiary Establishment		Rooms for detained persons within the Police organisational units	
	Place	Date	Place	Date	Place	Date	Place	Date
1	Tarnów	04-05.02.2010	Choszczno	9-10, 12.03.2010	EW Choszczno (PDC	9-10, 12.03.2010	Municipal Police Headquarters in	14.01.2010

					Choszczno)		Bytom	
2	Czerwony Bór	12.03.2010	Środa Wielkopolska	25.03.2010			Poviat Police Headquarters in Legionowo	15.01.2010
3	Hrubieszów	13-14.10.2010	Warsaw - Grochów	06.05.2010			Poviat Police Headquarters in Nowy Dwór Mazowiecki	15.01.2010
4	Goleniów	24-25.11.2010	Wrocław	25-27.05.2010			Warsaw I District Police Headquarters	02.02.2010
5	Rzeszów-Załęże	07-08.12.2010	Koszalin	28-30.07.2010			Municipal Police Headquarters in Wrocław	15.03.2010
6			Wejherowo	11-12.08.2010			Poviat Police Headquarters in Kutno	24.03.2010
7			Zielona Góra	08-10.09.2010			Poviat Police Headquarters in Środa Wielkopolska	26.03.2010
8			Gliwice	28-29.09.2010			Municipal Police Headquarters in Koszalin	26.07.2010
9			Katowice	17-18.11.2010			Municipal Police Headquarters in Gdynia	13.08.2010
10							Municipal Police Headquarters in Legnica	26.08.2010
11							Poviat Police Headquarters in Mogilno	14.09.2010
12							Municipal Police Headquarters in Gliwice	27.09.2010
13							Municipal Police Headquarters in Chelm	12.10.2010
14							Municipal Police	16.11.2010

							Headquarters in Jaworzno	
15							Municipal Police Headquarters in Kielce	15.12.2010
Total	5		9		1		15	
No	Sobering stations		Police emergency centres for children		Psychiatric hospitals		Social care centres	
	Place	Date	Place	Date	Place	Date	Place	Date
1	Bielsko-Biała	19.02.2010	Bielsko-Biała	16,18.02.2010	Institute of Psychiatry and Neurology in Warsaw	19.02.2010	Łódź (SCC No 3)	18-19.01.2010
2	Sosnowiec	25.02.2010	Gdańsk	10.08.2010	Voivodeship Psychiatric Hospital in Lubiąż	17-18.03.2010	Walerian Łukasiński Social Care Centre in Góra Kalwaria	22-23.02.2010
3	Gdańsk	17.03.2010	Legnica	24.08.2010	Regional Independent Mental Health Care Centre, Nowowiejska Street	06.05.2010	Warsaw (Leśny SCC)	24-25.02.2010
4	Wrocław	24.05.2010	Rzeszów	06.12.2010	Professor Tadeusz Sokołowski Independent Public Clinical Hospital No 1 of the Pomeranian Medical Academy	17.06.2010	Radom	24-25.05.2010
5	Gdańsk	30.06.2010			Regional Independent Public Hospital in Gorzów Wielkopolski	23-24.09.2010	Jedlanka	25-26.05.2010

6	Koszalin	27.07.2010					Bytom (Caritas)	13-15.10.2010
7	Legnica	27.08.2010						
8	Zielona Góra	09.09.2010						
9	Inowrocław	17.09.2010						
10	Gliwice	30.09.2010						
11	Chełm	15.10.2010						
12	Jaworzno	19.11.2010						
13	Szczecin	26.11.2010						
14	Rzeszów	09.12.2010						
Total	14		4		5		6	

No	Youth care centres		Youth sociotherapy centres		Juvenile shelters		Juvenile detention centres	
	Place	Date	Place	Date	Place	Date	Place	Date
1	Łódź (11 YCC)	19.01.2010	Łódź (No 2)	18.01.2010			Studzieniec	14.01.2010
2	Łódź (13 YCC)	20-21.01.2010					Białystok	23-24.06.2010
3	Jaworze	17.02.2010						
4	Załusków	01.03.2010						
5	Trzciniec	11.03.2010						
6	Różanystok	21-22.06.2010						
7	Jawor	25.08.2010						
8	Strzelno	15.09.2010						
9	Bielice	16.09.2010						
10	Szczecin	23.11.2010						
11	Kielce	13.12.2010						
12	Podzamcze	14.12.2010						

Total	12	1	0	2
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No	Deportation Centres		Guarded centres for foreigners	
	Place	Date	Place	Date
1	Deportation Custody Centre at Sudecki Oddział Straży Granicznej (Sudecki Border Guard Unit)	16.03.2010	Guarded Centre for Foreigners at Warmińsko-Mazurski Oddział Straży Granicznej (Warmińsko-Mazurski Border Guard Unit)	22.09.2010
2	Deportation Custody Centre at Pomorski Oddział Straży Granicznej (Pomeranian Border Guard Unit)	16.06.2010		
Total	2		1	

Juvenile shelters and juvenile detention centres	
Place	Date
Laskowiec	08.01.2010
Mrozy	01.02.2010
Pszczyna - Łąka	18.02.2010
Warsaw - Falenica	06.05.2010
4	