

**Report**  
**of the Commissioner for Human**  
**Rights**  
**on the activities of the**  
**National Mechanism**  
**for the Prevention of Torture**  
**in Poland in 2020**

**(Summary)**

## **BULLETIN OF THE COMMISSIONER FOR HUMAN RIGHTS 2021, no 2**

### **SOURCES**

#### **Editor-in-chief:**

Stanisław Trociuk

#### **Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2020**

#### **Editors:**

Hanna Machińska, Ph.D., Marcin Kusy, Przemysław Kazimirski

#### **Prepared by:**

Part I – Marcin Kusy

Part II – Marcin Kusy

Part III – Marcin Kusy

Part IV

Police detention facilities – Michał Żłobecki, Rafał Kulas

Penitentiary establishments – Magdalena Dziedzic, Aleksandra Nowicka

Detention of juveniles – Aleksandra Osińska

Nursing homes and long-term care and treatment facilities – Justyna Zarecka, Aleksandra Nowicka

Sobering-up stations – Rafał Kulas

Guarded Centres for Foreigners – Rafał Kulas

National Centre for the Prevention of Dissocial Behaviours – Justyna Józwiak, Ph.D.

Group quarantine facilities – Klaudia Kamińska

#### **Proofreading:**

Małgorzata Kuźniar

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Office of the Commissioner for Human Rights

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# FOREWORD

Every social crisis is a unique test of our humanity. It reflects our real approach to human dignity. It is also an important measure of our social sensitivity and solidarity.

The year 2020 was undoubtedly marked by a social and health crisis related to the COVID-19 coronavirus pandemic. How did the extraordinary circumstances and the accompanying restrictions impact the situation of people deprived of their liberty? The question is discussed in this report.

The situation required at least two-fold measures. On the one hand, persons deprived of their liberty had to be consistently protected against torture and other forms of ill-treatment. On the other hand, it was necessary to ensure that these persons do not themselves become victims of the COVID-19 virus pandemic. To this end, they had to be provided with appropriate care (in particular, medical care). Also, steps had to be taken to guarantee that their rights are respected or are not restricted in an undue or disproportionate manner.

Another fact to be taken into account was that in crisis situations, due to obvious reasons, the risk of torture and ill-treatment increases. However, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, provided for in Article 40 of the Polish Constitution, is absolute and may never be lifted or suspended. A failure to observe it may not be justified even by extraordinary circumstances. The prohibition derives from the obligation to respect inherent and inseparable human dignity. Therefore, last year was also a kind of test for our state, of its approach to the Constitution and the rule of law.

The extraordinary situation related to the pandemic influenced, naturally, also the methods of operation of the National Mechanism for the Prevention of Torture (NMPT). The Mechanism is a team of specialists that operates within the Office of the Commissioner for Human Rights. Since 2008, the Mechanism has been conducting monitoring visits to places of detention, pursuant to the provisions of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) ratified by Poland. In view of the need to take the necessary precautions in interpersonal contacts and to follow the principle of "do not harm", I decided to temporarily suspend the conduct of on-site (physical) monitoring visits to places of detention. According to the SPT guidelines related to COVID-19 (addressed to OPCAT States-Parties and to national preventive mechanisms), we took a number of other activities to comply with our obligations. Among others, we carried out the visits remotely via an internet communicator. We continuously monitored the pandemic

situation in places of detention, intervened in many cases and maintained dialogue with the institutions and authorities responsible for supervising such places.

I would like to emphasize that this publication: the "Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2020" is already the thirteenth report on the NMPT activities in the country. As each year, we have tried to give a broad description of the situation of persons deprived of their liberty in our country and to draw attention to numerous aspects thereof. However, this year, for obvious reasons, we have devoted more space and attention to the safety of such persons during the pandemic and to the implementation of the so-called minimum anti-torture guarantees. Of course, the report also describes all advisory and educational activities undertaken by the NMPT Team and sets out our recommendations for the future.

I hope that this report of the NMPT will become an important source of information both for those in places of detention, who need to know their rights, and for the authorities required to respect the law and the international standards applicable to such places. I hope you will find the report interesting.

*Adam Bodnar, Ph.D.*

*Commissioner for Human Rights*

# THE PANDEMIC AND HUMAN RIGHTS IN PLACES OF DETENTION

The year 2020 has made a unique mark on the history of every institution in every country. The announcement of the pandemic and the introduction of numerous restrictions influencing the exercise of the rights and freedoms of societies across the world raise many questions regarding the necessity for those restrictions as well as their effectiveness. The pandemic has also become a pretext, or a justification, for introducing excessive and ungrounded measures restricting the rights of individuals without contributing to their security.

The pandemic has brought about special challenges for the National Mechanism for the Prevention of Torture which, during its direct or online visits to places of detention, monitored the observance of anti-torture guarantees, including the right of access to a lawyer, the right to have a third person informed about the detention, the right of access to an interpreter and to a doctor, the right to information, and the possibility of lodging a complaint. The NMPT conducted monitoring visits to prisons, remand prisons, rooms for detained persons, police stations, juvenile correctional facilities, juvenile educational centres, nursing homes for persons with disabilities, social care homes, a guarded centre for foreigners, and a sobering-up station. Special attention was paid to quarantine facilities. The dynamics of infections and the observance of human rights of persons living in social care homes were also analysed.

The situations of persons deprived of their liberty in various forms and at various places required numerous measures, particularly due to the fact that those places were forgotten. The identified violations and cases of non-compliance with anti-torture guarantees were the reasons for numerous general intervention letters and statements of the NMPT. They concerned, inter alia, the introduction of the crime of torture into the penal law, the unacceptable brutalization of police actions, and violations of the law in the field of the use of direct coercion measures, including the use of gas, handcuffs, etc. The regulations regarding the pandemic made it possible to amend the *Act on the Prison Service* and to introduce the possibility for the service to use electric weapons.

The amendment caused a strong reaction of the Commissioner for Human Rights already at the stage of the legislative works. Starting from August 2020, numerous peaceful assemblies were held in connection with the Margot case and then with the Constitutional Tribunal's judgment of October 2020 regarding abortion. The NMPT, when assessing the related actions of the police, emphasized the disproportionate and unjustified use of force against the demonstrators. Those actions of the police clearly violated Polish and international law.

This report describes the NMPT actions taken with regard to many entities managing detention places as well as state institutions responsible for this area of functioning of the state. Of significance

were the NMPT thematic visits verifying the implementation of the CPT recommendations in remand prisons and juvenile correctional facilities. According to the NMPT conclusions, the CPT recommendations had been either not implemented or implemented only in part. In October 2020, the CPT published a report on the ad hoc visit to Poland and on the implementation of the CPT recommendations on the treatment of persons detained by the police. The report underlines the lack of any progress in the field of respecting anti-torture guarantees. The related violations are systemic and demonstrate the existence of risks for detained persons.

This report of the NMPT describes the situation in places of detention at the time of the pandemic. The NMPT has indicated areas where violations take place, and presented relevant international standards that should be fully respected by Polish institutions. The educational value of this report should also be emphasized: it has been drawn up as part of the NMPT campaign „State without Torture“. The following publications constitute integral parts hereof: "Juveniles with mental or intellectual disabilities in places of isolation"; "Report of the National Mechanism for the Prevention of Torture on ad hoc visits to the rooms for detained persons or persons brought for sobering up within the units reporting to the Warsaw Police Headquarters"; and "Report of the National Mechanism for the Prevention of Torture on ad hoc visits to the rooms for detained persons or persons brought for sobering up within the units reporting to the Warsaw Police Headquarters and to the Voivodeship (i.e. Regional) Police Headquarters in Radom", which provide a comprehensive picture of the situation of people in places of detention.

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

# HOW TO READ THE ANNUAL REPORT OF THE NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE (NMPT)?

According to Article 23 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: OPCAT), national preventive mechanisms are required to draw up annual reports on their activities, and States-Parties are required to publish and disseminate those documents. This obligation has been reiterated by the UN Sub-Committee on Prevention of Torture and Inhuman or Degrading Treatment or Punishment (SPT) in its First Annual Report<sup>1</sup>.

The annual report on the activities of the NMPT is an essential tool for communication with the society. The publications of the national preventive mechanisms inform the public about the state of respect for human rights in places where people are deprived of their liberty, educate about the subject of the prevention of torture, and disseminate knowledge about the standards of protection of people held in places of isolation.

This report is divided into four parts. The first part discusses the organisational aspects of functioning of the NMPT, including its financing. The second part presents the methods of work of the NMPT, including the methodology of conducting monitoring visits, as well as the NMPT educational activities (*State without Torture* social campaign, international activities) and advisory activities (general intervention letters and thematic reports) carried out in 2020. The third part describes the difficulties encountered by the NMPT Team during the exercise of the mechanism's mandate. The fourth part contains the conclusions on the monitoring visits conducted in the reported year, by individual categories of places of detention. Based on the information collected by the NMPT, each chapter describes the functioning of one type of detention facility in the time of the COVID-19 epidemic.

**THE REPORT PRESENTS KEY OBSERVATIONS AND OUTLINES MAIN ISSUES THAT NEED TO BE ADDRESSED IN ORDER TO INCREASE THE STANDARDS OF HUMAN RIGHTS PROTECTION.**

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<sup>1</sup> First Annual Report of the UN Subcommittee on Prevention of Torture, CAT/C/40/2, Article 28 (m).

➤ To make this report easier to read, the international standards and recommendations are highlighted with a background shade.

This report refers to specific examples of problems identified by the NMPT during the preventive visits.

Such examples are also highlighted to make them easy to find in the report.

✎ *The standards developed by the NMPT are included in text boxes.*

# **PART I – ORGANIZATION OF WORK OF THE NMPT IN 2020**

2020 was the 13<sup>th</sup> year of performing, by the Commissioner for Human Rights, of the tasks of the National Mechanism for the Prevention of Torture. That year, the NMPT activities were marked by the coronavirus outbreak which brought major challenges for the Mechanism. Because of the need for precautionary measures, the Commissioner took the decision to suspend physical on-site visits. In their place, the NMPT representatives conducted remote visits. They consisted in speaking, via an internet communicator, with selected persons deprived of their liberty, and selected employees of a given place of detention. The talks were followed by an analysis of the information on the operation of the place in question. The solution, practised also by the national preventive mechanisms from other countries, has ensured the exercise of the right to conduct interviews with individual persons deprived of their liberty, without the presence of third parties, which right arises from Article 20(d) of the OPCAT.

## **THE NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE IS COMPOSED OF EMPLOYEES OF THE NMPT TEAM AS WELL AS EXTERNAL EXPERTS.**

- The National Mechanism for the Prevention of Torture constitutes one of the departments within the Office of the Commissioner for Human Rights. In 2020, the department's Team consisted of 10 specialists and an employee working as a secretary. The Director of the NMPT is Przemysław Kazimirski and supervision over the activities of the Department is exercised by Deputy Commissioner for Human Rights Hanna Machińska, Ph.D. Pursuant to OPCAT provisions, employees of national preventive mechanisms should have relevant skills and diversified professional knowledge as well as constitute a representation of men and women. Staff members working for the Mechanism have relevant education in the fields of law, sociology, political sciences, rehabilitation, psychology and criminology. In the reported year, the NMPT Team was supported by the lawyer from the Commissioner for Human Rights' regional representative office in Wrocław, who, in addition to her work there, took part in the NMPT preventive visits to establishments within the area of the office's responsibility.
- **COMPOSITION OF THE NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE IN 2020:**

Przemysław Kazimirski – Director of the NMPT; lawyer

Marcin Kusy – Deputy Director; lawyer

Grażyna Kalisiewicz – employee of the secretary's office, lawyer

Justyna Józwiak, Ph.D. – sociologist

Justyna Zarecka – political scientist in the field of internal security

Klaudia Kamińska – lawyer

Aleksandra Osińska – psychologist

Aleksandra Nowicka – criminologist, security specialist

Magdalena Dziedzic – lawyer

Rafał Kulas – lawyer

Michał Żłobecki – lawyer

## **EXPERT COMMITTEE**

The scope of tasks and issues covered by the National Mechanism for the Prevention of Torture in many cases requires specialist knowledge and professional experience. Therefore, since 2016 the CHR's Expert Committee (EC) on the national preventive mechanism has been in operation.

Two meetings of the Expert Committee were held in 2020. Due to the coronavirus epidemic, the meetings were held online. The first meeting discussed the actions taken by the CHR and the NMPT with regard to places of detention during the coronavirus pandemic. Discussion also focused on what additional activities may be conducted by the CHR and NMPT to support people in isolation, and how to build media messages within the public debate on places of detention in the period of the pandemic. The second meeting was devoted, e.g., to the conclusions on the ad hoc visits to police stations, that were conducted on 8 August in connection with the detention of persons protecting against the arrest of an activist from the Stop Bzdurom [Stop Nonsense] group.

### **COMPOSITION OF THE EXPERT COMMITTEE IN 2020:**

1. Maria Ejchart-Dubois – co-chair
2. Justyna Józwiak, Ph.D. – co-chair
3. Prof. Mirosław Wyrzykowski
4. attorney Piotr Senddecki
5. Prof. Witold Klaus
6. Maria Załuska, M.D., Ph.D.
7. Prof. Marek Konopczyński
8. Marzena Ksel, Ph.D.
9. Prof. Grażyna Barbara Szczygieł
10. Janina Agnieszka Kłosowska
11. Lt. Col. Lidia Olejnik

12. attorney Paweł Knut
13. attorney Mikołaj Pietrzak
14. Jerzy Foerster, M.D.
15. commander Bożena Szubińska
16. Joanna Klara Żuchowska, M.D.
17. Kama Katarasińska-Pierzgalska
18. Agnieszka Aleksandra Sikora
19. Maria Książak
20. Aleksandra Chrzanowska
21. Katarzyna Wiśniewska; Ph.D.
22. Maria Niełacznna, Ph.D.
23. Janina de Michelis

## FINANCING OF THE NMPT

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*The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms<sup>2</sup>.*

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Expenditures on the activities of the National Mechanism for the Prevention of Torture are covered from the state budget allocation received by the CHR. According to the Annual Report on the Activity-Based Expenditures of the State Budget and of the European Funds Budget, in 2020 the Office of the Commissioner for Human Rights disbursed **2 773 996,39 PLN**.

The Polish state, despite the provisions of OPCAT and the Paris Principles<sup>3</sup>, from the very beginning of the performance of the tasks of the national preventive mechanism by the Commissioner has not been allocating sufficient resources for that purpose. The insufficient budget allocated to the operation of the Commissioner for Human Rights translates directly into the impossibility to fully exercise the mandate of the National Mechanism for the Prevention of Torture.

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<sup>2</sup> Article 18(3) of OPCAT.

<sup>3</sup> Adopted by the resolution of the UN General Assembly no. 48/134 of 23 December 1993. The Paris Principles are requirements to be met by human rights institutions. They were adopted by the UN in 1993. The main requirements to be met are independence and pluralism.

- CAT: Poland should allocate the amount of financial resources requested by the Office of the Commissioner for Human Rights to enable it to discharge its mandate, and increase significantly the resources provided to the National Preventive Mechanism in order to enable it to function effectively, hire the necessary specialized staff and to fully implement its mandate (...)<sup>4</sup>.
  
- SPT: The Subcommittee recommends that the State party allocate, as a matter of priority, the financial resources needed by the mechanism, as required by Article 18 (3) of the Optional Protocol and the Subcommittee's guidelines on national preventive mechanisms (...)<sup>5</sup>.

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<sup>4</sup> Cf. Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, Article 24(a).

<sup>5</sup> Report on the SPT visit to Poland, CAT/OP/POL/ROSP/1, Article 20.

## **PART II – HOW DOES THE NMPT WORK?**

The powers of the National Mechanism for the Prevention of Torture are laid down in Article 19 of the OPCAT. Although the primary method of work indicated by OPCAT is conducting of preventive visits to places of detention, such visits constitute only a part of the process aimed at ensuring better treatment of persons deprived of their liberty. In order to prevent torture and inhuman treatment it is also necessary to take other measures including education, training and actions increasing public awareness, as well as advisory activities such as recommendations of changes in law and issuing opinions on draft legal acts.

### **NMPT'S WORK METHODOLOGY**

The National Mechanism for the Prevention of Torture may visit all places where people are deprived of their liberty in Poland<sup>6</sup>. Such places include all establishments (public or private ones) where persons are or may be deprived of their liberty either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence<sup>7</sup>.

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

During the visits, the Mechanism's representatives may record sound, with the consent of individuals who are going to be recorded, as well as hold meetings with persons deprived of their liberty without the presence of other parties and meet individuals who, at their discretion, may provide significant information<sup>8</sup>.

In all the establishments visited, the NMPT follows the same methodology. The first stage is to establish the composition of the visiting team<sup>9</sup>.

The visiting team consists of several persons, with one person performing the role of the coordinator who is responsible for drawing up a visit report. Two persons, including the team coordinator, inspect the premises and buildings of the establishment, while others conduct individual

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<sup>6</sup> Article 19 OPCAT.

<sup>7</sup> Article 4 OPCAT.

<sup>8</sup> Cf. Article 13(1a) of the act on the CHR.

<sup>9</sup> According to OPCAT provisions, experts of the national preventive mechanisms should have the required capabilities and professional knowledge.

conversations with persons deprived of their liberty. External experts participating in visits draw up expert opinions which are incorporated in the visit report.

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

Every visit of the NMPT comprises the following stages:

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

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

Yet, if the person does not consent to addressing the issue officially, the visiting team shall only use the information for the purposes of analysing the operation of mechanisms intended to protect persons deprived of their liberty against degrading, inhuman treatment or punishment as well as from torture and for the purpose of presenting relevant recommendations.

Due to the epidemiological situation the visits had the form of remote monitoring. They consisted in interviews, held remotely via an internet communicator, with persons deprived of liberty and the staff of the facility in question. In each of the visited establishments, a special closed room with a computer station and access to the internet was allocated to ensure holding the interviews without the presence of third persons. As in the case physical on-site visits, the directors, officers and detainees were informed of the prohibition of reprisals under Article 21(1) of the OPCAT.

**ACCORDING TO ARTICLE 21 (1) OPCAT NO AUTHORITY OR OFFICIAL SHALL ORDER, APPLY, PERMIT OR TOLERATE ANY SANCTION AGAINST ANY PERSON OR ORGANIZATION FOR HAVING COMMUNICATED TO THE NATIONAL PREVENTIVE MECHANISM ANY INFORMATION, WHETHER TRUE OR FALSE, AND NO SUCH PERSON OR ORGANIZATION SHALL BE OTHERWISE PREJUDICED IN ANY WAY.**

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

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

## **EDUCATIONAL ACTIVITIES**

### **• SOCIAL CAMPAIGN *STATE WITHOUT TORTURE***

For two years now, the National Mechanism for the Prevention of Torture, together with its partners - the National Bar Council, the National Council of Attorneys at Law, the Council of Europe, the Office for Democratic Institutions and Human Rights/Organization for Security and Cooperation in Europe, the Association for the Prevention of Torture and Kantar Millward Brown - has been conducting a social campaign entitled *State without Torture*.

The campaign is addressed primarily to officers and representatives of establishments where persons deprived of their liberty are or may be detained. In 2020, as part of the campaign, training courses relating to torture prevention were carried out for employees of social rehabilitation institutions<sup>10</sup>, as well as the Police<sup>11</sup>. Moreover, the NMPT established cooperation with the TZMO foundation Razem Zmieniamy Świat [*Together, We Change the World*]. Within the series of free-of-charge webinars for long-term care institutions, prepared by the organisation, NMPT representatives twice conducted two trainings on the rights of residents of social care homes. They also presented the methodology of the NMPT's work and the main problems observed during its visits to such institutions. During one of the webinars, attention was also paid to the restrictions resulting from the coronavirus pandemic. In addition, the NMPT representatives conducted training sessions for university students<sup>12</sup> who, in their future professional work, may come into contact with persons deprived of their liberty.

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<sup>10</sup> The trainings organised by the Centre for the Development of Education were attended by employees of juvenile educational centres as well as representatives of institutions that educate specialist personnel for juvenile institutions.

<sup>11</sup> Police officers from the Kujawsko-Pomorskie region's unit took part in the training.

<sup>12</sup> The Faculty of Political Science and International Studies, University of Warsaw.

In November 2020, commissioned by the CHR, Kantar Millward Brown conducted a repeated<sup>13</sup> survey entitled *Torture: the opinions of Poles*. It showed that Poles have definitely changed their attitude to the issue of torture: 70% of them do not accept torture, which is an increase by 11 percentage points compared to the 2018 survey.



Figure 1. Poster of the campaign „State without torture”

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<sup>13</sup> The study was conducted for the first time at the turn of September and October 2018, and was the starting point for the *State without torture* campaign.

## **STATEMENTS OF THE NMPT AS A FORM OF BUILDING AN ATTITUDE OF NON-TOLERANCE TOWARDS TORTURE AND CRUEL AND DEGRADING TREATMENT**

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

In 2020, the NMPT issued 2 statements that were published on the website [www.rpo.gov.pl](http://www.rpo.gov.pl). The first one concerned the action carried out by police officers with regard to a man in Nowy Czarnów. As the media revealed, on 6 January 2020 two police officers approached a man who was sitting on a bench. The man tried to run away. The officers stopped him, pushed him, kicked and strangled him, trying to make him sit on the bench again. The officers then drove away, leaving the man on the bench. According to the NMPT, the way the man was treated is a clear example of inhuman and degrading treatment, strictly prohibited by the Constitution and by relevant international agreements. The police officers acted in a manner grossly disproportionate to the situation. The NMPT emphasises that violence against detainees should be treated as unacceptable behaviour, that negatively impacts the image of the police as a public service.

The second statement concerned the detention of a woman who was taking part in a solidarity-expressing protest held in front of the district police station Warsaw I. During the apprehension action, the woman's arm was broken in several places. The NMPT expressed its concern about the escalation of violence on the part of some police officers detaining people during peaceful demonstrations in various parts of the country. The NMPT reminded that even when suppressing demonstrations, police officers should take only such measures that are adequate to the situation they are attempting to control. In the case of the woman, it is necessary to emphasize the violation of anti-torture standards, and the possibility of the officers' criminal liability under Article 157(1) of the Penal Code. What is shocking is that the detainee was not guaranteed immediate access to medical assistance, which access should have been provided without delay. After the refusal of the emergency medical service dispatcher, the officers should have transported the detainee to a hospital emergency department.

***Effective prevention of torture and other forms of ill-treatment by police officers requires that the police operation culture be changed and re-oriented towards the respect for human rights. Police officers should react to any ill-treatment of people by other officers. Violence against people remaining under police supervision should be perceived as a violation of human rights and an unacceptable lack of professionalism, which affects the image of the police service as a whole.***

## **INTERNATIONAL COOPERATION**

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

The activities of the Commissioner for Human Rights as the National Mechanism for the Prevention of Torture are also one of the areas of the CHR's international cooperation. In the conditions of the epidemic, international meetings were held online. In 2020, representatives of the NMPT participated e.g. in: a conference on the monitoring of deportation flights from Italy and other European countries; seminars on the exercise of the NMPT mandate during the coronavirus pandemic, including an expert webinar on the challenges in the field of monitoring the situation of persons living in psychiatric care institutions in the era of the COVID pandemic-19<sup>14</sup>; a webinar entitled *Penal Reform International* devoted to the challenges faced by prisons during the pandemic; a training on violence in prisons<sup>15</sup>; the public hearing of the candidates for the UN Subcommittee on the Prevention of Torture; the conference on Prison Monitoring Methodologies for National Preventive Mechanisms, and the SPT session on the work of the national preventive mechanisms during the pandemic<sup>16</sup>. Also, on 16 June 2020 an international webinar was held which was organized by the Commissioner for Human Rights in cooperation with ODIHR, experts from the Omega Research foundation and the University of Exeter. The meeting was devoted to the use of electric weapons by Prison Service officers in the light of the service's new right to use such weapons under the special Act on COVID-19. The workshop participants spoke about the conditions of permissibility to use electric weapons and about their impact on the health of people against whom such weapons are used.

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<sup>14</sup> The seminars were organized by the Geneva Association for the Prevention of Torture (APT).

<sup>15</sup> The meeting was held within the project *Towards the European Union's harmonized standards of deprivation of liberty - the role of national preventive mechanisms*.

<sup>16</sup> The closed meeting was held as part of the 41<sup>st</sup> session of the SPT.

## ADVISORY ACTIVITIES

- **GENERAL INTERVENTIONS**

According to Article 14(2) of the *Act on the Commissioner for Human Rights*, the Commissioner may send a general intervention letter to an agency, organization or institution whose activity has been found to have infringed the liberties or rights of an individual and a citizen. In 2020, the CHR, acting as the National Mechanism for the Prevention of Torture, sent 12 general intervention letters.

### **Excessive use of handcuffs on detainees by police officers who use them as a form of prevention<sup>17</sup>**

The National Mechanism for the Prevention of Torture, while visiting places where people are deprived of their liberty, has noted a disturbing practice of excessive use of handcuffs on detainees by police officers. This applies both to escorting detainees and to interrogations or preliminary questioning at police stations.

The Commissioner for Human Rights pointed out that public authorities may take such measures with regard to citizens only in cases provided for by law, and if necessary for ensuring the state security or the public order, protecting the environment, health, public morals or the freedoms and rights of people. Both the *Act on the use of coercive measures and firearms*<sup>18</sup>, and the *Act on the Police*<sup>19</sup> empower police officers to use direct coercion measures, including handcuffs. However, when using such measures, three basic principles have to be observed: subsidiarity, proportionality and minimal harm. According to these principles, the use of direct coercion has to be preceded by the use of other methods aimed at the intended behaviour of persons who do not obey the law although they have been called to do so by relevant services. Those principles also aim at preventing standard and routine use of direct coercion measures. If the use of such measures is necessary, it should be adjusted to the circumstances and the people concerned. In the Commissioner's opinion, direct coercion measures should therefore be applied only to the extent necessary to achieve the purpose for which they are used.

The findings of the representatives of the National Mechanism for the Prevention of Torture made during the monitoring visits to police detention facilities indicate, however, that the above-mentioned principles are not observed. For example, the analysis of post-visit reports from juvenile educational centres, drawn up by representatives of the NMPT in the last two years only, leads to the conclusion that juveniles are handcuffed while being escorted to such facilities by police officers. The NMPT's findings indicate that the use of handcuffs by police officers on juveniles is mainly justified by

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<sup>17</sup> General intervention letter of the CHR to the Minister of the Interior and Administration, of 20 January 2020, no. KMP.570.29.2019.

<sup>18</sup> The Act of 24 May 2013 (Journal of Laws 2019, item 2418).

<sup>19</sup> The Act of 6 April 1990 (Journal of Laws 2020, item 360).

the preventive aspect. At the same time, it is worth noting that in the majority of cases, juveniles who were handcuffed during transport did not display aggressive behaviour and obeyed the orders of police officers. According to the Commissioner for Human Rights, the routine use of handcuffs on juveniles whose behaviour does not justify the preventive use of direct coercion measures, is not only a transgression of the law but is a form of degrading treatment of such persons, within the meaning of Article 3 of the European Convention on Human Rights. It clearly states that no one shall be subjected to torture or inhuman or degrading treatment or punishment. Moreover, in their long-term practice the NMPT personnel have come across cases where juveniles were handcuffed during their transport despite the fact that they were transported in police vans under the supervision of police officers. This, in the Commissioner's view, is not only disproportionate action but one that is stigmatising and traumatising for a young person. The Commissioner for Human Rights therefore requested the Minister of the Interior and Administration to comment on the CHR conclusions.

The Minister replied<sup>20</sup> that in the light of the applicable legislation, of the criminal nature of the committed acts and their dynamics, in specific situations the preventive use of handcuffs by police officers should be considered justified as it makes it possible to avoid potential negative consequences of not using the handcuffs. In cases of ungrounded use of a direct coercive measure, including handcuffs, by a police officer, there exist legal possibilities of controlling whether the measures have been used in a justified manner, and of enforcing disciplinary or criminal liability. Also, in connection with the use of direct coercion in the form of handcuffs, the National Police Headquarters will send a letter to the commanders of the voivodeship i.e. regional police units and the Warsaw police unit with a content to be used in professional training for police officers.

### **The need to introduce a definition of torture and other cruel, inhuman or degrading treatment or punishment into the Polish legislation<sup>21</sup>**

The Commissioner pointed out to the Prime Minister and the Minister of Foreign Affairs that it is necessary to introduce the definition of torture and other cruel, inhuman or degrading treatment or punishment into the Polish legislation. This necessity was highlighted by the CHR following the recommendations of the UN Committee Against Torture (CAT) and the opinion of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), which evaluates the Polish legislation with regard to the prohibition of torture, and provides examples of other countries' legislation containing definitions of such acts. The said opinion refers to the basic elements of the absolute prohibition of torture and other ill-treatment, as identified by the Committee against Torture. It points out that a definition of torture and other ill-treatment as a crime should be included in the national legislation. It also emphasizes that the State is under the obligation to investigate all acts of torture and other ill-treatment (Article 12 of the

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<sup>20</sup> Letter of 4 March 2020.

<sup>21</sup> General intervention letter of the CHR to the Prime Minister, of 19 March 2020, no. KMP.570.3.2018.

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, hereinafter referred to as the UN Convention), to ensure enforceable redress to victims of torture, including a fair and adequate compensation (Article 14 of the UN Convention), to fully implement the principle of non-refoulement (Article 3 of the UN Convention) and the principle of not invoking evidence, as referred to in Article 15 of the UN Convention.

In the opinion of the Commissioner, non-inclusion of a separate crime of torture in the Penal Code makes it difficult or even impossible to qualify specific acts as torture within the meaning of the UN Convention. It also prevents prompt and impartial investigations and just punishment of the perpetrators. In Poland, however, judgments are issued with regard to acts that, factually, meet the definition of torture as included in Article 1 of the UN Convention. The perpetrators are most often held liable under Article 231 of the Penal Code (abuse of power), Article 246 of the Penal Code (coercion of testimony) and Article 247 of the Penal Code (abuse with regard to a person deprived of liberty). Poland, by ratifying the UN Convention, undertook to protect its citizens against torture by, inter alia, defining a separate crime of torture, counteracting impunity by conducting effective investigations and imposing adequate penalties on the perpetrators, as well as ensuring redress and compensation to victims. The confirmed cases of torture demonstrate that Poland still lacks legal instruments to effectively counteract torture and ill-treatment. Polish penal law fails to take into account all the elements of the definition of torture as contained in Article 1 of the UN Convention. The Polish legislation criminalises acts of ill-treatment of citizens by state service officers or persons acting under their orders, but does not take into account actions of other persons e.g. acting in an official capacity or persons acting with explicit or tacit consent of public officials, although the UN Convention refers to such cases. The Polish legislation does not refer to the crime of torture or other ill-treatment arising from any form of discrimination. Moreover, the Committee against Torture, responsible for monitoring the implementation of the UN Convention by States Parties, has repeatedly recommended to Poland the taking of effective legislative action to provide for the crime of torture as a separate specific crime, and the adoption of a definition of torture, that includes all the elements set out in Article 1 of the UN Convention. In view of the above, the Commissioner called on the Prime Minister and the Minister of Foreign Affairs to take a legislative initiative to criminalize torture and to fully implement the UN Convention into the Polish legislation.

### **Rights of persons deprived of their liberty during the epidemic<sup>22</sup>**

During the pandemic, we should follow the principles of solidarity, responsibility and discipline, but also we should have sensitivity and empathy towards those who are deprived of their liberty, e.g. those who are undergoing a quarantine, or are held in prisons, remand prisons, detention facilities operated by the police or military forces, guarded centres for foreigners, juvenile correctional facilities and other institutions for juveniles, psychiatric or social care institutions, and other places where people

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<sup>22</sup> General intervention letter of the CHR to the Prime Minister, of 27 March 2020, no. KMP.571.2.2020.

are deprived of their liberty pursuant to a decision of the Polish authorities or with their consent. People in places beyond the social supervision are at risk of torture or inhuman or degrading treatment or punishment. The risk increases at the times of uncertainty, such as pandemics or emergencies. At such times, the lack of effective solutions, procedures and staff training can impact human behaviours. The surveillance and monitoring institutions, on the other hand, have limited capacity to act. Following the ongoing public discussions regarding the coronavirus, the Commissioner is under the impression that in the public space, no sufficient attention is paid to the situation of persons deprived of their liberty. Statements of representatives of the authorities, and voices in the public debate, hardly ever refer to persons deprived of their liberty or to solutions proposed to be used with regard to this group. The Commissioner emphasized the need to protect persons deprived of their liberty not only against the infection and the consequences of COVID-19, but also to provide adequate medical and psychological care to such people. The key element in preventing COVID infections at places of detention is the frequent conducting of the coronavirus tests. In the Commissioner's view, state institutions should review their measures and procedures, as well as their resources, to ensure that persons deprived of their liberty are not excessively exposed to the risk of COVID-19 infection, and that their rights and guarantees of protection against all forms of ill-treatment are not violated. The Commissioner, therefore, requested the Prime Minister to provide information on the measures taken to protect the rights of persons deprived of their liberty.

The Minister of the Interior and Administration, in his reply<sup>23</sup> ensured that persons deprived of their liberty exercise the rights enjoyed by them to the full extent. They undergo medical examinations in accordance with the rules set out in the Regulation of the Minister of the Interior of 13 September 2012 on medical examinations for persons detained by the police. All voivodeship i.e. regional police units and the Warsaw police unit have received the Procedure for dealing with persons suspected of the COVID-19 infection or with a confirmed COVID-19 diagnosis. The procedure has been approved by the Chief Sanitary Inspector from the Ministry of the Interior and Administration. Detained persons with COVID-19 symptoms or suspected SARS-CoV-2 infection are placed in separate rooms for detained persons (RDP), designated exclusively for persons with the symptoms or the suspected infection. Police officers at the isolation facilities follow the applicable procedures if they have been in contact with a person suspected of COVID-19 or with symptoms of the SARS-CoV-2 virus.

The Border Guard Headquarters informed that medical personnel members working in guarded centres for foreigners had been instructed about the procedures developed by the Chief Sanitary Inspector from the Ministry of the Interior and Administration - in relation to persons suspected of COVID-19 or with the confirmed diagnosis. Moreover, regular contact is maintained with the state sanitary inspectors responsible for the individual areas of the country. Also, daily disinfection of

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<sup>23</sup> Letter of 12 May 2020.

common spaces at the places of detention is carried out. Appropriate disinfectants and hygiene products, including protective masks and gloves, were provided to foreign migrants at the facilities, to Border Guard officers, employees and medical personnel, as well as cleaning personnel.

The Minister of Health also replied<sup>24</sup> to the CHR's general intervention. In his reply, he described measures taken to protect patients and personnel of psychiatric hospitals, and hospitals where people were held as a preventive measure.

### **Monitoring of deportation operations<sup>25</sup>**

According to the information provided by the Director of the Border Guard Headquarters' Committee on Foreign Migrants, the number of migrants deported to third countries by the Polish Border Guard service is increasing. Among persons deported to third countries there happen to be representatives of particularly vulnerable groups, such as juveniles, seniors, chronically ill persons or people with disabilities.

The Commissioner pays close attention to the situation of people with regard to whom deportation decisions are enforced. This is particularly important with regard to the conditions in which the person in question has been detained. It also has to be borne in mind that a foreign citizen, after his/her transfer to the authorities of the state to which he/she is deported, in practice has very limited possibilities to complain about any violation of his/her rights during the deportation operation. The national law provided for the possibility to monitor deportation operations under Article 333 of the *Act on Foreign Migrants*<sup>26</sup>. Pursuant to that article, representatives of non-governmental or international organisations working in support of foreign migrants may be present as observers during the detention and deportation of a foreign citizen pursuant to the enforcement of the undertaken decision on the citizen's deportation. According to the Commissioner, among the entities authorized by the law to monitor deportations there should also be the Commissioner for Human Rights as the body performing the role of the National Mechanism for the Prevention of Torture.

The Commissioner also drew attention to issues connected with limitations in the exercise of the mandate of non-governmental organisations' representatives taking part in the monitoring of deportations. The observers were not permitted to take part in activities preceding the foreign citizens' transport to the airport from which deportation flights were taking place. In some cases, their contact with persons awaiting deportation was impeded. Another problem was the lack of access to the documentation regarding the deported migrants. The adopted solutions not only do not contribute to the

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<sup>24</sup> Letter of 14 April 2020.

<sup>25</sup> General intervention letter of the CHR to the Minister of the Interior and Administration, of 3 April 2020, no. KMP.572.5.2018.

<sup>26</sup> Act of 12 December 2013 (Journal of Laws of 2020, item 35).

transparency of the Border Guard activities but also impede the disclosure and examination of violations of the rights of deported foreign citizens, and the imposition of sanctions on those who commit them.

The Commissioner requested the Minister of the Interior and Administration to amend the regulations on the participation of observers in deportation operations, to require the Border Guard to fully document the deportations of persons from vulnerable groups, and to require the Commander-in-Chief of the Border Guard to regularly publish reports on the deportations.

In reply, the Minister informed<sup>27</sup> that the Border Guard had looked for various possibilities of funding the participation of representatives of non-governmental organisations in deportation operations. In 2018, the possibility was found of financing the participation of NGO representatives in deportation operations with the use of international funds under the FAMI project (the Asylum, Migration and Integration Fund). However, despite the opportunities offered by the Border Guard to finance the participation of NGO representatives in deportation operations, only six operations were monitored in 2018-2019. In the Ministry's opinion, there is no need to modify the regulations on the participation of observers (including the Commissioner for Human Rights) in deportation operations, as the Commissioner's representatives may monitor such activities under the *Act on the Commissioner for Human Rights*. As regards access to the documentation from the monitoring of deportation operations, the Minister informed that the monitoring reports drawn up on deportation operations are classified as non-archived documents and are subsequently destroyed.

In another general intervention letter sent to the Minister<sup>28</sup>, the Commissioner emphasized that, in the absence of relevant implementing regulations on the participation of the CHR representatives in the monitoring of deportations, the Commissioner's possibility to perform the role of the national preventive mechanism in the field of deportations has in practice been excluded. The current situation contradicts Article 20 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), according to which the state authorities are required to ensure that the national preventive mechanism can actually fulfil its mandate. What is of importance, the OPCAT, as a ratified international agreement, according to Article 91(1) of the Constitution forms a part of the national legislative system. The Commissioner also pointed out that the principles regarding the monitoring of deportations by representatives of non-governmental organisations have been laid down in the Regulation of the Minister of the Interior on the presence of representatives of non-governmental organisations in the course of activities linked with bringing an alien to the border or to the airport or sea port of the country to which he/she is being brought. In the Commissioner's opinion, a similar solution should be adopted in the context of the Commissioner's participation in organised return operations. In view of the above, the Commissioner for Human Rights called on the Minister of the Interior and Administration to take legislative action in order to ensure that

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<sup>27</sup> Letter of 7 May 2020.

<sup>28</sup> General intervention letter of the CHR to the Minister of the Interior and Administration of 24 June 2020.

the Commissioner's representatives can actually carry out supervision activities during deportation operations.

In response, the Minister informed<sup>29</sup> that in 2019 an evaluation mission regarding deportations from Poland was held. The Polish side was evaluated positively. It was pointed out, however, that one of the elements to be strengthened was the monitoring of the enforcement of decisions on deportation of foreign citizens. In view of the above and of the Commissioner's request to amend the regulations on the participation of observers in deportation operations, the Ministry announced that already in 2020, the Border Guard would take steps to amend the regulations on the subject in question.

### **Possibilities of using additional direct coercion measures in the form of objects intended to incapacitate people using electricity<sup>30</sup>**

The Commissioner sent a general intervention letter to the Prime Minister in connection with the amendment of the provisions of *the Act on the Prison Service*. As a result of the amendment, penitentiary facilities' personnel have been permitted to use additional direct coercion measures in the form of objects intended to incapacitate people using electricity. The Commissioner indicated his objections regarding the amendments already at the stage of the legislative works. Unfortunately, the objections were not taken into account.

The very timing of introducing the amendments, as well as the grounds for them, raise serious doubts. The solution has been introduced as a permanent one although it was raised it was required in the context of the COVID-19 epidemic and situations when tasks need to be performed by a reduced number of personnel. Therefore, the powers granted to the Prison Service are not, in fact, aimed at preventing and combating COVID-19, but to make it possible to use the new direct coercion measures, introduced under the guise of fighting the effects of COVID-19. The Commissioner is also concerned about the fact that before the introduction of the amendment, there had been no true debate about it and about the fact that its purpose was to solve staffing problems in the Prison Service. The Commissioner pointed out that electric weapons can also be used as a form of torture, which has been confirmed by binding court judgments. It should also be mentioned that the risk of torture increases in situations of stricter isolation, where contact with the outside world is limited or prohibited for security reasons, and the monitoring or supervision institutions have limited possibilities of action. In the opinion of the Commissioner, granting officers of the Prison Service the right to use direct coercion in the form of electric weapons has been ungrounded. Such weapons should not be part of the equipment of penitentiary officers. All suggestions concerning the subject should be discussed without haste, as part of public consultations and expert discussions.

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<sup>29</sup> Letter of 17 July 2020.

<sup>30</sup> General intervention of the CHR to the Prime Minister, of 29 April 2020, no.KMP.571.3.2020.

The Commissioner called on the Prime Minister to take a legislative initiative to amend the law again and withdraw the Prison Service's right to use electric weapons.

The Minister of Justice, to whom the Prime Minister forwarded the motion, did not share<sup>31</sup> the Commissioner's arguments. The act in question, within the discussed scope, entered into force on 31 March 2020. The period of its validity, according to the minister, has been too short to indicate any real negative effects of the amendment. When introducing the regulations, the legislator was guided primarily by the need to increase the level of security in penitentiary establishments. The penitentiary service's right to use the direct coercion measure is aimed at ensuring the service's effective operation not only during the pandemic but also in all situations where human life or health should be protected.

***The need for the Polish government to join the so-called CPT reports automatic publication procedure***<sup>32</sup>

In 2019, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) celebrated its 30th anniversary. The institution as well as its achievements are recognized at the international level, and the standards it has developed are of fundamental importance for improved management of places of detention, increased professionalism of their staff, and the protection of persons deprived of their liberty against the risk of torture and other cruel, inhuman or degrading treatment or punishment. The CPT reports and standards play an important educational role, stimulate the public debate on human rights, and assist the Commissioner for Human Rights in performing the function of the national preventive mechanism. The Commissioner noted that the Polish government has not yet joined the so-called *CPT reports automatic publication procedure*. Thus, pursuant to the provisions of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, reports on CPT visits remain confidential until the Polish government requests their publication. This formula, however, is not perfect as it extends the time after which the public and the Commissioner may read the report. Because of the fact that the conclusions contained in CPT reports often require urgent corrective or preventive measures to be taken by the relevant state, more and more Council of Europe member states decide to join the so-called automatic publishing procedure. So far, 12 countries have joined it, including the Czech Republic (in 2019) and Ukraine (in 2014). Also the authorities of Austria, Albania, Bulgaria, Denmark, Finland, Luxembourg, Moldova, Monaco, Norway and Sweden have acceded. The adoption by our government of the automatic publication procedure would mean that all future reports on the CPT visits would be made public as soon as they are sent to the government. A separate request for publishing a given report would then not be required, as the procedure assumes the consent to the automatic publication of all future reports. The same applies to the responses to the reports, that are published immediately after their

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<sup>31</sup> Letter of 7 August 2020.

<sup>32</sup> General intervention of the CHR to the Prime Minister, of 29 May 2020, no. KMP.571.7.2020.

receipt by the Committee. Each party to the dialogue (i.e. the CPT and the government) has, however, the possibility to postpone the publication of the document for up to six months after its receipt. Thus, if the postponement of the publication of a report or reply is, in the government's opinion, justified by any reason, it is possible according to the procedure. In the opinion of the Commissioner, the adoption of the procedure by the Polish government is of great practical importance for torture prevention. According to the Preamble to the Optional Protocol to the United Nations Convention against Torture the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures. In this context, the time when the CPT report is made public is of key importance, as confirmed by experts and international institutions working in the field of human rights protection. The Commissioner requested the prime minister to ensure that Poland adopts the automatic procedure of publishing future CPT reports and responses, that the Committee's report on the visit to Poland on 9-16 September 2019 is published and that the authorities' position on the issue is presented.

In response, the Minister of Justice informed<sup>33</sup> the Commissioner that the actions of the Polish authorities fully implement Poland's obligations under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee and its representatives receive all the necessary assistance during their visits to Poland. As regards the publication of the CPT report on the ad hoc visit to Poland held in 2019, the Ministry informed that, in line with the established practice, the Minister of Justice would request the Committee to publish the report together with the response of the Polish authorities. After the publication of the documents by the CPT, they will be posted on the website of the Ministry of Justice.

### **The need to disseminate the standards of the United Nations Office for Project Services applicable to planning and technical aspects of penitentiary establishments<sup>34</sup>**

The issue of appropriate infrastructure of penitentiary establishments is of key importance for humane treatment of prisoners. Despite numerous problems in this area, many positive changes have taken place over the years. However, further progress requires not only the necessary financial support but also consistent planning and implementation based on the highest standards.

The Commissioner welcomed the works on drafting the act on the modernization of the Prison Service in the years 2021–2024. It is important for penitentiary institutions to properly perform the tasks for which they have been established and to respect the rights and needs of detainees and other people within those establishments. The Commissioner recalled that already in 2016, the United Nations Office for Project Services (UNOPS) published a document entitled *Technical Guidance for Prison Planning. Technical and operational considerations based on the Standard Minimum Rules for the Treatment of*

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<sup>33</sup> Letter of 14 July 2020.

<sup>34</sup> General intervention letter of the CHR to the Minister of Justice, of 9 July 2020, no. KMP.571.18.2020.

*Prisoners (the Nelson Mandela Rules)*. It contains guidelines for individual aspects of the planning and technical operation of penitentiary establishments, which aspects are important also for humane treatment of prisoners. According to the United Nations rules on the treatment of prisoners (the so-called Nelson Mandela Rules), the regime in penitentiary institutions should aim to minimize those differences between life in prison and life outside it, which reduce the prisoner's sense of responsibility or respect owed to them as human beings. Penitentiary facilities should therefore have infrastructure that promotes a safe environment supporting the rehabilitation process. This includes the provision of access to work, education, family visits, and other activities and programmes aimed at accelerating the process. The UNOPS also emphasizes that prisons should be perceived as a part of the broader system of justice, applicable to criminal cases. The understanding of this aspect will contribute to designing prisons in a manner that ensures their operational effectiveness. In the opinion of the Commissioner, the UNOPS publication is of great educational value and the standards contained therein should be taken into account in the process of planning, building and modernizing penitentiary establishments. According to the recommendations of the international institutions that monitor places where people are deprived of their liberty, addressed to the Polish government, further efforts are needed to improve physical conditions in penitentiary establishments so that they conform to the international standards of treatment of prisoners. The Commissioner requested the Minister of Justice to disseminate the information about the document among the Prison Service officers and the society, and to report the actions taken.

The minister pointed out<sup>35</sup> that in order to ensure humane conditions in prisons, the Prison Service received the guidelines of the Director General of the Prison Service of 7 June 2019 on technical and protection standards for accommodation buildings operated by organizational units of the Prison Service. They set out the principles of technical planning of penitentiary establishments in a manner that takes into account the required number of cells, their location, size, standard and necessary equipment. When designing new penitentiary establishments, the Prison Service is required to comply with the living conditions standards aimed at ensuring that the basic human needs are met. The standards are also followed in the already operating facilities. The Ministry of Justice and the Prison Service consider the improvement and modernization of prison facilities as a task that should be carried out on a continuous basis, depending on the financial resources available. In order to increase the knowledge and awareness, the Polish translation of the document of the United Nations Office for Project Services, drawn up in 2016, will be posted on the intranet site of the Quartermaster and Procurement Office of the Prison Service Headquarters, in the chapter devoted to the living conditions of prisoners.

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<sup>35</sup> Letter of 13 August 2020.

## **Implementation of anti-torture guarantees with regard to persons detained by police officers<sup>36</sup>**

The Commissioner for Human Rights who performs the role of the National Mechanism for the Prevention of Torture, monitors police detention facilities across the country: rooms for detained persons, operated by organizational units of the police; police emergency facilities for juveniles; and police stations. The aim of the monitoring is to establish a dialogue with the managers of detention facilities in order to increase the protection of persons deprived of their liberty against the risk of torture and ill-treatment. A number of problems, which entail the risk of ill-treatment of persons deprived of their liberty, have been identified in police detention facilities. The problems are caused among others by the fact that the assessment of the operation the individual establishments and the activities of officers is based on the national regulations, and that the international standards developed over many years and functioning in practice are not taken account of. Unfortunately, an established practice in the replies to the NMPT monitoring visit reports is to refer to the national regulations on the work of prison service officers, which regulations, unfortunately, do not always ensure adequate protection of persons deprived of their liberty against torture. The aim of the NMPT is to determine, based on the developed international standards, the desired directions of changes not only in the legislation, but also in the practices applied.

The Commissioner emphasized the key importance of the so-called five anti-torture guarantees, which include: the right of access to a lawyer, the right to have a third person informed about the detention, the right of access to an interpreter and to an initial medical examination by a doctor, the right to information, and the possibility of lodging a complaint. When properly applied, these fundamental guarantees provide comprehensive anti-torture protection for detained persons and for the officers against any false accusations regarding the use of violence against detainees. In order to improve the protection of detained persons against ill treatment, the Commissioner for Human Rights recommends, first of all, that detained persons should have the possibility to directly inform a selected person about their detention and the place at which they are held (and any change of that place). The notification should be made by an officer only when in the given case there is a real and rounded risk that any other notification will disrupt the appropriate course of the proceedings. An officer should also give the detainee the possibility to use a mobile phone in order to search for the telephone number of the person whom they want to notify about the detention and the place where they are held. The information about the effective notification of the selected person should be entered in the documentation on the detainee. If the notification has been made by an officer, the detainee should be informed of this fact and this information should be confirmed by their signature. The Commissioner also recommends that every detained person should be informed about their rights, including: the right to request a medical examination, to notify a close person, to contact a lawyer and to lodge a complaint regarding the officers'

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<sup>36</sup> General intervention letter of the CHR to the Police Commander in Chief, of 2 October 2020, no. KMP.570.4.2020.

activities. The information has to be provided before the first interrogation, in conditions ensuring that the detainee fully understands it and can ask additional questions. Every detainee should be informed that the police station has a list of attorneys and legal advisers from among whom they may independently select one lawyer to seek assistance from. In this regard, the CHR also pointed out that the provisions of the Code of Criminal Procedure as well as the practice are inconsistent with European Union law, in so far as they do not guarantee immediate contact with a lawyer financed from the state budget. Moreover, in the opinion of the Commissioner there is a need to develop a template of information with contact details of all authorities that consider complaints (including institutions for the protection of human rights and relevant units within the structures of the police, both at the central and regional levels), to provide information to detained persons on attorneys and legal advisers, and in the case of foreign detainees who does not speak Polish fluently, to ensure the presence of an interpreter as a mandatory condition. The presence of an interpreter during all official procedures should be confirmed by his/her signature and stamp in the relevant report. It also seems advisable to designate a room at the place of detention, which is not monitored and where meetings can be held of detained persons and their lawyers, out of sight and hearing of third parties. Police stations should be equipped with sound and image registration equipment to record interrogations. Officers should be trained in the use of such equipment and the equipment already available at some police stations should always be used. It would be helpful to keep a register of persons entering and leaving the station, including the date and time of entry and exit, the name of the officer under whose supervision the detainee is placed and the reasons for entry. It is also necessary to end the practice of routine body search of all detainees. Body search should be used only in exceptional cases justified by the situation, after the individual risk assessment, while in other cases preventive search should be conducted. It is also necessary to introduce a standard practice of medical examinations of all detained persons (including after the use of a taser, regardless of the consequences of its use) and to adopt the principle of conducting the medical examination out of sight and hearing of officers, unless the doctor decides that the presence of a policeman during the examination is necessary. The Commissioner recommends that officers use handcuffs only when justified by the risk assessment in a given case, and that an amendment is made of the order no. 130 of 7 August 2012 of the Police Commander in Chief on the performance of professional duties in rooms for detained persons or persons brought for sobering up, so as to guarantee the presence of more than one officer in such a room. Finally, the Commissioner recommends a review of staff shortages in all organizational units of the police, taking into account the increasing number of inhabitants of municipalities adjacent to urban agglomerations, and the introduction of officers' regular training in stress management methods, counteracting professional burnout and alcoholism, and the standards of protecting detainees against ill-treatment, as described herein.

The Commissioner requested the Police Commander in Chief to present information on the above-mentioned problems which increase the risk of ill-treatment and torture of detained persons in

police detention facilities. The Commissioner for Human Rights is awaiting a response of the Police Commander in Chief.

### **Psychological care for people deprived of their liberty in penitentiary establishments<sup>37</sup>**

The practice of psychological care in penitentiary establishments is very different from the guidelines indicated in the order of the Director General of the Prison Service<sup>38</sup>. According to the order, a psychologist should work with no more than 200 prisoners. In 2020, representatives of the National Mechanism for the Prevention of Torture, during the preventive visits, came across cases where this standard was not complied with. Disturbing conclusions were contained also in the report on the safety of prisoners, drawn up by the Supreme Audit Office. An expert in the field of psychiatry, appointed by the Supreme Audit Office, had objections as in three out of eight audited penitentiary establishments, the number of prisoners per one psychologist significantly exceeded the limit. Yet, the main objections were raised with regard to the limit itself. Thus, the Supreme Audit Office recommended a re-analysis of the limit of prisoners per psychologist, in order to ensure the optimal distribution of workload on psychologists and correction officers, taking into account the various types of penitentiary establishments and other significant factors (e.g. the percentage of inmates who are employed). In the opinion of the Commissioner, sufficient specialist assistance should be provided to prisoners, particularly during the coronavirus pandemic. The epidemiological situation has brought significant changes in the functioning of all places of detention, including some limitations on the rights of inmates. Reduced numbers, or full suspension, of visits that prisoners are permitted to receive, limited working time outside the establishment, or reduced availability of religious services can become the main reason for the increased number of undesirable incidents in penitentiary establishments, for the escalation of negative emotions among inmates, and for the lack of understanding of administrative decisions related to those limitations. The provision of appropriate psychological care may contribute to an increased sense of security both on the side of prisoners and employees of penitentiary establishments. Therefore, in the opinion of the Commissioner for Human Rights, it is necessary not only to take steps to guarantee the observance of the maximum limit of 200 inmates per psychologist, but also to verify the limit and to introduce a new lower one. The Commissioner requested the Director General of the Prison Service to present information on the provision of appropriate psychological care in penitentiary establishments.

According to the reply<sup>39</sup> of the Deputy Director General of the Prison Service, the activities undertaken by the Prison Service resulted in an increase in the number of psychologists working in penitentiary establishments from 408 to 465 in the years 2015–2020 (an increase by 13%). The situation

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<sup>37</sup> General intervention letter of the CHR to the Director General of the Prison Service, of 10 November 2020, no. KMP. 571.8.2020.

<sup>38</sup> Order no. 19/16 of 14 April 2016.

<sup>39</sup> Letter of 26 November 2020.

is different in therapy wards, where the number of personnel is much higher and where one specialist works, on average with 8–9 prisoners. Periodic difficulties with ensuring a sufficient number of psychologists occur in certain penitentiary establishments, mostly due to long-term sick leaves, maternity or parental leaves, and ongoing recruitment to the positions of psychologists. Each time, in such a situation the director of the establishment, in consultation with the Prison Service regional directors, try to ensure the provision of psychological care to the prisoners, e.g. by temporary employment of psychologists from other establishments; by periodic replacements by psychologists from other wards (e.g. therapeutic ward), or by other replacements. Issues related to the implementation of the standards of operation of penitentiary establishments are subject to official monitoring and are analysed by specialists from the Penitentiary Department of the Prison Service Headquarters, and the Prison Service regional inspection units.

### **The situation of minor detainees in juvenile educational centres during the pandemic<sup>40</sup>**

Since the beginning of the COVID-19 pandemic, the Commissioner has been monitoring the situation of persons deprived of their liberty, detained in any form, imprisoned or placed in a public or private place of detention pursuant to an order of any judicial, administrative or other authority. Such places include, among others, juvenile educational centres (JECs) that are answerable to the Ministry of National Education. In this extremely difficult situation, the directors and staff of the JECs have been under a great pressure to ensure the safety of the young people under their care, despite the increased risk to their physical and mental health in those difficult working conditions.

The representatives of the NMPT identified several areas of risk that was connected with the changes in the institution's operation during the pandemic crisis, and that could compromise the safety of the young people living in the institutions, or even their health and life. Because of to the lack of detailed guidelines regarding quarantine of juveniles in JECs, the directors of the individual institutions developed their own procedures and instructions. The remote visits of the NMPT revealed that the practices in this area were very diverse, and in some cases they were against the juveniles' rights. In the opinion of the Commissioner, the JECs directors' attempts to obtain the largest possible numbers of the tests for the juveniles were fully understandable. The JECs are enclosed places where social distancing is not possible. The Commissioner was also concerned with the lack of clear guidelines regarding the organization of quarantine at the centres. The guidelines for their directors, drawn up by the Ministry of Education and Science, contained only general information about the necessity of seven-day quarantine for juveniles newly admitted to the centres. For the quarantine, separate rooms were to be used. In this connection, the JEC directors placed newly arriving juveniles in isolation rooms for sick persons, or established the so-called quarantine groups. The remote monitoring conducted by the NMPT took place

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<sup>40</sup> General intervention letter of the CHR to the Minister of Education and Science, of 16 November 2020, no. KMP. 573.11.2020.

from July to October, i.e. after the announcement by the Ministry of Education and Science that the quarantine of newly admitted juveniles or those who had escaped and then returned should be an optional solution. Despite this, most of the centres quarantined all such juveniles. In some JECs visited by the NMPT representatives, the practice of "remote" supervision over the juveniles from the quarantine groups was applied. The educators did not stay in the rooms used for the quarantine. They were required to ensure the safety of the juveniles by using CCTV and observing the rooms through the glass doors. If it was necessary, the juveniles could knock on the doors to request the educators' assistance. In the opinion of the CHR, such supervision does not ensure safety of the juveniles and, in fact, poses a risk to their health and life. The Commissioner was also concerned about the limitations of the rights of the juveniles during the pandemic. In some JECs, juveniles in quarantine had their activities limited. They did not go outdoors, did not take part in activities in the association room, and did not have access to computers or TV. Most JECs suspended the possibility for the juveniles to receive visits, to spend weekends outside the JEC, or to go outside the facility. As the representatives of the NMPT have found during the visits, the number of available staff reduced along with the increase in the number of infections. The JEC directors require urgent support in such situations, in particular when the staff shortages are significant. The replacing personnel should be carefully selected so as to be characterized by maturity, professional integrity, the ability to cope with the work-related challenges and to take proper care of the juveniles. If the number of qualified personnel is insufficient, the juveniles do not have their safety ensured. There is a risk to the life and health of both the juveniles and the staff. It is also of importance to plan and establish the rules of cooperation between the JEC directors of and the authorities responsible for the centres' operation. Cooperation should be maintained with the Ministry of Education and Science, as well as local institutions (e.g. regional labour inspectorates, powiat i.e. county authorities, and crisis management centres). Without good cooperation, communication and inter-institutional support, the centres have reduced chance of overcoming the pandemic crisis and ensuring security to the juveniles. In view of the above, the Commissioner requested the Minister of Education and Science to look into the problems that translate into the increased risk to the health and life of the juveniles and personnel of the JECs. He also requested to be notified about the position of the ministry and about the actions taken.

In his reply<sup>41</sup> the Ministry of Education and Science pointed to the Guidelines for public and non-public schools and institutions, which have been in force since 1 September and 28 August 2020. He explained that the guidelines are general enough to provide a basis for effective actions, yet taking into account the diversity and specificity of every facility and its actual organizational possibilities. The minister also emphasized that as a result of the cooperation with the Minister of Health, additional support was provided for JECs in the form of personal protection equipment and non-contact

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<sup>41</sup> Letter of the Minister of Education and Science of 11 December 2020.

thermometers delivered to the centres. Also, the Ministry of Education and Science emphasized that the statistics on the confirmed cases in the centres were not disturbing, and therefore the Ministry of Health would not support the requirement for local medical care facilities to conduct regular coronavirus tests among the juveniles from JECs.

**Amendments to the regulations on uniformed officers operating within police special response units, and on the identification methods for non-uniformed officers<sup>42</sup>**

The Commissioner sent a general intervention letter to the Minister of the Interior and Administration, concerning the spontaneous assemblies across Poland with regard to the abortion-related regulations questioned by the Constitutional Tribunal, and the related actions of the police. The Commissioner had been watching with great concern the escalating use of force by police officers against the demonstrators. Many people were detained, and direct coercive measures were used against the demonstrators, including pepper spray, batons and physical force. Particular concern was raised by the action of not uniformed officers who used expandable batons against demonstrators on 18 November 2020 in Warsaw, and by the detention of a photojournalist who was performing her professional duties during a demonstration held in front of the Ministry of Education and Science on 23 November 2020. The abovementioned events require reconsideration of the methods of conduct of such preventive operations, from the point of the prohibition of torture and cruel, inhuman or degrading treatment or punishment. The state is required to take appropriate steps and thoroughly examine every case in which there is a suspicion that the prohibition has been violated. In this context, it is of importance to have the possibility of identifying officers who protect demonstrations and who intervene against persons violating the law. According to the Commissioner, do not sufficiently protect the citizens and should therefore be amended. The impossibility to prosecute officers due to the inability to determine their identity violates the prohibition of torture in procedural terms and contributes to the impunity of officers. The method of identification of officers of special response units and operational units, who take part in demonstrations, does not follow the standards and recommendations of international institutions operating within the framework of the human rights protection systems of the United Nations and the Council of Europe. The Commissioner for Human Rights requested the minister to make more precise the provisions and practice regarding such officers' identification methods and to ensure that all police officers (both uniformed and non-uniformed) bear individual identification signs.

By the time of completion of the work on this report, the Commissioner for Human Rights had not received any reply from the Minister of the Interior and Administration regarding the matter.

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<sup>42</sup> General intervention letter of the CHR to the Minister of the Interior and Administration, of 11 December 2020, no. KMP. 570.12.2020.

### **The possibility for the NMPT representatives to visit the Gostynin Centre<sup>43</sup>**

The Commissioner requested the Minister of Health to take steps to make it possible for the NMPT representatives, within their mandate, to speak to the patients and staff members of the Gostynin Centre via Skype or another remote communicator through which audio and video connections can be established<sup>44</sup>.

- **THEMATIC REPORT<sup>45</sup>**

The NMPT published a thematic report on the situation of juveniles with mental or intellectual disabilities, held in isolation places. The document contains conclusions and recommendations developed as a result of the visits of the National Mechanism for the Prevention of Torture to rehabilitation facilities and psychiatric wards for children and adolescents. The Commissioner for Human Rights and the National Mechanism for the Prevention of Torture expressed their deep concern about the situation of children and adolescents who are mentally ill or have mental disorders. Psychiatric care for children in psychiatric wards, especially forensic ones, is very poor. Children staying in care facilities or rehabilitation centres, who are often deprived of attention of their relatives, require special care. The situation diagnosed and described in the report, in the opinion of the CHR and the NMPT, brings consequences in the form of inhuman or degrading treatment of children in psychiatric wards, in particular in forensic psychiatry wards.

## **OTHER ACTIVITIES RELATED TO THE PANDEMIC**

In view of the spread of the coronavirus in Poland, the Commissioner for Human Rights, in his role of the National Mechanism for the Prevention of Torture, called on the authorities responsible for the operation of individual types of detention places<sup>46</sup> to provide information on their preparations for the risk of the epidemic. He also requested the Chief Sanitary Inspector to consider drawing up recommendations on counteracting the spread of the coronavirus in places where people are deprived of their liberty.

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<sup>43</sup> General intervention letter of the CHR to the Minister of Health, of 10 July 2020, no. KMP. 574.2.2020.

<sup>44</sup> More information on the lack of the NMPT's possibility to visit the centre can be found in the chapter "Difficulties in the implementation of the NMPT mandate" and in the chapter "National Centre for the Prevention of Dissocial Behaviours in Gostynin".

<sup>45</sup> See: <https://www.rpo.gov.pl/pl/content/nieletni-z-niepelnosprawnoscia-psychiczna-i-intelektualna-w-miejscach-izolacji-raport-kmpt>

<sup>46</sup> Letters with specific questions regarding the matter were sent to the Ministers of: Labour, Family and Social Policy; National Education; Health; Justice, and to the Commanders in Chief of: the Border Guard; the Police; the Military Police; and to the Director General of the Prison Service.

The NMPT also requested non-governmental organizations<sup>47</sup> to forward to the Mechanism the information available to them on the epidemic-related situation at places where people are deprived of their liberty. A similar request, regarding the provision of information on the situation in social care homes and 24-hour care facilities with regard to the coronavirus epidemic was sent to the directors of social policy departments of all voivodeship (i.e. regional) administration offices.

The NMPT collected and published, on the [rpo.gov.pl](http://rpo.gov.pl) website, the information on the group quarantine facilities operating in Poland. Also, it published Polish versions of important international documents on the situation of people deprived of their liberty during the coronavirus pandemic, drawn up by the UN Subcommittee on the Prevention of Torture (SPT)<sup>48</sup>, the European Committee for the Prevention of Torture (CPT)<sup>49</sup> and the World Health Organization (WHO)<sup>50</sup>.

A group of NMPT employees monitored, on daily basis, media reports on the situation in places of detention. The group keeps the NMPT Team informed about the places where new coronavirus infections have been detected, and the numbers of infections, of people quarantined, and of people waiting for the test results. Thanks to such daily reports the NMPT Director requests the authorities responsible for operating specific facilities, and their supervisory institutions, to provide detailed information on the situation in the facilities and the assistance provided by heads of regional and local administration as well as the National Health Fund.

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<sup>47</sup> The Helsinki Foundation for Human Rights; the Association for Legal Interventions; the Halina Nieć Legal Aid Centre in Kraków, and the Institute for the Rule of Law in Lublin.

<sup>48</sup> Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus pandemic.

<sup>49</sup> Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic.

<sup>50</sup> Preparedness, prevention and control of COVID-19 in prisons and other places of detention (2020).

## **PART III – DIFFICULTIES IN THE IMPLEMENTATION OF THE NMPT MANDATE**

The directors of the prison in Barczewo, the remand prison in Warszawa-Białołęka and the remand prison in Kraków informed that the conduct of the remote monitoring visits (video visits) by the NMPT was dependent on the consent of the authorities responsible for detention of the persons to be visited. In the opinion of the directors, according to the provisions of the Criminal Executive Code, a person held in a remand prison may use a telephone only with the consent of the authority responsible for the person's detention, but may not use other means of wired or wireless communication.

A similar position was taken by the Warsaw Regional Director of the Prison Service. In his letter of 28 May 2020 (ref. o. OI/S.4001.26.2020.AS), he pointed out that the Prison Service respects the rule of law and acts on the basis and within the limits of the law. Article 217c(1)(2) of the Criminal Executive Code explicitly provides that detainees may not use other means of wired or wireless communication, apart from telephone communication as set out in Article 217c(1)(1) of the Criminal Executive Code. For this reason, remand prisoners may not use the Skype communicator. In this connection, Deputy Commissioner for Human Rights Hanna Machińska, Ph.D., wrote a letter to the Director General of the Prison Service<sup>51</sup>. In his response, he shared the opinion of the other directors, emphasizing at the same time that the regulations do not prevent the CHR from entering the facilities in order to exercise the NMPT mandate. There is no consent to the use of the Skype communicator by remand prisoners, but the representatives of the National Mechanism for the Prevention of Torture may meet in person with the detainees within the premises of the remand prisons.

This reasoning is incorrect as it seems to disregard the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which – according to Article 91(2) of the Polish Constitution, should prevail over domestic regulations in the event of any discrepancy. According to the principle expressed in the Constitution, if the provisions of the domestic regulations make the possibility of contacting a detainee dependent on the consent of the responsible authority, and the international agreement ratified in the form of an act of Parliament contains no reference to such consent, the provisions of the international agreement should be applied directly.

The position of the NMPT on the matter was also supported by the deputy District Prosecutor for Warszawa-Praga Południe District. In her response to the letter of the Director of the remand prison

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<sup>51</sup> KMP.571.9.2020, letter of 15 June 2020.

in Warszawa-Białoleka, she stated there were no grounds for refusing consent to a detainee's meeting with a representative of the NMPT via an Internet communicator. The letter explicitly stated that Article 20(d) OPCAT does not make individual meetings with detainees dependent on the consent of the authorities responsible for the detained persons.

A principle analogous to the one contained in Article 217c of the Penal Code is included in Article 217 which refers to the visits that remand prisoners may receive. The consent to such visits is also granted by the responsible authority. However, the NMPT has an unquestionable right to hold meetings with persons held in remand establishments. This right has been respected for years, which proves that the international law has been applied directly by the establishment directors.

In 2020, the National Preventive Mechanism planned to conduct video meetings with patients of the National Centre for the Prevention of Dissocial Behaviours in Gostynin. On 19 May 2020, the director of the NMPT wrote to the centre's director and informed of his intention to visit the centre to monitor the degree of implementation of the NMPT recommendations issued following the visit held on 18-20 February 2019. On 26 May 2020, the NMPT secretariat received a reply in which the centre's director informed that due to the conditions in the facility, the meeting in the proposed form was impossible. He informed that contact with the patients could be made using their private cell phones or the telephone in the nurses' room. The director did not consent to an on-site visit and stated that access to the premises is possible only for the centre's personnel. The reply to a subsequent letter of 4 December also contained a refusal to hold an online visit, due to the lack of free rooms in the centre that was overcrowded. In view of the difficulties in exercising the NMPT mandate, the Commissioner for Human Rights sent a letter of general intervention to the Minister of Health<sup>52</sup>.

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<sup>52</sup> KMP.574.2.2020.

# PART IV – SITUATION IN PLACES OF DETENTION

In 2020, representatives of the NMPT carried out a total of 75 preventive visits. These were largely online visits, which was caused by the epidemic. However, direct visits were also made. Most of them were thematic visits to check the implementation of the recommendations of the UN Subcommittee on the Prevention of Torture (SPT)<sup>53</sup> and the European Committee for the Prevention of Torture (CPT)<sup>54</sup> issued to the Polish authorities following visits by these committees to places of detention. Moreover, in 2020, in connection with the detention of people protesting against the judgment of the Constitutional Tribunal, representatives of the NMPT carried out ad hoc visits to police detention facilities. Their purpose was to conduct individual interviews with detained persons and to investigate the situation and conditions of their detention and imprisonment in the context of the implementation of the so-called minimum anti-torture guarantees.

In total, in 2020, the National Mechanism for the Prevention of Torture conducted visits to:

- ✓ 15 prisons;
- ✓ 8 remand prisons;
- ✓ 8 police stations;
- ✓ 31 rooms for detained persons operated by the police organizational units;
- ✓ 7 juvenile educational centres;
- ✓ 3 24-hour care facilities;
- ✓ 1 sobering-up station;
- ✓ 1 juvenile correctional facility;
- ✓ 1 guarded centre for foreigners – re-visited.

This chapter, in addition to the results of the visits, presents information on the functioning of detention facilities in the time of the COVID-19 pandemic. The information was collected during the thematic visits and the remote monitoring of places of detention.

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<sup>53</sup> SPT report on the visit to Poland in 2018, CAT/OP/POL/ROSP/1.

<sup>54</sup> PT report on the visit to Poland in 2017, CPT(2017)62.

## **POLICE DETENTION FACILITIES**

In 2020, the NMPT visited **39 police detention facilities** (31 rooms for detained persons or persons brought for sobering-up, operating within the organizational units of the police, and 8 police stations). The visits included: one general on-site visit, three thematic visits to verify the implementation of the CPT and the SPT recommendations, and 35 *ad hoc* visits related to people's detentions that took place during protests held in Warsaw.

- **SYSTEMIC PROBLEMS**

During the visits in 2020, representatives of the National Mechanism for the Prevention of Torture identified the following systemic problems (referred to also in the previous years<sup>55</sup>):

### **Lack of access to a lawyer from the beginning of detention**

The possibility of access to a lawyer immediately upon detention is a fundamental safeguard for persons deprived of their liberty. The presence of a professional lawyer during activities carried out with regard to detained persons makes it possible for them to better understand their situation and rights. Moreover, access to a lawyer effectively minimizes the risk of torture or other forms of violence, which risk, as shown by the experience of the National Mechanism for the Prevention of Torture, is the greatest immediately after detention. The currently binding provisions of the Code of Criminal Procedure<sup>56</sup> lead to a situation in which most detainees do not, in practice, have access to a lawyer from the beginning of detention. In the Polish legal system, there are no relevant regulations ensuring that a detained person has immediate and free-of-charge access to a defence counsel (financed from the state budget). This is inconsistent with the applicable European Union regulations. There should be no acceptance for situations in which the exercise of detained persons' fundamental right to legal aid depends solely on the grassroots-level initiatives and good will of lawyers.

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<sup>55</sup> See e.g. Reports of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in [2017](#), [2018](#), and [2019](#).

<sup>56</sup> Act of 6 June 1997 - Code of Criminal Procedure (consolidated text: Journal of Laws of 2020, item 30, as amended).

- According to Directive 2013/48/EU, suspects and accused persons shall have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively. They shall have access to a lawyer without undue delay: before they are questioned by the police or by another law enforcement or judicial authority; at the time of carrying out, by investigating or other competent authorities, of an investigative or other evidence-gathering act; without undue delay after deprivation of liberty; and where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court<sup>57</sup>.
- The Polish authorities have not yet transposed Directive 2016/1919 of the European Parliament and of the Council of 26 October 2016 into the national law. Pursuant to the directive, suspects who lack sufficient resources to pay for the assistance of a lawyer are to have the right to legal aid when the interests of justice so require. Legal aid should be provided without undue delay and at the latest before questioning of the person concerned, by another law enforcement authority or by a judicial authority, or before the specific investigative or evidence-gathering acts.
- In 2016, the ECHR stated that the right of a person charged with a criminal offence to defend himself through legal assistance, guaranteed under Article 6(3)(c) of the European Convention on Human Rights, is one of the fundamental features of a fair trial. Prompt access to a lawyer constitutes an important counterweight to the vulnerability of suspects in police custody, and a fundamental guarantee against coercion and ill-treatment by the police<sup>58</sup>.

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<sup>57</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (Journal of Laws UE.L.2013.294.1).

<sup>58</sup> ECHR judgment of 13 September 2016, case Ibrahim and Others v. the United Kingdom (Grand Chamber, complaints no. 50541/08, 50571/08, 50573/08 and 40351/09).

➤ CPT: The report on the CPT ad hoc visit, published on 28 October 2020 stated, inter alia, that access of detained persons (including juveniles) to a lawyer should still be considered as exceptionally rare. In practice, contact with an attorney or legal adviser was ensured only to those detainees with whom the CHR representatives had spoken, who could afford legal aid and who knew the name and telephone number of their lawyer. Despite the earlier recommendations, detainees still cannot count on the assistance of an ex officio lawyer before the commencement of the court proceedings.<sup>59</sup>

### **Failure to conduct medical examinations of all detainees**

There is no obligation in Poland to subject every detained person to a medical examination. The situations when a person is obligatorily subjected to such an examination are specified in the Regulation of the Minister of the Interior<sup>60</sup>.

Although the national law does not provide for such a requirement, the NMPT thinks that all detainees should undergo mandatory medical examinations. The medical examination of detainees and proper documentation of injuries found during the examination is considered to be the fundamental and minimum safeguards for these persons against torture and violence, which is strongly emphasised by international institutions monitoring the treatment of persons deprived of their liberty.<sup>61</sup>

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<sup>59</sup> CPT report on the ad hoc visit to Poland, CPT/Inf (2020), para. 21.

<sup>60</sup> Regulation of the Minister of the Interior of 13 September 2012 on medical examinations for persons detained by the Police (Dz.U. (Journal of Laws) of 2012, item 1102), point 1(3).

<sup>61</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Cf. e.g.: 2nd General Report, CPT/Inf (92) 3, paras. 36-38; Report on the CPT visit to Poland, 25 June 2014, CPT/Inf (2014) 21, paras. 26 and 30; Report on the CPT visit to Poland, 25 July 2018, CPT/Inf (2018)39, para. 27.

- The SPT recommends that Poland should take appropriate steps in order to ensure that all arrested persons are subject to a free examination performed by a medical specialist who can work independently without the presence of a police officer. In compliance with the Istanbul Protocol such medical specialists should be trained in the field of examining persons who could have been subjected to torture or ill-treatments and in registering such cases<sup>62</sup>.
- According to the CAT recommendations, Poland should take effective measures to ensure that apprehended individuals are subjected to a confidential medical examination by an independent doctor within 24 hours from their arrival to the detention place. They should also be entitled to request an independent medical examination at any time<sup>63</sup>.

The careful and prompt registration and reporting of such evidence makes it much easier to investigate cases of possible ill-treatment and to hold the perpetrators responsible, which in turn is an important element of preventing future ill-treatment. Any injuries that are noticed should be entered in a special form provided for this purpose, with body charts to mark the injuries, which will be kept in the medical file. It would also be desirable to photograph the wounds and the photographs should be attached to the medical file<sup>64</sup>.

The postulated obligation for all detained persons to undergo a medical examination and to have all their injuries documented also protects police officers against false accusations that the injuries took place while they were under the police supervision.

### **Lack of legal measures to protect whistle-blowers**

Effective prevention of torture requires the establishment of an appropriate legal framework and institutional culture which would enable police officers to report cases of misconduct of their colleagues without the risk of retaliation or imputation of disloyalty towards their professional group.

The law still lacks appropriate procedures that would make it possible for officers to report cases of ill-treatment of detainees by other officers, in a confidential and safe manner. Theoretically, an officer

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<sup>62</sup> Report on the SPT visit to Poland, CAT/OP/POL/ROSP/1, para. 55.

<sup>63</sup> Committee against Torture, Concluding observations on the seventh periodic report of Poland, 29 August 2019, CAT/C/POL/CO/7, para. 16.

<sup>64</sup> Also, CPT recommends that a specific register of injuries be kept to record all types of injuries, cf.: Report on the CPT visit to Poland in 2017 [CPT/Inf (2018) 39], para. 80.

may notify his/her supervisor about the incident, or draw up a memo. However, that reporting method makes officers fear that their actions would be viewed as a sign of disloyalty and that they may face possible further consequences. The NMPT is of the opinion that the police itself should take effort to build a proper institutional culture which will encourage officers to actively oppose ill-treatment and inform about cases of violence on duty.

The actions of whistle-blowers may act as an early warning signal and may help in revealing irregularities, which otherwise would remain undisclosed, and in identification of responsible individuals<sup>65</sup>. Such actions are also beneficial for the organization as such, as they help to understand that making the whistle-blowing process easier and safer lies in its interest<sup>66</sup>.

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<sup>65</sup> Explanatory memorandum, Introduction. The importance of whistleblowing and protecting whistleblowers in Europe, items 1 and 3.

<sup>66</sup> Ibid, item 8.

- The need to provide legal protection to whistle-blowers and promote the culture acknowledging their vital role in the society is also emphasized by the Committee of Ministers of the Council of Europe <sup>67</sup>, the European Parliament<sup>68</sup> and non-governmental organizations. What is also noteworthy is the fact that on 26 November 2019 the directive of the European Parliament and the Council (EU) 2019/1937 of 23 October 2019 on the protection of persons reporting violations of the EU law was published in the Official Journal of the European Union. The directive entered into force on 16 December 2019. From that point on Poland has two years to transpose it to its domestic legal regulations.
  
- CPT: In the report on its visit to Poland in 2013, the CPT pointed to the need to develop a clear system of reporting cases of ill-treatment of detainees to other authorities that are external in relation to the unit in which the incident happened, and to develop a framework for legal protection of whistleblowers<sup>69</sup>. The standard was also recommended in the annual report on the CPT activities in 2018.<sup>70</sup>

On 16 April 2018, the Commissioner for Human Rights requested the President of the Council of Ministers to take steps aimed at ensuring effective legal protection to whistle-blowers in uniformed and special services.<sup>71</sup> It is of particular significance in the case of services that enforce the law, since improper conduct of an officer may shed a negative light on the whole formation as well as on the respect for the law and the institutions of the state. Implementation of internal irregularity reporting mechanisms

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<sup>67</sup> Protection of whistleblowers: recommendation CM/Rec (2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014, and explanatory memorandum.

<sup>68</sup> European Parliament resolution of 24 October 2017 on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies (2016/2224(INI)).

<sup>69</sup> CPT report on the visit to Poland, CPT/Inf (2014) 21, para. 24.

<sup>70</sup> 14<sup>th</sup> General Report of the CPT, CPT/Inf (2004) 28, para. 26; CPT report on the visit to Ukraine, CPT/Inf (2013) 23, para. 21; CPT report on visit to Macedonia, CPT/Inf (2016) 8, para. 93; CPT report on visit to Bulgaria, CPT/Inf (2015) 36, para. 14; CPT report on visit to Greece, CPT/Inf (2016) 4, para. 23; CPT report on visit to Germany, CPT/Inf (2017) 13, para. 20; CPT report on the visit to Ukraine, CPT/Inf (2017) 15, para. 16; 28<sup>th</sup> General Report of the CPT, CPT/Inf (2019) 9, para. 71.

<sup>71</sup> General intervention letter of the CHR to Prime Minister Mateusz Morawiecki of 16 April 2018, no. KMP.570.1.2018.

contributes, on the other hand, to the development of high standards of service and risk management<sup>72</sup>. Protection of whistle-blowers is also a tool for facilitating control mechanisms<sup>73</sup>.

- **CONCLUSIONS ON THE CONDUCTED THEMATIC VISITS**

In 2020, the NMPT carried out three thematic visits to assess the implementation of the CPT recommendations<sup>74</sup> and SPT recommendations<sup>75</sup> regarding police-operated places of detention<sup>76</sup>. The visits revealed that the recommendations of the international institutions that monitor detention places have not been implemented in key areas.

***In the opinion of the NMPT, the risk of ill-treatment of persons detained by police officers is very high. In order to mitigate the risk, it is necessary to implement the minimum anti-torture guarantees in the legislation and in practice.***

The CPT's assessment of the lack of progress in implementing the committee's recommendations was similar. The assessment can be found in the report on the CPT visit to Poland held in 2019 to assess the treatment of persons detained by the police<sup>77</sup>.

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<sup>72</sup> Ibid, item 9.

<sup>73</sup> Resolution no. 1729 of 29 April 2010 of the Parliamentary Assembly of the Council of Europe on the protection of whistleblowers.

<sup>74</sup> CPT report on the visit to Poland carried out on 11-22 May 2017, CPT/Inf (2018) 39, points 12-33.

<sup>75</sup> SPT report on the visit to Poland carried out on 9-18 July 2018, 21 January 2020, CAT/OP/POL/ROSP/1, points 44-69.

<sup>76</sup> The visit to the room for detained persons (RDP) at the District Police Station Warsaw VI (KMP.570.1.2020.AN), carried out on 6 February 2020, focused solely on the verification of the implementation of the CPT recommendations. The visit to the RDP at the Warsaw Police Headquarters (KMP.570.3.2020.KK), carried out on 4 March 2020, verified the degree of implementation of the SPT and CPT recommendations; the visit to the RDP at the Poviatic Police Station in Piaseczno (KMP.570.6.2020.JJ) focused solely on the SPT recommendations.

<sup>77</sup> CPT report on the visit to Poland carried out on 9-16 September 2019, CPT/Inf (2020) 31.

- CPT: The clear lack of progress with regard to basic safeguards against ill-treatment is long-lasting and is of systemic nature. If the Polish authorities do not take targeted and decisive action, the risk of ill-treatment of persons detained by the police is likely to continue to increase in the near future.
- If no progress is achieved in the implementation of the long-term CPT recommendations by the Polish authorities, the Committee may have to refer to Article 10(2) of the European Convention for the Prevention of Torture and issue a public statement on the matter<sup>78</sup>.

### **Implementation status of the recommendations**

#### **The reminder about the prohibition to use violence (including verbal violence) and about the sanctions for violating the prohibition**<sup>79</sup>

The recommendation has been implemented in all three visited establishments.

#### **Preventing and minimizing the use of force when detaining people; officers' training in this area**

The CPT indicated in its report that, in view of the findings made, it was necessary to remind the officers that physical force may be used against detainees only if the principle of proportionality is observed. There is no justification for beating detained persons who are incapacitated. Also, police officers should be trained in preventing and minimizing the use of violence in connection with people's detention, and in using professional techniques that minimize the risk of injury to the persons to be detained<sup>80</sup>.

**Assessment of the recommendation's implementation:** The training has not been conducted at any of the visited units. At one of the units, the officers took part in training focused on human rights, equal treatment and elements of anger control<sup>81</sup>.

#### **Use of tasers**

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<sup>78</sup> Ibid., Executive summary and points 8-9. To date, the CPT has published 9 public statements. They concerned: Turkey, Russia, Greece, Bulgaria and Belgium. The statements are available at: <https://www.coe.int/en/web/cpt/public-statements> (access: 27 January 2021). See also Article 10(2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Journal of Laws of 1995, no. 46, item 238).

<sup>79</sup> CPT report, CPT/Inf (2018) 39, para. 21; SPT Report, CAT/OP/POL/ROSP/1, para. 46.

<sup>80</sup> CPT report, CPT/Inf (2018) 39, para. 21.

<sup>81</sup> Room for detained persons at the Warsaw Police Headquarters, KMP.570.3.2020 KK.

The CPT recommended that special attention be paid to reminding all officers about the rules to be followed when using tasers and to enforcing the compliance with the rules<sup>82</sup>.

**Assessment of the recommendation's implementation:** The officers serving at the RDP had no tasers. However, such devices were used by officers serving in the organizational units of the Warsaw Police Headquarters.

According to the information of the Warsaw Police Commander dated 27 March 2020, a total of 615 officers from the Warsaw Police Headquarters had the right to use tasers. In 2019, the Warsaw Police Headquarters Training Department, as part of professional development courses for officers, organized 8 courses focused on the use of tasers, for a total of 88 participants. Further 8 training courses are planned for the year 2020.

By 27 March 2020, one training course was held, in which 7 officers participated<sup>83</sup>. The training programme covered issues related to taser construction, properties and methods of use, legal regulations that provide the basis for using tasers; the taser use tactics and first aid related to the use of tasers<sup>84</sup>.

In view of the above information, the recommendation to remind the officers about the rules of using tasers has been considered implemented<sup>85</sup>.

#### **Mandatory video and sound recording of police interrogations**

According to the SPT recommendation: "The State party should make mandatory the audio and video recording of interviews in relation to criminal investigations as a basic safeguard and as part of its efforts to prevent torture and ill-treatment, as well as to protect law enforcement personnel against unsubstantiated allegations. Recordings should be kept in centralized secure facilities for a period sufficient for them to be used as evidence and should be made available to investigators, detainees and lawyers, upon request. The use of bodycams is recommended, if possible"<sup>86</sup>.

**Assessment of the recommendation's implementation:** The recommendation has not been implemented. Situations in which police officers make audio and video recordings are rare, although the

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<sup>82</sup> CPT report, CPT/Inf (2018) 39, para. 22.

<sup>83</sup> Letter of the Warsaw Police Commander of 27 March 2020, PC-405/374/20.

<sup>84</sup> Letter of the Warsaw Police Commander of 23 April 2020, PC-459/443/20.

<sup>85</sup> RDP at the District Police Headquarters Warsaw VI, KMP.570.1.2020.AN; RDP at the Warsaw Police Headquarters, KMP.570.3.2020.

<sup>86</sup> SPT Report, CAT/OP/POL/ROSP/1, para. 47.

criminal-case procedure provides for such a possibility<sup>87</sup>. Police officers' rooms where interrogations take place have no monitoring systems.

### **Observance of detained persons' right to have a third person informed of the detention**

In their reports, both the SPT and the CPT pointed to problems with the observance of detained persons' right to have a third person informed of the detention<sup>88</sup>. Apart from the necessary steps to be taken by the Polish authorities, the CPT recommended that the exercise of this right be always confirmed in writing, indicating the exact time of providing the information and the details of the notified person. The subcommittee also recalled that the exercise of the right may not be dependent on the good will or decision of the detaining authority, the prosecutor, the investigator or the detention facility administrator.

In their reports, both delegations indicated the need to notify detainees whether the information on their detention has been successfully forwarded to their relatives or other persons.

**Assessment of the recommendation's implementation:** The recommendation has been implemented in two units<sup>89</sup>. In one case, a detainee reported to the visiting team that he had no possibility to inform his employer of his absence from work. The employer's telephone number was saved on the detainee's cell phone which had been stored in the facility's deposit box<sup>90</sup>. The NMPT delegation also raised objections as to the notification of the detention. The notification had been made by the detaining officers (as in the other two visited units). The officers at the RDP could not make telephone calls going outside the police station. If the notification about the detention had not been successful (e.g. because the person to be notified did not answer the phone), the detainee had to wait until the interrogation and request the interrogating police officer to notify the person (in such cases, the time between the detention and the information provision to the person selected by the detainee was in several or even about a dozen hours).

### **Right to information**

In their reports, the CPT and SPT recommended the observance of detainees' rights to information (including information provided in an understandable form, verbally and in writing, about

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<sup>87</sup> Article 147(1) of the Act of 6 June 1997- Code of Criminal Procedure (Journal of Laws of 2020, item 30, as amended).

<sup>88</sup> CPT report, CPT/Inf (2018) 39, para. 24; SPT report, CAT/OP/POL/ROSP/1, para. 57.

<sup>89</sup> RDP at the District Police Headquarters Warsaw VI, KMP.570.1.2020.AN; RDP at the Warsaw Police Headquarters, KMP.570.3.2020.K.K.

<sup>90</sup> RDP at the Poviatic Police Station in Piaseczno (KMP.570.6.2020.JJ).

the reasons for the detention, detainee's rights, and the charges)<sup>91</sup>; right to contact a relevant diplomatic or consular post, right to an interpreter and to have the applicable procedures translated<sup>92</sup>.

**Assessment of the recommendation's implementation:** Only in one case the recommendation has been implemented in full<sup>93</sup>. In one unit, the NMPT identified a problem with access to certified translators if detentions took place late at night or on weekends<sup>94</sup>. During the monitoring visit, at the RDP there were two Vietnamese citizens. They had no contact with any interpreter, and they did not speak Polish<sup>95</sup>. After their detention, they were given the *information about the rights of people detained in connection with criminal proceedings* (in Vietnamese) for signing. The other documents they were given for signing (detention report, deposit-related information, etc.) were in Polish and were signed by them without the participation of an interpreter.

In one case, the NMPT found that the implementation of the recommendation could not be verified due to the fact that there were no detainees in the visited unit at the time of the visit<sup>96</sup>. The documentation kept there contained detention reports in which there were detainees' signatures confirming that they had been informed about their rights. In the case of foreign detainees, they confirmed their knowledge of the Polish language or there were translators' stamps on translated documents. The RDP Regulations were displayed in each of the cells. The visited units also had foreign language versions of the document.

#### **Access to an attorney or defence counsel from the outset of detention**

In their reports, the SPT and the CPT recommended effective measures to be taken to ensure that all persons deprived of their liberty, from the onset of the detention, have access to an independent lawyer, ensured in relevant regulations and in practice. Furthermore, all police stations should have lists of attorneys and legal advisers. The police were also called upon to develop, without further delay and in cooperation with the Supreme Bar Council, a system of legal aid for people detained by the police, that is provided for in the law and sufficiently financed. The aid should be provided to detainees who cannot afford to cover the costs of a lawyer. It should be possible to use the system since the onset of

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<sup>91</sup> CPT report, CPT/Inf (2018) 39, para. 28; SPT report, CAT/OP/POL/ROSP/1, para. 50.

<sup>92</sup> CPT report, CPT/Inf (2018) 39, para. 28; SPT report, CAT/OP/POL/ROSP/1, points 50 and 59.

<sup>93</sup> RDP at the Warsaw Police Headquarters, KMP. 570.3.2020.

<sup>94</sup> RDP at the Poviast Police Station in Piaseczno, KMP. 570.6.2020 JJ.

<sup>95</sup> The detention took place on 3 August 2020 at 17.00 and until the end of the visit by the NMPT (4 August 2020, 2:00 p.m.) no contact with an interpreter had been ensured to the detainees.

<sup>96</sup> RDP at the District Police Station Warsaw VI, KMP. 570.1.2020.

the detention. Persons detained by the police should have the possibility to talk to a lawyer in private in every case<sup>97</sup>.

**Assessment of the recommendation's implementation:** Detainees who had their legal representatives had problems with contacting them from the RDPs<sup>98</sup>. Only in one case the attorney had unlimited access to the client held in the RDP<sup>99</sup>. The lawyer could meet the detainee in the doctor's room that was not monitored, or in other rooms within the police station. In the other units, detainee's contact with a lawyer was subject to a prior consent of the detaining authority<sup>100</sup> or the officer in charge of the case (the contact was possible only through him)<sup>101</sup>. Taking into account the fact that officers work at RDPs in a shift system, it is not possible for one police officer responsible for a given criminal case be present at the RDP continuously. As a result, the detainee's contact with the lawyer can be delayed.

Two of the visited RDPs had lists of attorneys and legal advisers who could be used by detained persons<sup>102</sup> (in one case, the list included only attorneys-at-law, and the NMPT recommended its extension by legal advisers who offer their services in Warsaw). In one RDP there was no such list at all<sup>103</sup>.

The subject of access to a lawyer is a systemic problem, as discussed above.

### **Initial medical examination of detainees and documentation of their injuries**

The SPT and the CPT pointed out that it was necessary to implement a system in which detainees at police units, who require medical care, including psychiatric care, get quick access to free-of-charge medical treatment. The need to ensure that all detained persons undergo immediate and free of charge examination by a medical specialist who works independently, without the presence of a police officer, was also underlined. It was recommended that doctors be trained in examining and registering injuries in a manner consistent with the Istanbul Protocol<sup>104</sup>.

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<sup>97</sup> CPT report, CPT/Inf (2018) 39, points 25 and 26; SPT report, CAT/OP/POL/ROSP/1, para. 52.

<sup>98</sup> RDP at the Warsaw Police Headquarters, KMP.570.3.2020.KK; RDP at the District Police Station Warsaw VI, KMP. 570.1.2020.

<sup>99</sup> RDP at the Poviast Police Station in Piaseczno, KMP. 570.6.2020 JJ.

<sup>100</sup> RDP at the Warsaw Police Headquarters, KMP.570.3.2020.KK.

<sup>101</sup> RDP at the District Police Headquarters VI in Warsaw, KMP. 570.1.2020.AN.

<sup>102</sup> RDP at the Warsaw Police Headquarters, KMP.570.3.2020.KK; RDP at the Poviast Police Station in Piaseczno, KMP. 570.6.2020 JJ.

<sup>103</sup> RDP at the District Police Station Warsaw VI, KMP. 570.1.2020.AN.

<sup>104</sup> CPT report, CPT/Inf (2018) 39, para. 27; Report SPT, CAT/OP/POL/ROSP/1, points 54-55.

**Assessment of the recommendation's implementation:** There is no obligation in Poland to carry out routine medical examinations of newly detained persons, which is a systemic problem<sup>105</sup>. As a consequence, not all persons detained and held in the units visited by the NMPT had undergone such examinations, which related also to people against whom a taser had been used<sup>106</sup>. In one of the visited units, the representatives of the NMPT found that the officers had used a taser three times during an action outside the police station, and only one of the detainees against whom a taser had been used had undergone a medical examination (in the other cases, the detainees refused to undergo a medical consultation)<sup>107</sup>. According to the CPT standards, such an examination should be mandatory in every case a taser has been used<sup>108</sup>.

➤ The CPT is of the opinion that every person against whom a taser has been used should be seen by a doctor and, if necessary, taken to a hospital. Physicians and emergency services should be informed about possible effects of the use of tasers against people and about the forms of treatment required, in terms of both physical and mental health. Also, the person concerned (and /or their lawyer, upon request) should be provided with a medical certificate<sup>109</sup>.

Any injuries suffered by the detainees had been recorded in the detention reports and police officers' notes attached to the documentation on the detention. The injury descriptions were rather general and apart from specifying injuries as such, some of them contained the detainees' statements the injuries' circumstances. The injuries found at RDPs were registered in the duty log books. The injuries were not, however, registered on a special form (so-called "body chart"), and no photographic documentation was made. No register of detainees' injuries was kept by the visited RDPs (such a register is not required by law). If a given detainee had undergone a medical examination, the doctor's certificate confirming that the detainee can stay at the RDP was attached.

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<sup>105</sup> Regulation of the Minister of the Interior of 13 September 2012 on medical examinations of persons detained by the police (Journal of Laws [Dz. U.] of 2012, item 1102), Article 1(3).

<sup>106</sup> Pursuant to Article 36.1 of the Act of 24 May 2013 of the *Act on coercive measures and firearms*, a medical examination is conducted in the case of an injury to a person with regard to whom direct coercion measures have been used, or who shows other visible signs of risk to his/her life or health.

<sup>107</sup> RDP at the District Police Station Warsaw VI, KMP. 570.1.2020.AN.

<sup>108</sup> 20<sup>th</sup> General Report of the CPT, CPT/Inf (2010) 28, para. 81.

<sup>109</sup> Ibid.

In one of the visited units, the NMPT concluded that the medical documentation kept at the RDP failed to meet the CPT standards<sup>110</sup>. The descriptions of the medical examinations were extremely brief and were limited only to the statement that the detainees could be held at the RDP. The certificates also included information about the medications taken by the individual detainees. Moreover, the detention reports had attachments indicating the results of the detainees' medical examinations.

There have also been cases of violations of the principle of confidentiality of medical examinations and of negligent conduct of such examinations (without a full body examination making it possible to identify all possible injuries caused by police officers). For example, in one of the RDPs, a detained man stated that during the medical examination his body had not been checked properly<sup>111</sup>. The medical consultation had taken place in a police car, in front of a hospital. The doctor, according to the detainee, approached the police car, and spoke to the detainee through an open door of the car only for a few seconds, and then issued a certificate confirming that the detainee can be held in the RDP. The situation had been witnessed by police officers. In another RDP, the medical examination of one detainee was conducted in a monitored cell, with police officers present in the corridor (but the cell door remained open and one of the officers entered the cell several times during the examination)<sup>112</sup>.

### **Detainees' right to go outdoors**

In its report, the SPT recommended that all persons detained by the police should spend at least one hour a day outside their cells, with the possibility to exercise and breathe fresh air. The CPT also called on the Polish authorities to make it possible for all persons detained by the police for 24 hours and longer to go outdoors every day<sup>113</sup>.

**Assessment of the recommendation's implementation:** Only one of the visited units had a suitable walking area, but it was not used<sup>114</sup>. It should be pointed out that the Polish regulations on the operation of RDPs not require outdoor space to be available to detainees or the possibility for them to go for a walk. The implementation of the CPT recommendation would therefore require amendment of the regulations on this aspect, and a change of the infrastructure of police detention facilities.

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<sup>110</sup> RDP at the Warsaw Police Headquarters, KMP.570.3.2020.KK.

<sup>111</sup> RDP at the Poviast Police Station in Piaseczno, KMP. 570.6.2020 JJ.

<sup>112</sup> RDP at the District Police Station Warsaw VI, KMP. 570.1.2020.AN.

<sup>113</sup> CPT report, CPT/Inf (2018) 39, para. 33; SPT report, CAT/OP/POL/ROSP/1, para. 67.

<sup>114</sup> RDP at the District Police Station Warsaw VI, KMP. 570.1.2020.AN.

### **Convoing of detained persons**

The SPT emphasized the need to ensure safe transportation of arrested or detained people, during which all applicable rules and road safety regulations should be observed<sup>115</sup>.

**Assessment of the recommendation's implementation:** During one of the visits, the NMPT found that detainees, as a rule, were handcuffed during their conveying<sup>116</sup>. The vehicles used to convoy detainees had air conditioning but did not have seat belts for convoyed people (with the exception of unmarked passenger cars) and did not have monitoring systems that would enable supervision over the behaviour of the detained persons and the officers. For this reason, the NMPT considered the SPT recommendation to have been implemented in part.

### **Police staffing situation**

The SPT recommended estimating the number of employees required to ensure professional operation of the police and of the penitentiary facilities. The subcommittee also recommended that, as a general preventive measure, the Polish authorities ensure that the officers' salaries are proportionate to the qualifications required in a given position and to the degree of responsibility in this position.<sup>117</sup>

**Assessment of the recommendation's implementation:** In two police units whose implementation of the SPT recommendation on the police staff numbers had been analysed, the NMPT concluded that the recommendation had not been implemented<sup>118</sup>. In the RDP at the Warsaw Police Headquarters, which could accommodate 21 detainees, there were only 2 officers on duty<sup>119</sup>. In the RDP in Piaseczno, with 20 places for detainees, only one officer was present who supervised the detainees<sup>120</sup>. In the third unit, which followed only on the recommendations of the CPT, 2 officers were present in the RDP which could accommodate 41 detainees<sup>121</sup>.

According to the information from the Warsaw Police Commander, as of 1 March 2020 the number of police officers employed by the Warsaw Police Headquarters was 2,298, and there were 215 vacant positions<sup>122</sup>. The Warsaw Police Headquarters is currently recruiting candidates for the service.

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<sup>115</sup> See: SPT report, CAT/OP/POL/ROSP/1, points 68-69.

<sup>116</sup> RDP at the Warsaw Police Headquarters, KMP. 570.3.2020.KK.

<sup>117</sup> SPT report, CAT/OP/POL/ROSP/1, points 42-43

<sup>118</sup> RDP at the Warsaw Police Headquarters, KMP. 570.3.2020.KK; RDP at the Poviast Police Station in Piaseczno, KMP. 570.6.2020.JJ.

<sup>119</sup> RDP at the Warsaw Police Headquarters, KMP. 570.3.2020.KK.

<sup>120</sup> RDP at the Poviast Police Station in Piaseczno, KMP. 570.6.2020.JJ.

<sup>121</sup> RDP at the District Police Station Warsaw VI, KMP. 570.1.2020.AN.

<sup>122</sup> Letter of the Warsaw Police Commander of 27 March 2020, PC-405/374/20.

As of 4 September, a total of 127 persons had been recruited that year, and were assigned to individual units based on the vacant positions in the individual organizational units<sup>123</sup>.

- **SITUATION DURING THE EPIDEMIC**

Starting from the moment of the person's detention, the responsibility for protecting his/her life and health lies with the police. The fundamental rights of all people, including those in detention, include the right to health protection, which was subject to a particularly careful analysis by the National Mechanism for the Prevention of Torture in the time of the coronavirus pandemic. In this context, the representatives of the NMPT examined the conditions existing in police detention facilities, from the point of view of the implemented procedures and access to personal protection equipment.

Taking into account the growth in the number of people infected with the coronavirus, that had taken place since March 2020, the Commissioner for Human Rights requested the Police Commander in Chief for information on the state of the preparations of police organizational units where detainees were held (police stations, RDPs, police emergency centres for children) for the situation of the spread of the virus<sup>124</sup>.

On 27 March 2020, the CHR requested the Prime Minister to order the relevant public institutions to carry out a review of their measures, applied procedures and resources, in order to verify whether detained persons are not exposed to the risk of COVID-19 infection, do not have their rights limited, and that their protection against all forms of ill-treatment is guaranteed<sup>125</sup>.

The issue of the means of protection against the coronavirus had also been examined during the monitoring visits to the police stations. The following findings have been made:

- All detainees interviewed by the NMPT representatives were wearing protective masks. Some of them reported that they had received them from the police officers who detained them, but in most cases they were not offered masks.
- Some persons indicated that during their detention within the police stations, no protection measures were taken in connection with the coronavirus pandemic, or that the solutions used to this end were very limited. During the ad hoc visits conducted on 8 August 2020 it was discovered that only few detainees had their body temperature checked as a preventive measure (of the 33 detainees to whom the NMPT representatives spoke). In many cases, the detainees had no possibility to wash or disinfect their hands. The detainees pointed out that at the entrance doors to the police stations, there were dispensers with disinfectants. However, the detainees

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<sup>123</sup> Letter of the Warsaw Police Commander of 4 September 2020, PC-869/830/20, sent in reply to the report on the visit to RDP at the Warsaw Police Headquarters, KMP.570.3.2020.

<sup>124</sup> Letter of 12 March 2020 (KMP.071.4.2020.PK).

<sup>125</sup> Letter of the Commissioner for Human Rights to the Prime Minister, of 27 March 2020, no. KMP.571.2.2020.

could wash their hands only after using the toilet, and the police officers had to grant their consent to the disinfection procedure. The detainees were placed in rooms where it was impossible to keep the social distance of 1.5 m between the people. 2 or 3 persons were placed in small spaces surrounded with bars. A covid-related medical interview and temperature checking took place only at the stage of the medical examination. It was carried out at a hospital, sometimes in a covid examination tent, before the entry to the emergency room, or during the patient's examination inside that room.

- During the ad hoc visits carried out from 23 October to 14 December 2020, some detainees stated they had no access to hand disinfectants or disinfecting soap in the bathrooms. Some persons also claimed that officers who worked at the RDPs in contact with the detainees did not wear face masks. As a rule, detainees transported for medical examinations had undergone the epidemic-related interviews and had their body temperature measured.

The National Mechanism for the Prevention of Torture emphasizes the need to exercise caution in people-to-people contacts in police detention facilities, because of the epidemic risk. Well-organized activities are required to ensure the safety of detained persons as well as police officers. A number of recommendations regarding the epidemic and the situation in penitentiary establishments have been issued by the World Health Organization (WHO), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN Subcommittee on Prevention of Torture (SPT)<sup>126</sup>.

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<sup>126</sup> <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

## PENITENTIARY ESTABLISHMENTS

In 2020, the NMPT visited **23 penitentiary establishments**: 15 prisons and 8 remand prisons.

Three visits were held on-site<sup>127</sup>. Two of them aimed at verifying to what extent the recommendations issued to the Polish side by the CPT after its visit in 2017 had been implemented. 20 visits took place remotely, via Skype<sup>128</sup>. Their purpose was to monitor the epidemic-related situation in the penitentiary establishments in during the coronavirus pandemic. Detailed conclusions on the remote visits are included in the chapter "*Penitentiary facilities in the time of the COVID-19 pandemic*".

- **SYSTEMIC PROBLEMS**

Unfortunately, not all systemic problems occurring in penitentiary establishments have been solved. Many of them, although reported for several years, still exist. The NMPT is still waiting for the legislator to take appropriate legislative steps on the following issues:

### **Small living space for inmates in cells**

For years<sup>129</sup>, the National Mechanism for the Prevention of Torture has been calling on the authorities to introduce relevant legislative changes with the aim to increase the cell space per prisoner.

According to the regulations applicable in Poland, an inmate is guaranteed a minimum of 3 m<sup>2</sup> of cell area. The legislation also provides for the possibility to reduce this standard<sup>130</sup>. In such cases an individual is unable to function normally. The Polish standard is contrary to international standards and practices of most of the European countries<sup>131</sup>.

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<sup>127</sup> Remand prisons: Warszawa-Białołęka (KMP.571.1.2020) and Warszawa-Służewiec (KMP.571.27.2020); Prisons: ZK Biała Podlaska and OZ Zabłocie (KMP.571.28.2020).

<sup>128</sup> Remand prisons: AŚ Łódź (KMP.571.4.2020) and AŚ Warszawa-Białołęka (KMP.571.5.2020); Prison ZK Potulice (KMP.571.8.2020); Remand prison AŚ Kraków (KMP.571.9.2020); Prison ZK Sztum (KMP.571.10.2020); Remand prison AS Wrocław (KMP.571.11.2020); Prison ZK Grudziądz nr 1 (KMP.571.12.2020); Prison ZK Krzywianiec (KMP.571.13.2020); Prison ZK Chełm (KMP.571.14.2020); Prison ZK Rzeszów-Załęże (KMP.571.15.2020); Remand prison AŚ Międzyrzecz (KMP.571.16.2020); Remand prison AŚ Białystok (KMP.571.17.2020); Prison ZK Nysa (KMP.571.19.2020); Prison ZK Jastrzębie-Zdrój (KMP.571.20.2020); Prison ZK Czarne (KMP.571.21.2020); Prison ZK Barczewo (KMP.571.22.2020); Prison ZK Głogów (KMP.571.23.2020); Prison ZK Bydgoszcz-Fordon (KMP.571.24.2020); Prison ZK Czerwony Bór (KMP.571.25.2020); Prison ZK Łupków (KMP.571.26.2020).

<sup>129</sup> See: Annual Reports on the Activities of the National Mechanism for the Prevention of Torture for 2017, 2018 and 2019.

<sup>130</sup> Article 110 of the Act of 6 June 1997 – Criminal Executive Code (Journal of Laws (Dz. U.) of 2020, item 523 as amended).

<sup>131</sup> See: Report of the Commissioner of Human Rights on the activities of the National Mechanism for the Prevention of Torture in 2018.

The problem of the so-called multiple size cells has not yet been solved. There are still cells for over ten inmates. The issue is discussed in detail in the chapter "*Penitentiary facilities in the time of the COVID-19 pandemic*".

- CPT repeatedly calls on the Polish authorities to increase the minimum standard of cell area per inmate to minimum 4 m<sup>2</sup> in multi-person cells (except for toilet area) and 6 m<sup>2</sup> in single cells<sup>132</sup>.
- CAT: Poland should take actions, including those aimed at increasing prison capacity, in order to ensure compatibility with the European standard of at least four square metres of cell area per inmate<sup>133</sup>.
- SPT: According to the repeated recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment, the Sub-Committee recommends that in the State Party, the minimum standard of cell space per inmate be increased to at least four square metres in multi-person cells (without the toilet area) and six square metres in single cells. The living space problem is additionally aggravated by the fact that prisoners who do not work or do not participate in correctional schemes usually spend only one hour daily outside the cell<sup>134</sup>.

### **A poor offer of cultural and educational activities addressed to inmates in remand prisons**

The problem of a poor offer of cultural and educational activities for detainees in remand prisons was identified by the NMPT already in 2014 and was referred to in the thematic report on the situation of detainees in remand prisons and therapy wards<sup>135</sup>. The visits conducted in 2020 demonstrated that the situation had not improved.

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<sup>132</sup> CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 59.

<sup>133</sup> The Committee Against Torture, Concluding observations on the combined fifth and sixth periodic reports of Poland, 23 December 2013, CAT/C/POL/CO/5-6, para. 9.

<sup>134</sup> The SPT report on the visit to Poland, CAT/OP/POL/ROSP/1, points 80 and 81.

<sup>135</sup> See: The NMPT report *Visits of the National Mechanism for the Prevention of Torture to prisons' therapy wards for inmates with non-psychotic mental disorders or mental retardation, and wards for remand prisoners*.

The visited penitentiary establishments<sup>136</sup> had not developed activity programs for people with the status of remand prisoners. For this reason, for most of the time the inmates were staying in their cells where they could read books, newspapers or listen to the prison radio. The only activities outside the cell were a daily walk (usually for a maximum of one hour) and the time spent in the association room (from one time to several times per week).

Although the visited establishments took attempts to organize some additional cultural or educational actions aimed at building civic and patriotic attitudes (e.g. exhibitions or knowledge quizzes), such actions were incidental. In the opinion of the NMPT, the activities are not sufficiently developed and an improvement in this area is necessary.

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<sup>136</sup> Remand prisons: AŚ Warszawa-Białoleka and AŚ Warszawa-Służewiec.

- CPT calls on the Polish authorities to take steps in order to develop programmes of activities for remand prisoners and long-term prisoners. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature (work, preferably with vocational value; education; sport; etc.)<sup>137</sup>.
- SPT: Programmes of activities for inmates play an important role in ensuring security and wellbeing for themselves and for prison officers. Forced inactivity increases tensions in the prison and may have serious consequences to inmates' health and wellbeing, as well as to their future re-integration with the society after leaving the prison. Total inactivity forced on prisoners in the long term may be considered a manifestation of inhuman treatment<sup>138</sup>.
- SPT recommended that the State Party takes measures aimed at further increasing the possibilities of work performance by prisoners and at ensuring that paid work is available for all prisoners, including those in remand prisons, while making sure that no inmate is forced to work<sup>139</sup>.

**The issue of medical examinations of prisoners in penitentiary establishments. The absence of procedures in cases of reported torture and the related inappropriate methods of registering injuries**

Not every person placed in a penitentiary establishment undergoes a medical examination. Only those „newly” detained people are examined; inmates who are moved between penitentiary establishments are not. Although they are initially interviewed by a nurse who refers them to a doctor if necessary, there is no provision for obligatory physical examination of all first time detainees, including body examination.

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<sup>137</sup> CPT report on the visit to Poland, CPT/Inf (2014) 21, para. 43; CPT report on the visit to Poland, CPT/Inf (2018) 30, para. 73.

<sup>138</sup> The SPT report on the visit to Benin, CAT/OP/BEN/1, para. 273.

<sup>139</sup> The SPT report on the visit to Poland, CAT/OP/POL/ROSP/1, para. 87.

➤ A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his/her admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge<sup>140</sup>.

The NMPT's recommendation set out in the subsequent annual reports since 2016, regarding the need for the Prison Service to adopt procedures to be followed in situations when a prisoner has reported that he/she has been a victim of torture or violence, or when there is a suspicion of torture or violence against a prisoner, has not yet been implemented<sup>141</sup>. Injuries are often documented in a negligent superficial manner, and medical staff have little knowledge about the Istanbul Protocol.

In 2019, the Commissioner for Human Rights reported the problem to the Director General of the Prison Service. However, the exchange of correspondence with the Deputy Director General did not bring any results expected by the NMPT<sup>142</sup>.

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<sup>140</sup> See: Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations General Assembly resolution 43/173 of 9 December 1988), principle 24.

<sup>141</sup> See e.g. Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2018.

<sup>142</sup> See: Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2019.

- SPT: Initial physical examination of all the inmates should be carried out with the use of a standard questionnaire which, apart from general questions regarding health, should include descriptions of all recent acts of violence experienced by the inmate concerned. A doctor should carry out a full physical examination, including inspection of the whole body. If the doctor has reasons to suspect the prisoner has been subjected to torture or other forms of abuse, he should inform relevant authorities immediately. The same should apply to any injuries suffered in the penitentiary establishment.
- Moreover, the Sub-Committee reminds of the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to adopt procedures to ensure that any injuries reflecting the inmate's report about ill-treatment (or suggesting ill-treatment even if it has not been reported by the inmate), are reported to competent authorities regardless of whether the inmate has requested to report them or not. The results of the inmate's physical examination should be available to the inmate concerned, and to his/her lawyer<sup>143</sup>.

### **Body search of prisoners should be subject to court decision**

Decisions on conducting body search of prisoners are not subject to assessment by courts, which poses a problem. This is because directors of penitentiary establishments are not required to issue written decisions on performing body search, which decisions could be appealed against by inmates before courts under Article 7 of the Criminal Executive Code.

***EGP The National Mechanism for the Prevention of Torture underlines that this can lead to non-compliance with the law. Therefore, the grounds for and method of conducting body search of prisoners should be subject to external verification by a court. Such a mechanism would have the preventive function and may be a deterrent to those who want to carry out body search where it is unnecessary.***

The proceedings that had been started based on an application of the Commissioner for Human Rights, filed with the Constitutional Tribunal in 2016, to render Article 116(6) of the Criminal Executive Code in conjunction with Article 7(1) of the Code unconstitutional within the scope in which it did not

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<sup>143</sup> The SPT report on the visit to Poland, CAT/OP/POL/ROSP/1, points 106 and 107.

require a court decision to perform a body search of a prisoner were closed and the application was dismissed on 26 November 2019 (case ref. no. K 5/16)<sup>144</sup>.

It is worth to note that situations occurred in the past, when a decision to carry out a body search was not justified from the point of view of security, which has already been pointed out by the European Court of Human Rights in Strasbourg in its judgments regarding Poland.

- ECHR: Every day body search of inmates, involving the need to strip down naked, did not result from any specific security reasons and were not related to suspicions resulting from inmate's behaviour. Such a practice must have made the inmate concerned feel humiliated, depressed and must have caused suffering that exceeded the unavoidable amount of suffering and deprivation related to imprisonment<sup>145</sup>.
- Domestic legislation applied in practice does not ensure an effective measure for inmates to appeal against decisions to carry out body search. Due to the lack of such measure, it is difficult to enforce, across the country, the obligation to have a sufficient justification for body search or body inspection connected with taking off the clothes by the inmate<sup>146</sup>.

### **Standards applicable to the numbers of forensic psychologists**

Since 2016, the NMPT has been emphasizing the need to increase the number of psychologists employed in penitentiary establishments. In the opinion of the National Mechanism, psychological care in prisons is not sufficient, and the existing standard (one psychologist per 200 inmates) does not ensure the effectiveness of psychological support<sup>147</sup>. Working with so many inmates, a psychologist is unable to perform his/her work effectively.

This issue was raised by the Commissioner for Human Rights again in his letter to the Director General of the Prison Service, as described in the chapter "*General intervention letters*".

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<sup>144</sup> See: Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2019.

<sup>145</sup> Judgment in the case: Świdorski versus Poland, of 16 February 2016, complaint no. 5532/10, points 60-61.

<sup>146</sup> Judgment in the case: Milka versus Poland, of 15 September 2015, complaint no. 14322/12, points 30 and 48.

<sup>147</sup> Order No. 19/16 of the Director General of the Prison Service of 14 April 2016 on the detailed rules of conduct and organization of penitentiary work and on the scopes of activities of officers and employees of penitentiary and therapeutic units and penitentiary wards, point 3(2).

➤ As a result of effective psychological therapy it is possible to determine the reasons, scope and details of the inmate's lack of adjustment to living in the society. It is also possible to implement appropriate corrective measures during the period of the sentence served. The work of psychologists influences not only daily operation of prisons. The effectiveness of activities conducted within prisoners' preparation for living in the society after they leave prison contributes to the level of public security and public order<sup>148</sup>.

### **The situation of inmates suffering from physical disorders**

According to the NMPT, inmates with reduced physical abilities are a group at risk of torture or inhuman or degrading treatment. Imprisonment of those suffering from chronic reduction of their physical capacity is regulated by the amended Ordinance of the Minister of Justice of 23 June 2015 applicable to administrative activities connected with pre-trial detentions, penalties and coercive measures that result in imprisonment, and documentation of such activities<sup>149</sup>. The implementation of the amended ordinance, that came into effect on 1 July 2015, requires penitentiary establishments to admit as inmates also *individuals who require immediate hospitalization due to direct risk to their life or health, and women pregnant for 28 weeks or more*.

Within the Polish prison system, there is only one prison hospital ward for such inmates, i.e. the Ward for Chronically Ill Prisoners in the prison in Czarne. As a result of a limited number of places in that facility, inmates sometimes wait for admission for more than a year. Somatically ill inmates placed in other penitentiary establishments require regular assistance from other prisoners, which is necessary for performing their basic living functions. In the opinion of the NMPT, this solution is ungrounded and has already been questioned in the past by the European Court of Human Rights<sup>150</sup>.

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<sup>148</sup> *Rola psychologii w działalności służb mundurowych* [The role of psychology in the activities of uniformed services], „Zeszyty naukowe ruchu studenckiego”, no. 2 (2015), p. 97–98.

<sup>149</sup> Journal of Laws (Dz. U.) of 2015, item 927.

<sup>150</sup> In 2019, the Commissioner for Human Rights carried out thematic visits to examine the situation of chronically ill prisoners. The conclusions were presented in the letter to the Director General of the Prison Service. The letter emphasized: the lack of specialist care and specialized equipment, improper adaptations of space to the needs of such prisoners, the lack of activation programs for this group of prisoners. If there are objective obstacles to releasing somatically ill inmates from prison, care should be taken to ensure that they live in conditions that guarantee human dignity. See the cases no.: KMP.571.2.2019; KMP.1.2019; and case no. IX.517.532.2019.

- ECHR: The necessity for other inmates to assist disabled inmates in their everyday hygiene routine, dressing and undressing must cause their anxiety and make them feel inferior to the other inmates<sup>151</sup>.
- It is unacceptable to imprison individuals suffering of serious physical disorders in the conditions which are inappropriate given their health condition, or to leave those individuals to be dependent on fellow inmates for showering, dressing or undressing. This is a form of degrading treatment<sup>152</sup>.

*In the opinion of the NMPT, a solution that should be considered by the Penitentiary Service to meet the needs of inmates suffering from chronic physical disorders is to increase the number of prison hospital wards such as the one operating in Czarne.*

- **CONCLUSIONS ON THE CONDUCTED THEMATIC VISITS**

In 2020, the NMPT carried out two thematic visits to assess the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), issued with regard to penitentiary establishments. The visits demonstrated that the recommendations issued for the Polish side have not been implemented in key areas.

### **Living space per prisoner**

The minimum standard recommended by the CPT to the Council of Europe member states is 6 m<sup>2</sup> of floor area per person in a single cell and 4 m<sup>2</sup> of floor area per person in a multi-person cell (the toilet area is not included). Also, every cell should have at least 2 m of space between the walls and 2.5 m between the floor and the ceiling<sup>153</sup>.

The CPT recommended to the Polish authorities<sup>154</sup>:

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<sup>151</sup> Judgment in the case Farbtuhs versus Latvia, of 2 December 2004, complaint no. 4672/02.

<sup>152</sup> Judgment in the case D. G. versus Poland, of 12 February 2013, complaint no. 45705/07.

<sup>153</sup> See: Living space per prisoner in prison establishments: CPT standards, 15 December 2015, CPT/Inf (2015) 44; 26<sup>th</sup> General Report of the CPT, CPT/Inf (2017) 5, para. 56; CPT report on visit to Poland, CPT/Inf (2018) 39, para. 59.

<sup>154</sup> See CPT report on the visit to Poland, CPT/Inf (2018) 39, paras. 59, 67 and 68.

- that the minimum living space per inmate be increased to a minimum of 4 m<sup>2</sup> in multi-person cells (excluding the toilet and bathroom area) and to 6 m<sup>2</sup> in single cells. The official capacity of the cells should be adjusted accordingly;
- that the distance of 2 m between the cell walls be ensured. Cells that do not meet the standard should be reconstructed or decommissioned.

**The remand prison Warszawa-Białoleka has not implemented the recommendation.** The measurements of selected cells, made by members of the NMPT delegation, indicated that they met only the current national standard (3 m<sup>2</sup>) but did not meet the living space standard recommended by the CPT. Also, in some cells, the space between the walls was less than 2m.

**The remand prison Warszawa-Służewiec has implemented the recommendation in part.** The visiting team did not find any cells where the distance between the walls would be less than 2 m and the distance between the floor and the ceiling would be less than 2.5 m. Some of the visited cells also met the living space standard of 4 m<sup>2</sup> per inmate (or a few centimetres less).

### **Window blinds**

The CPT expressed its disapproval for the cell protection solution in the form of non-transparent window blinds. In the opinion of the Committee, the solution is, in most cases, unnecessary. It blocks the possibility to look outside and limits access of natural light and fresh air to the cells. The CPT recommended that the Polish authorities remove the blinds and, if they are really necessary, replace them with ones that allow access of natural light and fresh air to the cells in sufficient amounts<sup>155</sup>.

**The remand prison Warszawa-Białoleka has implemented the recommendation.**

**The remand prison Warszawa-Służewiec has not implemented the recommendation.** Some windows in the cells still have non-transparent blinds. As the visiting team members were informed during the visit, the blinds were replaced with new ones in 2019, which proves that modernization works have been carried out, yet the solution did not take the CPT recommendations into account.

### **Activities for remand prisoners**

The CPT drew attention to the daily regime of remand prisoners. Most of the inmates from this group spent about 23 hours per day in their cells. Penitentiary establishments offered them only the possibility of outdoor exercise (for one hour a day) and of spending time in the association room (up to one hour, several times a week)<sup>156</sup>.

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<sup>155</sup> See CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 69.

<sup>156</sup> Ibid., para. 72.

The CPT called on the Polish authorities to take decisive action to develop activity programs for remand prisoners. The aim of these activities should be to ensure that all prisoners spend 8 hours or more outside of their cells, engaged in activities of various kinds - work, education, sports, etc.<sup>157</sup>

**Both visited establishments failed to implement the recommendation.** The inmates did not have any activity programmes and, similarly as during the CPT visit, they spent most of their time in the cells where they had access to books and newspapers. The only other possible activities were: going for a walk (1 hour per day) and staying in the association room (in the remand prison Warszawa-Białoleka: twice per week, and in the remand prison Warszawa-Służewiec: one to four times per week).

The visited establishments tried to offer also some other activities to the inmates, e.g. cultural and educational activities aimed at building civic and patriotic attitudes (e.g. the action entitled *Saving the memory*), an exhibition about the Auschwitz-Birkenau concentration camp, competitions and quizzes about the Battle of Warsaw of 1920, the Warsaw Uprising and Marshal Józef Piłsudski, as well as outdoor sports activities. In the opinion of the NMPT, these activities are, however, too rare and only occasional.

### **Association rooms**

When visiting the two remand prisons in 2017, the CPT paid attention to the poor equipment in the association rooms. The CPT report addressed to the Polish authorities emphasized that the association rooms on each floor were practically unfurnished (in some cases, there were even no chairs or a TV set)<sup>158</sup>. The CPT recommended that the Polish authorities take steps to adequately furnish the association rooms in the penitentiary establishments<sup>159</sup>.

**The remand prison Warszawa-Białoleka has implemented the recommendation.**

**The remand prison Warszawa-Służewiec has implemented the recommendation in part.** The equipment differed strongly between the individual association rooms. One of the rooms had only a TV set, a table and some chairs. In the other rooms, there were: a computer game station, a table tennis table, a mattress and a ladder for workout, a TV set and an exercise bicycle.

### **Walking yards**

The CPT drew attention to the technical condition and equipment of the walking yards in Polish penitentiary establishments. The report emphasized that the vast majority of the visited establishments had only small yards surrounded by high concrete walls. The equipment in the yards included benches,

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<sup>157</sup> Ibid., para. 73. See also the SPT comments, CAT/OP/POL/ROSP/1, points 86-91.

<sup>158</sup> CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 62.

<sup>159</sup> Ibid., para. 67.

and there was no protection against bad weather conditions. The CPT recommended that steps be taken to ensure that all inmates have the possibility to take their daily outdoor exercise in conditions which enable them to physically exert themselves. Further, all exercise yards should be equipped with some protection against inclement weather and, preferably, offer a horizontal outside view.<sup>160</sup>

The remand prison **Warszawa-Białoleka has not implemented the recommendation.** The walking yard was still equipped only with benches and some simple pull up bars, but there was no proper roofing (only a small partial cover). The surface of the walking yard was cracked. The yard was surrounded by a concrete wall over which a metal mesh was stretched, which made the area look like a cage. During the walk, the prisoners did not perform any physical exercises or use the pull up bars. There were two outdoor gym stations within the premises of the facility. However, they were not available to all inmates on daily basis.

The renovation plan to be implemented by 2022 provides for the adjustment of the walking yard for team games, according to the guidelines of the Director General of the Prison Service<sup>161</sup>.

**The remand prison Warszawa-Służewiec has implemented the recommendation in part.** The walking yards were partially roofed. However, they resembled cages and were very small (the smallest one had only 20.1 m<sup>2</sup> and, as the visiting team found, there had been situations where as many as 12 prisoners were taking a walk there). The yards were covered with a metal mesh on top. Their only piece of equipment was a small wooden bench.

### **Access to General Practitioners**

During the CPT visit to the remand prison Warszawa-Białoleka in 2017, health care was provided to the inmates by 3 general practitioners employed full time. At the remand prison Warszawa-Służewiec, health care was provided to the inmates by one general practitioner employed full time. The CPT delegation members were informed by inmates in both facilities that the waiting times for medical consultations were very long. In the opinion of the CPT, there was a need to increase the employment of general practitioners at the Warszawa-Białoleka facility up to 5 full-time doctors, and at the Warszawa-Służewiec facility up to three full-time jobs<sup>162</sup>.

**Both establishments failed to implement the recommendation.** The NMPT delegation received information that despite the increased employment of doctors, the availability of medical care for inmates had not improved. Inmates continued to report that the time of waiting for an appointment with a general practitioner was very long, sometimes several days.

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<sup>160</sup> Ibid., para. 74.

<sup>161</sup> See: Guideline no. 2/2013 of 4.06.2013

<sup>162</sup> CPT report on the visit to Poland, CPT/Inf (2018) 39, points 75 and 76, and footnotes no. 66 and 68.

The remand prison Warszawa-Białołęka, during the visit of the NMPT representatives, employed in total five medical staff members: a general practitioner who was also a Prison Service officer, and 4 other general practitioners (civilians). Their working hours made up, in total, 3.5 full-time jobs. The findings of the NMPT delegation also made it clear that the head of the prison health service and his deputy (both doctors) were overwhelmed with administrative tasks and, apart from emergency situations, did not see patients in practice.

The remand prison Warszawa-Służewiec, during the visit of the NMPT representatives, employed in total three general practitioners: two of them worked based on specific-task contracts, and one worked part-time. There was also a vacant position of a doctor (0.25 of a full-time job).

### **Work of nurses**

During the CPT visit to the remand prison Warszawa-Białołęka, there were no nurses available during the night hours and on weekends. The remand prison Warszawa-Służewiec employed 7 full-time and nurses and one part-time nurse (3 nurse positions were vacant). The nurses worked in a shift system, both on weekdays and on weekends. During the night, nursing coverage was ensured only on weekdays<sup>163</sup>.

The CPT recommended that a person competent to provide first aid (which should include being trained in the application of CPR and the use of a defibrillator) is present on every night shift; preferably, this person should be a qualified nurse. With regard to the remand prison Warszawa-Służewiec, the CPR also recommended to increase the number of nurses.<sup>164</sup>

### **Both visited establishments implemented the recommendation in part.**

During the NMPT visit, the remand prison Warszawa-Białołęka employed 20 nurses, and 6 nurse positions were vacant. The nurses worked in 8-hour or 12-hour shifts (four nurses per shift). Nursing coverage was ensured on weekends but not during the night.

Moreover, the NMPT representatives found out that there had been situations where nurses participated in conveying inmates in order to supervise their medical documentation. Many hours spent on transport meant that the nurse did not provide medical care in the establishment at that time, and the medical staff was reduced in number. At the remand prison Warszawa-Służewiec, the nursing team was increased to 15 people (11 nurses actually work, 4 are on maternity leave). The unit still has 3 nurse position vacancies. Nursing care is provided 7 days a week from 6:30 am to 6:30 pm. Nurses do not work at night. In case of emergency, an ambulance is called.

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<sup>163</sup> Ibid., para. 75.

<sup>164</sup> Ibid., para. 76.

## Medical examinations

The CPT noted that that initial examination in the penitentiary establishments was often cursory and superficial (limited to a few general questions about the state of health and in most cases not including a full physical examination). Furthermore, the prisoners were not examined within 24 hours of their admission to prison (in some cases, the examination was delayed by several days, up to a week)<sup>165</sup>. Also, medical examinations were carried out in the presence of custodial staff and the prisoners were handcuffed (this applied to “N” status prisoners, according to the CPT comment).<sup>166</sup>.

The CPT recommended that the Polish authorities:

- remind all prison health care staff that every newly-arrived prisoner should be properly interviewed and physically examined as soon as possible, and no later than 24 hours after admission, by a doctor or by a fully-qualified nurse reporting to a doctor)<sup>167</sup>;
- ensure that all medical examinations of prisoners are conducted out of the hearing and -unless the doctor concerned expressly requests otherwise in a particular case -out of the sight of prison officers);
- stop the practice of routine application of means of restraint to "N" status prisoners during medical examinations.<sup>168</sup>.

### **Both visited establishments implemented the recommendation in part.**

Newly arrived prisoners are examined by a doctor or a nurse within 24 hours (the remand prison Warszawa-Białołęka) or within three working days (the remand prison Warszawa-Służewiec) of their arrival. The examination usually takes place without the presence of Prison Service officers, unless in individual cases medical staff asks them for assistance due to security reasons.

However, persons who have arrived from other penitentiary facilities do not undergo the initial medical examination. As a rule, they are examined at the previous facility, before being transported to the new one. This practice generates the risk of not detecting injuries that could originate when the prisoner was convoyed.<sup>169</sup>.

Situations in which the medical examination of a prisoner was superficial and was limited only to an interview, without a full body examination, were still reported.

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<sup>165</sup> Ibid., para. 78.

<sup>166</sup> Ibid., para. 79.

<sup>167</sup> Ibid., para. 78.

<sup>168</sup> Ibid., para. 79.

<sup>169</sup> The issue has been described in detail in the chapter on systemic problems in penitentiary establishments.

During medical examinations carried out within the penitentiary establishment, the inmates were not handcuffed. However, there were situations in which they were handcuffed during medical examinations carried out outside the establishments. Such examinations are conducted in the presence of Prison Service officers. At the remand prison Warsaw-Białołęka, the NMPT delegation was informed of a case of a prisoner who had been handcuffed to his bed in the hospital. In the opinion of the CPT, the practice of applying means of restraint to prisoners during medical consultations infringes upon the dignity of the prisoners concerned, prevents the development of a genuine doctor-patient relationship and may even be prejudicial to the establishment of objective medical observations.<sup>170</sup>

### **Registration of prisoners' injuries**

The CPT called upon the Polish authorities to ensure (including through the issuance of instructions and the provision of training to relevant staff), that all medical examinations are properly recorded. This applied both to traumatic injuries suggesting the use of violence, noticed in newly arrived prisoners, as well as examinations conducted after incidents within the penitentiary establishment. The CPT indicated the items to be included in the documentation on a medical examination<sup>171</sup>, and pointed out e.g. that:

- the recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the detained person;
- if any photographs are made, they should be filed in the medical record of the person concerned;
- a special register of injuries should be kept, in which all injuries should be recorded.

**Both visited establishments failed to implement the recommendation.** Injuries of prisoners are described in their health registry books. The medical documentation contains no special form (body chart) for registering injuries, and no photographic documentation. The establishments do not keep separate registers of injuries.

At the remand prison Warsaw-Białołęka there was a case in which a doctor took photographs of a prisoner's injuries with his private telephone, and later made the photographs available to a prosecutor in connection with ongoing criminal proceedings. However, the photographic documentation was not included in the medical records of the prisoner but was only kept by the doctor in case any

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<sup>170</sup> See: CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 79; CPT report on the visit to the Czech Republic, CPT/Inf (2019) 23, para. 70.

<sup>171</sup> CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 80.

related proceedings are started. The method of registering injuries of prisoners is therefore inconsistent with the Istanbul Protocol<sup>172</sup>.

The representatives of the NMPT also met with the opinions of the staff that not all injuries are recorded (especially minor injuries), and the Police and the Prison Service should cooperate and trust each other. The NMPT delegation even heard about the informal rule in the unit, according to which one does not report to each other. The findings of the NMPT representatives also indicate that not all information about injuries of a prisoner goes to the law enforcement agencies. Minor injuries are recorded in the prisoner's health book, when the injuries are serious and the perpetrators are police officers, law enforcement agencies are notified. At the Warsaw-Służewiec University, medical personnel were aware of the existence of the Istanbul Protocol, but did not know its content. This document is not used in the investigation and documentation of injuries.

### **Drug-addicted prisoners**

The CPT paid attention to the methods of work with drug-addicted prisoners. The Committee pointed out that methadone programmes were available in all the visited establishments. However, despite the CPT's repeated recommendations, no harm reduction measures (e.g. needle change information, the supply of condoms, information on how to sterilise needles and other materials used for injecting drugs) were introduced.<sup>173</sup>

According to the CPT, the management of drug-addicted prisoners must be varied. It should, on the one hand, focus on eliminating the supply of drugs into prisons, and on the other hand, on the problem of drug abuse as such (through identifying and engaging drug misusers, providing them with treatment options and ensuring that there is appropriate through care, developing standards, monitoring and research on drug issues, and the provision of staff training and development). The activities should be linked to a proper national prevention policy. The CPT emphasizes that health-care staff must play a key role in drawing up, implementing and monitoring the programmes concerned and must co-operate closely with the other (psycho-socio-educational) staff involved.

The CPT called upon the Polish authorities to develop and implement a comprehensive strategy for the provision of assistance to prisoners with drug-related problems (as part of a wider national drugs strategy)<sup>174</sup>.

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<sup>172</sup> See: paragraph 122 and Annexes III and IV to the Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; The Office of the United Nations Commissioner for Human Rights; Professional Training Series No. 8/Rev.1; New York and Geneva, 2004.

<sup>173</sup> See: CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 81.

<sup>174</sup> Ibid., para. 81.

**The remand prison Warszawa-Białoleka failed to implement the recommendation.** A methadone programme was available at the establishment. However, no harm reduction measures were introduced. The staff of the facility (medics, psychologists) did not know the CPT recommendations in this regard and were sceptical about the harm reduction measures.

The prisoners are not covered by a professional therapy programme. There is no therapy ward for prisoners addicted to narcotic drugs or psychotropic substances. There is a ward for prisoners who are alcoholics. The therapeutic activities are, however available only to convicts, and not to remand prisoners. Convicts addicted to narcotic drugs are referred to other establishments with appropriate therapeutic wards or, if serving a short-term sentence, are covered by a psychologist's support. Also, opioid-addicted inmates who were covered by a substitution programme prior to detention may continue the opioid substitution.

Meetings of the Anonymous Drug Addicts Community are held also within the establishment, with the participation of the Community representatives from outside.

**The remand prison Warszawa-Służewiec implemented the recommendation in part.** The establishment has a therapy ward for convicts addicted to psychotropic substances. The ward has 36 places and is not intended for remand prisoners.

If a prisoner is diagnosed with an addiction but there is no possibility to place him in the ward, he is covered by a psychologist's support.

Inmates also attend individual meetings with a psychologist and an educator. They are covered by the following programmes: short-term intervention, social re-adaptation, addiction and alcoholism prevention, narcotic and substitute drug abuse prevention.

**The remand prison Warszawa-Służewiec** had a methadone programme available but had no harm reduction measures recommended by the CPT. During the conversations with the NMPT representatives, the staff members stated they were familiar with the measures but were sceptical about them.

### **Remand prisoners' contact with the outside world**

The CPT expressed its concern with the failure to implement the long-standing recommendation regarding remand prisoners' contacts with the outside world. During the 2017 visit, remand prisoners were still required to request authorization from a judge or a prosecutor for every visit.

The CPT reiterated that remand prisoners should be entitled to receive visits (and make telephone calls) as a matter of principle, rather than these being subject to authorisation by a judicial authority. In individual cases the authorization may be refused. Any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation, require the approval of a judicial authority and be applied for a specific period of time. If it is considered that there is an on-

going risk of collusion, particular visits (or telephone calls) can be monitored. The Committee called upon the Polish authorities to bring the relevant legislation into conformity with these principles without further delay<sup>175</sup>.

**Both visited establishments failed to implement the recommendation.** Contacts of remand prisoners are regulated by the provisions of Article 217 of the Criminal Executive Code<sup>176</sup>. The authorization of the authorities is still required for the contacts.

### **Receiving visits**

The CPT noted that prisoners in closed establishments were entitled only to two one-hour visits a month. According to the CPT, that all inmates – both those on remand and those already sentenced – should benefit from the equivalent of at least one hour of visiting time per week. The Committee once again recommends that the Polish authorities increase the current visiting entitlement for prisoners accordingly<sup>177</sup>.

**Both visited establishments failed to implement the recommendation.** Contacts of the prisoners are regulated by the provisions of Article 217 of the Criminal Executive Code, according to which a visit may last 60 minutes. A prisoner may receive only one visit per day.<sup>178</sup> In closed-regime prisons, sentenced prisoners may receive two visits per month, and the establishment's director may consent to them being held jointly.<sup>179</sup> In semi-closed-regime prisons, sentenced prisoners may receive three visits per month, and the establishment's director may consent to them being held jointly<sup>180</sup>. In open-regime prisons, sentenced prisoners may receive any number of visits<sup>181</sup>. Remand prisoners may receive at least one visit per month by the closest person, unless the authorization has been refused<sup>182</sup>.

Relevant internal regulations of the establishments are in line with the provisions of the Criminal Executive Code.

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<sup>175</sup> Ibid., para. 84.

<sup>176</sup> See: Article 217 of the Criminal Executive Code.

<sup>177</sup> CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 85.

<sup>178</sup> See: Article 105a(1) of the Criminal Executive Code.

<sup>179</sup> See: Article 90(6) of the Criminal Executive Code.

<sup>180</sup> See: Article 91(8) of the Criminal Executive Code.

<sup>181</sup> See: Article 92(10) of the Criminal Executive Code.

<sup>182</sup> See: Article 217(1a) of the Criminal Executive Code.

## **Disciplinary procedure**

Standards applicable to inmates on whom disciplinary sanctions have been imposed were presented by the CPT in its report on the visit held in 2013.<sup>183</sup> During the 2017 visit, the Committee found that no progress in this regard had been made. Inmates were not systematically heard prior to the imposition of a sanction. They were generally not informed (or only informed orally) of the available avenues of appeal against the disciplinary sanction and did not receive a copy of the disciplinary decision. The Committee called upon the Polish authorities to eliminate these deficiencies<sup>184</sup>.

**Both visited establishments failed to implement the recommendation.** Prisoners, before being placed in an isolation cell, attended a meeting with the director the establishment. In their opinion, however, the conversation was a pure formality and consisted in communicating the sanctions.

The remand prison Warszawa-Białoleka had some inmates who reported they had not been informed of the possibility to appeal against the decision (but this was not a rule). Some inmates claimed that they had not received a copy of the decision on the disciplinary sanction.

At the remand prison Warszawa-Służewiec none of the interviewees remembered whether they had been informed about the possibility of appealing against the decision. One of the inmates received a copy of the decision only when he asked for it; another one claimed that he had not received a copy at all.

## **Period of placement in an isolation cell**

The CPT was also concerned by the fact that the maximum legally authorised period of placement in a disciplinary isolation cell for sentenced prisoners (28 days) has not been shortened. The Committee calls upon the Polish authorities to amend the relevant legislation so as to align the maximum period of placement of sentenced prisoners in disciplinary isolation with the provisions regarding remand prisoners i.e. 14 days. Further, there should be a prohibition of sequential disciplinary sanctions resulting in an uninterrupted period of solitary confinement in excess of the maximum period. Any offences committed by a prisoner which it is felt call for more severe sanctions should be dealt with through the criminal justice system<sup>185</sup>.

**Both visited establishments failed to implement the recommendation.** Cases of placing a prisoner in an isolation cell for a period exceeding 14 days were, yet, very rare in the visited establishments. At the remand prison Warszawa-Białoleka, in the years 2018-2020 there was only one

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<sup>183</sup> See: CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 99.

<sup>184</sup> See: CPT report on the visit to Poland, CPT/Inf (2018) 39, para. 87.

<sup>185</sup> Ibid., para. 88.

disciplinary sanction consisting in the placement in an isolation cell for a period exceeding 14 days. At the remand prison Warszawa Służewiec in 2019-2020 there was only one such case too.

The national law has not been adjusted to the CPT standard<sup>186</sup>. Therefore, there is a risk of placing a prisoner in a solitary confinement for a period of more than 14 days (up to 28 days), depending on the establishment director's decision. The regulations also allow for sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement lasting for up to 28 days<sup>187</sup>. Importantly, according to Polish law, a disciplinary sanction of less than 14 days does not require consent of a penitentiary judge<sup>188</sup>.

### **Role of prison doctors in the procedure of placement in a disciplinary cell**

The CPT expressed its concern about the fact that doctors were involved in the procedure of placing prisoners in isolation cells. According to the CPT, medical personnel should never participate in any part of the decision-making process resulting in any type of solitary confinement, except where the measure is applied for medical reasons. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote a positive doctor-patient relationship; moreover, it is unethical.<sup>189</sup>

Health-care staff should be informed immediately of every such placement and should visit the prisoner without delay after placement and thereafter on a regular basis, at least once per day, and provide him/her with prompt medical assistance and treatment as required<sup>190</sup>. The CPT recommended that steps be taken by the Polish authorities to ensure that the practice throughout the Polish prison system is brought into conformity with the aforementioned standards<sup>191</sup>.

**The remand prison Warszawa-Białoleka failed to implement the recommendation.** Doctors still certify that prisoners are fit to undergo a disciplinary sanction, which is in line with the Criminal Executive Code<sup>192</sup>. In some cases doctors also certify that prisoners can undergo other disciplinary sanctions such as not receiving parcels with food from outside the prison for up to 3 months.<sup>193</sup>

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<sup>186</sup> See: Article 143(1)(8) of the Criminal Executive Code.

<sup>187</sup> See: Article 146(1) and (2) of the Criminal Executive Code.

<sup>188</sup> See: Article 145(3) of the Criminal Executive Code.

<sup>189</sup> See: CPT report on the visit to Poland, CPT/Inf (2018) 39, para 89.

<sup>190</sup> Ibid., para. 90.

<sup>191</sup> Ibid., para. 89 and 90.

<sup>192</sup> See: Article 145(3) of the Criminal Executive Code.

<sup>193</sup> See: Article 145(4) and (5) of the Criminal Executive Code 145.

**The remand prison Warszawa-Służewiec implemented the recommendation in part.** At the visited establishment, a psychologist not a doctor certifies that a given prisoner is fit to be placed in an isolation cell.

Neither of the establishments has introduced the standard of daily medical check-ups during prisoners' isolation. Health-care staff would only visit an inmate placed in a disciplinary cell upon the latter's request, or if medical assistance is required (e.g. the personnel suspect that the prisoner's health has deteriorated). The law does not require the prisoner to be examined by a doctor after being placed in solitary confinement; such prisoners are supervised by a psychologist with regard to their fitness for remaining in the confinement.<sup>194</sup>.

### **Role of prison doctors in the context of the use of restraint procedures**

The CPT pointed out that in cases where prisoners are subjected to measures of mechanical restraint (including placement in a security cell or use of a restraint belt), they should be examined by a doctor before using the measure. However, the CPT delegation established that that a medical examination of the prisoner was only foreseen upon request of prison staff, in case where there was a medical indication for it (visible injury or other symptoms of risk to life or health).

In the opinion of the CPT, any resort to mechanical restraint should be immediately brought to the attention of a medical doctor in order to assess whether the mental state of the prisoner concerned requires hospitalisation or whether any other measure is required in the light of the prisoner's medical condition. The Committee recommends that the Polish authorities take the necessary measures to amend the current practice accordingly<sup>195</sup>.

**The NMPT delegation had no possibility to verify, in either of the establishments, whether the recommendation had been implemented.**

**At the remand prison Warszawa-Białoleka,** in 2019 there were six cases of applying direct coercion measures. In all cases, they consisted in using physical force and handcuffs. No mechanical measures of restraint, indicated by the CPT in its report, were applied. In 2020, no direct coercion measures had been applied in the establishment by the time of the visit.

**At the remand prison Warszawa-Służewiec,** in 2019 there was one case of applying direct coercion measures which consisted in using physical force (restraining lock and special transportation techniques), handcuffing the prisoner on the back, and placing him in a security cell. No mechanical measures of restraint, indicated by the CPT in its report, were applied. In 2020, no direct coercion measures had been applied in the establishment by the time of the visit.

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<sup>194</sup> See: Article 148(3) of the Criminal Executive Code.

<sup>195</sup> Ibid., para. 91.

- **Penitentiary establishments in the times of the COVID-19 pandemic**

In 2020, due to the COVID-19 pandemic, penitentiary establishments became much more enclosed. The epidemiological situation throughout the country has caused significant changes in their functioning, such as suspension of visits, limited access by third parties to penitentiary establishments, limited offer of educational and recreational activities or changes in the possibilities of participation in them, or reorganization of medical care.

The introduced restrictions brought about the risk of violation of prisoners' rights and of their ill-treatment. They also made it almost impossible for the National Mechanism for the Prevention of Torture to exercise its mandate in the to-date form i.e. through on-site visits.

To ensure the continuity of the exercise of its mandate, the National Mechanism decided to remotely monitor the situation in penitentiary establishments. This included: analysis of media reports on infections in penitentiary establishments, exchange of correspondence with the Ministry of Justice<sup>196</sup>, Director General of the Prison Service<sup>197</sup> and directors of selected prisons and remand prisons<sup>198</sup>, and remote visits with the use of the Skype communicator.

Between 5 May and 17 August 2020, the National Mechanism conducted online visits to 20 establishments across the country, which report to the Prison Service<sup>199</sup>. **The data included in this**

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<sup>196</sup> Letters to the Deputy Minister of Justice of 16 April 2020 and 30 April 2020 (KMP.071.4.2020 regarding the algorithms for the operation of the Prison Service during the coronavirus pandemic and the effects of their introduction. Until the date of this report, no reply has been received by the CHR Office from the Ministry of Justice; Letter of the Deputy Minister of Justice to the Commissioner for Human Rights of 1 April 2020 (DWOiP-II.53.1.2020) regarding ongoing preparations of penitentiary establishments for the risk related to the coronavirus pandemic).

<sup>197</sup> Letter to the Director General of the Prison Service of 12 March 2020 (KMP.071.4.2020) regarding penitentiary establishments' preparations for the coronavirus pandemic: procedures introduced, means of personal protection, restrictions on the rights of prisoners, etc.). Reply of 20 March 2020 (regarding the developed algorithms to be used); Letter to Director General of the Prison Service of 10 April 2020 (KMP.071.4.2020) regarding the possibility of conducting the NMPT visits via Skype and presenting the SPT and CPT international standards regarding places of detention during a pandemic). Response of 21 April 2020 (BP.414.101.2020) regarding consent to online visits).

<sup>198</sup> Letter to the Director of the remand prison in Grójec, of 10 November 2020 (KMP.071.8.2020) regarding the number of infections diagnosed in the establishment). Reply of 12/10/2020 (S/P.4003.19.2020.AB/8580); Letter to the Director of the prison in Opole Lubelskie of 16 November 2020 (KMP.071.8.2020) regarding the number of infections diagnosed in the establishment). Reply of 24 November 2020 (S/P.070.60.2020.JW); Letter to the Director of the prison in Iława of 16 November 2020 (KMP.071.8.2020) regarding the number of infections diagnosed in the establishment). Response of 25 November 2020 (S/P.414.10.2020.JP).

<sup>199</sup> The NMPT conducted online visits to the remand prisons in: Łódź (KMP.571.4.2020), Warszawa-Białoleka (KMP.571.5.2020), Kraków (KMP.571.9.2020), Wrocław (KMP.571.11.2020), Międzyrzecz (KMP.571.16.2020) and Białystok (KMP.571.17.2020) and to prisons in: Potulice (KMP.571.8.2020), Sztum (KMP.571.10.2020), Grudziądz – prison no. 1 (KMP.571.12.2020), Krzywianiec (KMP.571.13.2020), Chełm (KMP.571.14.2020), Rzeszów (KMP.571.15.2020), Nysa (KMP.571.11.2020), Jastrzębie-Zdrój (KMP.571.20.2020), Czarne (KMP.571.21.2020), Barczewo (KMP.571.22.2020), Głogów (KMP.571.23.2020), Bydgoszcz-Fordon (KMP.571.24.2020), Czerwony Bór (KMP.571.25.2020) and Łupków (KMP.571.26.2020).

**report relate to the situation in the establishments until the date on which the visits ended, i.e. 17 August 2020, and are based on the conducted interviews and documents sent by penitentiary units.**

### **Guidelines of the Prison Service Headquarters on procedures to be followed in cases of suspected coronavirus infection.**

On 4 March 2020, the Director General of the Prison Service sent a letter with algorithms drawn up in cooperation with the Chief Sanitary Inspectorate, indicating the detailed procedures to be followed with regard to people suspected of coronavirus infection, to the Regional Directors of the Prison Service. The letter emphasizes that the guidelines are a basis for developing internal procedures by the individual establishments, taking into account their specificity.

The Guidelines of the Prison Service Headquarters set out the methodology to be followed with regard to newly arrived prisoners with COVID-19, and other prisoners with symptoms of COVID-19.

The Prison Service Headquarters sent a subsequent document with the guidelines on 25 March 2020. The algorithms applied to persons who had tested positive for the presence of the coronavirus but had no indications for hospitalization. Such persons should be placed in either of the two isolation facilities established within the premises of the prison in Potulice and the remand prison in Bytom (if there are no free places, they should be placed in the prison in Potulice).

All algorithms developed by the Prison Service Headquarters in consultation with the Chief Sanitary Inspectorate contain clear guidelines to be followed in the event of coronavirus infection. The directors of the visited establishments did not raise any objections as to the interpretation of the received guidelines. On their basis, in accordance with the order of the Headquarters, directors of prisons and remand prisons issued internal instructions regulating the methods of protection against the spread of the virus in their establishments<sup>200</sup>.

Therefore, detailed instruction have been issued on dealing with newly arriving prisoners during the pandemic, in particular with regard to the methods of using personal protection equipment in contact with an infected or potentially infected person. Such instructions contain not only the description and characteristics of individual types of personal protection equipment, such as masks, aprons, gloves, protective eyewear, but also summarize the knowledge on the safe use of the available personal protection equipment.

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<sup>200</sup> The prison in Międzyrzecz was an exception. It adopted a system in which the guidelines developed during weekly videoconferences with directors of other establishments were adopted for immediate implementation. Therefore, most of the measures were undertaken based on the guidelines of the Prison Service regional director or national headquarters director, without developing additional internal procedures (see: the NMPT Report on the visit to the prison in Międzyrzecz, KMP.571.16.2020).

As a rule, newly arriving prisoners in every establishment have their body temperature measured and a medical interview is conducted on their arrival to the establishment<sup>201</sup>. They also undergo a two-week quarantine, after which they transferred to multi-person cells. People quarantined in remand prisons are required to wear disposable masks when moving in the common areas or going for walks. They are also required to collect their meals wearing disposable masks. Groups going for a walk may consist only of newly arrived persons who are undergoing quarantine.

## **Epidemic-related situation in penitentiary establishments**

Due to the precautions that are described in more detail below, the number of infections in penitentiary establishments was very low, as compared to the numbers in the society as such.

In the vast majority of the visited establishments, there had been no cases of infections among prisoners or officers by the end of the monitoring interviews conducted by the representatives of the NMPT<sup>202</sup>. As in the whole country, tests for the presence of the coronavirus were performed mainly in cases of the existing symptoms of the SARS-CoV-2 infection<sup>203</sup> and in cases of admission to hospital for reasons unrelated to coronavirus infection<sup>204</sup>.

In the prison in Sztum, at the end of April, in connection with the occurrence of the symptoms one of the inmates was tested for COVID-19 at the city hospital in Sztum. The County Sanitary and Epidemiological Service in Malbork was notified immediately. It recommended that a list of people who had both direct and indirect contact with the inmate suspected of the infection be drawn up. 20 officers were in home isolation for a period of about 2-3 days until a second negative COVID-19 test result was obtained by them. At the same time, the fellow inmates of the one suspected of the infection were transferred to the infirmary<sup>205</sup>.

In the prison in Głogów, two cases of the coronavirus infection were detected among the inmates. The first of the inmates, diagnosed with the coronavirus, was hospitalized at the time when the infection occurred. In the second case, after finding the COVID-19 infection, six fellow inmates living

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<sup>201</sup> Prisoners held in the prison hospital wards of the prison in Czarne have their body temperature checked twice a day (see the NMPT Report on the visit to the prison in Czarne, KMP.571.21.2020).

<sup>202</sup> See: Reports on the NMPT visits to the remand prisons in Międzyrzecz (KMP.571.16.2020), Kraków (KMP.571.9.2020) and Białystok (KMP.571.17.2020), and the prisons in Krzywaniec (KMP.571.13. 2020), Chełm (KMP.571.14.2020), Rzeszów (KMP.571.15.2020), Nysa (KMP.571.19.2020), Czarne (KMP.571.21.2020), Barczewo (KMP.571.22.2020), Bydgoszcz-Fordon (KMP.571.24.2020), Czerwony Bór (KMP.571.25.2020), and Łupków (KMP.571.26.2020).

<sup>203</sup> See: Report on the NMPT visit to the remand prison in Wrocław (KMP.571/11/2020).

<sup>204</sup> In prison no. 1 in Grudziądz, one person was tested due to the planned hospitalization in a hospital outside the prison. See: Report on the NMPT visit to prison no. 1 in Grudziądz (KMP. 571/12/2020). See also: Report on the NMPT visit to the prison in Jastrzębie-Zdrój (KMP.571.20.2020).

<sup>205</sup> See: Report on the NMPT visit to the prison in Sztum (KMP. 571.10.2020).

in the same cell with the infected man were quarantined within the premises of the establishment. One positive and five negative results were obtained after their testing. Due to the fact that the inmate infected with the coronavirus had only two more days of imprisonment to be served, an agreement with the sanitary inspectorate was concluded, pursuant to which the Director of the prison in Głogów granted him a leave and the inmate was transported to the isolation facility in Bolesławiec<sup>206</sup>.

### **Personnel (staffing situation)**

Despite the fact that prison officers and other staff members are, in fact, outsiders and are therefore more exposed to the coronavirus infection, the number of the infections in the establishments was low. As in the case of inmates, in most establishments no infections were found among the officers<sup>207</sup>. However, due to preventive quarantines as well as leaves taken by the employees (e.g. due to the need to provide personal care to their children due to the closure of schools), penitentiary establishments faced greater shortages of staff.

A positive example is the solution introduced in the Sztum prison where questionnaires were conducted among the officers and other employees in order to verify the staffing needs and problems. The results of the surveys and the identified problems related to the pandemic resulted in the introduction of a shift system called 6+2, instead of the standard 8-hour shift system. Under that system, for 2 hours per shift all employees could remotely perform any activities that could be performed in this way<sup>208</sup>.

Detainees from the establishments to which the remote monitoring visits were held did not report any significant slow-down in the operation of the penitentiary establishments during the pandemic. In general, they did not feel that the number of officers had decreased to a degree making it excessively difficult to exercise their duties during the pandemic. Inmates did not report any increased aggression or concern on their part due to the COVID-19 pandemic or to the potentially increased workload on the officers.

According to the reports of directors of most of the establishments, the limitations on the hours of performance of certain activities resulted in the possibility to settle the already accumulated overtime hours. Due to the restrictions on people's movement both outside and inside the establishments, the

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<sup>206</sup> See: Report on the NMPT visit to the prison in Głogów (KMP.571.23.2020).

<sup>207</sup> In prison no. 1 in Grudziądz, the infection was confirmed in one of the officers (KMP.571.12.2020), while in the prison in Głogów, the presence of the SARS-CoV-2 virus was detected in two officers (KMP.571.23.2020). In other establishments, by the time of the visit, no cases of infection among officers or employees had been recorded. See Reports on the NMPT visits to the remand prisons in: Kraków (KMP.571.9.2020), Wrocław (KMP.571.11.2020) and Miedzyrzecz (KMP.571.15.2020), and the prisons in Czerwony Bór (KMP.571.25.2020), Czarne (KMP.571.21.2020), Łupków (KMP.571.26.2020), Barczewo (KMP.571.22.2020), Nysa (KMP.571.19.2020), Rzeszów (KMP.571.15.2020), Jastrzębie-Zdrój (KMP.571.2020) and Krzywianie (KMP.571.13.2020).

<sup>208</sup> See: Report on the NMPT visit to the prison in Sztum (KMP. 571.10.2020).

amount of duties of the officers had decreased<sup>209</sup>. The deputy director of the prison in Łupków stated that the epidemic-related restrictions had little impact on the staffing situation in the establishment; the situation remained relatively stable and did not bring any negative consequences for the prisoners.<sup>210</sup>

Prisoners in the remand prisons in Kraków and in Bydgoszcz-Fordon pointed out that, depending on the weather conditions and the workload on the officers, there were cases in which the prisoners' walks lasted longer than the standard 60 minutes a day. This shows that the officers have been open to the needs of the inmates. The solution of going beyond the required standard should be a positive example for other penitentiary establishments.

### **Specific actions taken in penitentiary establishments in connection with the COVID-19 pandemic**

All establishments visited by the National Mechanism for the Prevention of Torture operated according to the procedures aimed at preventing the spread of the coronavirus. These included the guidelines of the Director General of the Prison Service and the resulting instructions of the directors of the individual establishments.

Also, in many establishments<sup>211</sup> special teams were established to coordinate actions taken in connection with the epidemiological situation. Their purpose was to monitor the situation related to the epidemic risk in the establishment and in the country, and to coordinate the implementation of related procedures. In some establishments, only Prison Service officers (e.g. on the managerial level) or only civilian employees were appointed as members of such teams. The exception was the prison in Jastrzębie-Zdrój, in which, in addition to officers, the team included the facility's doctor and a nurse. Also at the prison in Krzywaniec, the team included representatives of the prison's medical staff. Another example of an interdisciplinary team that coordinated activities related to the epidemic risk may be the team established in the Łupków prison, which, apart from the managers of the establishment, included: a doctor, nurses, heads of the individual wards, a health and safety inspector, an inspector responsible for examining complaints and requests, a health and safety inspector, and an inspector for staffing. At the same prison, a management team was also appointed which, every working day, held a meeting to discuss the current epidemiological situation in the country and the possible actions to ensure

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<sup>209</sup> See: Report on the NMPT visit to the remand prison in Kraków (KMP.571.9.2020) and the prison in Bydgoszcz-Fordon (KMP.571.24.2020).

<sup>210</sup> See: Report on the NMPT visit to the prison in Łupków (KMP.571.26.2020).

<sup>211</sup> See: Reports on the NMPT visits to the remand prisons in Międzyrzecz (KMP.571.16.2020), Białystok (KMP.571.17.2020) and Wrocław (KMP.571.11.2020), the prisons in Barczewo (KMP.571.22.2020), Bydgoszcz-Fordon (KMP.571.24.2020), Czarne (KMP.571.21.2020), Głogów (KMP.571.23.2020) and Łupków (KMP.571.26.2020), prison no.1 in Grudziądz (KMP.571.12.2020) and the prison in Krzywaniec (KMP.571.13.2020).

security in the establishment. The tasks of the team included the analysis of the current guidelines concerning the epidemiological situation in Poland, the situation in the establishment (including the psychological condition of the prisoners and the officers) and the formulation of conclusions and recommendations on counteracting the spread of the coronavirus.

At the remand prison in Białystok, a team was established for permanent cooperation with the national, voivodeship (i.e regional) and powiat (i.e. county) sanitary inspectors in order to regularly adjust the activities to the guidelines published by the sanitary inspectorates<sup>212</sup>.

The director of the Bydgoszcz-Fordon prison announced that its health and safety unit runs a website for the staff members, where all necessary information regarding the epidemic risk is posted. The information is also available in paper copies at designated points in the establishment. Additionally, an information campaign concerning the epidemiological situation was carried out in the form of posters and e-mails<sup>213</sup>.

An example of an establishment that had not established any special team to coordinate the activities undertaken in connection with the COVID-19 pandemic is the prison in Potulice. Instead, every day, the daily order contained information that required the officers and other staff members of the establishment to read the current recommendations of the Chief Sanitary Inspector (GIS), available on the GIS website, as well as the information on the Polish National Health Service website.

Officers and other staff members were also required to immediately read the applicable "Procedure to be followed in the event of a suspected coronavirus infection in the prison in Potulice" and „Procedure to be followed in the event of a suspected coronavirus infection in the Potulice prison’s external ward". In case of doubt as to the content of the procedures, explanations were provided by designated officers of the hospital ward and healthcare unit located within the establishment<sup>214</sup>.

All the visited establishments had introduced special procedures and guidelines for the disinfection of common spaces, toilets, association rooms and devices intended for common use, i.e. telephones and computers used for communication via Skype<sup>215</sup>. The problem with the availability of disinfectants was reported solely by inmates at the Warszawa-Białoleka remand prison.

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<sup>212</sup> See: Report on the NMPT visit to the remand prison in Białystok (KMP.571.17.2020).

<sup>213</sup> See: Report on the NMPT visit to the prison in Bydgoszcz-Fordon (KMP.571.24.2020).

<sup>214</sup> See: Report on the NMPT visit to the prison in Potulice (KMP.571.8.2020).

<sup>215</sup> See: Reports on the NMPT visits to the remand prisons in Międzyrzecz (KMP.571.16.2020), Białystok (KMP.571.17.2020), Kraków (KMP.571.9.2020) and Wrocław (KMP.571.11.2020), and the prisons in Barczewo (KMP.571.22.2020), Bydgoszcz-Fordon (KMP.571.24.2020), Chełm (KMP.571.14.2020), Czerwony Bór (KMP.571.25.2020), Krzywaniac (KMP.571.13.2020) and Rzeszów (KMP.571.15.2020).

During the interviews, some inmates indicated that during the pandemic, the administrators paid more attention to cleanliness and disinfection procedures than before. Inmates who were not engaged in cleaning works confirmed that they could smell disinfectants within the establishment, after the corridors had been sprayed with disinfecting substances in the evenings<sup>216</sup>.

The availability of disinfectant agents for use by inmates in prison corridors varied, depending on the establishment. In some establishments, inmates reported that disinfecting agents were available, for example, next to telephone sets (and could be used by the prisoners). In other cases, officers had to be called to disinfect the telephones. In the latter situations, According to the establishments' directors, it should be kept in mind that most disinfectants are alcohol-based and should not be left unattended.

Several establishments had so-called foggers for effective disinfection procedures in hard-to-reach places where sprayed disinfectants are not sufficiently effective. Such devices are used not only to disinfect buildings but also convoy vehicles<sup>217</sup>.

## **Personal protection measures**

All visited establishments had personal protection measures for their officers and other employees as well as for inmates who performed any work for the establishment (e.g. cleaning work, kitchen work, or meal delivery). The measures included: reusable and disposable face masks, protective overalls, protective glasses, face shields, shoe covers, disposable aprons, nitrile gloves, surface disinfectants and hand disinfectants.

Depending on the establishment and on the date of the visit, the establishments had amounts of such equipment sufficient for periods from about one month to about half a year. The facility directors pointed out that at the beginning of the pandemic, access to personal protection measures had been limited. The situation had been the same across the country due to the lack of preparations for the increased demand for such items. After the initial period, all the visited establishments had secured the necessary funds, and most of the directors declared there were no problems with the ongoing deliveries of such items<sup>218</sup>.

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<sup>216</sup> In the prison in Sztum, every day in the evening, after the roll call, the corridors were sprayed with a chlorine-based disinfectant. See: Report on the NMPT visit to the prison in Sztum (KMP.571.10.2020).

<sup>217</sup> See: Reports on the NMPT visits to the remand prison in Międzyrzecz (KMP.571.16.2020), prison no. 1 in Grudziądz (KMP.571.12.2020) and the prison in Barczewo (KMP.571.22.2020).

<sup>218</sup> See: Reports on the NMPT visits to the remand prisons in Międzyrzecz (KMP.571.16.2020), Kraków (KMP.571.9.2020) and Wrocław (KMP.571.11.2020), and the prisons in Bydgoszcz-Fordon (KMP.571.24.2020), Czerwony Bór (KMP.571.25.2020), Głogów (KMP.571.23.2020), Jastrzębie-Zdrój (KMP.571.2020), Krzywianiec (KMP.571.13.2020), Łupków (KMP.571.26.2020) and Chełm (KMP.571/14.2020), prison no. 1 in Grudziądz (KMP.571/December 2020), and the prisons in Potulice (KMP.571.8.2020), Nysa (KMP.571/19.2020) and Rzeszów (KMP.571/15/2020).

The NMPT received disturbing information in the prison in Czarne where some prisoners reported that the ward officers were wearing the same masks all day long and that the masks looked dirty and worn. Inmates at the Czarne prison also reported that the common spaces were disinfected but there were co commonly available hand disinfectants<sup>219</sup>.

In the remand prisons in Międzyrzecz and Warszawa-Białołęka and the prisons in Barczewo and Krzywaniac, inmates could take part in the face mask sewing actions, to meet the needs of individuals as well as entities such as health care facilities or nursing homes<sup>220</sup>.

The engagement of inmates in such activities should be assessed positively because prisoners could not only spend their time productively but also develop supportive social attitudes. The help provided by inmates was rewarded in various ways. In some establishments, the benefits were according to the list of benefits provided for in the Criminal Executive Code. In the prison in Krzywaniac, the Dialtech company that took place in the face mask sewing action offered to the inmates free of charge cards for paid common telephones. Cards worth PLN 50 were given to 36 women who took place in the masks sewing action.

## **Restrictions introduced in the establishments due to the COVID-19 pandemic**

Due to the epidemic risk, all penitentiary establishments throughout the country introduced a number of restrictions. In the first place, in order to reduce the possibility of the inmates becoming infected, the possibility to receive visits and prisoners' work for external entities were suspended. In the vast majority of the establishments, the restrictions were extended for subsequent two-week periods.

In most of the establishments, religious services and meetings with representatives of churches and religious associations were also suspended for the period of the epidemic. Due to this restriction, in some establishments holy masses and programmes on religious subjects were broadcast via the prison radio<sup>221</sup>. In the remand prison in Kraków, during the Holy Week and Easter the number of broadcasted holy masses and programmes on religious subjects was increased. There were also religious-subject broadcasts by prisoners from the Saint Joseph men's group and the Pentecostal Church.

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<sup>219</sup> See: Report on the NMPT visits to the remand prison in Czarne (KMP.571.21.2020).

<sup>220</sup> See: Reports on the NMPT visits to the remand prisons in Międzyrzecz (KMP.571.16.2020), Barczewo (KMP.571.22.2020) and Krzywaniac (KMP.571.13.2020).

<sup>221</sup> See: Reports on the NMPT visits to the remand prisons in Międzyrzecz (KMP.571.16.2020), Kraków (KMP.571.9.2020) and Wrocław (KMP.571.11.2020) and the prison in Bydgoszcz-Fordon (KMP.571.24.2020).

An exception was the prison in Nysa where religious services and individual religious meetings were held, but in accordance with the sanitary guidelines. Inmates were allowed to watch religious services broadcast on television in common rooms located in the wards<sup>222</sup>.

A common solution was to introduce limitations on the use of association rooms and cultural and educational facilities. In most establishments, only the common rooms within the wards could be used. As the prisoners pointed out, they were very poorly furnished. Cultural and educational activities and their replacement activities are discussed below in a separate section.

A significant change caused by the epidemic was introduced in the prison in Barczewo. It is a closed-type establishment but according to the Barczewo Prison Director's order of 3 February 2020, cells for convicts from groups P2 and R2 remained open during daytime. On 12 March 2020, the Barczewo Prison Director ordered the cells to be closed during daytime, due to the epidemic risk existing in Poland. As the director informed, the limitation was introduced based on Article 247(2) of the Criminal Executive Code, pursuant to a consent of a penitentiary judge<sup>223</sup>.

Inmates held in the ward that between 3 February and 12 March operated as a semi-open ward pointed out that the restriction was ungrounded as inmates living in the ward meet on daily basis anyway, during walks and when using the common room. In their opinion, if the doors of the cells were open during daytime, this would not increase the risk of the spread of the coronavirus.

## **Additional rights of prisoners, introduced in connection with the COVID-19 pandemic**

Because of the suspension of the visits, in some establishments the duration of inmates' telephone calls was extended. In most of the establishments the daily limit was increased from 5 to 8 minutes<sup>224</sup>. In the prison in Barczewo the increase applied only to weekends (from 5 to 7 minutes), and in the prison in Czerwony Bór it applied only to weekdays (the limit was increased by 5 minutes)<sup>225</sup>.

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<sup>222</sup> See: Report on the NMPT visit to the prisons in Nysa (KMP.571.19.2020).

<sup>223</sup> See: Report on the NMPT visit to the prisons in Barczewo (KMP.571.22.2020).

<sup>224</sup> See: Reports on the NMPT visits to the prisons in Potulice (KMP.571.8.2020) and Rzeszów (KMP.571.15.2020), the remand prison in Białystok (KMP.571.17.2020), prison no.1 in Grudziądz (KMP.571/12/2020) and the prison in Rzeszów (KMP.571.15.2020). In the prison in Czarne, the daily time limit of telephone conversations during the pandemic was 10 minutes (KMP.571.21.2020).

In the Sztum prison, the daily limit was extended by one minute, i.e. from five to six minutes. See: Report on the NMPT visit to the prison in Sztum (KMP.571.10.2020). In the prison in Krzywianiec, the daily limit was 7 minutes in the closed ward and 12 minutes in the semi-open ward (KMP.571.13.2020).

<sup>225</sup> See: Report on the NMPT visit to the prisons in Barczewo (KMP.571.22.2020) and Czerwony Bór (KMP.571.25.2020).

Inmates in the Chełm prison had the right to the longest telephone calls. Starting from 17 March 2020, the limit of telephone calls was extended from 8 to 10 minutes, and from 11 April 2020 to 15 minutes<sup>226</sup>.

Some prisoners reported that, as in the case of walks, the time limit could be slightly extended, depending on the number of inmates willing to use the telephone.

In the remand prison in Wrocław, the daily time limit of telephone calls at was 5 minutes and remained unchanged<sup>227</sup>. However, the inmates received free-of-charge telephone cards from the director of the establishment, and codes to make free-of-charge telephone calls. They were provided by Dialtech, the telephone service provider for the facility. In the prison in Krzywanięc, 250 telephone cards were distributed by the correction officers among prisoners who were in the most difficult financial situation<sup>228</sup>.

Another form of prisoners' contact with their families during the prohibition of the visits was the Skype communicator, the access to which was increased. In some establishments, additional computers were made available for this purpose<sup>229</sup>. However, this form of communication was not widely used. Prisoners, particularly older ones, stated that neither themselves nor their families were interested in using online communicators, and used mostly telephone calls.

In the Sztum prison, there were three computers with access to Skype. The number was small, given the fact that the prison can accommodate over 1000 prisoners. Considering the daily time limit, the connections lasted only 3.5 hours per day. As reported by the inmates, the waiting time for a connection was from 1 to 2 weeks<sup>230</sup>.

Prisoners from other establishments reported that they used Skype calls and the waiting time for such a call usually did not exceed a few days<sup>231</sup>. Depending on the establishment, the permissible duration of the connection ranged from 10 to 30 minutes<sup>232</sup>.

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<sup>226</sup> See: Report on the NMPT visit to the prison in Chełm (KMP.571.14.2020).

<sup>227</sup> See: Report on the NMPT visit to the remand prison in Wrocław (KMP.571/11/2020).

<sup>228</sup> See: Report on the NMPT visit to the remand prison in Wrocław (KMP.571.11.2020) and the prison in Krzywanięc (KMP.571.13.2020).

<sup>229</sup> See: Reports on the NMPT visits to the remand prisons in Kraków (KMP.571.9.2020), Wrocław (KMP.571.11.2020) and Międzyrzecz (KMP.571.16.2020) and the prison in Bydgoszcz-Fordon (KMP.571.24.2020).

<sup>230</sup> See: Report on the NMPT visit to the prison in Sztum (KMP. 571.10.2020).

<sup>231</sup> See: Reports on the NMPT visits to the remand prison in Międzyrzecz (KMP.571.16.2020), the prison in Barczewo (KMP.571.22.2020) and the remand prison in Białystok (KMP.571.17.2020).

<sup>232</sup> See: Reports on the NMPT visits to the remand prison in Kraków (KMP.571.9.2020), and the prisons in Sztum (KMP.571.10.2020), Chełm (KMP.571.14.2020), Czerwony Bór (KMP.571.25.2020), Głogów (KMP.571.23.2020) and Krzywanięc (KMP.571.13.2020).

At the Białystok remand prison, the limit was 15 minutes a week but inmates informed it could be extended by the facility director at the inmate's request.

The directors of the establishments reported that because of the suspension of the visits, consent to use the Skype communicator was granted, as a rule, to all inmates. An exception was the remand prison in Kraków where such contacts could not be used by remand prisoners and by other persons who did not have an individual Skype account. In that situation the inmates had no real possibility of maintaining contact with the outside world. This is of concern as inmates could have used Skype also to communicate with their lawyers. Preventing inmates from using online communicators in such a situation may be perceived as a violation of their right to contact a lawyer or other representative, provided for in Article 8(3) of the Criminal Executive Code.<sup>233</sup>

One of the correction officers in the semi-open ward at the prison in Czarne informed that a prisoner from Georgia, who is deaf, was allowed to maintain daily contacts via Skype with his family in his country of origin. This is another example of how the establishments adjusted their functioning to the individual needs of the inmates<sup>234</sup>.

## **Free time organization in the period of restrictions**

In order to compensate the inmates for the difficulties experienced because of the introduced restrictions, the establishments organized various forms of activities possible under the sanitary regime. Inmates interviewed by representatives of the NMPT gave the following examples:

- larger numbers of books that could be borrowed from the library;
- more frequent programmes on various subjects, available on the prison radio;
- additional recreation and sports equipment, games, etc. available in the association rooms;
- thematic contests and sports competitions.

In some establishments, the possibility of spending time actively outdoors was increased. Inmates in the Czerwony Bór prison had access to the football, volleyball and basketball pitches within the establishment's area. One of the prisoners reported that he had participated in a first aid course<sup>235</sup>.

In the prison in Jastrzębie-Zdrój, each cell building has a separate walking yard. Due to the fact that it is a semi-open type establishment, the walking yards were available from the morning roll-call to the evening one. There were no restrictions on going outdoors. Also, inmates from each cell building

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<sup>233</sup> See: Report on the NMPT visit to the remand prison in Kraków (KMP.571.9.2020).

<sup>234</sup> See: Report on the NMPT visit to the prison in Czarne (KMP.571.21.2020).

<sup>235</sup> See: Report on the NMPT visit to the prison in Czerwony Bór (KMP.571.25.2020).

were permitted to spend one hour using the multi-sport pitch within the establishment's area, as well as the outdoor gym there<sup>236</sup>.

Sports activities were also carried out in the prison in Nysa, in prison no. 1 in Grudziądz<sup>237</sup>, and in the prisons in Bydgoszcz-Fordon and Chełm. In the Kraków remand prison, sports activities were held only in the indoor gym, and there were no outdoor activities available<sup>238</sup>.

In the prison in Głogów, due to the restrictions caused by the coronavirus pandemic, inmates have been provided with sports equipment that can be used in the walking yard. There was also an outdoor chess playing station. In the association rooms, it was possible to play darts, take part in chess competitions, Play Station games, and attend chess players' meetings. The time limit for staying in the association rooms was also extended. However, the interviews with the inmates showed that not all of them used the offer or had sufficient information about it. Among the inmates from the Głogów prison there were ones reporting that the establishment did not offer any additional forms of spending time.

Similar differences were also reported in the prison in Czarne. According to the information provided by the inmates, the additional activities differed strongly between the wards. Some prisoners indicated there were no activities at all, while others emphasized the rich offer and the positive approach of the correction officers. In the prison hospital wards, inmates had access to computer stations with games, and in the semi-open ward there was a Play Station unit. The establishment also had movie watching sessions and arts activities<sup>239</sup>.

The inmates of the prison in Krzywaniec complained of the poor offer of cultural and educational activities. They mainly pointed to small and poorly equipped association rooms. They also reported that the sports pitch was closed but they did not know whether this was due to the pandemic or to poor weather conditions. The inmates reported that there were no TV sets in the establishment and only inmates who had private TV sets could watch TV<sup>240</sup>.

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<sup>236</sup> See: Report on the NMPT visit to the prison in Jastrzębie-Zdrój (KMP.571.20.2020).

<sup>237</sup> In prison no. 1 in Grudziądz, the available activities included recreational exercise, fitness and general development training, muscle training, cardio training and table tennis. In addition to group activities, inmates can exercise individually on floor mats. There are magazines on individual sports training, yoga and healthy lifestyle. See: Report on the NMPT visit to prison in no. 1 in Grudziądz (KMP.571/12/2020).

<sup>238</sup> See: Reports on the NMPT visits to the prison in Nysa (KMP.571.19.2020), prison no.1 in Grudziądz (KMP.571.12.2020), the prisons in Bydgoszcz-Fordon (KMP.571.24.2020) and Chełm (KMP.571.14.2020) and the remand prison in Kraków (KMP.571.9.2020).

<sup>239</sup> See: Report on the NMPT visit to the prison in Czarne (KMP.571.21.2020).

<sup>240</sup> See: Report on the NMPT visit to the prison in Krzywaniec (KMP.571.13.2020).

### **The establishments that implemented particularly positive initiatives were:**

- The remand prison in Białystok where inmates had the possibility to participate in English language classes (both through radio broadcasts as well as individual meetings with an educator). Female inmates also had the possibility to attend a workshop on soft toys making for their children on the occasion of the Children's Day<sup>241</sup>.
- The prison in Nysa, where an additional edition of the family integration programme "Read a story to me ..." was held. Its aim was to strengthen the family ties between the inmates and their family members. As part of the programme, the inmates recorded CDs with fairy tales or poems read for their children. The CDs were sent to the children or other family members<sup>242</sup>.
- The prison in Czerwony Bór where a programme for prisoners who serve long-term sentences is implemented. The programme is focused on gardening, and the participants plant, water, weed and care for plants, and pick fruit and vegetables in the prison garden almost every day<sup>243</sup>.
- The prison in Krzywaniec which runs numerous educational programmes, such as:
  - the action "Tolerencja.pl" [tolerance.pl] within which thematic programmes on human rights are broadcast;
  - the programme of English and German lessons for inmates through the broadcast series "I speak English" and "Ich spreche Deutsch"; there are four short lessons per day, containing words, an overview of grammar, short language tips and culture-related information;
  - the social campaign entitled "A postcard for a medic. We support you! „carried out in cooperation with the Mothers' and Children's Home. The children draw pictures, and the inmates write thank-you texts addressed to medics. The cards will be sent to hospitals, health emergency units as well as fire brigades in the Lubuskie region,<sup>244</sup>.

### **Psychological condition of prisoners**

The increased isolation of people deprived of their liberty, who had no possibilities to take part in some cultural or educational activities, and who could not receive visits for some time, could be expected to result in prisoners' increased frustration or tensions between inmates. In most of the visited penitentiary establishment this was not visible strongly. The directors of the establishments visited by the NMPT reported that the inmates understood the reasons for the restrictions and there were some who even stated they felt safer than outside.

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<sup>241</sup> See: Report on the NMPT visit to the remand prison in Białystok (KMP.571.17.2020).

<sup>242</sup> See: Report on the NMPT visit to the prison in Nysa (KMP.571.19.2020).

<sup>243</sup> See: Report on the NMPT visit to the prison in Czerwony Bór (KMP.571.25.2020).

<sup>244</sup> See: Report on the NMPT visit to the prison in Krzywaniec (KMP.571.13.2020).

The knowledge of the epidemic situation was quite extensive in the establishments, which was a positive aspect. Inmates knew what specific restrictions were introduced and until when. They indicated several sources of information on the situation.

Inmates in the Sztum prison reported that they felt secure and that their overall mood was normal. They demonstrated their understanding for the reasons of the introduced limitations such as the suspension of visits from outside and the inmates' work outside the prison. When asked about what they would like to change in the functioning of the establishment, they mainly referred to the poor quality of the walking yards and the limited use of the main association room<sup>245</sup>.

The situation was similar also in some other establishments<sup>246</sup>. The Director of the remand prison in Białystok and the inmates reported that the mood in the establishment seemed positive. Prisoners had a reasonable attitude to the pandemic-related limitations, and no related increase in aggression or violence levels were reported. The number of self-injuries had not increased either. A psychologist working in the establishment confirmed that in general, the atmosphere had not significantly deteriorated and that the increase in the demand for psychologist consultations was not large. However, some inmates emphasized that despite the possibility of contacting their family members by phone or via Skype, they missed their families and that the lack of personal contacts was strongly felt by them<sup>247</sup>.

The NMPT was informed about an increase in the level of negative emotions in the remand prison in Międzyrzecz, during the monitoring visit there. The prisoners stated that various restrictions were lifted, according to the news, but the visits to prisoners were not restored. The inmates also complained of boredom and of the fact that, in principle, they had to spend all days in their cells that the walking yards were small and the walking groups were overcrowded. There were also complaints concerning common rooms within the wards. According to the inmates the rooms were „smaller than the cell”<sup>248</sup>.

### **Group protest at the prison in Chełm**

On 11 April 2020, about 80 prisoners conducted a protest action, and refused to eat two meals (breakfast and lunch). Their demands were related, first of all, to the suspension of the visits<sup>249</sup>. The prisoners, furthermore, protested against:

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<sup>245</sup> See: Report on the NMPT visit to the prison in Sztum (KMP.571.10.2020).

<sup>246</sup> See: Reports on the NMPT visits to the prison in Bydgoszcz-Fordon (KMP.571.24.2020) and the remand prison in Kraków (KMP.571.9.2020).

<sup>247</sup> See: Report on the NMPT visits to the remand prison in Białystok (KMP.571.17.2020).

<sup>248</sup> See: Report on the NMPT visit to the remand prison in Międzyrzecz (KMP.571.16.2020).

<sup>249</sup> See: Report on the NMPT visit to the prison in Chełm (KMP.571.14.2020).

- not introducing any additional activities that could be carried out while the visits were suspended; they demanded, e.g., the permission for them to have game consoles in their cells,
- lack of real access to medical care,
- too small numbers of protective equipment for inmates.

The interviewed prisoners who had information about the incident reported that, as a result, the telephone duration limit was extended to 15 minutes. The information was confirmed by the documents sent by the establishment's managers.

Most of the inmates who did not take part in the action had negative opinion about it. They stated that it was ineffective, and that the prisoners made a laugh of themselves because they failed to win anything. Some of the inmates said the timing was bad because the situation was exceptional, and they had some understanding for the restrictions introduced by the Prison Service.

The information obtained from the managers of the establishment showed that the inmates who took part in the action had penalties imposed on them. In relation to some of the inmates, special safety measures were also taken.

- Three of the inmates were transported to another establishment because they had already been classified as posing a serious threat to the society or to the safety of the establishment (Article 88a(1) of the Criminal Execute Code). Also, each of those prisoners had a joint penalty imposed on him (including for the participation in the group action) in the form of solitary confinement for 28 days, based on the consent of a penitentiary judge;
- Four of the inmates were transported to another establishment for the purpose of serving joint disciplinary penalties imposed on them in the form of solitary confinement for 28 days (the penalties were imposed for several acts jointly, including the participation in the group action);
- One of the prisoners had a joint penalty imposed on him (for several acts jointly, including the participation in the group action) in the form of solitary confinement for 28 days, based on the consent of a penitentiary judge;
- Three of the prisoners had joint penalties imposed on them (for several acts jointly, including the participation in the group action) in the form of solitary confinement for 14 days;
- One of the prisoners had a disciplinary penalty imposed on him in the form of solitary confinement for 12 days;
- On 39 of the prisoners, penalties were imposed in the form of the prohibition to receive food parcels (for up to three months);

- On 14 of the prisoners, penalties were imposed in the form of the prohibition to buy food (for a period of up to three months);
- On 13 of the prisoners, penalties were imposed in the form of the prohibition to buy tobacco products (for up to three months);
- On 11 of the prisoners, penalties were imposed in the form of prohibition to take part in certain cultural or educational activities (with the exception of reading books and the press) for up to three months;
- Three of the prisoners were reprimanded.

## Living conditions

As already mentioned in the chapter on the systemic problems, the NMPT has been highlighting the problem of multiple occupancy cells for several years. During the remote visits, the NMPT requested the directors of the establishments for information on the numbers and capacities of cells for more than 7 prisoners.

*Living conditions that are characterized by overcrowding, in particular in the time of the epidemic, pose a threat to prisoners' lives and health.*

During the remote monitoring visits to penitentiary establishments, it was found that many of them still have cells for more than 7 prisoners<sup>250</sup>. The worst situation was found in the prison in Sztum and the remand prison in Białystok.

In the prison in Sztum, there are as many as **30(!) multiple occupancy cells**: twenty seven 7-person cells, two 9-person cells and one 11-person cell. In total, 218 people can be placed in those cells. Given the capacity of the establishment, i.e. 1,002 places, **every fifth inmate** lives in a cell for more than seven inmates<sup>251</sup>.

In the remand prison in Białystok, there are also many (21) multiple occupancy cells with capacity ranging from 10 to as many as **18(!) places**.

The inmates living in the 18-, 16- or 12-person cells reported that their living conditions were very difficult. Each of the cells, regardless of the capacity, had only one toilet zone with a wash basin. In such a large group of inmates, daily activities (such as washing dishes or washing clothes) turned into

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<sup>250</sup> E.g. in the Białystok remand prison, Łódź remand prison, Międzyrzecz remand prison, Grudziądz prison, Jastrzębie-Zdrój prison and Sztum prison.

<sup>251</sup> See: Report on the NMPT visit to the prison in Sztum (KMP. 571.10.2020).

a difficult task. The inmates also referred to difficulties in maintaining hygiene in such cells. It was difficult even to wash hands, with so many people having to use the same toilet zone. The inmates also reported that the situation caused conflicts, in particular in the morning when everyone was getting ready for the morning roll call<sup>252</sup>.

*The maintenance of hygiene is one of the basic needs of every human being. In the times of the epidemic risk, it should be a priority for all individuals as it may have a direct influence on people's life and health. Everyday life in such a large group of people entails the risk of catching not only the coronavirus but also other diseases<sup>253</sup>.*

A change of the conditions, in particular in the times of the pandemic, is of critical importance. Yet, such a change does not have to entail the necessity to reconstruct the establishments or allocate large financial resources.

A good example is the prison in Jastrzębie-Zdrój where the capacity of one of the cells was officially reduced and it was decided not to place more than 9 inmates there, even though there were up to 10 places. Such a practice should be introduced in all the establishments that struggle with the problem of multiple occupancy cells for more than 7 inmates. Until the establishment's reconstruction, the official capacity of the multiple occupancy cells should be reduced to a maximum of 7 places.

During the visits to the penitentiary establishments, the NMPT was also interested in inmates' **access to hot water** during the COVID-19 pandemic.

In most of the visited establishments, the prisoners had access to hot water 24 hours a day<sup>254</sup>. In the remaining establishments, hot water was available in the cells several times a day. In some of those establishments it was available three times a day, just like before the pandemic<sup>255</sup>, in others, it was available more often than before it<sup>256</sup>.

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<sup>252</sup> See: Report on the NMPT visit to the remand prison in Białystok (KMP.571.17.2020).

<sup>253</sup> The Expert Network on External Prison Oversight and Human Rights is of a similar opinion. See: the special issue of the network's newsletter: *ADAPTING TO COVID-19. Medical Isolation and Quarantine in Prison during a Pandemic*, Office of the Correctional Investigator, Ontario 2020, pp. 7–8.

<sup>254</sup> See: Reports on the NMPT visits to the remand prisons in Międzyrzecz (KMP.571.16.2020), Wrocław (KMP.571.11.2020), Kraków (KMP.571.9.2020) and Białystok (KMP.571.17. 2020), the prisons in Sztum (KMP.571.10.2020) and Bydgoszcz-Fordon (KMP.571.24.2020), prison no.1 in Grudziądz (KMP.571/12.2020), and the prisons in Potulice (KMP. 571.8.2020) and Rzeszów (KMP.571.15.2020). See: Report on the NMPT visits to the prisons in Czarne (KMP.571.21.2020), Łupków (KMP.571.26.2020) and Krzywaniec (KMP.571.13.2020).

<sup>255</sup> See: Reports on the NMPT visits to the prisons in Nysa (KMP.571.19.2020) and Chełm (KMP.571.14.2020).

<sup>256</sup> See: Reports on the NMPT visits to the prisons in Czarne (KMP.571.21.2020), Barczewo (KMP.571.22.2020) and Czerwony Bór (KMP.571.25.2020).

Before the outbreak of the pandemic, two baths a week were the standard in almost all establishments. In view of the epidemic risk, additional baths were made available in the remand prisons in Kraków, Warszawa-Białołęka, Białystok, the prison in Jastrzębie-Zdrój and prison no. 1 in Grudziądz.

It should be pointed out that inmates in the prison in Łupków reported continuous access to hot water on daily basis, and the possibility to have a bath every day. Foam disinfectants were also available in the bathrooms. Such a standard should be a model example for other penitentiary establishments in terms of counteracting the spread of the coronavirus.

The system of bathing was reported as a problem in one of the visited prisons. Inmates in the prison in Międzyrzecz informed that bathing was available on Tuesdays and Thursdays, which meant that after the Thursday bath they had to wait 4 days for the next one. The inmates reported that the breaks between the baths should be more even.

In the prison in Jastrzębie-Zdrój, inmates reported a problem with access to hot water, which was caused by poor work of the water heating system. Water supplied to the cell buildings was heated by a solar installation. Most of the inmates complained of the lack of hot water in those buildings, and said it was lukewarm. Hot water was occasionally available but only at some hours which were not fixed ones. The problem did not exist in the main prison building where bathing was possible too.

During the remote visits, at some establishments inmates reported problems with the availability of hygiene products in sufficient amounts<sup>257</sup>.

The situation was opposite in the remand prison in Kraków and the prison in Sztum where, according to the inmates, the amounts of hygiene products were always increased if such a request was made by them.

There is no doubt that, in particular during the pandemic, access to hygiene products should be unlimited.

The living conditions in most of the establishments were assessed by the inmates as appropriate. Most complaints were made with regard to the walking yards. For example, in the prison in Sztum, the inmates reported that the walking yards were larger in the past but later they were divided. As a result, at the time of the visit they were so small that some inmates preferred to stay in the cell and not to go for a walk<sup>258</sup>.

The worst condition of the walking yards was reported by the inmates from the Czerwony Bór prison. All interviewed prisoners emphasized that the walking yards were small, surrounded by a metal sheet fence, and had a net above them. On hot days, in particular, the temperature in the yards was very

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<sup>257</sup> Such situations took place, among others, in the prison in Czarne and the prison in Głogów.

<sup>258</sup> See: Report on the NMPT visit to the prison in Sztum (KMP.571.10.2020).

high and the conditions were, according to the prisoners, “like in an oven”. Several inmates reported that they did not go for walks because of the poor condition of the yards<sup>259</sup>.

***During the pandemic, it was of particular concern that the quality of the walking yards discouraged inmates from going outdoors.***

In the prison in Łupków, a disabled inmate who used crutches pointed to a number of problems related to the lack of adjustments to the needs of people with reduced mobility (some of the infrastructure had been improved by the report date). For example, in June and July 2020, handrails were installed in the toilet and in the shower, and a special seat was installed to facilitate bathing for prisoners with mobility problems. However, the inmate reported that it was impossible for him to take a walk because of the bumpy surface on the walking yard<sup>260</sup>.

## **Medical care during the COVID-19 pandemic**

Access to medical care during the COVID-19 pandemic was assessed as satisfactory or good in most of the visited establishments. Despite the limitation of direct in-person medical consultations to the most necessary cases, the so-called telephone consultations i.e remote consultations worked efficiently<sup>261</sup>. Some inmates even said that the establishment had improved medical care and that the waiting time for an appointment was shorter out of the prison.

In the prison in Sztum, one of the inmates consulted a neurologist via Skype and assessed this form of consultation positively. The same inmate needed a surgical consultation due to the bone replacement, and it was provided on-site due to the need for direct contact.

Female prisoners from the prison in Krzywaniec reported very different opinions on the access to a doctor. Some of them said they had to wait a few weeks for an appointment. Others stated that the medical care was very good and they were taken to the doctor whenever needed. They appreciated the fact that the doctor carefully analysed their medical history and was engaged in his work. All the inmates emphasized that during the epidemic, the examinations were carried out normally, were not limited to a

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<sup>259</sup> See: Report on the NMPT visit to the prison in Czerwony Bór (KMP.571.25.2020).

<sup>260</sup> See: Report on the NMPT visit to the prison in Łupków (KMP.571.26.2020).

<sup>261</sup> In the prison in Jastrzębie-Zdrój, inmates reported that in the system of remote consultations, ones with specialists were not available. They also complained about the impossibility to have any consultation with an ophthalmologist or dentist during the pandemic. At the same time, they informed that inmates with acute symptoms were taken to a doctor’s office where a normal medical examination was carried out. According to the information provided by the director of the prison, the limitations were caused by the fact that the doctors also worked in a hospital outside the prison. See: Report on the NMPT visit to the prison in Jastrzębie-Zdrój (KMP.571.20.2020).

medical interview but included also physical examination of the patients, including blood pressure check and an electrocardiography examination if needed<sup>262</sup>.

Medical care has been negatively assessed by inmates from the prisons in Chełm, Rzeszów, Czerwony Bór prison and the remand prison in Międzyrzecz. The inmates emphasized that their comments concerned medical care provided in the penitentiary establishments in general, not only in the times of the pandemic. The inmates claimed that it was very difficult to get medical appointments and that they were conducted without due care. When asked how they assessed medical care during the pandemic, the most common reply was that *it was just as poor as before*<sup>263</sup>.

Objections to the penitentiary medical care system as such have also been raised by the director of the prison in Łupków. Among the basic problems, he emphasized, inter alia, the insufficient number of beds in prison hospitals, which makes it necessary to refer inmates to hospitals outside prisons. This is particularly difficult during the pandemic and results in the hospitalization of only most urgent cases without delay. In his opinion, the waiting time for planned treatments was much too long<sup>264</sup>.

One of the isolation facilities for prisoners infected with the coronavirus, established during the fight against the COVID-19 pandemic, is the isolation unit within the hospital in the Potulice prison. The staff of the Potulice prison hospital included the following specialist doctors: general surgery - 1 doctor; internal medicine - 5 doctors; infectious diseases - 1 doctor; pulmonology - 3 doctors; dermatology - 1 doctor; ophthalmology - 1 doctor; orthopaedics - 1 doctor; neurology - 1 doctor; psychiatry - 1 doctor; dentistry - 2 doctors; epidemiology - 1 doctor; family medicine - 1 doctor; laryngology - 1 doctor.

Moreover, the hospital also employs 24 nurses, one radiology technician and one dental technician. Two persons are employed in the pharmacy unit.

According to the prison director, as regards medical staff shortages, there is a shortage of nurses at that time. The difficulties encountered in the times of the coronavirus epidemic include primarily limited access to medical care at health care facilities outside prisons.

**It should be noted that although the prison hospital in Potulice has established an isolation unit for people infected with the coronavirus, it does not have specialist equipment e.g. medical ventilator machines, the use of which can be necessary if the symptoms of the coronavirus infection worsen in a patient.**

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<sup>262</sup> See: Report on the NMPT visit to the prison in Krzywanięc (KMP.571.13.2020).

<sup>263</sup> See: Report on the NMPT visit to the prison in Chełm (KMP.571.14.2020).

<sup>264</sup> See: Report on the NMPT visit to the prison in Łupków (KMP.571.26.2020).

One of the inmates who had a COVID-19 infection emphasized the professionalism of the doctors and other medical staff working in the isolation unit for patients with the coronavirus. At each stage of the infection (the man had the asymptomatic disease), he was informed about his health condition and the conducted procedures<sup>265</sup>.

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<sup>265</sup> See: Report on the NMPT visit to the prison in Potulice (KMP.571.8.2020).

## DETENTION OF JUVENILES

In 2020, the National Mechanism for the Prevention of Torture carried out visits to eight facilities for juveniles: one juvenile correctional facility<sup>266</sup> and seven juvenile educational centres<sup>267</sup>.

The visit to the juvenile correctional facility in Białystok was conducted on-site and was focused on specific subjects. Its aim was to verify the degree of implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), forwarded to the Polish authorities in the report on the visit held in 2017<sup>268</sup>.

The visits to the youth educational centres had the form of remote monitoring, and consisted in holding interviews with the juveniles and the staff via an internet communicator. The aim of the interviews was to establish what were the detention conditions and the juveniles' treatment during the COVID-19 coronavirus pandemic. Of particular interest were issues related e.g. to the epidemiological situation in the individual institutions, the procedures implemented to counteract the pandemic, and the observance of the juveniles' rights to maintain contacts with the outside world and to receive information. The conclusions on the visits are presented in the chapter on the functioning of the youth educational centres in the times of the coronavirus pandemic.

- **CONCLUSIONS ON THE CONDUCTED THEMATIC VISIT**

The advancement of implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is presented below: **Preventing acts of inter-juvenile violence. Improving the training of staff in conflict resolution and verbal de-escalation techniques**<sup>269</sup>.

**In the opinion of the NMPT**, the recommendation has been implemented in part. Twice a year, questionnaires are conducted among the juveniles on safety at school, during workshops and in the dormitories. In the years 2017-2020, most of the staff took part in training in the following areas: implementation of rehabilitation and therapy programmes (supervision); assessment diagnosis of juveniles; corrective measures for juveniles; and conflict resolution. Individual persons took part in training courses e.g. on handling aggression and self-aggression in children

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<sup>266</sup> Juvenile correctional facility in Białystok (KMP.573.8.2020).

<sup>267</sup> Juvenile educational centers in: Mszana Dolna (KMP.573.3.2020); Czaplinek (KMP.573.4.2020); Łódź - center no. 3 (KMP.573.6.2020); Łobżenica (KMP.573.7.2020); Renice (KMP.573.5.2020); Łańcut (KMP.573.10.2020); and Mrowiny (KMP.573.9.2020).

<sup>268</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). CPT report on the visit to Poland carried out on 11-22 May 2017 2018, CPT/Inf (2018) 39, paras. 56-91. The document is available at: <https://www.coe.int/en/web/cpt/poland>.

<sup>269</sup> See CPT report on visit to Poland, CPT/Inf (2018) 39, para. 95.

and adolescents, conducting interventions in crisis situations, information and communication techniques, ART aggression replacement training and counteracting hate speech. The institution keeps a *Register of Incidents*, according to which in 2019 there were eight such events (three related to the use of psychoactive substances, two suicide attempts, and single cases of self-mutilation, refusal to obey, and fight between juveniles). In 2020 there were two incidents (related to the use of psychoactive substances). The documentation kept in the facility showed there were cases of subculture-related conflicts between the juveniles, beating, threats about the performance of sexual activities and other activities.

**Prohibition of restraining violent and/or agitated juveniles; removal of metal beds, with handles for restraining juveniles, from security rooms and introduction of alternative methods of managing violent incidents; placing juveniles in a solitary confinement room only as a last resort, for no longer than a few hours and never as a punishment<sup>270</sup>.**

**The recommendation has been implemented in part.** The CCTV recordings and the analysis of the documentation did not show any case of restraining juveniles and fixing them to metal beds with belts. According to the director of the facility, the overall lower number of direct coercion measures is a result of the current consciously different approach to aggressive behaviours of juveniles. The staff members try to solve such problems by other means of persuasion, and coercion measures are used as a last resort. At the same time, the NMPT delegation found that at the facility there were still cases of placing juveniles in medical isolation rooms, for reasons not related to health<sup>271</sup>.

**Ensuring regular visits by a general practitioner to the facility; every newly-arrived juvenile should be properly interviewed and physically examined as soon as possible and no later than 24 hours after admission by a doctor or by a fully-qualified nurse reporting to a general practitioner).**<sup>272</sup>

**The recommendation has been implemented in part.** The facility employs a full-time nurse who conducts the initial interview and an examination of the physical and mental state of the newly arrived juvenile. His/her illnesses, previous hospitalization cases, medications, injuries, tattoos etc. are described. The juvenile has a meeting with a psychiatrist no later than on the second day after arrival. Despite the fact that the facility itself does not employ a general practitioner, a GP care is ensured. However, medical examination of every juvenile arriving to the facility and having no disease symptoms is not possible within the GP medical care system because it is not paid for by the National Health Fund.

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<sup>270</sup> See: Report on the CPT visit to Poland, CPT/Inf (2018) 39, paras. 103-107.

<sup>271</sup> Two juveniles who did not attend the school were placed in one of the rooms. They could not remain unsupervised within the school premises and within the dormitory.

<sup>272</sup> See: Report on the CPT visit to Poland, CPT/Inf (2018) 39, paras. 99-101.

The director of the facility is taking steps to employ a general practitioner, but he has not yet been successful.

**All juveniles deprived of their liberty should have frequent access to a telephone and there should be a minimum entitlement to be able to call one's family without having to earn it as a reward.**<sup>273</sup>

**The recommendation has been implemented.** The juveniles did not report any complaints regarding access to the telephone. Telephone calls on weekdays are made and answered within the set hours, and on Sundays and public holidays, they are made and answered without any restrictions. Additionally, incoming telephone calls to juveniles staying in transit rooms for new arrivals and in medical isolation rooms are not subject to any restrictions. Juveniles who have the right (as a privilege or a reward) to use a computer and the internet may contact their family members and relatives via Skype, which possibility is willingly used by them.

**Ensure that all juveniles in correctional facilities, irrespective of their regime, are offered the possibility of daily outdoor exercise for at least two hours; construct a roof over a part of the outdoor exercise yard to ensure protection against bad weather conditions.**<sup>274</sup>

**The recommendation has been implemented in part.** The availability of outdoor activities, lasting for about 2 hours per day, was confirmed by the juveniles. They pointed out they would like the activities to be even longer, if there were no objections on the part of the educators and if this did not disrupt the work of the facility. However, there is still no roofing over the exercise yard to protect it against bad weather.

**Maintain the current number of employees at the facility (staff reductions were planned).**<sup>275</sup>

**The recommendation has been implemented.** The number of employees was not reduced and has even slightly increased compared to 2017.

- THE FUNCTIONING OF JUVENILE EDUCATIONAL CENTRES IN THE TIME OF THE CORONAVIRUS PANDEMIC

#### Epidemiological situation

There were no COVID-19 infections in any of the centres among the juveniles or staff members. Nobody was under a quarantine ordered by the Sanitary and Epidemiological Service. Symptoms of possible infection were not observed in any of the centres.

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<sup>273</sup> See: Report on the CPT visit to Poland, CPT/Inf (2018)39, paras. 108-109.

<sup>274</sup> See: Report on the CPT visit to Poland, CPT/Inf (2018)39, para. 98.

<sup>275</sup> See: Report on the CPT visit to Poland, CPT/Inf (2018)39, para. 102.

At the juvenile educational centre (JEC) in Czaplinek, six female juveniles were tested for the presence of the coronavirus, and all the results were negative. The tests were made because it was not known at that time where the juveniles arrived from, and where they had previously stayed. The tests were conducted by representatives of the local Sanitary and Epidemiological Service Station.

The JEC in Łódź, in cooperation with the local Sanitary and Epidemiological Service Station, was the only one of the visited establishments that conducted covid genetic tests for all newly arriving juveniles. Until the results were obtained, the juveniles were in quarantine, in a medical isolation room. Until 19 August 2020 i.e. the day of the monitoring visit, there had been no positive results of the tests. In addition, a representative of the NMPT was informed that the practice would be continued – every juvenile arriving to the centre in the new school year will be tested for the presence of the coronavirus.

At the JEC in Łańcut, every juvenile arriving to the centre had the so-called rapid cassette test made. The sample to be examined was the patient's blood drop taken from a finger. The test was conducted by the centre-employed nurse, and the result appeared very quickly after placing a drop of blood on a special plate. Due to the lower sensitivity of the test, as compared to others, if the result was ambiguous the patient was taken to the hospital in Rzeszów for a smear test.

A similar practice of conducting covid tests of juveniles coming back from holidays outside the centre was followed at the JEC in Mrowiny.

Director of one of the centres<sup>276</sup> reported that very unfriendly attitude of the local Sanitary and Epidemiological Service Station officials. The director asked them about the possibility of testing newly arrived juveniles remaining in isolation. He was informed that the tests were conducted only for patients who were in quarantine ordered by the Sanitary and Epidemiological Service, and that it was not possible to perform the tests as a preventive measure in cases where there existed no suspicion of infection. The director reported that he had contacted other JECs and that their local Sanitary and Epidemiological Services did not cause any problems in conducting such tests.

In Łańcut, a representative of the NMPT was informed about the case of a juvenile who had been admitted to the emergency department of the powiat (i.e. county) hospital in Limanowa in April 2020 due to self-mutilation and the necessity to undergo X-ray examinations. Soon afterwards, the emergency department was under quarantine due to one of the patients' positive coronavirus test. The educator (a psychologist by profession) and the juvenile had been in contact with the emergency department staff when they had been at the hospital. Therefore, the JEC director contacted the county Sanitary and Epidemiological Service Station in Limanowa and inquired about the possibility of performing a coronavirus test for the educator and the juvenile. The station refused and the tests were not performed. The educator and the juvenile were not quarantined because the service did not see such

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<sup>276</sup> JEC in Mszana Dolna.

a need. They were recommended to conduct self-observation and report any symptoms of infection. The JEC staff's opinions on the cooperation with the Sanitary and Epidemiological Service in Limanowa were very negative. They expected assistance and cooperation but they felt unwanted and "a disturbance of the system".

## **Guidelines of the Ministry of National Education and the related safety procedures**

Since the beginning of the pandemic, the Ministry of National Education has been sending information to the directors of the JECs, with guidelines regarding the operation of the facilities during the pandemic. The guidelines concerned: limitations on leaving the facility by the juveniles; suspension of leaves and received visits, cooperation of JEC directors with the sanitary service and crisis teams reporting to county governments<sup>277</sup>.

In addition, Ms. Joanna Wilewska, Director of the Department of Integrative Education at the Ministry of National Education, on 19 March 2020 requested the Minister of Health to consider the possibility of introducing regulations enabling the coronavirus testing requirement for JEC juveniles who return to the centre after escaping, or who have newly arrived to the centre.<sup>278</sup> However, the request was considered ungrounded by the Minister of Health<sup>279</sup>.

**The remote monitoring visits carried out during the COVID-19 pandemic at the juvenile educational centres by representatives of the National Mechanism for the Prevention of Torture demonstrated that despite the above-described actions and guidelines, the centres required greater support from the government and the authorities managing and supervising the centres' operation. The guidelines for the JEC directors, sent by the Ministry of National Education were helpful, but insufficient. In discussions with the representatives of the National Mechanism, directors and employees of the centres repeatedly expressed the need for greater support from the Ministry of National Education.**

In connection with the coronavirus pandemic, the centres developed new regulations or implemented the existing ones. They regulated the work of the facilities during the epidemic situation in the country. At the initial stage of the pandemic, the new recommendations related e.g. to:

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<sup>277</sup> Letter from the Ministry of National Education to the directors of juvenile educational centres of 16/03/2020 (ref. no. DWKI-WSPE.5015.7.2020.KT).

<sup>278</sup> Letter from the Director of the Ministry of National Education's Department of Integrative Education and Training to the Minister of Health on 19 March 2020 (ref. no. DWKI-WSPE.5015.17.2020).

<sup>279</sup> Reply of the Minister of Health of 10 April 2020 (ref. no. ZPP.051.74.2020.DJZ).

- introducing a procedure to be followed with regard to newly arrived juveniles, ones who have been brought back after escaping or failure to return, or have returned after a leave<sup>280</sup> (more information on this is included in the next chapter);
- subjecting newly arrived juveniles to quarantine (from 7 to 14 days) in places or rooms adapted for this purposes<sup>281</sup> (more information on this is included in the next chapter);
- suspending the visits to the JEC, leaves from the JEC, and possibilities to go outside<sup>282</sup>;
- suspension of juveniles' individual learning courses<sup>283</sup>;
- restrictions on receiving and sending postal deliveries<sup>284</sup>;
- remote work of employees, if possible<sup>285</sup>;
- ensuring that employees have additional clothes, hygiene products and medications to be used in case the centre is under quarantine<sup>286</sup>;
- introducing distance education for juveniles attending the centre's schools (procedures for teachers' preparations for lessons of the individual subjects, preparation of tasks for the students, the methods of evaluating and grading the students who were sent home for the time of the pandemic)<sup>287</sup>.

It should be noted that the limitations were reduced after the letter from the Ministry of National Education of 8 June 2020, which indicated that isolation of newly arrived juveniles or ones brought back after escaping should only be an optional solution. It should be used depending on the content of the interview conducted with the juvenile and any determined risk of contracting and developing COVID-19<sup>288</sup>. Also, the juveniles could leave the JECs for the summer holidays. The leaves had to be agreed with the parents or legal guardians of the juveniles (including a representative of the foster care institution). The juvenile's journey home for the leave had to be organized in accordance with the national guidelines on juveniles' movement. If they were going to their foster care facility, they had to travel in agreement with the facility. The Ministry also decided that the centres could organize summer

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<sup>280</sup> JEC in Mszana Dolna, JEC in Renice, JEC in Łobżenica, JEC no. 3 in Łódź, JEC in Mrowiny, JEC in Łańcut.

<sup>281</sup> JEC in Renice, JEC in Czaplinek, JEC in Mszana Dolna, JEC in Łobżenica, JEC no. 3 in Łódź, JEC in Mrowiny, JEC in Łańcut.

<sup>282</sup> JEC in Czaplinek, JEC in Mszana Dolna, JEC in Łobżenica, JEC no. 3 in Łódź, JEC in Łańcut.

<sup>283</sup> JEC in Czaplinek.

<sup>284</sup> JEC in Łobżenica, JEC in Łańcut.

<sup>285</sup> JEC in Łobżenica, JEC no. 3 in Łódź.

<sup>286</sup> JEC in Czaplinek.

<sup>287</sup> JEC in Czaplinek.

<sup>288</sup> Letter from the Ministry of National Education to the directors of juvenile educational centres of 8 June 2020 (ref. no. DWKI-WSPE.5015.18.2020.KT.).

holidays for the juveniles, subject to the requirements set out in the sanitary guidelines for organizers of holidays for children and youth<sup>289</sup>.

### **Isolation of newly arrived juveniles**

The Ministry of National Education, in its information materials sent to the directors of the JECs, included several guidelines on the centres' functioning during the COVID-19 pandemic. They concerned, inter alia, quarantine of newly arrived juveniles. After arrival to the centre, the juveniles should remain isolated from their educational groups for a period of 7 days, and their health should be monitored. The Ministry of National Education recommended the use of standard procedures set out by the Chief Sanitary Inspector for such activities. If the centre in question does not have rooms where the quarantine may be held, it is possible to temporarily increase the number of juveniles in bedrooms in order to obtain free rooms. If there is an infected person, the centre and all the juveniles should be quarantined for 14 days<sup>290</sup>. The aforementioned letter of 8 June 2020 informed the JEC directors of that a quarantine of newly arrived juveniles and those who had escaped and been brought back should be an optional solution, depending on the content of the interview conducted with the juvenile and any determined risk of contracting and developing COVID-19<sup>291</sup>.

Due to the lack of detailed guidelines on juveniles' quarantine at JECs, the directors of the individual institutions developed their own procedures and instructions. The NMPT remote visits revealed that in practice, they were very diverse. In some cases there were doubts as to whether a given method of conducting quarantine ensures sufficient safety of the juveniles.

The admission procedure was similar in most of the centres. The juveniles had their temperature measured, and a medical interview was conducted that focused on the COVID-19 symptoms and possible contacts with infected or quarantined people. The admission form was filled out. Before joining the quarantine group, the juvenile had to take a shower. Then, he/she changed into pyjamas or new clothes (own clothes, or if there were none, clothes provided by the centre). The clothes in which the juvenile arrived were collected to be washed. At JEC no. 3 in Łódź, all personal belongings of the juvenile were also quarantined for at least 48 hours in the group's storage place, and any valuables were deposited with the group's educator. The juvenile remained separated from the other group members for 7 to 14 days, depending on the centre (and depending on the temperature measurements and

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<sup>289</sup> Ibid.

<sup>290</sup> Letter of the Ministry of National Education to the directors of juvenile educational centres of 20/03/2020 (ref. no. DWKI-WSPE.5015.18.2020.KT).

<sup>291</sup> Letter from the Ministry of National Education to the directors of juvenile educational centres of 8 June 2020 (ref. no. DWKI-WSPE.5015.18.2020.KT.).

symptoms). There were also situations when juveniles joined their educational group after three or five days. In all the centres, newly arrived juveniles, those brought back after escaping and those coming back from holidays stayed in separate areas or rooms. In two JECs<sup>292</sup> newly admitted juveniles had to use a separate entrance to the building not to have contact with other people.

The method of quarantine in three of the centres<sup>293</sup> caused particular concern of the NMPT due to the doubts regarding the sufficient level of safety of the juveniles.

At the JEC in Mrowiny, arriving juveniles were quarantined, usually for about 7 days. The juveniles stayed in the corridor of group II. The other juveniles or outsiders were not allowed to enter the corridor. The corridor was selected because of the coverage of the monitoring system. In the corridor there were beds for the juveniles, a TV set, a table and some chairs. The boys also had access to board games, playing cards, quiz games and some tasks to solve. These were delivered by the centre's personnel. The educators did not stay in the rooms used for the quarantine. They were required to ensure the safety of the juveniles by using CCTV and observing the rooms through the glass doors. If it was necessary, the juveniles could knock on the doors to request the educators' assistance. The juveniles were visited by a psychologist and an educator. They had their body temperature measured twice a day. The food was delivered in disposable packages, by a staff member. Those in contact with the quarantined juvenile (e.g. delivering meals or a telephone in the case of an incoming call) were required to wear protective equipment in the form of face masks. The educators also brought hand disinfectants to the juveniles.

At the JEC in Łańcut, every newly admitted juvenile had to undergo a test and a 7-day quarantine. Usually, the juvenile stayed on the ground floor in one of the three medical isolation rooms (former transition rooms). These are single rooms with separate toilets. The room door remained open, and for the 7 days the juvenile could only go to the toilet. There were short visits by a psychologist who (keeping a distance), spoke with the juvenile. Meals were left at the door and then picked up by the juvenile. There was no TV or radio set, so the only activity was reading books. Some juveniles (who returned after a leave as required) could use their mobile phones (for one hour per day).

At the time when many juveniles were coming back after their holidays or leaves, the three rooms turned out to be insufficient. Therefore, it was necessary to create a quarantine group similar to an educational group. The quarantine group was supervised by employees who were not on duty in the other groups. The boys were placed in 3- or 4-person rooms which they were not allowed to leave. Their body temperature was measured twice a day. They did not use the common room. In the bedrooms, they could have only the most necessary things (clothes, hygiene products). Contacts with the staff members

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<sup>292</sup> JEC in Mszana Dolna and JEC in Łobżenica.

<sup>293</sup> JEC in Renice, JEC in Mrowiny and JEC in Łańcut.

were maintained via an internal telephone. Meals were left at the doors and the trays were taken inside by one of the boys. To use the toilet, the juvenile had to press the call button or to knock on the door to call a staff member to take him there. The juveniles could take a bath every day. The staff members and the juveniles wore face masks when being together. During the 7 days of the separation the juveniles did not go out and did not get any fresh air. They had no radio or television sets in the rooms. The educators brought cards and board games for the juveniles who had to fill their time by themselves. Nobody visited them except the educators. The reason was the director's intention to protect both the juveniles and the employees. Many of the juveniles reported they were bored. There were cases in which they were allowed to stay in the common room and watch TV, but this was a very rare practice. There were single cases where the isolation lasted for as many as 14 days. For the first 7 days, the juveniles could stay only in their bedrooms, and for the next 7 days they could leave their bedrooms but not meet with anyone from outside their quarantine group. Juveniles returning after the summer holidays on the pre-set date could use their mobile phones (which were made available to them at specific hours).

It should be emphasized that the practice of "remote" monitoring of the juveniles was used at that time. Until mid-September 2020, the educators did not enter the quarantine rooms but were required to ensure the safety of the juveniles by using CCTV and observing the rooms through the glass doors. After the night from 6 to 7 September 2020 (the night of the death of a juvenile from the quarantine group, described in the next chapter), the night shift regulations were changed. Starting from that day, the employees were required to enter the juveniles' rooms at night (every half hour between 10.00 p.m. and 1.00 a.m., and every hour between 1.00 a.m. and 6.00 a.m.) with a torch to check their condition. The director of the centre also introduced the requirement to keep the *Bedrooms monitoring logbook*, in which the dates and hours of the monitoring are recorded. The entries are verified against the CCTV recordings.

The practice of "remote" monitoring of the quarantined juveniles was also used at the Juvenile Educational Centre in Renice. The facility director designated a separate unused wing of the building to be used for quarantine at the time of the COVID-19 pandemic. He did it in consultation with the authority by which the JEC is operated<sup>294</sup> and in line with the recommendations of the Ministry of National Education, the Education Development Centre in Warsaw and the Education Authority in Szczecin. An additional monitoring system was installed to supervise the safety of the juveniles in that part of the building. The juveniles on quarantine did not leave the wing, their body temperature was monitored and their health status was monitored. The staff members provided cleaning agents and bags into which the disposable meal containers were put. During the quarantine, the juveniles were not allowed to go outside the centre, or for a walk inside it.

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<sup>294</sup> Myślubórz Powiat Administration Office.

At the end of March 2020, the director of the centre issued an instruction which contained the following recommendations:

- starting from 27/03/2020 until further notice, new tasks are assigned to the educators on duty at the JEC in Renice with regard to the quarantined juveniles;
- the educator monitors the juvenile under quarantine, and delivers meals in disposable packages to his room door. He takes the juvenile to the toilet and to the bathroom by opening the doors leading to the separate wing of the building. He supplies medicines to the juvenile if needed. During such activities, the educator is wearing protective clothing (gloves and a face mask; the items are available at the educators' room) and keeps a safe distance. The educator does not enter the rooms used by the juvenile who is quarantined;
- the teacher who is the juvenile's school class teacher delivers lunch to the juvenile.

The quarantine place was one of the building's corridors, where beds and a TV set were placed. The director of the facility purchased and installed cameras to monitor the corridor. The juveniles were staying by themselves during the quarantine. The educator on duty could monitor the corridor from the educators' room by watching the camera image. Twice a day, the educator checked the quarantined boys' temperature. The food was delivered in disposable packages, by the educator or other juveniles. Those in contact with the quarantined juveniles (e.g. those who delivered meals or a telephone in the case of an incoming call) were required to wear protective equipment in the form of gloves and a face mask. The educators also brought hand disinfectants to the juveniles who could only use them in the presence of the educator or other staff member.

Most of the interviewed juveniles did not report any problems with contacting the educator when needed. In such situations, they had to knock on the door and the educator would come to the room. However, two boys reported that they had to wait for over an hour for anyone to appear (despite them knocking on the door and waving to the camera). The boys also said they once had to wait to use the toilet, which was outside the "quarantine zone." Other juveniles and the centre director informed the delegation that the toilet and the bathroom were within the quarantine zone. However, the text of the above instruction shows that the bathroom and the toilet were in fact located at a different place than the quarantine zone.

***In the opinion of the NMPT, "remote supervision" does not ensure the safety of juveniles and, moreover, poses a risk to their health and life.***

It is not difficult to imagine the consequences of a delayed reaction of staff in the event of a juvenile's sudden health deterioration (e.g. fainting or injury), or a conflict or aggression between the juveniles. Such remote supervision, in extreme cases, may even result in a juvenile's death.

In view of the above, the NMPT is of the opinion that the guidelines and the measures taken were too general and insufficient. The juvenile educational centres required greater support from the government and the authorities managing and supervising the centres' operation. Therefore, the Commissioner for Human Rights called on the Minister of Education and Science to pay attention to the situation of juveniles held in juvenile educational centres during the pandemic crisis<sup>295</sup>.

During the pandemic, two systems of isolation were used in the Juvenile Educational Centre in Mszana Dolna. During the school year, when there were more newly arriving juveniles, a so-called quarantine group was established. It used two adjusted rooms normally used by one of the educational groups. Meals were delivered to the group members by the JEC's staff member. The juveniles were not isolated in their rooms and were in contact with other newly admitted juveniles within the quarantine group. They slept in their bedrooms but spent time together, played games, talked to each other and watched TV. Their body temperature was checked at least twice a day. The staff and the juveniles reported that in some case the temperature was checked more frequently e.g. when someone's was over 37 degrees Celsius. The juveniles had a computer with access to the internet, and could freely use facebook and the messenger communicator. They had access to e-mail service and a telephone (both the JEC telephone and their private mobile telephones). The juveniles did not go out for a walk during isolation. At least once per hour, the boys were visited by a staff member - an educator, a teacher or a psychologist. The psychologist had spoken to each of them on admission, and offered to speak to them during the isolation period. The boys were not visited by a doctor or a nurse as there is no medical staff employed directly by the JEC.

Later, when there were fewer newly admitted juveniles, two separate isolation rooms (with access to a bathroom) were used for them. The boys were not placed in a quarantine group but stayed in isolation rooms by themselves. They had no contact with each other. The rooms in which they stayed had a bed, a table, a chair and a cabinet. The windows had no bars. Only one of the rooms had a computer with internet access. The juveniles emphasized that there was quite a lot of space and that they could exercise easily in their rooms. There was a calling system in the rooms. As in the case of the quarantine group, the isolation period was from 7 to 14 days (usually after one week the juveniles could leave their rooms). However, they did not meet with the rest of the group but had to return to their rooms. The rooms were not monitored. The system of the visits and temperature checks was the same as in the quarantine group. The staff informed that had the number of newly arriving juveniles been larger (at least three), they would have established a quarantine group again. It would also be possible to have both a quarantine group and the isolation rooms operating simultaneously.

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<sup>295</sup> See: general intervention letter of the Commissioner for Human Rights of 16 November 2020, file ref. no. KMP.573.11.2020. The content of the letter and of the response of the Ministry of National Education is described herein below, in a separate part of the report.

At the JEC in Łobżenica the quarantine zone was also located in a separate part of the building. However, after a certain period of the pandemic, when the isolation group already had several boys group, and others were to arrive soon, it was decided to open a second isolation zone within the JEC branch in Kijaszków<sup>296</sup>. There, the educator was staying with the juveniles all the time. A register of persons present in the building was kept. As there were no other juveniles there, the boys were allowed to go outside to breathe fresh air. They were supervised by the educator. In June, in accordance with the already mentioned recommendations of the Ministry of National Education, the system of isolation was abandoned if the interview during the admission did not show any suspicion relating to the infection or contact with an infected person.

At the end of the first wave of the pandemic, when fewer boys were admitted to the facility, the quarantine group no longer existed (before the letter from the Ministry of National Education of June 2020, that lifted the restrictions). There were some juveniles isolated in separate rooms, without contact with other boys. The juveniles were regularly visited by the educators and a psychologist. The JEC employees explained to them that the isolation was not any form of penalty, and that it was connected with the need to counteract the pandemic. The juveniles had no objections as to the behaviour of the staff. No difficulties with access to the bathroom were reported. The boys' temperature was measured three times a day, in the isolation group and in the regular groups. Later, it was measured less frequently. It was also checked during the holiday camp organized for the juveniles.

At the JEC in Czaplinek, juveniles were quarantined in single rooms on the ground floor in the main building. The quarantine room could only be left when the juvenile wanted to use the toilet or the bathroom next door. The meals were delivered by educators who entered the quarantine room wearing a mask. During the quarantine, the juveniles could also request permission to go for a walk. In such a case, the educator, using personal protection equipment, went out with the juvenile to the garden. All the juveniles maintained contacts with the outside world. They used portable telephones that the facility had. Each time, after ending the conversation the telephone was disinfected by the educator. The legal guardians of some of the juveniles applied to the court for consent to their stay outside of the centre during the pandemic. 10 girls had used this possibility between 1 March and the date of the visit.

### **Major incident: death of a juvenile at the non-public juvenile educational centre in Łańcut**

An example of the risks caused by a system in which quarantined juveniles are supervised only "remotely" can be the death of one of the juveniles in the non-public juvenile educational centre in Łańcut.

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<sup>296</sup> The JEC was a part of the Juvenile Educational Centres complex in Łobżenica, and according to its statutes the Kijaszków facility was a part of the complex.

The juvenile died during the night hours, in the bedroom where two quarantined boys had been staying for three days. The incident report drawn up by the non-public JEC states that at 20.00 hrs. the educator started his night shift. The day preceding the incident was quiet, without any incidents. At that time, the quarantine group consisted of five juveniles. After the bath at about 21.00 hrs., all juveniles went to their rooms which they were not permitted to leave at night. Throughout the night, the educator was present in the facility and, according to the then-practised procedure, remotely supervised the juveniles from the quarantine groups. He did not enter the bedrooms but looked into them several times through the window in the door to check if everything was all right. He spent the rest of his shift in the educators' room (located 2 meters from the juveniles' room). According to the educator's report, he did not notice anything alarming. He did not hear any disturbing noises or signals from the juveniles, and nothing unusual attracted his attention. On the following morning at 8, a new shift started and a new educator arrived. By 10.30am he had checked each bedroom several times looking through the window in the door, but the juveniles were asleep. At about 10.40 one of the juveniles knocked on the door, went to the toilet, and then took the breakfast from the kitchenette for himself and his roommate. After about 5 minutes, when the educator entered the bedroom to measure the temperature, the juvenile informed that his roommate was probably dead. After an attempt to check the heart rate and breathing (the boy did not show any signs of life), the educator immediately notified the director of the JEC who called an ambulance and the police. The ambulance doctor who arrived to the JEC confirmed that the juvenile was dead. The police secured the place and called a prosecutor. The juvenile's parents were also notified. According to the preliminary opinion of medical experts, the boy had a piece of toilet paper in his mouth (he had a runny nose and kept some toilet paper in the bedroom). Two weeks later, the other juvenile who slept in the same bedroom admitted that he killed his roommate. On the same day, the police detained him and placed him in a shelter for juveniles. The circumstances and the course of the incident are being investigated by the District Prosecutor's Office in Łańcut.

Immediately after the incident, the practice of night-time supervision over the juveniles was changed, as mentioned in the earlier part of this report<sup>297</sup>. Actions to support the other juveniles has also been undertaken in the centre. They mainly consisted in individual and group meetings with a psychologist and an educator, aimed at reducing psychological tension. Moreover, the juveniles were permitted to contact their parents by telephone at any time. The psychological aid team also conducted telephone conversations with the parents of the juveniles from the group of which the dead juvenile had been a member, in order to dispel the parent's fears and doubts regarding the safety of their children in the facility.

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<sup>297</sup> At present, staff members are required to enter the juveniles' rooms at night (every half hour between 10.00 p.m. and 1.00 a.m., and every hour between 1.00 a.m. and 6.00 a.m.) with a torch to check their condition. The director of the centre has also introduced the requirement to keep the *Bedrooms monitoring logbook*, in which the dates and hours of the monitoring are recorded. The entries are verified against the CCTV recordings.

Additional information on the incident, and the NMPT opinion issued on it, can be found in the post-visit report<sup>298</sup>.

## **Personal protection measures**

Three of the juvenile educational centres<sup>299</sup> reported problems, that occurred at the beginning of the pandemic, with access to disinfectants and personal protection equipment, i.e. face masks and gloves. The JEC in Łobzenica managed to get them only thanks to the commitment and private contacts of the managers. Later, the facility received the products from private institutions, the head of the voivodeship (i.e. regional) government, a ministry, MPs and the JEC's managing authority; at the very beginning the JEC management had the impression that nobody was interested in their problem.

The JEC in Mszana Dolna informed that it was only after a month that the Ministry of Health supplied the facility with hand disinfectants. Before, the centre director received them through his private contacts (there were shortages of such products in pharmacies). Later, the managing authority ensured the supply of the products and transferred funds also for purchase masks and gloves.

The director of JEC in Mrowiny, on the other hand, reported that the centre had difficulties in obtaining sufficient amounts of personal protection measures within the first two or three weeks. At that time, the facility did not have any support from external institutions. The management ensured the purchase of face masks, gloves and hand sanitizers; the funds for this purpose were allocated from the "regular" budget of the centre. After two weeks, the Ministry of National Education provided the JEC with all the products needed for protection against the coronavirus: soaps, disinfectants, face masks and gloves. Since then, there have been no problems with funds for such products. Moreover, the head of the county government also provided the centre with non-contact thermometers, one for each group.

The director of JEC no. 3 in Łódź reported that as regards the supply of personal protection measures, until May 2020 the centre had received no support at all and had no such measures. They sewed face masks by themselves; they also supplied some masks to a local public health centre. Liquid disinfectant was also made by themselves using home-made methods. Only during the summer holidays the centre was allocated money for the purchase of disposable masks and disinfectant dispensers. The purchased amounts were sufficient for the next months. The JEC also received 100 liters of liquid disinfectant from the Ministry of National Education. In addition, the Łódź Sanitary Inspector offered testing to all juveniles returning from the summer holidays; this offer was highly appreciated by the centre's management. The director of the centre also mentioned that the protection measures were

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<sup>298</sup> See: Report of the representatives of the National Mechanism for the Prevention of Torture on the remote monitoring visit to the non-public juvenile educational center in Łańcut, held on 0 December 2020, file ref. no. KMP.573.10.2020.JJ.

<sup>299</sup> JEC in Łobzenica, JEC in Mszana Dolna and JEC in Mrowiny.

sufficient to work in a sanitary regime but if at least one person had been infected, then they would not have been sufficient, and that they would not have conditions for proper isolation.

The NMPT noted a similar problem at the JEC in Łańcut. Since the announcement of the pandemic until the second half of April 2020 it was not possible to buy any personal protection equipment (face masks, gloves, disinfectant) due to their shortages. Every day, the director contacted the manager and employees of the voivodeship (i.e. regional) Crisis Management Centre in Rzeszów about the supply of disinfectants. Unfortunately, all the funds received by that centre from the Material Reserves Agency were allocated to the covid-assigned hospital in Łańcut. At the turn of April and May 2020, personal protection equipment and disinfectants appeared on the market but their prices were very high (several times higher than before the pandemic). The juveniles from the centre took part in the "Masks for Łańcut" campaign, making parts of the masks. As a result, the centre employees and juveniles later received masks made by the campaign volunteers. In May and June 2020, the schools operating in the centre received two non-contact disinfectant dispensers, about 60 packages of disinfectant and 500 masks from the Ministry of Health. In April 2020, the management of the facility decided to purchase SARS-CoV-2 rapid tests detecting antibodies (300 tests were purchased starting from March 2020). In August 2020, the facility received one non-contact thermometer from the Podkarpackie Voivodeship Office in Rzeszów.

The situation improved in June when the facility joined the EU project "Cooperation Leaders" under the 2014–2020 Knowledge, Education, Development Operational Programme financed by the European Social Fund. The funds were spent on two ozone generator, disinfecting cloths, face masks, gloves, disinfectant liquids, thermometers, protective overalls, disposable bedding and contactless liquid dispensers.

The director of the JEC in Renice emphasized that from the very beginning of the pandemic he received support from external institutions, and the centre was provided with all the resources necessary to maintain appropriate sanitary conditions. He appreciated the cooperation with the centre's governing authority and the fact that in every situation he could count on help and quick reaction of the Myślibórz country government.

All directors of the JECs agreed that at the time of the visit the amounts of disinfectants and other protective measures were sufficient and that there were no problems with their regular purchase. In all the visited establishments there were dispensers with hand disinfectant. Juveniles did not get the liquid to be kept in their rooms but they had access to it in many places, including at the entrance to the centre, in the schools, in the corridors and in the common rooms.

During the pandemic there was no obligation to wear face masks or gloves inside the JEC buildings for their residents; this applied to both educators and juveniles. Masks had to be put on by the staff when visiting a juvenile who was in post-arrival isolation or during contacts with people from

outside the centre (e.g. a postman or a juvenile's parents). The juveniles, in turn, were required to put on masks when going outside the facility, e.g. to see a doctor.

## **Contact with the outside world**

As a rule, none of the juveniles interviewed by the representatives of the NMPT (regardless of the facility) complained about the impossibility to maintain contact with their families or close ones.

At all the facilities visited by the NMPT representatives, in order to minimize the possibility of the juveniles becoming infected with the coronavirus, leaves and passes to go outside the facilities were suspended in mid-March 2020. Later, as in the JEC in Czaplinek, leaves were granted to the juveniles whose legal guardians, pursuant to the consent of the family court, wished the juveniles to return home for the time of the pandemic. Remote teaching principles were developed for the girls and information on the prevention of infections was provided.

Since Easter, at two other JECs<sup>300</sup> juveniles could also be granted leave. The JEC in Mszana Dolna resumed the organization of excursions and trips in May. At JEC no. 3 in Łódź and the JEC in Mrowiny the juveniles were granted leave for Easter.

As regards visits by the relatives, as a rule, they were suspended (with the exception of two centres<sup>301</sup>). In Mrowiny, visits were usually held outdoors, those who were meeting had to wear masks, some distance had to be kept and hugging was forbidden. Meetings with the relatives were also held "through the window" - the juvenile was in the room on the ground floor, the window was opened, the visitor was outside the building. The same system was also used in the JEC in Czaplinek. When the restrictions were gradually loosened, "distance-keeping" visits were introduced. During such visits, the juvenile was in the building (usually a bedroom on the ground floor or first floor), and the visitor was in the garden and was speaking to the juvenile through the window. The NMPT appreciates the fact that the JECs ensured the possibility of such contacts between the juveniles and their relatives. At the same time, it draws attention to the confidentiality aspect of such visits. It is important that the juveniles do not feel uneasy about anyone listening to their during conversations with the visitors. To ensure the confidentiality during such conversations is also important from the point of view of the prevention of ill-treatment - a conversation with relatives may be the only opportunity to report negative situations that may potentially be taking place in the centre.

At the juvenile educational centre in Czaplinek, the juveniles could also contact their close ones by the centre's telephones. The rules were changed as compared to those from before the pandemic when phone calls could only be made from Fridays to Sundays, and their duration could not exceed 10

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<sup>300</sup> JEC in Renice and JEC in Łobżenica.

<sup>301</sup> JEC in Czaplinek and JEC in Mrowiny.

minutes. Due to the restrictions introduced and the suspension of regular visits the talks could take place every day. There were no connection time limits during the summer holiday period when the NMPT monitoring visit took place.

From the beginning of March, the possibility of video calls via the Messenger application was also introduced. Several girls at one time could use the computer room under the supervision of an IT teacher. Due to the lack of confidentiality of such conversations and the fact that some of the juveniles used this opportunity to speak to their friends whom they should not contact, the Messenger calls were given up after some time. In order to ensure that the juveniles contacted only those they were permitted to contact via Messenger, a contact list (for telephone calls and for postal letters) had to be made by a legal guardian of every juvenile and delivered to the facility at the time of the juvenile's arrival.

The interviews with individual juveniles at the JEC in Mszana Dolna showed that they spent their remote contact time mainly using the internet, including online communicators, or making telephone calls (between 10:30 am and 8:00 pm). Each educational group had also access to a portable telephone and a computer with an internet connection. The boys could also use their own cell phones. Before the pandemic, access to private cell phones was dependent on the juveniles' behaviour (the so-called social rehabilitation level). During the pandemic, this requirement was abolished and, after breakfast, the educators were giving the cell phones (from the deposit) to the boys who could use them practically all day. As for the JEC's landline telephone, theoretically the conversations were limited to 10 minutes per day, but the limit was not observed too strictly. The educators allowed the boys to have longer conversations (they usually ordered to end the conversation if it lasted about 40 minutes, to avoid a queue of other juveniles). The centre's telephone was not used too frequently. The cell phones or Messenger chats were preferred.

At the JEC in Łobżenica, the boys also spent most of their contact time using private cell phones with internet access. Due to the pandemic, during the summer holiday season they were permitted to use their own telephones between 11 am and 9 pm. As a rule, the possibility of using one's own cell phone depended on the boy's behaviour (it was a privilege). The boys did not report any limits on such conversations. Both the juveniles and the staff stated that the boys' contacts were not subject to control in this regard.

The strictest rules on contacts with the outside world were introduced in two JECs<sup>302</sup>. In JEC no. 3 in Łódź, juveniles had access to their cell phones for one hour per day, at 8 p.m., and for two hours on weekends. Juveniles who had no private cell phones could use the facility's telephone. The girls reported that the use of cell phones was possible only for those who had been staying in the facility for

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<sup>302</sup> JEC no. 3 in Łódź and JEC in Łańcut.

at least 2 weeks. The girls also informed that from time to time (they could not recall how often exactly) they were permitted to use a computer.

In the JEC in Łańcut, the juveniles contacted their relatives by telephone according to the following system: on weekdays, juveniles at *level two of social rehabilitation* had access to their own telephones between 18:30 and 21:30, and on weekends for most of the day. Juveniles who were not at *level two* could use the facility's telephone within the same hours. No visits conducted via the internet communicator were made. During their stay in the computer room (which happened about three times a week), the juveniles could use facebook and contact people from the outside in this way.

Juveniles from the JEC in Mrowiny had most freedom in maintaining contacts with the outside world. At the facility, juveniles could use the centre's telephone on daily basis - each educational group had its time schedule. The juveniles reported that the educators allowed them to make telephone calls also within other hours, if there was such a need. There were also situations when the staff members, in justified cases, offered the possibility of using their own telephones to the juveniles. Contacts with relatives were also possible for the juveniles from the computer room, on average two or three times a week.

## **Right to information**

All juveniles interviewed by the NMPT representatives were aware of and had knowledge about the coronavirus and the possible ways of getting infected. This is a positive aspect because a good understanding of how to protect oneself against infection can effectively reduce the stress level associated with the pandemic and, as a result, prevent related incidents.

According to the information received during the interviews with staff members and juveniles, all the juvenile educational centres had similar practices with regard to the provision of information about the coronavirus. At the beginning of the pandemic, information posters demonstrating appropriate hand hygiene procedures, methods of preventing infections and possible methods of contracting the coronavirus were displayed. Up-to-date information on the number of cases, and on any restrictions was also provided in general meetings. Juveniles reported they could also speak about the pandemic with their educators and ask about any aspects they did not understand or they were concerned with.

Information about the coronavirus was also received from television programmes or the internet. In three centres<sup>303</sup> some of the juveniles reported that at the time when there were most restrictions, they were required to watch news programmes together<sup>304</sup>.

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<sup>303</sup> JEC in Czaplinek, JEC in Łobżenica and JEC in Mszana Dolna.

<sup>304</sup> Eg.. Teleexpress TVP, TV Polsat news, TVN news, TVP news.

According to the information from the director of the JEC in Mszana Dolna the facility organized some educational activities on the COVID-19 pandemic. They had the form of talks with every educational group (regarding difficulties in the functioning of the society, and the situation of the juveniles) and a series of educational meetings on infectious diseases in general (in the form of a lecture accompanied by playing a board game called *Pandemic*). Also, first aid training was conducted for all juveniles.

## **Leaving JEC during the pandemic**

In the juvenile educational centre in Łobżenica, there was a problem with collecting an 18-year-old juvenile from the facility. On a set date, the boy was to return to the children's home where he had previously lived. Two days before the date, the JEC in Łobżenica received a letter from the home, stating that "in connection with the coronavirus crisis and the requirement to protect people's health and life, I would like to inform you that (...) the juvenile will not be picked by us from your centre on... (...). The children's home's employees refuse to pick up the boy, and the refusal is made on the grounds of Article 210(1) of the Labour Code. I am also asking you not to create a risk to the health and life of the juvenile by his unnecessary travel on public transport, and to make it possible for him to stay in your centre until the risk ends". The JEC deputy director was aware that such a solution would constitute illegal deprivation of liberty of the juvenile. Therefore, he was driven to the local railway station in the JEC's car, under the care of staff member, and travelled to the children's home by train. The described case demonstrates that the instructions or recommendations of the Ministry of National Education were insufficient as they failed to take account of such situations.

## **Staffing situation**

At the juvenile educational centre in Łobżenica, a major challenge turned out to be the process of staff management in the time of the pandemic. The deputy director reported that out of 41 juvenile care staff members, at the turn of January and February 14 people (over 30%) were on long-term sick leaves. In addition, some staff members were on short-term sick leaves or leaves to take care of their children because of school closures due to COVID-19 (childcare leaves). According to the deputy director, the average absenteeism of juveniles care staff in the period between January/ February and the end of July was about 40%. Out of 21 centre service employees, 7 (30%) were on long-term leaves from January/February until the end of July. Others were on short-term sick leaves. The average absenteeism of centre service employees in the period between January/February and the end of July was about 35%.

Also, at the beginning of the pandemic the staff members were concerned about their safety. The deputy director of the JEC in Łobżenica admitted that the problem disappeared after 2-3 weeks

because during that time no new juveniles arrived to the facility. According to the deputy director, as time passed the educators got used to the situation and conducted their normal work also with the group of newly arrived juveniles who were initially isolated. The procedure of admitting newly arrived juveniles was adjusted to pay much attention to sanitary aspects. The JEC also received personal protection equipment and disinfectants. Before Easter, some juveniles left the centre and it was possible to reorganize the work of the facility by assigning one floor of the building to newly admitted juveniles who stayed there for the first 7 days.

The deputy director could not count on the support of many staff members. However, he reported that he always tried to plan work schedules so as to ensure appropriate juvenile care staff, although he had to seek support from the centre service staff. At all times, there was always at least one person from the juvenile care staff.

However, a different situation was described in the report on the ad hoc inspection of the centre conducted by representatives of the Wielkopolskie region Education Board on 8 June 2020, and the conclusions contained in that report. According to the materials, in some situations the juveniles had no appropriate care ensured. There were no educators present on certain days and hours, which was considered a violation of the law i.e. Article 25(1) of the Regulation of the Minister of National Education in conjunction with Article 2 of the Regulation of the Minister of National Education and Sport.

The Education Board inspectors also referred to the insufficient number of staff members during night hours (in relation to the number of juveniles). This, in their opinion, constituted a violation of Article 25(4) and (5) of the Regulation of the Minister of National Education in conjunction with Article 2 of the Regulation of the Minister of National Education and Sport. Similar conclusions were found in the report on the subsequent ad hoc inspection conducted by representatives of the Wielkopolskie region Education Board on 23 July 2020. In the period between 9 March 2020 and 8 June 2020, covering 92 night shifts, there were 53 shifts in which the number of educators was insufficient in relation to the number of juveniles. This proves that the practice was permanent and not sporadic.

The conclusions contained in the report on the inspection by the Wielkopolskie voivodeship Education Board included the following statement: *If there is only one educator on duty, two floors are not supervised by any member of the juvenile care staff, and one floor remains without any supervision. This poses particular danger when the educator is on the ground floor in the duty room or is dispensing medications. At that time, the group is left unattended as the educator has to prepare and dispense medications in the duty room. The lack of juvenile care staff's supervision resulted e.g. in one of the juveniles' accident in the shower.* In the opinion of the inspectors and the representatives of the NMPT such situations pose a threat to the safety or even life of the juveniles.

In the other juvenile educational centres, to which the monitoring visits were held, there were no problems caused by staff sick leaves or quarantines so adequate care was ensured to the juveniles. Replacement for staff members on sick leave or quarantine was found easily.

## **Conclusions on the NMPT meeting held at the Education Development Centre in Sulejówek**

In 2018, the National Mechanism for the Prevention of Torture has been cooperating with the Education Development Centre in Sulejówek where it conducts trainings for employees of juvenile educational centres and youth sociotherapy centres<sup>305</sup>.

One of the training sessions took place on 24 August 2020, in the sanitary regime. Usually, such sessions focused on discussing the problems noticed by the NMPT during its visits to the establishments, particularly in the context of ensuring minimum anti-torture guarantees. This time, a lot of attention was devoted to the operation of the facilities in the time of the coronavirus epidemic. The meeting was attended by employees of establishments from various parts of the country, thanks to which the information and postulated solutions were a valuable source of information for the NMPT.

The participants of the meeting emphasized, first of all, that the situation in the centres very much depended on the attitude of the staff, their readiness to work and management skills of the directors. Thanks to their commitment in some institutions, for example, agreements were concluded with local health authorities regarding routine coronavirus tests for newly arrived juveniles. Yet, most of the training participants reported the sanitary authorities refused such routine testing. Many staff members had fears about starting the new school year or the admission of many juveniles at one time, often from different regions of the country. Doubts were also raised about juveniles' transport to the facility, particularly by means of public transport. It was also emphasized that reliable medical interview on admission to the centre may not always be possible and the infection risks may not always be established. Representatives of some JECs also pointed to the limitations in access to medical care. They emphasized that in the case of some juveniles, particularly those chronically ill, whose health condition should be regularly monitored, there existed problems. In their opinion, the so-called telephone consultations i.e remote consultations were not a good solution in most cases but it was often the only way to consult a doctor.

According to the participants of the training, the pandemic particularly strongly impacted the situation of mentally ill juveniles. A psychologist working in one of the JECs reported that due to the disturbing behaviour one of the juveniles he had to be urgently placed in a medical institution. However, there were serious problems with finding an expert to issue a medical opinion, because of the pandemic-related disorder. As the psychologist pointed out, the only possible way was to use a private consultation.

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<sup>305</sup> The educational activities are carried out within the *State Without Torture* campaign.

Another problem was that, according to the applicable regulations, the opinion had to be sent to the competent court in the paper form. Yet, the court had waited for 14 days before reading any incoming letters. The juvenile's case was urgent but could not be solved quickly enough.

All participants of the meeting emphasized that in their opinion there were no sufficiently clear guidelines from the Ministry of National Education regarding the establishments' work during the pandemic, and measures to counteract it. There were statements that in the establishments where the staff was well-coordinated and committed to their work, the establishment management and operation during the crisis was much easier. In the facilities where internal conflicts existed, the pandemic made the problems even more serious. It was also mentioned that during the epidemic in some establishments many employees were on sick leave or the leave to take care of their children. Some institutions had also problems with rooms for isolating newly arrived juveniles.

## NURSING HOMES AND OTHER LONG TERM CARE AND TREATMENT FACILITIES

In 2020, the National Mechanism for the Prevention of Torture carried out three on-site monitoring visits to 24-hour care facilities<sup>306</sup>.

Due to the epidemiological situation, the CHR, guided by the principle of "first do no harm" (*primum non nocere*), decided to temporarily suspend on-site visits, in particular to long-term care facilities and nursing homes. This decision was taken for reasons related to the safety and health of the facilities' residents or patients as well as staff members. People living in social care homes, private nursing homes and other long-term care and treatment facilities are at the greatest risk of infection as they are seniors, ill persons or persons with disabilities.

The National Preventive Mechanism, intending to ensure the continuity of the implementation of its mandate and seeking to prevent violations of the rights of residents of social care homes, private nursing homes and other long-term care and treatment facilities, carried out remote monitoring of such establishments primarily through the exchange of correspondence with their managing or supervising entities. Within such monitoring, the NMPT requested information<sup>307</sup> from 65 social care homes<sup>308</sup>, 11 24-hour care facilities<sup>309</sup> and 10 long-term care and treatment facilities<sup>310</sup>.

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<sup>306</sup> Nursing Home "Adriana" in Milanówek (KMP.573.1.2020.JJ); "Leśne Zacisze" Retirement Home in Kliczków (BPW.573.1.2020.NK); "OAZA" Retirement Home in Kraśnik Górny (KMP.573.2.2020.JZ).

<sup>307</sup> All cases under reference number KMP.071.4.2020 and KMP.071.8.2020.

<sup>308</sup> Social Care Home (SCH) Jakubowice, SCH Niedabył, SCH Skarżysko-Kamienna, SCH Koszęcin, SCH Tomczyce, SCH Podobowice, SCH Bochnia, 2 social care homes in Kraków (ul. Łanowa and ul. Helców), SCH Drzewica, SCH Pleszew, SCH Psary, Nursing Home for Veterans in Warsaw, SCH Zamość, SCH Kalisz, SCH Wierzbica, SCH Głowno, SCH Skierniewice, SCH Kleszczów, SCH Stalowa Wola, SCH Poznań, SCH Krzyżanowice, SCH Łódź, SCH Starachowice, SCH Marszałki, SCH Niegów, SCH Lipno, SCH Chumiętki, SCH Wielka Wieś, SCH Bełchatów, SCH Tonowo, SCH Rzeszów, SCH Baszków, SCH Łąka, SCH Biskupice, SCH Łódź (ul. Podgórna and ul. Przybyszewskiego), SCH Kutno, SCH Cmolas, SCH Koło, SCH Ołdaki, SCH „Na Przedwiośniu” in Warsaw, SCH Kielce, SCH Skierniewice, SCH Biłgoraj, SCH Różanka, SCH Ostrów Lubelski, SCH Gościeradów, SCH Szczepieszyn, SCH Ślesin, SCH Kock, SCH Siedlce, SCH Ruda Pilczycka, SCH Kozula, SCH Ostrołęka, SCH Przemyśl, SCH Tyszowce, SCH Folusz, SCH Brzeziny, SCH Słupia, SCH Radom (ul. Holszańskiej), SCH Chełmno, SCH Sejny, SCH Pabianice, SCH Kamień Krajeński.

<sup>309</sup> "Biały Domek" Nursing Home for ill, dependent and senior persons in Majdan Ruszowski; "Natalia" Retirement Home in Kobiór; "Bursztynowe Zacisze" Retirement Home in Lisków; Saint Hubertus Nursing Home in Zalesie Górne; "Radosny" Retirement Home in Łódź; "Spełnione Marzenie" 24-hour care facility in Łódź, "Akacja" Retirement Home in Łódź; Long-Term Treatment and Care Home in Nałęczów; "Dwa Serca" Seniors Home in Śniadowo; „Tęczowe Zacisze” 24-hour Care Facility in Kamienna Wola; „Dom Na Byczkach” Nursing Home in Ciosmy.

<sup>310</sup> "Jaśmin" Long-Term Care and Treatment Home in Stary Gózdź; Nursing Home at ul. Bobrowiecka in Warsaw; Caritas Long-Term Care and Treatment Home of the Warsaw Archdiocese, ul. Krakowskie Przedmieście, Warsaw; "Salus" Long-Term Care in Kalisz; Long-Term Care and Treatment Home in Pleszew; Long-Term Care and Treatment Home in Jarosław; Children's Long-Term Care and Treatment Home in Piszkwice; "Wigor" Nursing Home in Legionowo; Long-Term Care and Treatment Home SP ZOZ in Radziejów; Private Long-Term Care and Treatment Home "AKARI Sp. z o.o." in Ustrzesza.

The key data and the conclusions on the operation of long-term care facilities are presented in the chapter "Long-term care facilities in the time of the COVID-19 epidemic".

- **SYSTEMIC PROBLEMS**

Despite the multiannual efforts of the NMPT, not all systemic problems existing in 24-hour care facilities have yet been solved. The NMPT is still awaiting appropriate legislative measures to be taken by the legislator with regard to:

### **Legality of stay of residents who are not incapacitated but whose health status makes it impossible for them to conclude a service agreement**

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

It would be desirable, therefore, to regulate the issue in the generally applicable regulations, e.g. by introducing solutions similar to the consent of a custody court for the provision of a health service, specified in the act *on the professions of physician and dentist*<sup>311</sup>, or consent for the placement in a psychiatric hospital<sup>312</sup>.

➤ CPT: to ensure that all residents who are not or no longer able to give a valid consent to their placement, do not have a guardian and are prevented from leaving the establishment, are notified to the competent court<sup>313</sup>.

### **CCTV monitoring**

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

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<sup>311</sup> Cf. Article 32 of the *Act of 5 December 1996 on the professions of physician and dentist* (Dz. U. of 2020, item 514).

<sup>312</sup> Cf. Articles 22 and 23 of the *Act of 19 August 1994 on mental health protection* (Dz. U. of 2020, item 685).

<sup>313</sup> See: CPT report on the visit to Poland, CPT/Inf (2011)20, para. 166.

the context of respecting the right to privacy defined in Article 47 of the Constitution. However, the issue of video monitoring in private care facilities has not yet been regulated at the statutory level.

- **LONG-TERM CARE FACILITIES IN THE TIME OF THE COVID-19 EPIDEMIC**

The state of epidemic announced on the territory of the Republic of Poland by way of the Regulation of the Minister of Health of 20 March 2020<sup>314</sup> forced significant changes in the operation of all places of detention, and resulted in restrictions on the rights of residents of social care homes, 24-hour care facilities and patients of long-term care and treatment facilities. Because of the already mentioned suspension of on-site visits, the NMPT analysed the situation in those institutions primarily based on information obtained from representatives of the government, heads of regional governments, representatives of local governments and managers of individual facilities where infection cases occurred.

Already in mid-March 2020, when the first cases of the disease appeared in Poland, the Commissioner for Human Rights wrote to the Minister of Health and the Minister of Family, Labour and Social Policy<sup>315</sup> requesting information on the state of preparations of social care homes and long-term care and treatment facilities for the risk of the spread of coronavirus.

At the end of March 2020, the Commissioner for Human Rights requested the Prime Minister for information on ensuring safety and respecting the rights of persons deprived of liberty during the coronavirus epidemic<sup>316</sup>. Responses were received by several ministries but the Ministry of Health did not refer in any way to the situation in long-term care and treatment institutions<sup>317</sup>.

Based on the collected data, a detailed picture of the functioning of long-term care facilities during the pandemic can be presented.

## **Social care homes**

### **Epidemiological situation**

The first media reports on coronavirus infections in a social care home, which were analysed by the NMPT, concerned the situation in the SCH in Jakubowice. The NMPT sent a letter to the relevant poviát (i.e. county) government on 31 March 2020 inquiring about the situation. By the end of 2020, the

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<sup>314</sup> Regulation of the Minister of Health of 20 March 2020 declaring the state of epidemic in the territory of the Republic of Poland (Journal of Laws of 2020, item 491).

<sup>315</sup> Letter of 12 March 2020, ref.no. KMP.071.4.2020.

<sup>316</sup> Detailed information can be found in point III of this chapter: "General intervention letters".

<sup>317</sup> Letter of 14 April 2020, ref.no. ZPP.743.74.2020.MS.

NMPT sought information about the situation in 65 social care homes throughout the country. Also, the NMPT requested heads of voivodeship (i.e. regional) governments to provide information about the situation in their respective regions' social care homes and 24-hour care facilities<sup>318</sup>. The Mazowieckie Voivodeship Office sent periodic reports on the epidemiological situation and indicated the numbers of infected people in individual facilities.

According to the information received by the NMPT, **in some establishments over 70% of residents were infected.**

The official data presented to the Sejm<sup>319</sup> by Deputy Minister of Family Iwona Michałek as of 1 October, SARS-CoV-2 coronavirus infections were confirmed in 48 social care homes i.e. in 5.8% of all facilities (there were 824 SCHs operating in Poland at that time). 890 out of 80 thousand SCH residents, and 339 out of 58 thousand staff members were infected. Between the first registered infection and 1 October, 204 residents of SCHs died of the infection.

### **Covid tests conducting**

Since there were no ministerial guidelines on tests conducting and quarantine at the SCHs, these aspects were dependent on the locally competent sanitary inspectors<sup>320</sup>.

In his reply to the NMPT letter regarding the situation in the John Paul II Social Care Home in Głowno, the head of Zgierz powiat government informed that the coronavirus was diagnosed in 26 residents and four staff members, and that 29 residents and 7 staff members were quarantined. Among the activities aimed at counteracting the spread of the coronavirus he mentioned e.g. **that as a result of the SCH's negotiations, the local sanitary inspectorate agreed to conduct coronavirus swab tests for all residents and staff members at the SCH and those in home quarantine**<sup>321</sup>. This example shows that a lot was dependent on mutual relations between the facilities' funding authorities and the local sanitary and epidemiological stations, and on the workload on individual health care entities and laboratories conducting the tests, particularly during the first wave of the pandemic.

In this context, it should be mentioned that when the pandemic situation began to stabilize, in some voivodeships screening test programmes were introduced for SCH employees and long-term care facilities, which was not possible at the beginning of the epidemic ( due to limited availability of the

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<sup>318</sup> Letter of 14 April 2020, file ref. KMPT.071.4.2020.

<sup>319</sup> The Sejm of the 9th term of office, Office for the Parliamentary Committees. Full minutes of the session of the Senior Policy Committee (No. 10) of 6 October 2020.

<sup>320</sup> GPs got authorized to refer patients to the tests only in the autumn.

<sup>321</sup> Reply of 4 May 2020.

tests). Many local governments operating care facilities regretted the programmes were not available earlier.

In this context, it should be pointed out that at the beginning of the epidemic, admissions of new residents to social care homes were limited. In many institutions, newly admitted residents were subjected to isolation for several days. An interesting initiative in this regard was implemented in Krakow. New procedures for admitting new residents to social care homes during the epidemic were developed, and **a special support facility with quasi-quarantine places was established**. People referred to social care homes stayed there for 14 days before being placed in the SCH.

Some SCH directors were considering whether it was permitted to require a test prior to admission to the home<sup>322</sup>. The issue was finally regulated by the ordinance of the Council of Ministers of 1 September 2020<sup>323</sup>. It was also made clear that the tests were financed from public funds.

There was also a risk of the residents becoming infected by staff members who were asymptomatic. Therefore, many local government officials emphasized that the coronavirus tests should be more easily available to SCHs as a matter of urgency.

### **Staffing problems**

The issue of the health of SCHs' staff and the possibility to ensure continued care to the homes' residents was one of the key problems faced by social care homes' directors and operating entities. In most of the institutions, employees who were quarantined in the homes continued to perform care and nursing tasks with regard to the residents. In some cases, however, it was insufficient and additional staff was delegated to the institutions by voivodeship governments<sup>324</sup>, or volunteers were sought. The situation was difficult because many nurses worked for several institutions, which, according to the ministerial recommendations, should be limited during the epidemic. Local government officials understood the difficulties.

There were also solutions aimed at limiting the spread of the infections among the homes' employees. The city of Krakow launched an initiative within which **SCH employees could commute**

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<sup>322</sup> The issue was discussed during a webinar for employees of care institutions, conducted with the participation of NMPT representatives on 31 July 2020 by the *Together We Change the World* Foundation.

<sup>323</sup> Regulation of the Council of Ministers of 6 May 2021 on the introduction of certain restrictions, orders and prohibitions in connection with the state of epidemic (Journal of Laws of 2020, item 1505).

<sup>324</sup> Based on Article 47(1) of the *Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans* (Journal of Laws of 2008, No. 234, item 1570, as amended): Employees of medical entities, medical professionals and other persons who have signed contracts for the provision of health services, may be delegated to work related to combating the epidemic. Other people may also be delegated to such work if so justified by the current needs of entities that manage the fight against the epidemic.

**to work by specially assigned means of public transport**<sup>325</sup>. Some of the institutions, in accordance with the ministerial recommendations, introduced changes to their work systems. For example, in the SCH in Skierniewice<sup>326</sup> care staff were divided into teams to limit contacts, and administrative staff remained separated from the residential part of the building by a closed corridor. They worked remotely whenever this was possible.

It should not be forgotten that work performance in the homes in the time of quarantine was very difficult. The deputy mayor of Poznań emphasized that the staff members who worked long hours<sup>327</sup> at the SCH at ul. Sielska were very tired. He pointed out that the situation changed with time. The mental and physical condition of the personnel (15 people) who left the home after 17 days of quarantine improved. The initial difficulties were partially overcome. Eight regular staff members and seven nuns-volunteers (including four nurses in total) took care of 46 residents of the home.

The Commissioner for Human Rights wrote to the Prime Minister at the beginning of April 2020 emphasizing physical and mental exhaustion of employees of care institutions and the need to ensure more tests for the staff.<sup>328</sup>

### **Medical care**

The evacuation of some of the care homes showed that the provision of effective medical care to the residents was sometimes impossible. This was pointed out by representatives of the authorities operating the homes. The head of the Bełchatów powiat indicated that in the local SCH, medical support was possible only in the form of telephone consultations i.e remote consultations.

Some local government representatives also pointed out that social care homes were not prepared for medical treatment of people suffering of infectious diseases.

### **Availability of personal protection equipment and disinfectants**

It was of great importance to supply adequate personal protection measures for the personnel, to ensure availability of disinfectants, and to introduce other solutions and procedures to prevent the spread of the coronavirus. At the beginning of the pandemic, it was particularly difficult to buy disinfectants as there were shortages on the market.

Notably, in some institutions, in accordance with the recommendations of the Ministry of Health, separate parts of the buildings were assigned to healthy residents and to infected ones.

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<sup>325</sup> Letter of 10 April 2020.

<sup>326</sup> Letter of 28 April 2020.

<sup>327</sup> Letter of 27 May 2020.

<sup>328</sup> General intervention letter of the Commissioner for Human Rights of 4 April 2020, ref. no. III.7065.67.2020.

However, not all SCHs could adopt such rules. It should be remembered that some homes are located in buildings that cannot be divided into separate parts, and such separation may be impossible also because of the activity profile of the home.

It should be noted that with the passage of time, the availability of protection and disinfection measures increased, the demand reporting system was improved, voivodeship governors transferred funds to SCHs from the Material Reserves Agency, and some funds were received also from private donors. Subsequent information from individual social care homes showed the supplies of those products were sufficient.

### **Restrictions on the rights of residents**

For most residents, the most severe restrictions of their rights were the impossibility to receive visits by relatives, and the prohibition to leave the nursing home area. Those restrictions were based on the already mentioned ministerial recommendations, which individual voivodeship governors included in their orders for the homes. The voivodeship governors were authorized *to issue orders binding on: all government administration bodies operating within the voivodeship, on state legal persons, local government bodies and legal persons established by them, as well as entities established by them but having no legal personality*. The orders were issued in the form of administrative decisions and were implemented immediately. The voivodeship governors immediately notified the competent minister about the issuance of such orders<sup>329</sup>. The voivodeship governors forwarded the recommendations e.g. of the Chief Sanitary Inspector and the Minister of Health according to the same procedure.

However, in some cases, the homes' managers misinterpreted the orders, particularly at the beginning of the pandemic. For example, in the SCH in Skarżysko-Kamienna residents were asked not to leave their rooms<sup>330</sup>. In some other institutions, the forms of spending time together by residents were significantly limited. Group activities such as occupational therapy or physical rehabilitation were suspended, and meals were delivered to individual rooms<sup>331</sup>. This, to a large extent, limited social interactions between the residents although such interactions are extremely important in the life of every human being.

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<sup>329</sup> Based on Article 11(h) of the Act of 2 March 2020 *on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them* (consolidated text: Journal of Laws of 2020, item 1842; hereinafter: the special act on covid). Until 5 September 2020, the issues were regulated by Article 11, which pursuant to Article 36(1) of the special act on covid expired 180 days after its entry into force.

<sup>330</sup> Letter of 2 April 2020.

<sup>331</sup> SCH for veterans in Warsaw.

Due to the restrictions on leaving the social care homes, in some establishments medicinal products and other small items for residents were bought by designated employees<sup>332</sup>, and all items given to residents by families and relatives had to be quarantined for 24 hours and disinfected before handing over to the resident<sup>333</sup>. This was not a common practice and in some establishments, due to staff shortages, no purchases for residents were made at all.

### **Psychological support**

The coronavirus pandemic posed a threat not only to the physical health of residents and staff of long-term care facilities, but also to their mental condition. Long-term isolation, lack of contacts with loved ones, fears about their life and health, and in some cases also death of another resident were the problems faced by residents of care facilities, including nursing homes. This was also emphasized by the Minister of Family, Labour and Social Policy who requested voivodeship governors to pay special attention to these aspects and to sensitize the homes' managers to the situation of their residents, particularly those with mental disorders, whose mental condition could deteriorate significantly in connection with the introduced restrictions regarding visits and leaves<sup>334</sup>.

Unfortunately, despite the ministerial recommendation, contact with a psychologist was not ensured by the institutions<sup>335</sup>.

However, in the vast majority of them, psychological support was available, although in various forms. In some facilities, contact with a psychologist was possible by telephone<sup>336</sup> or by videoconference<sup>337</sup>, and in some homes also through direct contact (where psychologists were employed full-time by the facility)<sup>338</sup>. In some homes, the residents could use all the three forms.

Notably, the pandemic clearly showed the problem of ensuring access to psychological support for SCH residents, which problem has been emphasized by the NMPT for many years<sup>339</sup>. In the

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<sup>332</sup> At the SCH in Folusz, items for residents were bought by social workers, in accordance with the needs and preferences of the residents.

<sup>333</sup> SCH for veterans in Warsaw.

<sup>334</sup> Letter of 30 June 2020 ref. no. DPS-V.070.412.2020.DW of the Minister of Family, Labour and Social Policy, to the Social Policy Department of the Kujawsko-Pomorskie Voivodeship Office.

<sup>335</sup> SCH in Kock, SCH in Siedlce (due to a confirmed infection of the home's psychologist and the fact that most of the residents were in home isolation, psychotherapy support was impossible for some time).

<sup>336</sup> SCH in Tomczyce, SCH in Jakubowice, SCH in Skarżysko-Kamienna, SCH in Drzewica, SCH of the Congregation of St. Vincent de Paul Sisters of Mercy in Poznań; SCH in Biskupice, SCH in Tonowo (telephone contact was possible with a psychologist employed in the home, and confidentiality was maintained: the residents could hold the conversations in a separate room. Their mental health was monitored on an ongoing basis by a psychiatrist employed in the facility).

<sup>337</sup> SCH in Bochnia.

<sup>338</sup> SCH in Pleszew, SCH for veterans in Warsaw, SCH in Skierniewice, SCH in Krzyżanowice, SCH in Folusz.

<sup>339</sup> The issue is discussed in more detail inter alia in the Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in 2018.

institutions where psychologists were employed before the pandemic, even part-time, the residents were more likely to use their support because they already knew the persons and trusted them. Even if the contacts were not direct, it was easier to initiate them. On the other hand, some institutions informed that residents were not interested in support provided by psychologists. Most often, however, this was the case in the homes where the residents had no regular contacts with psychologists before, and where during the pandemic the only initiative was to display a telephone number of a psychologist who could be contacted (and whose services were provided ad-hoc, within programmes initiated by relevant local governments). For senior or mentally ill persons, establishing a telephone contact with a person they did not know was a strong barrier in itself.

### **Easing of restrictions**

As in other areas of life, at some point also care facilities decided to ease the restrictions. Recommendations in this regard were presented by voivodeship governors. The Mazowieckie Voivodeship Governor did it already on 5 June 2020<sup>340</sup>, requesting local governments to undertake, jointly with the social care home directors, steps aimed at enabling the residents to be active outside the homes, and to maintain contacts with their families, carers or other persons. The voivodeship governor's decision was also communicated to the owners of private 24-hour care facilities operating in the Mazowieckie Voivodeship. Only in the Śląskie and Podlaskie voivodeships the sanitary regime introduced in March 2020 was maintained. The SCH area could be left while maintaining the sanitary regime (use of a face mask, social distancing and use of hand disinfectants)<sup>341</sup>, the SCH could be left under the supervision of a staff member<sup>342</sup>, tests were conducted for the residents who came back from the family home or a hospital<sup>343</sup>, visits were received in compliance with the sanitary regime, e.g. through meetings outdoors or prior to a telephone announcement, the number of people meeting was limited, body temperature of visitors was checked with a non-contact thermometer, records of people who visited residents were kept, mask wearing, hands disinfection and frequent opening of windows in the rooms was still required; at some places where the meetings took place there were glass/plexi-glass separation panels.

Notably, voivodeship governors emphasized that final decisions regarding the easing of restrictions and the related procedures should be taken by the authorities operating the homes, in

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<sup>340</sup> Decision No. WPS.9421.76.2020 of the Mazowieckie Voivodeship Governor.

<sup>341</sup> Governors of the following Voivodeships: Mazowieckie, Opolskie, Lubelskie, Dolnośląskie, Kujawsko-Pomorskie, Wielkopolskie.

<sup>342</sup> Zachodniopomorskie Voivodeship.

<sup>343</sup> Lubuskie Voivodeship Governor reported that residents of some homes travelled to their family homes. Upon their return, they were quarantined and tested. Łódzkie Voivodeship Governor informed that after reducing the restrictions, it some internal procedures should be developed to regulate, e.g. residents' holidays from the SCHs, visiting relatives, admitting new residents, residents' return from clinics or hospitals, and precautions to be taken in specific situations.

consultation with the SCH directors and poviát sanitary inspectors. This makes it possible to adjust the solutions to the epidemiological situation in a given municipality or poviát where individual institutions operated. However, many directors were uncertain about making decisions to resume visits or allow the residents to leave the SCH premises. In their opinion, the risk of getting infected was too large and they did not want to take the responsibility for the lives and health of the residents and the staff. As a result, they maintained the earlier decisions regarding, for example, the prohibition of visits, without taking into account the possibilities of minimizing the risk of infection.

***In the opinion of the NMPT, the introduced restrictions should be proportional to the existing risk and should take into account alternative solutions. Restrictions on the rights of residents, undermining their basic rights, may only be introduced pursuant to parliamentary acts.***

In this context, the actions taken by some voivodeship governors who monitored the implementation of the recommendations by individual care institutions should be appreciated.

Voivodeship governors also reminded that if visits cannot be restored, alternative forms of contact with relatives should be provided, e.g. using online communicators or video calls.

Some social care homes also reported taking additional activities, including therapy and physical rehabilitation during the epidemic, and activities to support and improve the well-being of the residents. The possibility to practice outdoor activities was also very important.

### **Reinstatement of restrictions**

Unfortunately, in the summer and fall of 2020 the coronavirus incidence increased significantly. Therefore, the Minister of Family, Labour and Social Policy sent a letter dated 5 August 2020<sup>344</sup> to the executive bodies of local governments, stating that once again actions aimed at limiting direct contact of residents of social care homes with people from outside the institutions should be introduced. Also, the minister recommended testing of newly admitted residents immediately and their temporary separation from the other residents, as well as the limitation of the number of staff working in direct contact with newly admitted residents. The Minister also emphasized the importance of testing employees of social care homes before allowing them to work after a longer absence, or in the event of a justified suspicion of contact with an infected person. Such tests should be conducted in cooperation with local sanitary services and the voivodeship government. On 7 August 2020, the Secretary of State in the Ministry of Family, Labour and Social Policy sent another letter to the voivodeship governors regarding ongoing monitoring of actions to counteract the negative effects of the epidemic. He also requested voivodeship governors to report any problems in combating the coronavirus epidemic, e.g.

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<sup>344</sup> Ref.no. DPS-I.070.69.2020.

problems with availability of personal protection equipment, with procedures and sanitary regimes, as well as shortages of staff (including absence from work), in particular in establishments that provide 24-hour care.

It should be noted, however, that the letters had the form of recommendations and guidelines, and the responsibility for making final decisions rested with the local government authorities and directors of the institutions. The situation was also largely dependent on the homes' relations with local sanitary inspectors, and the workload on sanitary inspectorates' staff. At the end of September 2020, the media informed that the Ministry of Health, in consultation with the Ministry of Family, Labour and Social Policy decided to prohibit visits to social care homes<sup>345</sup> because again the numbers of infections there were increasing.

## **24-hour care facilities**

### **Epidemiological situation**

The media information monitoring carried out by the NMPT demonstrated that infections were much less frequent in 24-hour care facilities than in SCHs. From March 2020 to the end of the year, the NMPT examined the situation in 11 facilities providing 24-hour care. According to the official data presented to the Sejm<sup>346</sup> by Deputy Minister of Family Iwona Michałek as of 1 October, SARS-CoV-2 coronavirus infections were confirmed in 6 24-hour care facilities out of 643 such facilities operating in Poland at that time. 49 residents and 12 staff members were infected. Between the first registered infection and 1 October, 204 residents of SCHs died of the infection. As indicated by the deputy minister, 99 residents of the facilities have died since the beginning of the pandemic due to the coronavirus infection.

### **Availability of personal protection equipment and disinfectants**

In most of the care facilities, there were no problems with the availability of appropriate protection measures. They were often provided by voivodeship governors or local governments.

The NMPT has positively assessed the availability of personal protection measures in private care facilities.

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<sup>345</sup> <https://www.tvp.info/50020257/wiceminister-zdrowia-wprowadzilismy-zakaz-odwiedzin-w-dpsach>

<sup>346</sup> The Sejm of the 9th term of office, Office for the Parliamentary Committees. Full minutes of the session of the Senior Policy Committee (No. 10) of 6 October 2020.

## **Staffing problems**

Problems with ensuring proper care to residents occurred in some of the facilities. Employees of social policy departments of voivodeship offices often assisted in the search for volunteers or help provided by Territorial Defence Forces.

In most of the facilities, the staffing situation was relatively stable.

## **Long-term care and treatment facilities**

### **Epidemiological situation**

In connection with the pandemic, the NMPT analysed the situation in 10 long-term care and treatment facilities and nursing facilities where people who were at the greatest risk of infection were living.

According to the official data presented to the Sejm<sup>347</sup> by Deputy Minister of Health Józefa Szczurek-Żelazko, from the beginning of the epidemic until 15 September, 965 patients had been infected in the long-term care and treatment facilities and nursing care facilities (i.e. 2.4% of all people living in such facilities within the year (about 40.7 thousand people).

### **Cooperation with the State Sanitary Inspection**

Some of the institutions could not count on any support of local sanitary and epidemiological services, or their actions were significantly delayed.

At the long-term care and treatment facility run by Caritas of the Warsaw Archdiocese<sup>348</sup> after receiving information about the infection of one of the employees, a report was immediately sent to the Sanitary and Epidemiological Service Station with the data of the patients and employees who had direct contact with the infected person. For the next few days, however, the managers of the facility did not receive any response from the station. It was decided to carry out tests to detect the presence of the coronavirus at the facility's own expense. The Sanitary and Epidemiological Service Station started cooperation with the facility only after a few days, and then it only sent some recommendations regarding, inter alia, isolating infected patients from healthy ones, cohorting patients in patient rooms, the use of personal protective equipment by staff members, and the fumigation of rooms.

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<sup>347</sup> The Sejm of the 9th term of office, Office for the Parliamentary Committees. Full minutes of the session of the Senior Policy Committee (No. 10) of 6 October 2020.

<sup>348</sup> Letter of 27 April 2020.

The management of the Nursing Home at ul. Bobrowiecka in Warsaw<sup>349</sup> reported that one of their residents had been hospitalized and found to be infected. After the home was notified of the infection, 34 people who had direct contact with the infected resident were identified to be reported to the Sanitary and Epidemiological Service. The next day, the management of the facility, despite several attempts, could not contact the Service by phone so the list was sent to them by e-mail. However, the Service refused to conduct tests for the presence of the coronavirus. The facility managers decided to have the tests conducted by a private laboratory, at the facility's expense.

Both cases took place at the beginning of the pandemic but, according to later replies, the problem was never fully resolved. This clearly confirms that not all sanitary and epidemiological stations were able to cope with the large numbers of outbreaks in their areas (as was seen also in the case of social care homes). The regulations gave significant freedom to the institutions and authorities to take decisions about testing.

### **Staffing problems**

The provision of proper care to patients in long-term care and treatment facilities was the greatest challenge during the pandemic. Work orders issued by voivodeship governors, as in the case of SCHs, were ineffective. Moreover, problems occurred in the contacts between the National Health Fund and voivodeship governors. The difficulties prove that there were no effective systemic solutions. This is of particular concern because the lack of staff or their limited performance of professional duties may bring a direct threat to the health or life of the residents.

### **Psychological support**

In facilities where the staffing situation was not too bad psychological support was provided<sup>350</sup>. Due to the fact that the psychologist from the home at ul. Bobrowiecka in Warsaw was on quarantine, psychological support was provided to the residents by telephone<sup>351</sup>. However, the Treatment and Care Home for Children in Piskowice ensured the possibility to contact a psychologist employed by the facility. Also, during the pandemic, the support of was also available within the cooperation with an external entity providing such services locally. In the facility run by Caritas of the Warsaw Archdiocese, psychological support was additionally provided to family members of patients.

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<sup>349</sup> Letter of 7 April 2020.

<sup>350</sup> "Biały Domek" Nursing Home for ill, dependent and senior persons in Majdan Ruszowski; Long-Term Care and Treatment Home in Jarosław, "Wigor" Nursing Home in Legionowo.

<sup>351</sup> Letter of 7 April 2020, 51/2020.

## Financial assistance

Long-term care and treatment facilities during the coronavirus pandemic had to face not only the above-mentioned problems but also increased expenditure of funds. The main cost items was related to the provision of appropriate amounts of personal protection measures, as well as additional benefits for personnel working in extraordinary conditions and often overtime.

In this context, the regulations issued by the President of the National Health Fund should be recalled. Their purpose was to provide additional financial support to long-term care and treatment facilities<sup>352</sup>. According to one of the regulations<sup>353</sup> a new salary item was introduced in the form of an additional lump sum for readiness to provide healthcare services. Another regulation of August 2020<sup>354</sup> made it possible for long-term care and treatment facilities to seek funding under the 2014–2020 Knowledge, Education, Development Operational Programme financed by the European Social Fund.

The obtained funds could be used for additional remuneration for nurses, paramedics, physiotherapists, medical caregivers and support staff members who had to resign from other jobs for safety reasons, to reduce the risk of infection. The funds could also be used to purchase personal protection equipment and disinfectants for the staff and the patients. However, it should be noted that facilities where infection outbreaks occurred at the very beginning of the pandemic had no access to the support.

## SOBERING-UP STATIONS

In 2020, the National Mechanism for the Prevention of Torture carried out a monitoring visit to one sobering-up station operating within the Centre for Intoxicated People in Warsaw<sup>355</sup>.

### • EPIDEMIC SITUATION IN SOBERING-UP STATIONS DURING THE COVID-19 PANDEMIC

The NMPT monitored the epidemiological situation in sobering-up stations. To this end, the Mechanism requested the President of the Association of Directors and Chief Accountants of Sobering-

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<sup>352</sup> Such activities were reported, among others, by Dolnośląskie Voivodeship Branch of the National Health Fund - letter of 25 August 2020, DOWNFZ/WSOZ DMS/113888/2020/WSOZ.401.2.2020, and Podkarpackie Voivodeship Branch of the National Health Fund - letter of 27 August 2020, WSOZ-KS .401.190.2020.

<sup>353</sup> Regulation no. 104/2020 DSOZ of the President of the National Health Fund of 8 July 2020 amending the regulation on reporting and financial settlement of healthcare services related to prevention, counteraction and combating COVID-19.

<sup>354</sup> Regulation No. 118/2020/DEF of the President of the National Health Fund of 3 August 2020 on the implementation of the grant project "Ensuring safety and care for patients as well as safety of personnel at long-term care and treatment facilities, social care homes, nursing homes and hospices during COVID -19".

<sup>355</sup> See: Report on the monitoring visit held on 2-3 March 2020, KMP.574.1.2020.RK.

up Facilities in Poland to provide information on e.g. on: people suspected of SARS-CoV-2 staying in sobering-up stations, activities conducted with regard to such people, procedures to prevent infections, staff preparation for the situation, coronavirus testing, isolation procedures and staff quarantine<sup>356</sup>.

The response sent by the NMPT stated that among people brought to the sobering-up stations and other facilities taking care of intoxicated people, there were three cases of persons suspected of the coronavirus infection. The cases were registered in: the Alcoholism Prevention Centre in Bielsko-Biała, the Centre for Solving Alcoholism-Related Problems in Słupsk and the Sobering-up Station in Gliwice. The persons' test results were negative<sup>357</sup>.

All employees and persons who had contact with the tested persons were placed under epidemiological supervision until the test results were received. The facilities' rooms were also disinfected. The Bielsko-Biała centre suspended its activity for the period from 13 March to 23 March 2020<sup>358</sup>.

Four staff members of the Centre for Assistance to Addicts and Their Families in Chorzów were quarantined and tested due to suspected SARS-CoV-2 infection. However, the test results were negative. In the remaining sobering-up stations, it was not necessary to quarantine the staff<sup>359</sup>.

Between 23 March and 4 May 2020, there were 11 cases of refusal to admit an intoxicated person to a sobering-up station due to the symptoms of the coronavirus infection; in all the cases the refusing entity was the Alcoholism Prevention Centre in Bielsko-Biała. Each of the persons, after a detailed medical examination, was transported from the centre by an ambulance directly to a specialist hospital. Other sobering-up stations and similar facilities did not register any persons with a suspected coronavirus infection, although most sobering-up stations had special isolation rooms prepared for persons with the suspected infection, from where they would be taken by relevant services<sup>360</sup>.

Directors of sobering-up stations and similar facilities in Poland introduced procedures to prevent coronavirus infections. They included e.g. the following provisions:

- any person brought for sobering-up has his/her body temperature measured using a non-contact thermometer;
- it is necessary to interview every person brought for sobering-up, to determine whether he/she had had any contact with an infected person in the past 14 days or has stayed abroad; the information should be recorded in the admission form;

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<sup>356</sup> See: letter of 2 April 2020, KMP.071.4.2020.PK.

<sup>357</sup> See: letter of 4 May 2020, SDiGKIW.03.05.2020.

<sup>358</sup> Ibid.

<sup>359</sup> Ibid.

<sup>360</sup> Ibid.

- the admission and discharge of persons brought for sobering-up can involve only one person at a time;
- persons brought for sobering up are placed in small single rooms, or in larger double rooms (where they have to keep safe distance);
- personal protection equipment (gloves, masks, disposable aprons, overalls, visors) has to be used, and hands must be properly washed and disinfected;
- the rooms, and in particular frequently touched surfaces, should be regularly cleaned, ozoned and disinfected with virucidal disinfectants;
- a separate room should be assigned to persons with a suspected infection, until the arrival of the relevant services;
- the visits by outsiders are limited<sup>361</sup>.

In March 2020, the staff of the Centre for Solving Alcoholism-Related Problems in Słupsk took part in a training conducted by employees of the city's Sanitary and Epidemiological Service Station and the Crisis Intervention Department of the Municipal Office in Słupsk in recognizing symptoms of a coronavirus infection and procedures to be followed in such cases.

At all sobering-up stations and similar facilities the staff had personal protection equipment, i.e. masks, visors, disposable aprons, disposable gloves, protection overalls, disinfecting liquids, gels and soap for personal use and for surface cleaning. The facilities did not have any coronavirus tests<sup>362</sup>.

According to the information provided by the President of the Association of Directors and Chief Accountants of Sobering-up Facilities in Poland, every person brought for sobering up has body temperature measured. Also, each police patrol bringing a person for sobering up is required to check whether the person is not in quarantine<sup>363</sup>.

- **THE CASE OF THE PERSON DETAINED AFTER A PUBLIC PROTEST**

The National Mechanism for the Prevention of Torture monitored the situation of persons detained by the police in connection with citizens' protests that took place after the Constitutional Tribunal's judgment tightening the abortion law<sup>364</sup>. During a monitoring visit, the NMPT was informed

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<sup>361</sup> Ibid.

<sup>362</sup> Ibid.

<sup>363</sup> Ibid.

<sup>364</sup> Judgment of the Constitutional Tribunal of 22 October 2020 in case K1/20. See the document entitled *Report of the National Mechanism for the Prevention of Torture on ad hoc visits to the rooms for detained persons or persons brought for sobering up within the units reporting to the Warsaw Police Headquarters and to the Voivodeship (i.e. Regional) Police Headquarters in Radom* of 10 January 2021, KMP.570.11.2020.MZ.

by one of the detainees that he had been tortured by police officers in a police car, and then ill-treated by employees of the sobering-up station at the Centre for Intoxicated People in Warsaw<sup>365</sup>. At the time of the meeting with the NMPT representatives, the detainee had numerous traces of injuries on his body (including his face, throat area, arms and legs). His hygienic and mental condition was very bad. The man was shaken and cried during the interview.

In view of the allegations raised by the detainee, on 28 October 2020 the NMPT Director requested in writing the Director of the Centre for Intoxicated People in Warsaw to provide copies of the documents on the detainee's delivery and stay in the sobering-up station and the relevant surveillance camera recordings<sup>366</sup>.

The analysis of the CCTV footage showed that the detainee told the staff of the sobering-up station that he had been tortured by police officers. He also requested an examination by a doctor, and access to a lawyer.

The medical examination was extremely superficial. It lasted 3.5 minutes and consisted in the removal of the man's face mask to check his face. No full-body examination or comprehensive health assessment was conducted. During the examination, the man was accompanied by police officers and had his hands handcuffed behind his back. After the "examination", visible abrasions of the face skin were marked on the body chart by an employee of the sobering up station. However, the red spots on the man's neck, visible on the CCTV footage, were not marked.

The detainee was not allowed to contact his lawyer. The staff told him he had no right to contact a lawyer because he was intoxicated.

After being placed in the sobering-up room, the man stood by the door for 27 minutes, hitting it with his fist and waiting for the facility employee to come. Faced with no response, the man removed his trousers, tied his trouser leg around his neck, hit the door several more times, and then hid in an unmonitored corner of the room. After approximately two minutes, seven staff members appeared in the room. The detainee turned towards them, after which he was overpowered and strapped into a restraint belt. The man remained immobilised for 2 hours. During this time he urinated.

The NMPT's doubts concerned the legality of the man's immobilisation. The recording registered by the CCTV system showed there was no hook or other element in the room where the man could hang himself, and it was certain he just tried to attract the staff's attention, after knocking on the door for 27 minutes<sup>367</sup>.

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<sup>365</sup> Ibid, para. 6.2.1. Detention of a man brought to a sobering-up station.

<sup>366</sup> See: NMPT letter of 28 October 2020, KMP.570.11.2020.MZ; Reply of the facility's Director, dated 3 November 2020, SDS.43.8.4281.2020.JKO.

<sup>367</sup> A detailed description of the situation, based on the analysis of the CCTV recordings and documentation can be found in the *Report of the National Mechanism for the Prevention of Torture on ad hoc visits to the rooms for*

The NMPT requested the Director of the centre to analyse whether in that case the use of direct coercion in the form of immobilisation complied with the provisions of the applicable law. Moreover, the NMPT recommended the Director of the Centre for Intoxicated People in Warsaw:

- that the Director of the centre in Warsaw should instruct the medical staff subordinate to him on the necessity to carry out a thorough examination of persons brought to sober up,
- that the centre's staff should always provide law enforcement agencies with information on incidents of violence reported by persons brought to sober up.

During his conversation with the NMPT representative, the detainee decided to file a formal complaint about his treatment by the police officers and the staff of the sobering-up station. The complaint was forwarded by the NMPT to the CHR Office's Department for Law Enforcement Agencies' Proceedings. Considering the fact that the complaint constitutes a notice of a suspected offence, the Commissioner for Human Rights forwarded it to the District Prosecutor for Warsaw Śródmieście District so that steps provided for by the law can be taken<sup>368</sup>.

On 19 November 2020, the Public Prosecutor refused to initiate an investigation because of the fact that the situation did not involve any prohibited act (Article 17(1)(2) of the Code of Criminal Procedure). The decision on the case is final<sup>369</sup>.

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*detained persons or persons brought for sobering up within the units reporting to the Warsaw Police Headquarters and to the Voivodeship (i.e. Regional) Police Headquarters in Radom, of 10 January 2021, KMP.570.11.2020.MZ, para. 6.2.1: Detention of a man brought to a sobering-up station, pp. 37-41.*

<sup>368</sup> See letter of 30 October 2020, II.519.1574.2020.KM.

<sup>369</sup> See: letter of the District Prosecutor's Office Warszawa Śródmieście of 21 December 2020, ref. no. PR 1 Ds. 967.2020.DK.

## GUARDED CENTRES FOR FOREIGNERS

In 2020, the National Mechanism for the Prevention of Torture conducted a visit to **one** Guarded Centre for foreigners, located in Lesznowola<sup>370</sup>. The purpose of the visit was to assess the advancement of the implementation of the CPT recommendations to the Polish Government, included in the CTP report on its visit to Poland in 2017<sup>371</sup> and the NMPT recommendations issued following its visit to the centre in 2018.<sup>372</sup>

- **IMPLEMENTATION STATUS OF THE CPT RECOMMENDATIONS**

### **Recommendations that the NMPT has considered implemented:**

- **To treat detained foreign migrants in a respectful manner**<sup>373</sup> – no cases improper treatment of foreign migrants were reported to the NMPT;
- **To ensure two-stage body search of persons placed in the centre, in accordance with the procedure in force**<sup>374</sup> – not all foreign migrants were subjected to body search upon admission into the centre. Where body search was carried out, the two-stage procedure was used;
- **To ensure the presence of an interpreter during psychological consultations as well as medical examinations and consultations**<sup>375</sup> – in the case of communication problems, contact with the interpreter was made by telephone (using a loudspeaker). The NMPT considered the recommendation implemented. Yet, it emphasized that the physical presence of an interpreter is the best solution, and that interpretation should be a standard also in psychological support provision (waiting time/the possibility to select the interpreter's gender);
- **To considering the possibility of allowing foreign migrants to use the VoIP technologies to communicate with the outside world, and offering indigent foreign migrants at least one free-of-charge phone call per month**<sup>376</sup> – foreign migrants in the centre had access to Skype for 60 minutes a day. Persons who did not have a private telephone had access to the centre's telephone (via the duty manager);

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<sup>370</sup> See: NMPT Report on the visit conducted on 7-9 October 2020, KMP.572.2.2018.KK.

<sup>371</sup> See: CPT Report on the visit to Poland conducted on 11 - 22 May 2017, CPT/Inf (2018) 39, paras. 34-55.

<sup>372</sup> See: NMPT report on the visit conducted on 16-17 July 2018, KMP.572.2.2018.MK.

<sup>373</sup> See: CPT Report, CPT/Inf (2018) 39, para. 37.

<sup>374</sup> Ibid, para 53.

<sup>375</sup> Ibid, para. 46.

<sup>376</sup> Ibid, para 54.

- **To ensure that foreign migrants live in rooms that have access to fresh air in and are protected against excessively high temperatures<sup>377</sup>** – window blinds were installed. There were no handles on the windows which could be opened only by an officer who had to consent to their opening;
- **To review the quality and quantity of food<sup>378</sup>** – the foreign migrants received three meals a day, including one hot meal, and beverages. The foreign migrants interviewed by the NMPT did not report any negative comments regarding the food.

### **Recommendations that the NMPT has considered implemented in part:**

- **To ensure nursing cover also on weekends; and to ensure that a person competent to provide first aid (which should include being trained in the application of CPR and the use of a defibrillator)<sup>379</sup> is present throughout the week, including at weekends.** The nurses worked from 8 a.m. to 8 p.m. and were all trained in first aid. Also, six Border Guard officers were trained in qualified first aid. The NMPT considered that in the light of the working hours of the nurses and the number of trained officers, further efforts were necessary in this respect and recommended that all officers be trained in qualified first aid;
- **To carry out full and detailed medical examinations of foreign migrants upon admission, in particular with regard to transmissible diseases (including tuberculosis). The medical screening should also aim at identifying possible victims of torture<sup>380</sup> and be carried out in conditions ensuring confidentiality<sup>381</sup>. Medical records should only be accessible to medical staff<sup>382</sup> and include, among other things, a special form (body chart) for registering injuries, photographs of the injuries (if taken) and relevant statements by the patient. In addition, injuries should be specified in a separate register<sup>383</sup>.**

The practice of conducting medical examination of persons admitted to the centre changed at the time of the COVID-19 pandemic. Before, the examinations were carried out immediately, at the time of admission. During the pandemic, examination by doctor was preceded by isolation and testing for SARS-CoV-2. Foreign migrants were admitted to the

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<sup>377</sup> Ibid, para 39.

<sup>378</sup> Ibid, para 41.

<sup>379</sup> The CPT emphasized in its report that, ideally, the person providing first aid should be a qualified nurse. See para. 43 of the report, CPT/Inf (2018) 39.

<sup>380</sup> Ibid, para 44.

<sup>381</sup> Ibid, para 45.

<sup>382</sup> Ibid, para 45.

<sup>383</sup> Ibid, paras. 27 and 45.

centre only after a negative coronavirus test. Then, they stayed in a separate ward for 7 days under observation. After that period, another test was performed. If the test was negative, the foreign national had a medical examination conducted and was placed in the regular ward.

The initial medical examination after admission to the centre was conducted in a manner that ensured confidentiality. A Border Guard officer was present during the examination only at the doctor's express request. Each foreign national had his/her blood tested for the presence of viruses (e.g. HIV, HCV), was examined for tuberculosis, had an ECG test, a glucose level test and a dental examination. If needed, consultations in orthopaedics, neurology and psychiatry were conducted within the centre. Other specialist consultations took place outside the facility. Each foreign national had also their weight and blood pressure checked once a month. If they stated during a medical interview upon admission (in a language they understood) that they had been subjected to any violence or trauma, they were referred to a psychologist for a consultation. Any injuries were entered in the patient's medical records, but when documenting them, a special form (body chart) was not used. Medical records of foreigners did not contain photos of their injuries. The register of injuries, recommended by the CPT, was not kept. Medical files of the patients were kept in the doctor's office. Only medical staff had access to them.

- **It would be desirable for foreign migrants to receive a written translation in a language they understand of the conclusions of decisions regarding their detention/expulsion, as well as written and oral information on the modalities and deadlines for appealing against such decisions**<sup>384</sup> – the court's decisions on foreign migrants' placement in the centre were not always issued in a language understood by them<sup>385</sup>. The applications drawn up in Polish were interpreted verbally to the applicants. If there was a language barrier, translation devices were used. The Education Team used portable translators. The NMPT was also informed that the Education Team uses interpretation provided by other foreigners. In the NMPT's opinion, such situations are unacceptable as they violate the confidentiality of the interviews. Information regarding deportation is provided to foreigners in advance;
- **To make further efforts to improve language skills of the staff and to increase their number**<sup>386</sup> – at the time of the monitoring visit, the centre had no vacancies. Starting from 2019, four officers (at the managerial level) took part in an English language course. The number is

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<sup>384</sup> The CPT considered that filling all vacancies should be a priority, see: para. 47 of the report, CPT/Inf (2018)39.

<sup>385</sup> For example, a Turkish citizen received the decision on his placement in the centre in Arabic and requested the court to re-translate it into Kurdish or Turkish.

<sup>386</sup> See: CPT Report, CPT/Inf (2018) 39, para. 49.

too low given the aim of the CPT recommendation, i.e. facilitating communication in daily contacts with the foreign national in the centre.

### **Recommendations that the NMPT has considered not implemented:**

- **Not to carry means for direct coercion (batons, handcuffs and pepper spray) in full view of the foreign migrants, including inside the accommodation areas**<sup>387</sup> – during the monitoring visit, Border Guard officers carried batons. Furthermore, officers had access to tasers. They were stored in a the shift officer’s room. They were handed out only to trained officers and, as a rule, were not carried into the accommodation part of the centre;
  - **To provide effective legal aid to the foreign migrants, including free legal representation for those who cannot afford it**<sup>388</sup> – the problem is a systemic one, as the Polish legislator has not referred to the necessity to provide free legal aid to such foreign migrants;
  - **To extend the offer of organised activities for the foreign migrants (including sports activities)**<sup>389</sup> – the men were permitted to stay outdoor for 1.5 hours, which was too short given the potential of the facility, its location and infrastructure.
- **STATE OF IMPLEMENTATION OF THE NMPT RECOMMENDATIONS**

### **Recommendations that the NMPT has considered implemented:**

- To remove personal data of the foreign migrants, and the names of medicines placed next to the individual names, from the information board;
- To keep documents with guidelines on dealing with vulnerable groups<sup>390</sup> in the doctor’s office in the centre;
- To ensure language interpretation of consultations with psychologists<sup>391</sup>;
- To assign a separate room exclusively for meetings with psychologists (those from the centre and from the outside) to ensure confidentiality, and to make sure that the room is soundproof<sup>392</sup>;

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<sup>387</sup> In the CPT's view, this is an intimidating and unjustified practice, see: para. 51 of the report, CPT/Inf (2018)39.

<sup>388</sup> Ibid, para 47.

<sup>389</sup> Ibid, para 42.

<sup>390</sup> The nursing team had the Istanbul Protocol copy in their room.

<sup>391</sup> The consultations took place by telephone (using a loudspeaker).

<sup>392</sup> Due to the coronavirus pandemic, the room for meetings with a psychologist was used as an isolation room. Meetings with the psychologist were held in the medical room, which raised a number of problems: the room was not soundproof, and there was occasional presence of outsiders. The NMPT, aware of the need to counteract the pandemic, considered the recommendation to be implemented as long as the room, once the pandemic ends, is used for the purpose for which it was created.

- To separate psychological documentation from medical records;
- To provide foreign migrants with information on the planned enforcement of deportation decisions immediately after the date of the deportation has been set;
- To use handcuffs when conveying the foreign migrants only in individual cases justified by specific circumstances;
- To ensure that accommodation rooms have curtains or window blinds;
- To assign one room as a smoking room in every accommodation building of the centre;
- To arrange for a second room with access to computers.

### **Recommendations that the NMPT has considered implemented in part:**

- To have any signs of violence, visible on the foreign migrant's body and reported by them as signs of violence, including torture, assessed from the medical point of view to verify whether violence has been used;
- To provide professional in-person interpretation by external interpreters in all identification activities and not to use interpretation by other foreign migrants;
- To provide training to medical staff, psychologists, the education team members and other officers in the identification of, and communication and work with traumatized persons and survivors of violence including torture or inhuman treatment, as well as persons with mental disorders<sup>393</sup>.

### **Recommendations that the NMPT has considered not implemented:**

- **To have psychological services provided by several persons with competencies in the identification and support of persons with special needs** - there was one psychologist employed in the centre who was present there once a week for three hours, and also when needed;
- **To introduce the possibility of regular meetings with a psychologist without the foreign national having to request a meeting every time** - a foreign national who wants to meet with a psychologist has to report such a need to a member of the Education Team or to medical personnel;

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<sup>393</sup> As of 2019, four officers (managers) took part in the training courses. The courses covered: "Methods of coping with stress at work and on duty", "Preparation of officers to carry out their duties within cross-border cooperation with European Union member states and other countries based on bilateral agreements", "Exchange of experience and best practices on the performance of tasks by the Education Section in guarded centres for foreign migrants" and a language course (English).

- **To set out standards for drawing up psychological documentation (based on a uniform template) and for documenting informed consent to a psychological examination, the issuance of a psychological opinion, and the transfer of such an opinion to third parties** - the documentation did not meet the NMPT standards in this regard. The psychologist kept the documentation in the form adopted at her discretion. Information about the foreign national's intention to meet with a psychologist or about a refusal of such a meeting was contained only in the person's medical records;
  - **To notify the foreign migrant about the psychologist's obligation to maintain professional secrecy and the exceptions to this obligation under the ethical and professional code of conduct for psychologists and the Act on the profession of psychologist, and to record such notification** - the psychologist did not provide such information to the foreign migrants;
  - **To ensure that the detainees have access to the exercise yard in accordance with the daily schedule** - see the report's point on CPT recommendations not implemented.
- **EPIDEMIOLOGICAL SITUATION IN THE GUARDED CENTRES FOR FOREIGNERS DURING THE COVID-19 PANDEMIC**

The Commissioner for Human Rights monitored the epidemiological situation in the guarded centres for foreigners. To this end the CHR:

- requested information from the Commander-in-Chief of the Border Guard on the state of the centres' preparedness for the threat related to the SARS-CoV-2 virus<sup>394</sup> as well as the planned and carried out deportations<sup>395</sup>;
- wrote to the Head of the Office for Foreigners, inquiring, inter alia, about cases of infections in foreign migrants who were held in the guarded centres and were in quarantine<sup>396</sup>;
- requested the Director of the Social Welfare Department of the Office for Foreigners to provide information on the quantities of computer equipment available at the guarded centres to foreign migrants for the purposes of remote learning<sup>397</sup>;
- called on non-governmental organisations working in the field of human rights protection and assistance to foreign migrants to provide all available information on the situation in the guarded centres for foreigners with regard to the coronavirus pandemic.

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<sup>394</sup> See: letter of 12 March 2020, KMP.071.4.2020.PK.

<sup>395</sup> See: letter of 2 April 2020, KMP.071.4.2020.MZ.

<sup>396</sup> See: letter of 17 March 2020, XI.543.17.2020.MS.

<sup>397</sup> See: letter of 2 April 2020, XI.543.17.2020.MS.

According to the information obtained by the Office of the Commissioner, as of 19 March 2020 there were no cases of COVID-19 infections in the guarded centres for foreigners. No foreign national staying there was under quarantine<sup>398</sup>. At the guarded centres, no foreign migrants, no employees or other persons employed by the Office for Foreigners, by a medical operator or other external company had symptoms of coronavirus infection<sup>399</sup>.

In guarded centres for foreigners, the following procedure, in force since 2017, was followed: *Procedure for ensuring sanitary and epidemiological safety, and for alerts on sanitary and infectious diseases for persons staying in the guarded centres for foreigners*. The Chief Sanitary Inspector from the Ministry of Interior and Administration took part in drafting the procedure<sup>400</sup>.

In order to prevent infections, the following guidelines of the Chief Sanitary Inspector from the Ministry of the Interior and Administration were adopted: *Guidelines for officers and employees in contact with persons suspected of infection with the new SARS-CoV-2 coronavirus*, of 28 February 2020. Medical personnel were familiarised with the procedures developed by the Chief Sanitary Inspector from the Ministry of the Interior and Administration. Regular working contacts were also maintained with the local Sanitary Inspector<sup>401</sup>. The medical operator cooperating with the Office for Foreigners implemented their own internal procedure designed specifically for guarded centres for foreigners and relating to the risk of COVID-19<sup>402</sup>. Also, in guarded centres for foreigners:

- personal protective equipment (disinfectants, protective masks, gloves) was provided for the staff and the foreign migrants; hand and surface disinfectants were available in all staff rooms as well as at entrance doors;
- daily disinfection of common spaces in the centres was carried out;
- a prohibition to receive visits was introduced; they were replaced by "virtual visits" with the use of an electronic communicator;
- the practice of 14-day preventive observation of newly arrived persons was introduced; the persons stayed in a medical isolation room or another room assigned to the isolation purposes;
- body temperature checks in the detained foreigners were introduced as a preventive measure (the temperature was checked at least once a day) as well as body temperature checks of all

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<sup>398</sup> See: letter of the Commander-in-Chief of the Border Guard of 19 March 2020, KG-CU-IV.072.1.2020; Letter of the Head of the Office for Foreigners of 20 March 2020, DPS.WII.0733.2.2020/KL.

<sup>399</sup> See: letter of the Head of the Office for Foreigners of 20 March 2020, DPS.WII.0733.2.2020/KL.

<sup>400</sup> Ibid.

<sup>401</sup> See: letter of the Commander-in-Chief of the Border Guard of 19 March 2020, KG-CU-IV.072.1.2020.

<sup>402</sup> See letter of the Head of the Office for Foreigners of 20 March 2020, DPS.WII.0733.2.2020/KL.

persons entering the centre premises (if body temperature exceeded 38°C, relevant sanitary services were informed; people not working in the centre were not permitted to enter);

- purchases of products for the foreign nationals were limited to the necessary minimum (and were possible only in particularly justified cases);
- the centre staff's tasks that required direct contact with the foreigners were limited to a necessary minimum<sup>403</sup>;

The number of people entering the centres was limited to a minimum, which applied to:

- employees of companies contracted to carry out Polish language lessons, educational activities, adjustment activities and integrating activities for the foreign nationals;
- persons holding a permit issued by the Head of the Office for Foreigners to enter the centre for the purpose of conducting classes/activities;
- foreign nationals covered by social welfare benefits but not accommodated in the centre. The exceptions were foreigners who received cash benefits to cover the costs of their stay outside the centre but were covered by medical care within the centre. Persons who received medical care within a given centre but were not residents of that centre, were permitted to enter only after a telephone consultation with the medical personnel. In addition, the beneficiaries of assistance provided by the Office for Foreigners received relevant recommendations concerning the necessity to limit interpersonal contacts<sup>404</sup>.

According to the information provided by the Commander-in-Chief of the Border Guard, there were no possibilities to order paid preventive tests detecting the SARS-CoV-2 virus for all foreigners newly admitted to the guarded centres. The tests were carried out only in persons who had symptoms of COVID-19, after taking their medical history. Foreigners who reported symptoms suggesting SARS-CoV-2 infection, were notified to the competent sanitary and epidemiological services for the purpose of conducting medical examinations and further procedures. Decisions on quarantine were taken by the sanitary services<sup>405</sup>.

All guarded centres for foreigners were prepared for isolating infected people. There was a room for isolation and observation of foreign nationals in each of the centres. The detainees had to undergo a medical consultation in the case of symptoms indicating a possibility of infection<sup>406</sup>. As of 19 March 2020, the Border Guard had a total of seven medical isolation rooms (with a total capacity of 12 persons) located in the guarded centres in: Białystok (two rooms, four places), Lesznowola (one room, one place),

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<sup>403</sup> See: letter of the Commander-in-Chief of the Border Guard of 19 March 2020, KG-CU-IV.072.1.2020.

<sup>404</sup> See: letter from the Head of the Office for Foreigners of 20 March 2020, DPS.WII.0733.2.2020/KL.

<sup>405</sup> See: letter of the Commander-in-Chief of the Border Guard of 19 March 2020, KG-CU-IV.072.1.2020.

<sup>406</sup> See: letter from the Head of the Office for Foreigners of 20 March 2020, DPS.WII.0733.2.2020/KL.

Przemysł (one room, two places), Biała Podlaska (one room, two places), Kętrzyn (one room, two places), and Krosno Odrzańskie (one room, one place)<sup>407</sup>.

Medical care for the foreign nationals seeking protection on the territory of the Republic of Poland was the same as for Polish citizens, and included primary medical care, diagnostic procedures, specialist care, hospital care, and vaccination of children according to the vaccination calendar. Beneficiaries of social assistance and medical care provided by the Office for Foreigners were covered by the same procedures in the case of suspicion and confirmation of infection, as well as isolation and quarantine<sup>408</sup>.

The Office for Foreigners, based on the recommendations of the State Sanitary Inspectorate, the Ministry of Health and the European Asylum Support Office, prepared its own information and education materials on procedures to be followed during the epidemic and on the symptoms to be looked for. The material, together with hand washing instructions, was translated into English, Russian and Ukrainian and distributed to all the guarded centres<sup>409</sup>.

On 10 April 2020 the Commander-in-Chief of the Border Guard informed the NMPT that, based on the guidelines of the Chief Sanitary Inspector from the Ministry of the Interior and Administration, a single procedure has been introduced for all the centres for foreigners<sup>410</sup>. The procedure provided for:

- the requirement to carry out a medical examinations of every detained foreigner before his/her admission to a given guarded centre; in the case of discovering the disease symptoms, further activities, the same as those taken with regard to Polish citizens, should be conducted (including a coronavirus test);
- preventive isolation of newly arrived foreigners after their admission to the guarded centre, and their medical re-examination and observation by medical personnel. The contact with people in isolation was limited. Medical staff, a social care officer and a security officer had access to the foreigner. Foreigners in isolation could receive "virtual visits" with the use of an internet communicator, had access to a telephone and the possibility of daily recreation outdoors;
- body temperature measurement in all persons detained in the guarded centre as well as every person entering the premises of the centre;
- body temperature measurement in the detained foreigners at least once a day, as a preventive measure;

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<sup>407</sup> See: letter of the Commander-in-Chief of the Border Guard of 19 March 2020, KG-CU-IV.072.1.2020.

<sup>408</sup> See: letter from the Head of the Office for Foreigners of 20 March 2020, DPS.WII.0733.2.2020/KL.

<sup>409</sup> *Idid.*

<sup>410</sup> See: letter of the Commander-in-Chief of the Border Guard of 10 April 2020, KG-CU-IV.072.4.2020.

- limitation of the activities of the guarded centre's personnel, working in contact with the foreigners, to a necessary minimum;
- prohibition of visits to the guarded centres;
- limitation of the purchases of products for the foreign nationals to the necessary minimum (and only in particularly justified cases).

In connection with the prohibition to receive visits, the Commander-in-Chief of the Border Guard ordered to take all necessary steps to intensify the foreigners' contacts with their relatives as well as with non-governmental organisations providing assistance to foreigners, using, inter alia, internet communicators<sup>411</sup>.

As regards the staffing of the guarded centres for foreigners, according to the Commander-in-Chief, the number of staff was sufficient and ensured efficient functioning of the centres<sup>412</sup>. Medical care services were provided without any disturbances (medical consultations for foreigners were conducted in the centre according to the set schedule, and nurses and paramedics were on duty seven days a week). In the case of an urgent need for medical consultation, a telephone consultation i.e remote consultation was provided<sup>413</sup>.

Psychological consultations also worked normally. They were conducted based on reported needs, according to a set time schedule, by a psychologist employed by the centre. They were also carried out by external psychologists<sup>414</sup>.

The centres for foreigners did not have any computers assigned to remote learning. The Office for Foreigners ensured internet access via a WiFi network in all the guarded centres. It also monitored its presence and bandwidth in order to ensure efficient conduct of distance learning<sup>415</sup>. The employees of the guarded centres were in contact with the schools. They encouraged the foreigners to study in accordance with the school guidelines and to take part in the remote education. They also provided learners with materials sent by the schools by traditional post or by e-mail<sup>416</sup>.

No foreign nationals were released from the guarded centres on the grounds of the coronavirus outbreak. In the opinion of the Border Guard, there were no legislative solutions making it possible to change the period of detention in such cases, and no procedures for such release from the centre. In the opinion of the Border Guard, the fact that the epidemic was announced did not constitute grounds for

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<sup>411</sup> Ibid.

<sup>412</sup> Ibid.

<sup>413</sup> Ibid.

<sup>414</sup> Ibid.

<sup>415</sup> See: letter from the Office for Foreigners of 7 April 2020, DPS.WIII.0733.3.2020/AF.

<sup>416</sup> Ibid.

releasing the foreigners from the centres (in their letter to the NMPT, the Border Guard noted that the individual decisions to detain the foreigners were still valid)<sup>417</sup>.

The Commander-in-Chief of the Border Guard also raised the issue of deportations of foreigners to their countries of origin after 13 March 2020. He pointed out that a total of 49 foreigners were deported, including 29 who had been detained in the guarded centres. They had no symptoms of infection, and thus preventive tests for coronavirus were not carried out in those persons<sup>418</sup>.

As of 3 March 2020, in the guarded centres for foreigners there were a total of 91 foreigners with regard to whom deportation decisions had already been issued or were pending to be issued. Among those persons, there were 11 minors (two unaccompanied minors, and nine accompanied by their parents) and seven chronically ill persons (taking medications to treat hypertension). There were no persons over the age of 60 to be deported<sup>419</sup>.

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<sup>417</sup> See: letter of the Commander-in-Chief of the Border Guard of 10 April 2020, KG-CU-IV.072.4.2020.

<sup>418</sup> Ibid.

<sup>419</sup> Ibid.

## THE NATIONAL CENTRE FOR THE PREVENTION OF DISSOCIAL BEHAVIOURS IN GOSTYNIN

In connection with the COVID-19 pandemic, the NMPT attempted to conduct a remote monitoring visit to the Gostynin Centre, using the Skype communicator or other video-transmission technology. On 19 May 2020, the NMPT director sent a letter to the Centre director notifying him of the intention to conduct an online monitoring visit to the Centre<sup>420</sup>. He also requested access to at least one computer station with the Skype communicator, so that the NMPT representatives could speak with the patients freely and in private. On 26 May 2020, the Centre director replied that due to lack of space in the Centre, the proposed form of communication was impossible. He suggested that contact with the patients be made via their private mobile phones or the cordless telephone in the nurses room. The director did not agree, either, to a traditional on-site visit and stated that that due to the pandemic people who were not employed by the Centre were not permitted to enter it.

Thus, the CHR wrote two letters to the Minister of Health requesting that steps be taken to make it possible for the representatives of the NMPT to carry out their mandate and hold online interviews with the patients and the staff members of the Centre<sup>421</sup>. According to the *Act on the Commissioner for Human Rights* the institution to which the Commissioner sends a letter should reply within 30 days<sup>422</sup>, The CHR has not yet received any reply regarding the issue.

On 4 December 2020, the NMPT director again requested the Gostynin Centre director to make it possible for the NMPT delegation to hold online interviews with patients and employees of the Centre. He thought this would be possible because of a larger number of computers with internet access then used in the Centre<sup>423</sup>. However, the request did not bring any effect. The Centre director replied that since 11 September 2020, in each ward patients have the possibility to use an info-kiosk with internet access. The device is available in a place that is accessible to every patient, i.e. in the canteen or the occupational therapy room. There, it is impossible for the patient to have a conversation with a representative of the National Mechanism for the Prevention of Torture freely and in private. This was

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<sup>420</sup> The visit was to assess the degree of implementation of the NMPT recommendations issued following the last visit to the Centre held on 18-20 February 2019. (KMP.574.2.2020.RK).

<sup>421</sup> The first general intervention letter of the CHR to the Minister of Health on the permission for the NMPT representatives to carry out an inspection visit to the Gostynin centre (10.07.2020). The second letter, given the absence of a response, was sent on 8.09.2020. (KMP.574.2.2020).

<sup>422</sup> See: Article 15(2) of the *Act on the Commissioner for Human Rights*.

<sup>423</sup> The CHR Office received, in August 2020, a letter from the Gostynin Centre, informing about the implementation of the agreement concluded on 29 June 2020 between the patients and the management and staff of the Centre, under which, among others, the retrofitting of the Centre's accommodation wards by installing computer stations with internet access had begun.

due to the lack of free rooms and to the Centre's overcrowding (there were 89 patients but the centre had only 60 places)<sup>424</sup>.

Despite the impossibility to carry out a monitoring visit to the Centre, its situation is systematically monitored by the CHR, by prof. Adam Bodnar, by his deputy Hanna Machińska, Ph.D., and by Ms Ewa Dawidziuk, director of the Penalties Enforcement Department of the CHR Office.

#### **SITUATION DURING THE PANDEMIC**

It has been found that the pandemic resulted in additional restrictions being imposed on the patients, which undoubtedly contributed to lowering the moods in the Centre.

Starting from 5 March 2020, the patients were not permitted to receive visits, including visits by couriers and other services delivering food and meals from outside the Centre. The staff and the personnel had their body temperature measured, and the staff had to use protective clothing and shoes. The Centre director managed to purchase coronavirus tests but they only detected the presence of antibodies in the patients. They did not make it possible to determine whether the tested patient or employee was infected at the testing time and posed a risk to other people.

The CHR Office started to receive complaints about the restrictions. The patients pointed out, among others, that there was a lack of information on the ending dates of the restrictions (in particular on receiving visits). The Centre director did not agree to contacts via Skype, which could have compensated for the lack of patients' direct meetings with their relatives. The patients also complained about the lack of direct contacts with the director and the possibility to freely report their requests and doubts concerning the decisions that impacted them. They did not understand many of the restrictions and prohibitions introduced, such as the prohibition to purchase food and order products from the outside or to use service providers other than Poczta Polska (the Polish Post)<sup>425</sup>.

On 14 May 2020, an online meeting was held at the CHR Office to discuss the situation of the Gostynin Centre patients. The participating psychologists emphasised that the additional restrictions in places of detention are a particularly stressful factor and lead to emotional tension. The lack of group therapy activities in the Centre, that would contribute to reducing the level of frustration and, first of all, would allow to discuss the patients' problems and to react to them on a current basis, does not contribute

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<sup>424</sup> Reply of the Gostynin Centre Director of 7.12.2020 (ref.no. KOZZD/EP/1229/2020).

<sup>425</sup> General intervention letter of Deputy CHR to the Gostynin Centre Director of 22.05.2020. (IX.517.1013.2020.ED).

to good atmosphere in the Centre. It is therefore necessary to take measures to reduce the negative emotions and improve interpersonal relations between the patients and the Centre's staff<sup>426</sup>.

After the meeting, which was attended not only by psychologists but also lawyers and virologists, the CHR presented experts' advice and suggestions that could help improve the situation in the Centre. Its director did not participate in the meeting although he had been invited<sup>427</sup>.

The deteriorating atmosphere resulted in 30 patients starting a hunger protest on 23 June 2020. But then, the Centre's patients had presented their numerous demands. They expected, among others, improvement of living conditions, re-introduction of the possibility to use courier services and order meals from the outside, to make purchases, to have air-conditioners installed in rooms and to be treated better (which included e.g. longer walking times, removal of CCTV cameras from the bathrooms, abandonment of preventive use of handcuffs, introduction of the possibility to meet with the director of the Centre on monthly basis, etc.)<sup>428</sup>. Also of great importance was the fact that the Centre had been overcrowded for a long time which resulted in lower quality of the living conditions (on the day of the protest, there were 87 patients in the Centre).

On 29 June an agreement was concluded between the patients and the Centre director, which ended the hunger protest. Negotiations on the agreement were held with the participation of a mediator, an impartial person registered as a professional mediator. The director of the Centre agreed to most of the postulates. As a result of the agreement, some restrictions were lifted. Patients again have the possibility to: purchase products from a mobile van shop (with all the necessary precautions), use courier deliveries to the premises of the Centre, order meals from the outside (bars, restaurants, etc.), maintain contacts via private mobile phones, laptops and tablets with unlimited access to the internet. Contacts via Skype are possible only from private devices of the patients, because there is no possibility in the Centre to assign a separate place where they could talk to other people freely and in private. The director of the Centre has informed that he has been meeting with the patients once a month, since August 2020. Such meetings take place in each ward. The patients select two representatives of the ward for the meeting, and have the possibility to hold individual meetings too. Visits to patients continue to be prohibited, except for attorneys and legal representatives<sup>429</sup>.

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<sup>426</sup> <https://www.rpo.gov.pl/pl/content/rpo-w-sprawie-sytuacji-w-KOZZD-Gostynin>

<sup>427</sup> <https://www.rpo.gov.pl/sites/default/files/RPO%20do%20KOZZD%20po%20spotkaniu%2015%20maja%2C%2022.05.2020.pdf>

<sup>428</sup> The CHR informed the Minister of Health about the situation in the Gostynin Centre in sending a general intervention letter on 25.06.2020. (IX.517.1376.2020.ED).

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<https://www.rpo.gov.pl/sites/default/files/Odp.%20dyrektora%20KOZZD%20ws%20sytuacji%20w%20O%2C5%209Brodku%20w%20Gostyninie%2C%2023.09.2020.pdf>

In October and November 2020, COVID-19 infections occurred the Centre and (by the end of January 2021) 47 patients got infected<sup>430</sup> and one died. Three patients, due to deterioration of their health condition, were hospitalised in the infectious wards in hospitals in Płock, Kutno and Pułtusk. As regards medical staff, as of 4 November 2020 there were 13 staff members in isolation and 24 in quarantine<sup>431</sup>. The situation was carefully monitored by the CHR<sup>432</sup>.

In their letters sent to the CHR Office, the Gostynin Centre patients frequently mentioned problems with contacts with the Centre director and the staff members, their inaccessibility and unwillingness to meet and speak directly about the situation. The patients emphasised that they felt treated like objects and had to fight for their dignity. They did not see any willingness on the side of the therapeutic team and, above all, the Centre director to speak with them and understand their difficulties and problems in daily life of the Centre. They did not have any possibilities to complain verbally; and complaints could be filed only in writing. The Centre staff, on the other hand, were of the opinion that the patients did not identify themselves with the aims of their stay in the Centre and did not show any willingness to work on themselves. Additionally, they had a hostile and demanding attitude towards the world, including the Centre's personnel. It could be concluded that there was an atmosphere of conflict and lack of mutual understanding at the Centre, which was emphasised both by the patients and the Centre's personnel<sup>433</sup>.

The tense atmosphere led to another hunger protest by the patients, which began on 1 February 2021. The patients' demands related to systemic aspects, including systemic solutions for post-penal isolation in Poland, as well as aspects related to the living conditions and daily functioning in the Centre. The situation was monitored during an on-site visit by the Patient Ombudsman for Psychiatric Hospital Patients<sup>434</sup>.

At the beginning of 2021, the Centre director refused, for the first time, to admit a patient who was to be placed in the Centre based on the provisions on civil security, and explained that admission of new patients was no longer possible due to overcrowding of the Centre.

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<sup>430</sup> <https://www.hfhr.pl/zapobieganie-epidemii-covid-19-w-krajowym-osrodku-zapobiegania-zachowaniami-dyssocjalnym/>

<sup>431</sup> Letter of the Minister of Health of 7.11.2020 (ref.no.: ZPP.6142.3.2020.TM).

<sup>432</sup> General intervention letter of the CHR of 3.11.2020 to the Prime Minister regarding coronavirus in the Gostynin Centre. General intervention letter of the Deputy CHR of 29.10.2020 to the Deputy Chief Sanitary Inspector. General intervention letters of the Deputy CHR of 27.10.2020 and 29.10.2020 to Waldemar Kraska, Undersecretary of State at the Ministry of Health. General intervention letter of the Deputy CHR of 29.10.2020 to Michał Warchoł, Secretary of State at the Ministry of Justice (ref. no. of the cases: IX.517.1702.2017).

<sup>433</sup> General intervention letter of the Deputy CHR of 1.12.2020 to Maciej Miłkowski, Undersecretary of State at the Ministry of Health (IX.517.2468.2018).

<sup>434</sup> General intervention letter of the Deputy CHR of 2.02.2021 to Maciej Miłkowski, Undersecretary of State at the Ministry of Health (IX.517.1702.2017).

The Commissioner for Human Rights has been monitoring the situation in the Gostynin Centre and the observance of the rights and freedoms of its patients for six years. In his numerous general intervention letters, the Commissioner has requested a comprehensive amendment of the *Act of 22 November 2013 on dealing with persons with mental disorders who pose a threat to life, health or sexual freedom of other people*, and executive regulations accompanying the act. On 10 January 2021, a joint meeting was held of two committees of the Senate of the Republic of Poland, i.e. the Committee on Health and the Committee on Human Rights, Rule of Law and Petitions. During the meeting, the situation in the Centre was discussed. The meeting was also attended by CHR prof. Adam Bodnar, Deputy CHR Dr. Hanna Machińska, Ph.D., and Ewa Dawidziuk, Ph.D., director of the Penalties Enforcement Department of the CHR Office. The meeting ended with the president of the Committee making a commitment to undertake works on the amendment of the parliamentary act on the Centre.

## GROUP QUARANTINE FACILITIES

Persons who are healthy but may potentially carry the virus, e.g. after returning from abroad or after a contact with a person diagnosed with the infection, are quarantined. In order to be isolated, such persons are required to undergo quarantine in their place of residence. However, for persons who, for various reasons, cannot undergo quarantine at home, e.g. because they do not want to expose their relatives to the infection, local authorities are required to establish group quarantine facilities. If a person decides to quarantine in such a place he/she may not leave it until the end of the quarantine period set in the applicable administrative decision of the locally competent sanitary inspectorate. Account should be taken of the fact that according to the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, any place under the jurisdiction and control of the state, where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence, should be considered to be a place of detention. Therefore, such places also include group quarantine facilities. The temporary nature of those facilities does not exclude their status as places of detention. Therefore, group quarantine facilities are required to meet the minimum standards in regard to both the conditions of detention and the rights of persons held there. Those standards or requirements are set out in national and international legislation.

However, media reports concerning the system of establishment of such facilities, as well as the conditions in them, have raised concerns of the NMPT.

Therefore, on 27 March 2020 the Commissioner for Human Rights requested the Minister of Health to provide him with a list of all group quarantine facilities (both those already established and those under development).

On 17 April 2020, then-Deputy Health Minister Józefa Szczurek-Żelazko informed the Commissioner that the Ministry of Health did not have a list of existing group quarantine facilities or their contact details, and that the establishment of group quarantine facilities comes within the scope of responsibilities of voivodeship (i.e. regional) governors. She stated that where an establishment is to be transformed into a group quarantine facility but here are doubts as to the sanitary conditions there, the authority to be contacted is the powiat (i.e. county) Sanitary and Epidemiological Service Station.

In view of the content of the response (received on 28 April 2020) the NMPT Deputy Director requested every voivodeship governor to provide a list of group quarantine facilities already in operation or under development, together with contact details of the facilities and persons responsible for their day-to-day operation. According to Article 33(7) of the *Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans* (consolidated text: Journal of Laws of 2020,

item 1845), voivodeship governors are required to ensure appropriate quarantine conditions by assigning suitable premises to be used for this purpose<sup>435</sup>.

After collecting the information on such facilities, the NMPT requested heads of locally competent municipal governments, powiat (i.e county) governments as well as city mayors to provide answers to the following questions:

1. How many people are quarantined in group quarantine facilities?
2. How have the quarantine facilities been established - who has issued the decision to establish a given facility; have those bodies received the applicable standards, recommendations and requirements that had to be met in order for the facility to be designated as a quarantine facility?
3. How is the supervision of the quarantined people conducted – is there a person responsible for ensuring that the people do not leave the facility? Is this person staying in the quarantine facility?
4. How are the living needs of the quarantined people met - who does the shopping, by whom are the meals provided, or are they made by the quarantined people themselves?
5. How do the quarantined people maintain contact with the outside world? Is there anyone maintaining contact on their behalf?
6. Are personal hygiene products ensured to the quarantined people? Who provides those products? Or are they bought by the quarantined people themselves?
7. How is access to medical care provided in medical cases unrelated to suspected coronavirus infection?
8. Are the facility premises disinfected and how often?
9. Who is responsible for the supply of disinfectants?
10. What procedures are taken with regard to people with symptoms of coronavirus infection?

The conclusions drawn based on the received responses are presented below, together with selected examples of how group quarantine facilities operate.

- **CONCLUSIONS DRAWN BASED ON THE REPLIES TO THE NMPT INQUIRIES**

## **System of establishment of quarantine facilities**

Pursuant to Article 11(1) of the *Act of 2 March 2020 on special measures for preventing, counteracting and combating COVID-19 and other infectious diseases and crisis situations caused by*

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<sup>435</sup> The information gathered in this way was published on the CHR website.

*them* (consolidated text: Journal of Laws of 2020, item 1842), voivodeship governors issued instructions for heads of powiat (i.e. county) governments, mayors of cities with the county status, mayors of other cities and heads of municipality governments, ordering them to designate facilities to be used as group quarantine facilities, and describing the rules of their coordination, organisation and operation. The instructions included standards and recommendations to be followed in operating quarantine facilities. They concerned catering, cleaning, disinfection, waste collection, personal protection and disinfection measures. The standards were also set out in individual voivodeship plans of action in the event of an outbreak of an infectious disease/epidemic. Buildings designated as quarantine facilities were inspected by representatives of the powiat (i.e. county) Sanitary and Epidemiological Service Station and then entered in the list of group quarantine facilities in a given voivodeship.

However, there were situations when the standards and requirements were not communicated<sup>436</sup>. In such cases, heads of powiat governments independently developed the requirements, in cooperation with the Powiat Sanitary Inspector or based on information obtained from the voivodeship governor's office.

Not all local authorities had at their disposal any premises that met the requirements of the State Sanitary Inspection Service, because quarantine facilities should have their own bathrooms and toilets. If such premises were not available, an agreement was concluded with a private entity to provide a group quarantine facility as a service to the local authority<sup>437</sup>.

In some cities and counties, also individual quarantine facilities were established. The municipal authorities developed cooperation with hotels or holiday centres which agreed to receive people for a two-week quarantine if those people could not be quarantined at home<sup>438</sup>. The cost of stay at such a hotel or centre was covered by the quarantined people. There were situations in which the voivodeship governor did establish group quarantine facilities in the poviats (i.e. counties) within the voivodeship.<sup>439</sup> The governor only required the county authorities to notify the owner of a given property that it was included in the voivodeship action plan for the time of the epidemic. The group quarantine facilities started to operate only if needed, pursuant to a later decision of the voivodeship governor.

In some cases, voivodeship governors decided to unify guidelines on the functioning of group quarantine facilities within their area. This resulted, for example, in the removal of certain facilities from

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<sup>436</sup> City of Szczecin, County Office of Kołobrzeg, Hospital for Mentally Ill and Psychiatric Patients in Rybnik, County Office of Zduńska Wola, County Office of Giżycko, County Office of Chrzanów, City of Kraków, County Office of Bochnia, County Office of Myślenice, County Office of Oświęcim, City and Municipality of Wschowa, City of Gubin, City of Jelenia Góra, City of Iława, City of Świdnica, City of Tarnów, City of Kalisz, County Office of Leszno.

<sup>437</sup> County Office of Giżycko, County Office of Sokółka, City of Kraków, Municipality of Nowe Miasteczko.

<sup>438</sup> City of Przemyśl, County Office of Mielec, County Office of Ropczyce, County Office of Rzeszów, City of Rzeszów, County Office of Tarnobrzeg.

<sup>439</sup> County Office of Dębica, County Office of Łańcut, County Office of Żywiec.

the list by the heads of individual powiat (i.e. county) governments, mayors of cities or heads of municipality governments<sup>440</sup>.

## Methods of supervising quarantined people

In group quarantine facilities, supervision over quarantined people to ensure they do not leave the facility was exercised by police officers who carried out ad hoc inspections. In addition, in most facilities such supervision was exercised by the personnel employed at the facility, or designated by the owner of the facility or by the authority that established the quarantine facility. Supervision was exercised by staff remaining within the facility or maintaining telephone contacts with those in quarantine. County governors also reported cases where a dedicated employee was contracted to supervise the quarantine facility<sup>441</sup>.

Sometimes, security companies were also employed to ensure security and order in the quarantine facilities<sup>442</sup>, or those tasks were assigned to Fire Brigades<sup>443</sup>, Municipal Police<sup>444</sup>, Military Police<sup>445</sup>, soldiers of Territorial Defence Forces<sup>446</sup> and soldiers from individual military units<sup>447</sup>. Epidemiological surveillance was carried out by employees of the County Sanitary and Epidemiological Service Stations. In addition, most facilities were covered by video surveillance (by remote systems, and in some cases by internal systems)<sup>448</sup>.

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<sup>440</sup> County Office of Wąbrzeźno.

<sup>441</sup> County Office of Biała Podlaska, County Office of Bochnia, County Office of Myślenice, County Office of Włoszczowa, County Office of Iława, County Office of Olecko.

<sup>442</sup> County Office of Police, City of Szczecin, City of Kielce, County Office of Ostrowiec Świętokrzyski, County Office of Staszów, County Office of Pabianice, County Office of Sieradz, County Office of Wieluń, County Office of Tarnów, County Office of Olkusz, City of Kalisz, City of Grudziądz, County Office of Chełm, City of Kraków, County Office of Nowy Targ, County Office of Końskie, County Office of Opatów, County Office of Leszno.

<sup>443</sup> Municipality of Przytoczna, City and Municipality of Witnica, County Office of Pajęczno, City of Łódź.

<sup>444</sup> City of Biała Podlaska, City of Żary, City of Zamość, City of Lipno, City of Krosno Odrzańskie, City of Wschowa, City of Piotrków Trybunalski, City of Przemyśl, County Office of Stargard.

<sup>445</sup> County Office in Legionowo.

<sup>446</sup> County Office of Braniewo, City of Chełm, Municipality of Żerków, City of Wrocław, County Office of Elbląg (on the response date, no person was in quarantine, however, the county office adopted a system in which, in case of a larger number of people, support would be provided by Territorial Defence Forces).

<sup>447</sup> City of Zielona Góra.

<sup>448</sup> County Office of Golub-Dobrzyń, County Office of Nakło, County Office of Bydgoszcz, City of Zamość, County Office of Kraśnik, County Office of Parczewo, Municipality of Trzciel, County Office of Bełchatów, County Office of Sieradz, County Office of Chrzanów, County Office of Gorlice, City of Kraków, County Office of Oświęcim, County Office of Wyszaków, County Office of Augustów, County Office of Bielsk Podlaski, County Office of Miechów, County Office of Tczew, Hospital for Mentally Ill and Psychiatric Patients in Rybnik, County Office of Końskie, County Office of Opatów, County Office of Staszów, County Office of Skarżysko-Kamienna, County Office of Kielce, County Office of Szczytno.

There were cases in which powiat (i.e. county) governors reported that they had no knowledge about the system of supervision of persons quarantined in the facilities<sup>449</sup>. In those cases, the county governors referred to Article 33(7) the *Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans*, according to which it is the responsibility of the voivodeship governor to ensure properly qualified personnel.

Information was also received that some persons in quarantine were using the "home quarantine" mobile phone application. The tool makes it possible for police officers to verify the person's place of stay, and the quarantined person may use the application to contact local social welfare centres which, in justified cases, can supply medicines or groceries to the person's quarantine place. Thanks to the application it is also possible to quickly contact a social worker.

The County Office in Kutno contracted qualified medical workers, members of a medical emergency group to supervise people in quarantine.

In one of the group quarantine facilities in Bydgoszcz, after the admission of the first people for quarantine, the staff normally employed there refused to work with the quarantined people. In connection with the situation, an additional municipal police post was established to supervise the people in quarantine. The solution turned out to be insufficient and the persons in quarantine did not observe the rules and regulations. They also started using rooms that were not designated for them. As a result, on-site supervision, by a contracted security company was introduced.

## **Meeting living needs of people in quarantine (shopping, food)**

In most cases, quarantined people received three meals (breakfast, lunch, dinner) or two meals<sup>450</sup> (breakfast, lunch) per day. There were also situations where people in quarantine were provided with only one meal as lunch<sup>451</sup>.

Meals in the quarantine facilities were ensured by: the entity with which the agreement on the quarantine facility operation was signed, by catering companies<sup>452</sup> under an agreement signed with the

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<sup>449</sup> County Office of Zambrów, County Office of Kołobrzeg.

<sup>450</sup> County Office of Rypin.

<sup>451</sup> County Office of Bełchatów, County Office of Myślenice.

<sup>452</sup> City of Jelenia Góra, City of Bydgoszcz, County Office of Chełmno, City of Golub-Dobrzyń, County Office of Golub-Dobrzyń, County Office of Inowrocław, County Office of Nakło, County Office of Ostrów Wielkopolski, Municipality of Solec Kujawski, Municipality of Osielesko, County Office of Toruń, County Office of Sępólno Krajeńskie, County Office of Tuchola, City of Włocławek, County Office of Biłgoraj, County Office of Chełm, County Office of Janów Lubelski, County Office of Puławy, County Office of Lubartów, County Office of Lublin, City of Lublin, County Office of Łuków, County Office of Kraśnik, County Office of Opole Lubelskie, County Office of Świdnica, County Office of Radzyn Podlaski, County Office of Zamość, County Office of Świdnik, County Office of Tomaszów Lubelski, County Office of Świecie, Municipality of Pszczew, County Office of Kutno, City of Łódź, County Office of Rawa Mazowiecka, City of Skierniewice, County Office of Skierniewice, County Office of Zduńska Wola, County Office of Zgierz, County Office of Bochnia, County Office of Brzesko,

facility operator, by municipal social welfare centres<sup>453</sup> or by municipal family support centres<sup>454</sup>. In such cases, persons in quarantine did not bear any costs. They could refuse such meals and make their own ones. The quarantine facilities ensured access to an electric kettle, coffee, tea and mineral water<sup>455</sup> to quarantined people.

However, there were cases where food supply had to be secured by the people in quarantine themselves, or by their families<sup>456</sup>. If they were not possible to secure food delivery, this was organised by the local social welfare centre.

Other food and subsistence needs were met by the quarantined people's family members, friends, the quarantine facility staff members or local social welfare centres. There were also services in the form of parcel delivery (without personal contact), or quarantined people could order products online.

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County Office of Chrzanów, City of Kraków, County Office of Kraków, County Office of Limanowa, County Office of Miechów, City of Nowy Sącz, County Office of Nowy Targ, County Office of Oświęcim, County Office of Olkusz, County Office of Tarnów, City of Tarnów, County Office of Wadowice, County Office of Wieliczka, County Office of Radziejów, County Office of Augustów, County Office of Bielsk Podlaski, County Office of Hajnówka, County Office of Wysokie Mazowieckie, County Office of Nowy Dwór Gdański, County Office of Sztum, County Office of Ostrowiec Świętokrzyski, County Office of Tarnowskie Góry, County Office of Busko-Zdrój, County Office of Końskie, County Office of Opatów, County Office of Pińczów, County Office of Staszów, County Office of Sandomierz, County Office of Skarżysko-Kamienna, County Office of Elbląg, County Office of Mrągowo, County Office of Elk, City of Kalisz, County Office of Leszno, Municipality of Żerków, County Office of Goleniów, City of Szczecin, City of Koszalin, County Office of Stargard.

<sup>453</sup> County Office of Oleśnica, County Office of Inowrocław, City of Lipno, Municipality of Koronowo, Municipality of Dobrycz (for one person, due to his difficult situation), County Office of Sępólno Krajeńskie, City of Drezdenko, City of Kostrzyn nad Odrą, City of Międzyrzecz, Municipality of Przytoczna, Municipality of Żagań, County Office of Brzeziny, County Office of Opoczno, County Office of Pabianice, County Office of Pajęczno, County Office of Radomsko, City of Przemyśl, City of Sopot.

<sup>454</sup> City of Piotrków Trybunalski, City of Kielce.

<sup>455</sup> County Office of Lubliniec, City of Kielce, County Office of Staszów, County Office of Grajewo, County Office of Świecie, City of Włocławek, County Office of Aleksandrów Kujawski, County Office of Ryki, City of Lublin, County Office of Biała Podlaska, County Office of Opole, County Office of Zamość, County Office of Łęczna, County Office of Janów Lubelski, County Office of Świdnica, County Office of Wadowice, County Office of Kraków, County Office of Puławy, County Office of Opole Lubelskie, County Office of Świdnik, County Office of Zduńska Wola, the City of Kraków, County Office of Miechów, the City of Tarnów, County Office of Bielsk Podlaski, County Office of Tczew, County Office of Końskie, County Office of Staszów, County Office of Elk, County Office of Leszno, County Office of Olecko.

<sup>456</sup> County Office of Nowe Miasto Lubawskie, City of Elbląg, County Office of Lubaczów, City of Krosno Odrzańskie, Municipality of Dobrz, Municipality of Białe Błota, County Office of Oleśnica, County Office of Wieluń, County Office of Wieruszów County Office of Sieradz, County Office of Łódź East, County Office of Poddębice, County Office of Piotrków Trybunalski, County Office of Łask, County Office of Radomsko, Municipality of Trzciel, County Office of Nowa Sól, Municipality of Świebodzin, Municipality of Jasiień, Municipality of Sulechów, Municipality of Dobiegniew, City of Gorzów Wielkopolski, Municipality of Cybinka, City of Iłowa, City of Żary, City of Zielona Góra, Municipality of Lipniki Łużyckie, Municipality of Nowe Miasteczko, City of Małomice, Municipality of Brody, City of Gubin, City of Jasiień, Municipality of Lubrza City of Słubice, City of Szprotawa, Municipality of Trzebiel, Municipality of Witnica, City of Wschowa, City of Żagań, County Office of Tomaszów Mazowiecki, City of Krosno, County Office of Rzeszów, County Office of Kolno, County Office of Kazimierza Wielka.

## Means of contact with the outside world ensured to people in group quarantine facilities

People in quarantine maintained contact with the outside world via their private mobile phones or other means of remote communication. They could also use the facility telephones after requesting the facility manager<sup>457</sup>.

In some cases, a mobile phone was provided for the duration of the quarantine by the local authorities, if the quarantined person did not have such a telephone<sup>458</sup>.

At some facilities there was access to the radio, television and/or landline telephones, either in accommodation rooms or in other designated places<sup>459</sup>. This was mainly the case if quarantined people stayed in hotel or student dormitory buildings. Many facilities also provided wireless access to the internet<sup>460</sup>. In the municipality of Sulechów, an intercom was installed in each room for contacting people from outside the building.

In many places, people in quarantine were given telephone numbers of the quarantine coordinators, duty officers, or employees of designated offices, services or institutions, e.g. the Police, Fire Brigades, Ambulance Service, County Sanitary and Epidemiological Service Station or social

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<sup>457</sup> County Office of Legionowo, City of Gorzów Wielkopolski, County Office of Kraków, City of Świnoujście, County Office of Elbląg, County Office of Elk, County Office of Mrągowo, County Office of Bartoszyce.

<sup>458</sup> City of Zielona Góra, City of Cybinka, City of Zielona Góra.

<sup>459</sup> Municipality of Słubice, City of Kraków, City of Toruń, County Office of Mogilno, County Office of Grudziądz, County Office of Żnin, City of Chełm, County Office of Lublin, City of Lublin, City of Zamość, County Office of Włodawa, City of Gorzów Wielkopolski, Municipality of Pszczew, Municipality of Trzciel, Municipality of Żagań, County Office of Bełchatów, City of Łódź, County Office of Bochnia, County Office of Brzesko, County Office of Kraków, County Office of Nowy Sącz, County Office of Nowy Targ, County Office of Proszowice, County Office of Wadowice, County Office of Wieliczka, County Office of Legionowo, County Office of Sejny, County Office of Mońki, County Office of Sokółka, County Office of Grajewo, City of Białystok, County Office of Słupsk, City of Sopot, County Office of Tczew, County Office of Tarnowskie Góry, Hospital for Mentally Ill and Psychiatric Patients in Rybnik, County Office of Bartoszyce, County Office of Działdowo, County Office of Mrągowo, County Office of Pisz, County Office of Elk, County Office of Olsztyn, County Office of Węgorzewo, County Office of Krotoszyn.

<sup>460</sup> County Office of Chełmno, City of Grudziądz, County Office of Inowrocław, City of Toruń, County Office of Nakło, County Office of Biała Podlaska, County Office of Puławy, City of Lublin, City of Zamość, County Office of Kraśnik, County Office of Parczew, County Office of Ryki, Municipality of Pszczew, Municipality of Słubice, Municipality of Sulechów, Municipality of Trzciel, Municipality of Witnica City of Zielona Góra, County Office of Bełchatów, City of Łódź, County Office of Łask, County Office of Wieruszów, County Office of Zduńska Wola, County Office of Bochnia, County Office of Gorlice, City of Kraków, County Office of Kraków, County Office of Miechów, County Office of Myślenice, City of Nowy Sącz, County Office of Nowy Sącz, County Office of Nowy Targ, County Office of Proszowice, County Office of Tarnów, City of Tarnów, County Office of Wieliczka, County Office of Legionowo, County Office of Wyszaków, County Office of Augustów, County Office of Mońki, County Office of Tczew, County Office of Sztum, County Office of Cieszyn, County Office of Lubliniec, County Office of Ostrowiec Świętokrzyski, City of Kielce, County Office of Końskie, County Office of Opatów, County Office of Pińczów, County Office of Staszów, County Office of Sandomierz, County Office of Skarżysko-Kamienna, County Office of Starachowice, County Office of Giżycko, County Office of Olsztyn, County Office of Węgorzewo, Municipality of Żerków, City of Koszalin.

welfare centres<sup>461</sup>. Also, some facilities had a designated first contact person through whom contact with the outside world was also possible. Those persons lived in the same building as the quarantined people, or could be contacted by telephone if necessary<sup>462</sup>.

According to the received information, most facilities had no designated persons to represent the quarantined people outside the facility.

The information showed that contacts with visitors were not restricted. They were maintained under a safety regime<sup>463</sup>, e.g. through a window or across a fence. In many facilities it was possible for people from the outside to deliver food products, additional cleaning products, clothes or letters to those in quarantine .

## **Provision of personal hygiene products to quarantined people**

Entities that operated the quarantine facilities provided basic personal hygiene products and cleaning products (bed linen, towels, toilet paper, soap, hair shampoo, shower gel, toothpaste, disinfectants, disposable gloves and masks for moving around the common areas, and sometimes also disposable cups, disposable cutlery sets and waste bags) free of charge to the persons in quarantine.

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<sup>461</sup> County Office of Aleksandrów Kujawski, County Office of Chełmno, County Office of Golub-Dobrzyń, the City of Grudziądz, County Office of Nakło, County Office of Ostrowiec Wielkopolski, Municipality of Osielesko, County Office of Rypin, City of Włocławek, County Office of Lubartów, County Office of Łęczna, County Office of Łuków, County Office of Opole Lubelskie, County Office of Parczew, County Office of Świdnik, City of Drezdenko, City of Gubin Municipality of Sulechów, Municipality of Trzebiel, Municipality of Żagań, County Office of Bochnia, County Office of Miechów, County Office of Sucha Beskidzka, County Office of Wadowice, County Office of Radziejów, County Office of Augustów, City of Suwałki, County Office of Wysokie Mazowieckie, County Office of Tczew, County Office of Sztum, City of Kielce, County Office of Opatów, County Office of Starachowice, County Office of Leszno, Municipality of Żerków.

<sup>462</sup> County Office of Inowrocław, County Office of Mogilno, County Office of Nakło, County Office of Ostrowiec Wielkopolski, Municipality of Koronowo, Municipality of Dobrcz, County Office of Włocławek, County Office of Żnin, City of Chełm, County Office of Krasnystaw, County Office of Puławy, County Office of Łęczna, City of Zamość, County Office of Kraśnik, County Office of Opole Lubelskie, County Office of Świdnica, County Office of Ryki, County Office of Zamość, County Office of Świdnik, City of Babimost, City of Cybinka, Municipality of Dobiegniew, City of Drezdenko, City of Gubin, City of Iłowa, City of Miedzyrzecz, Municipality of Szprotawa, Municipality of Trzebiel, City of Zielona Góra, City of Zagan, County Office of Kutno, County Office of Pabianice, County Office of Poddębice, County Office of Sieradz, County Office of Wieluń, County Office of Zduńska Wola, County Office of Zgierz, County Office of Brzesko, County Office of Chrzanów, City of Nowy Sącz, County Office of Nowy Sącz, County Office of Sucha Beskidzka, City of Tarnów, County Office of Zakopane, County Office of Radziejów, City of Tarnobrzeg, County Office of Hajnówka, County Office of Kolno, County Office of Sejny, County Office of Mońki, County Office of Puck, County Office of Lubliniec, County Office of Bieruń, Hospital for Mentally Ill and Psychiatric Patients in Rybnik, County Office of Jędrzejów, County Office of Końskie, County Office of Opatów, County Office of Staszów, County Office of Skarżysko-Kamienna, County Office of Bartoszyce, County Office of Braniewo, City of Elbląg, County Office of Nowe Miasto Lubawskie, County Office of Kętrzyn, County Office of Ostróda, City of Kalisz, County Office of Krotoszyn, County Office of Goleniów, County Office of Gryfino, City of Koszalin, County Office of Stargard.

<sup>463</sup> County Office of Ostrów Wielkopolski, City of Kalisz, City of Zielona Góra, City of Piotrków Trybunalski, County Office of Brzesko, City of Nowy Sącz, County Office of Oświęcim, County Office of Lubliniec, City of Elbląg, County Office of Leszno, City of Koszalin.

Other products could be bought by them independently. Some facilities also ensured the availability of thermometers<sup>464</sup>.

However, at some facilities all personal hygiene products had to be bought by those in quarantine<sup>465</sup>.

## **Access to medical care in cases unrelated to suspected coronavirus infection**

Medical care in cases unrelated to suspected coronavirus infection was provided under the same system as for other people. Quarantined people contacted a general practitioner. The recommended form was a telephone consultation (remote consultation) and the doctor's recommendations were followed. A doctor could also see the patient in the quarantine facility if necessary. Quarantined persons were given a telephone number of a 24-hour medical service to be contacted if necessary, or could report the need for a medical consultation to the facility manager, quarantine supervisor, or other designated person. In emergency cases, during the night or public holidays, an ambulance could be called.

In some facilities, in cases of medical conditions unrelated to coronavirus infection, the local Sanitary Inspectorate had to be contacted to decide on further steps<sup>466</sup>. If a medical consultation outside the quarantine facility was necessary, the Sanitary Inspectorate issued a decision permitting the person to leave the quarantine facility, or called an ambulance.

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<sup>464</sup> County Office of Rypin, County Office of Proszkowiec, County Office of Staszów, County Office of Opatów, County Office of Elbląg, County Office of Nowy Targ, City of Chełm, City of Łódź, City of Nowy Sącz, City of Cybinka, City of Ślubice, City of Świnoujście, County Office of Krotoszyn, County Office of Sztum.

<sup>465</sup> County Office of Wieluń, County Office of Wieruszów, County Office of Tomaszów Mazowiecki, County Office of Opoczno, County Office of Piotrków Trybunalski, County Office of Łask, County Office of Radomsko, City of Krosno, County Office of Lubaczów, City of Suwałki, City of Lublin, County Office of Włodawa, City of Elbląg, County Office of Mragowo, County Office of Elk, County Office of Goleniów, County Office of Myślenice, County Office of Brzesko, City of Kraków, City of Kalisz, City and Municipality of Wschowa, City of Krosno Odrzańskie, Municipality of Lipniki Łużyckie, Municipality of Koronowo, Municipality of Dobiegniew, Municipality of Przytoczna, County Office of Brzesko, County Office of Kraków, City of Suwałki, County Office of Skarżysko-Kamienna, County Office of Nowe Miasto Lubawskie, County Office of Ostróda, City of Koszalin, City of Świnoujście.

<sup>466</sup> County Office of Opatów, County Office of Chojnice, County Office of Nowy Dwór Gdański, County Office of Skarżysko-Kamienna, City of Drezdenko, Municipality of Żagań, City of Żary, Municipality of Sulechów, County Office of Nakło, County Office of Golub-Dobrzyń, County Office of Grudziądz, County Office of Aleksandrów Kujawski, County Office of Elk, County Office of Końskie, County Office of Oleśnica, City of Biała Podlaska, County Office of Opole, County Office of Parczew, County Office of Łęczna, County Office of Biłgoraj, County Office of Kolno, County Office of Kutno, County Office of Krasnystaw, County Office of Puławy, County Office of Lubartów, County Office of Opole Lubelskie, County Office of Parczew, County Office of Świdnik, City of Gubin, Municipality of Trzebiel, County Office of Staszów, County Office of Włoszczowa, County Office of Bartoszyce, County Office of Iława, County Office of Szczytno, County Office of Police, County Office of Sztum.

Some quarantine facilities had designated doctors to provide medical services to the quarantined people, and telephone contact with the doctor was possible<sup>467</sup>. The doctors consulted the patients and ordered the required treatment.

Also, in many facilities people in quarantine were given a telephone number of a psychologist<sup>468</sup>.

## **Room disinfection in group quarantine facilities**

Room disinfection always took place after the end of a given person's quarantine. Disinfection was carried out by the building owner's staff, other designated staff, Red Cross employees or a specialist company. Every person newly admitted to a quarantine facility was accommodated in a clean and disinfected room. In many facilities, disinfection was carried out regularly, according to the needs (mainly in common areas - corridors, toilets and bathrooms, door handles)<sup>469</sup>.

In some facilities, cleaning and disinfection tasks were performed by the quarantined persons (this applied mainly to bedrooms and toilets)<sup>470</sup>. Cases were reported in which the facility premises were

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<sup>467</sup> County Office of Oświęcim, County Office of Gorlice, County Office of Tarnów, County Office of Brzesko, City of Tarnów, City of Nowy Sącz, County Office of Sucha Beskidzka, County Office of Kraków, County Office of Gryfino, County Office of Biała Podlaska, County Office of Olkusz, County Office of Wadowice, County Office of Wieliczka, City of Białystok.

<sup>468</sup> County Office of Staszów, County Office of Sztum, County Office of Wieliczka, City of Kraków, City of Włocławek, City of Zamość, County Office of Chełm, County Office of Zamość, County Office of Zduńska Wola, City of Piotrków Trybunalski.

<sup>469</sup> County Office of Brodnica, City of Bydgoszcz, County Office of Toruń, City of Włocławek, County Office of Biała Podlaska, City of Chełm, County Office of Ryki, City of Międzyrzecz, City of Zielona Góra, City of Łódź, County Office of Łask, City of Skierniewice, County Office of Sieradz, County Office of Wieluń, County Office of Zduńska Wola, County Office of Bochnia, County Office of Chrzanów, County Office of Gorlice, City of Kraków, County Office of Kraków, County Office of Limanowa, County Office of Myślenice, City of Nowy Sącz, County Office of Nowy Sącz, County Office of Proszowice, County Office of Olkusz, County Office of Sucha Beskidzka, City of Tarnów, County Office of Legionowo, County Office of Wyszaków, County Office of Bielsk Podlaski, County Office of Sejny, County Office of Mońki, County Office of Grajewo, County Office of Chojnice, County Office of Nowy Dwór Gdański, County Office of Puck, County Office of Tczew, County Office of Ostrowiec Świętokrzyski, Hospital for Mentally Ill and Psychiatric Patients in Rybnik, County Office of Żywiec, County Office of Kazimierzy Wielka, County Office of Końskie, County Office of Opatów, County Office of Braniewo, City of Elbląg, County Office of Nowe Miasto Lubawskie, County Office of Elk, County Office of Olecko, County Office of Olsztyn, City of Kalisz, County Office of Goleniów, City of Szczecin.

<sup>470</sup> City of Toruń, City of Biała Podlaska, County Office of Biłgoraj, County Office of Chełm, County Office of Łęczna, County Office of Łuków, the city of Zamość, County Office of Krasnystaw, County Office of Kraśnik, County Office of Radzyń Podlaski, County Office of Zamość, City of Cybinka, City of Ilowa, City of Gubin, City of Żary, County Office of Kutno, County Office of Rawa Mazowiecka, County Office of Gorlice, County Office of Nowy Targ, County Office of Wadowice, County Office of Kolno, County Office of Wysokie Mazowieckie, County Office of Staszów, County Office of Elbląg, County Office of Ilawa, County Office of Pisz, County Office of Drawsko Pomorskie, City of Świnoujście.

not sanitised or disinfected at all<sup>471</sup>: the quarantined people were considered healthy, and disinfection was carried out only when an infection had been confirmed.

Disinfectants were provided by local authorities, building managers/owners or disinfection service companies; they were sometimes given for free by various entities<sup>472</sup>. However, it should be pointed out that in some cases disinfectants had to be ensured by the quarantined persons<sup>473</sup>.

## **Procedures with regard to persons with coronavirus infection symptoms**

In most of the quarantine facilities there were no people with symptoms of coronavirus infection. If a person with the symptoms was identified, the Sanitary and Epidemiological Service was notified, or a doctor providing medical care to the quarantined person was informed in order to decide about further steps. In most cases, a swab test was made, an ambulance was called, or the person was taken to an infectious disease hospital or a medical isolation facility.

Some group quarantine facilities designated separate rooms, so-called medical isolation rooms, for persons who developed coronavirus symptoms during the quarantine<sup>474</sup>.

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<sup>471</sup> County Office of Oleśnica, Municipality of Koronowo, County Office of Świecie, Municipality of Trzebiel, County Office of Łódź East, County Office of Poddębice, County Office of Radomsko.

<sup>472</sup> County Office of Chełmno.

<sup>473</sup> County Office of Nowe Miasto Lubawskie.

<sup>474</sup> County Office of Wieluń, County Office of Limanowa, County Office of Miechów, County Office of Myślenice, County Office of Sucha Beskidzka, County Office of Elbląg.

