

ALTERNATIVE REPORT

To the list of issues (CAT/C/HRV/4-5),
Prepared by the UN Committee against Torture to be considered in connection with the
consideration of the combined fourth and fifth periodic reports of

CROATIA

Ombudswoman of the Republic of Croatia
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Contents:

Introductory remarks

With regards to Article 2

With regards to Article 11

With regards to Articles 12-13

With regards to Article 16

General information

Recommendations

Introductory remarks

Pursuant to Article 93 of the Constitution of the Republic of Croatia, the Ombudsperson is a commissioner of the Croatian Parliament for the promotion and protection of human rights and freedoms as laid down in the Constitution, acts and international legal documents providing for human rights and freedoms adopted by the Republic of Croatia. In addition to regular Ombudsperson's duties, the Ombudsperson also performs activities of the National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM) and is the National Equality Body. Moreover, in 2012 our mandate was expanded to the promotion of human rights, and in 2013, the International Coordinating Committee of National Human Rights Institutions (ICC NHRI) re-accredited the Ombudsperson's Office's status A, which is the highest level of institutional independence.

With regards to Article 2:

Question 2: Please indicate whether the State party has established or designated a national preventive mechanism in accordance with the Optional Protocol to the Convention, and, if so, please explain whether this body has the necessary resources to carry out its mandate. Please explain whether there are mechanisms in place to monitor and regularly inspect all places of custody or control, including police detention facilities, institutions that engage in

the care of children, the aged, the mentally ill or disabled, and military service institutions. Please further clarify whether any such mechanism(s) is/are independent of the State.

The Croatian Parliament adopted the Act on the National Preventive Mechanisms against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: ANPM) in 2011, which prescribes the activities of the National Preventive Mechanism performed by the Ombudsperson. Under the ANPM, two representatives of academic community and two representatives of associations registered for activities in the field of human rights protection, along with the Ombudsperson, participate in the performance of NPM activities. When necessary, the Ombudsperson may include other independent experts in NPM activities. The performance of NPM activities in the Republic of Croatia started on 12 July 2012, after the funds required were allocated in the State Budget for 2012 and after adoption of implementing regulations.

Pursuant to Article 7 of the Ombudsman's Act, the Ombudsperson performs his/her duties with independence and autonomy. Any form of influence on the Ombudsperson's work is prohibited.

The Department for Persons Deprived of Liberty was established within the Ombudsperson's Office and it is managed by the Deputy Ombudsperson. It employs five Ombudsperson's advisors. Pursuant to Article 10 of the ANPM, funds for performing NPM activities are allocated in the state budget of the Ombudsperson's Office, under a separate entry. The amount of HRK 467,400 (approx. EUR 61,000) was allocated for the performance of NPM activities in 2012, HRK 212,000 (approx. EUR 28,000) in 2013, but that amount was reduced by reallocation during the year to HRK 109,150 (approx. EUR 14,400), while the amount allocated for 2014 is HRK 111,000 (approx. EUR 14,600). These amounts refer to material costs, excluding expenses for employees.

Pursuant to Article 3 paragraph 2 of the ANPM, persons deprived of liberty are persons who have been ordered into any form of detention, imprisonment or placement in a public custodial setting which they are not permitted to leave at will. Taking account of the above, all establishments in which persons deprived of liberty are or may be placed fall within the competence of the NPM. These include a total of 23 establishments under the authority of the Ministry of Justice (penitentiaries, prisons and correctional facilities), more than 250 establishments under the authority of the Ministry of the Interior (facilities in police stations, police detention units and immigration detention centres), 32 establishments under the authority of the Ministry of Health (psychiatric hospitals for involuntary placement of persons with mental disorders, health institutions who have psychiatric activities contracted with the Croatian Health Insurance Fund and Special Hospital for Chronic Diseases of Children in Gornja Bistra), more than 560 establishments under the authority of the Ministry of Social Policy and Youth (homes for adult persons with mental disorders, family homes and other legal persons providing services of permanent accommodation for adult persons with mental disorders, homes for persons with physical or mental disabilities, family homes and other legal persons providing services of permanent accommodation for persons with physical or

mental disabilities, homes for children with behaviour disorders, homes for elderly and helpless persons, family homes and other legal persons providing services of permanent accommodation for elderly and helpless persons) and five establishments under the authority of the Ministry of Defence (temporary detention units for members of the Armed Forces of the Republic of Croatia).

With the purpose of increasing the efficiency, in 2014 amendments to the ANPM have been initiated, which would allow for more active participation of associations registered for activities in the field of human rights protection and inclusion of ombudsperson for children, ombudsperson for persons with disabilities and ombudsperson for gender equality, as well as independent experts, in NPM activities.

Question 3: With reference to the competences of the institution of the Ombudsman, inter alia, to investigate complaints and to monitor places of detention, please provide information for the reporting period on the number of complaints alleging torture or other ill-treatment received by the Ombudsman's office over the last five years and on the type of follow-up provided. Please further clarify whether the Ombudsman's office can visit places of detention without prior notification. Please indicate to what extent the Ombudsman's recommendations are binding. Please provide information on whether the Ombudsman's office is equipped with the human, technical and financial resources necessary to carry out its mandate, particularly with regard to investigating complaints and monitoring places of detention.

In the database of the Ombudsperson's Office, complaints related to torture and other cruel, inhuman or degrading treatment or punishment are not shown separately, but are registered as complaints from persons deprived of liberty.

Number of complaints made by persons deprived of liberty (from 2005 to 24 September 2014)

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
22	86	152	131	177	213	217	212	219	221	148

Accommodation conditions are the most frequent reason why persons deprived of liberty submit complaints to the Ombudsperson, followed by complaints on the quality of health care. Considering the fact that accommodation conditions and health care provision may often constitute inhuman or degrading treatment, in annual reports to the Croatian Parliament the Ombudsperson regularly warns about the necessity of harmonizing the accommodation conditions with legal and international standards and the need to equalize the quality of health care provided to persons deprived of their liberty with the quality of health care provided to persons not deprived of their liberty. It is worth noting that the European Court of Human Rights has on several occasions established a violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in cases against

the Republic of Croatia with regards to inappropriate accommodation conditions and quality of health care (e.g.: Testa v. Croatia, Pilčić v. Croatia, Longin v. Croatia).

The Ombudsperson, by taking actions on individual complaints in accordance with her legal competences referred to in Article 15 of the Ombudsman's Act issues recommendations, opinions, proposals and warnings to state authorities, bodies of local or regional self-government units and legal person with public authorities. No criminal or misdemeanour provisions for failing to comply with the Ombudsperson's requests are prescribed under the Ombudsman's Act; however, in the case of failure to take measures, the Ombudsperson may inform the Government of the Republic of Croatia or, when it concerns a higher level of violating or jeopardizing citizens' rights, she may inform the Croatian Parliament and the public.

Pursuant to Article 28 of the Ombudsman's Act, the Ombudsperson may at any time and without prior notification inspect establishments where the persons deprived of liberty are placed, establishments where persons whose freedom of movement has been restricted and establishments where specific groups whose rights and freedoms the Ombudsperson protects are placed. Likewise, pursuant to Article 5 of the ANPM, persons participating in the performance of NPM activities are entitled to carry out unannounced visits to establishments or institutions and examine the facilities where persons deprived of their liberty are placed.

Visits pursuant to Article 3 of the ANPM (12 July 2012 - 24 September 2014)

2012 (from 12 July)	2013	2014 (until 24 Sep)
7	12	10

Inspections pursuant to Article 28 of the Ombudsman's Act (2004 - 24 September 2014)

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
2	24	8	5	16	30	11	18	18	2	4

In addition to the listed visits and inspections, Ombudsperson also visits establishments where persons deprived of liberty are placed as part of investigative procedures based on individual complaints. A relatively small number of visits and inspections is a result of insufficient capacities of the Office. More precisely, although the Department for Persons Deprived of Liberty and NPM, along with the Deputy Ombudsperson, currently employs five Ombudsperson's advisors, until September 2013 these activities were carried out by only two Ombudsperson's advisors. As noted above, Croatia has more than 870 establishments and institutions where persons deprived of liberty or with restricted freedom of movement are placed, which, due to the existing human and material resources, NPM is unable to visit regularly, which certainly has effects on the level of efficiency in preventing torture and other cruel, inhuman or degrading treatment or punishment. Department for NPM activities also performs other activities arising from the regular Ombudsperson's duties and takes actions on complaints, which significantly affects both the number of visits and the performance of other

tasks under the Department's competence. For example, because of insufficient capacities and scope of activities, during 2013 we were unable to regularly submit reports on NPM visits, which is a serious shortcoming. The situation has somewhat improved in 2014, but the optimal work conditions are yet to be achieved.

Since regular visits to establishments where persons deprived of liberty are placed is also the goal of the OPCAT, it is necessary to increase the number of regular and follow-up visits which in turn requires the increase of material and human resources for NPM activities.

Question 4: Please provide information on steps taken by the State party to ensure that all detained persons, including foreign nationals, are afforded, in practice, fundamental legal safeguards from the very outset of detention, including the right of access to a lawyer and an independent doctor, if possible of their own choice, as well as the right to inform a relative, to be informed of their rights and to be promptly presented to a judge. How does the State party ensure that these rights are implemented in practice? Please also indicate whether all persons detained are registered from the very outset of detention. In particular, please comment on the following:

In view of the fact that the Criminal Procedure Act has to ensure not only efficient prosecution and sanctioning of perpetrators, but also has to set clear limits of the State's intrusion of fundamental human rights, the Ombudsperson paid special attention to the process of its amendments and submitted to the Ministry of Justice an opinion regarding the need to amend Article 108a point 8 of the Criminal Procedure Act which prescribes the right of the arrested person to an emergency medical assistance. Taking into account the position of the Committee against Torture in the General Comment No. 2 Implementation of Article 2 by States Parties, 2008.; SPT Report (CAT/OP/SWE/1, p.64, 2008.); CPT Standards (§ 34. CPT/Inf/E (2002), Rev 2011) and point 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, (A/RES/43/173), we have pointed out to the Ministry of Justice the fact that restricting the right of arrested persons only to emergency medical assistance is contrary to the adopted international standards. However, arrested persons still have the right only to emergency medical assistance.

During visits to police detention units, specific shortcomings in keeping official records in cases when arrested and detained persons are foreigners, have been established. For example, a personal file of a randomly selected arrested person who is a foreign citizen and does not speak Croatian was inspected, and established that the filled-out forms are missing information in what way and in what language was he informed of his rights since it is not listed that an interpreter was hired nor that the police officer informed him of his rights in a language he understands, which is contrary to the regulations in force. The listed forms are in Croatian language, signed by the arrested person, without any record that the forms were translated in a language he understands.

(a) The reported practice of summoning persons to a police station and engaging them in so-called "informative talks" for several hours, before formally declaring them criminal

suspects (on the basis of an arrest warrant which had been previously issued against them) and before allowing them to contact a lawyer;

As part of investigating complaints concerning the conduct of police officers, we have received citizens' complaints that they were invited to the police station for an interview, but did not know in what capacity were they invited to provide information on a criminal offence, and later they were informed that they are suspects for committing a criminal offence and were arrested. After an arrest, the time spent in an interview, which sometimes lasts several hours, is not calculated because they were not formally arrested. It should be noted that, according to the Act on Police Activities and Authorities, a person who is likely to have information useful for performing police activities may be invited to an informative interview, but has to be informed of the reason for invitation.

(b) Allegations that the correspondence of some prisoners with their lawyers is being read by prison officers;

The Ombudsperson received only a few complaints regarding the opening of correspondence with a lawyer, but the investigative procedures that were carried out revealed no illegal conduct of officers in prisons and penitentiaries. For example, during the investigative procedure with regard to a prisoner's complaint that his letter was opened, we established that the envelope contained only the address and name of the penal institution, but not the name of the prisoner, because of which the letter was opened. After it was established from the contents of the letter that it concerns correspondence with his lawyer, officers informed the prisoner about it and recorded a formal note. Based on the available information, it is our conclusion that Article 124 paragraph 4 of the Execution of Prison Sentences Act, which prescribes the right of prisoners to correspondence with their attorneys without restriction or supervision of its contents, is generally complied with.

Somewhat more frequent are written and oral complaints that the contents of prisoner's correspondence with the Ombudsperson are monitored. Although we have found no evidence for these complaints, based on the collected information we believe that cases of opening correspondence with the Ombudsperson exist. Therefore, during visits to establishments where persons deprived of liberty are placed we regularly provide warnings about the need to comply with Article 21 paragraph 3 of the Ombudsman's Act and Article 124 paragraph 4 of the Execution of Prison Sentences Act, under which persons deprived of liberty have the right to correspondence with the Ombudsperson without supervision.

(c) Measures to ensure that medical examinations are conducted out of the hearing and sight of police officers, that the confidentiality of medical data is strictly respected and that medical reports contain conclusions on the degree of consistency between allegations of ill-treatment and the medical findings.

If health care in police stations and police detention units is required, as a general rule, the emergency ambulance service is called, but medical examinations are performed in the

presence of police officers. For instance, during the visit to a police detention unit in the Split-Dalmatia County Police Administration, it was established that medical examinations are performed in the presence of police officers and a warning was immediately issued concerning the unacceptability of such treatment. However, doctors have a legal obligation to report if they doubt that a physical injury was caused by violence.

Question 6: Please provide information on steps taken by the State party to reduce the length of the pre-trial detention period and to ensure that it is only used as an exceptional measure. Please also indicate whether, and if so which, alternatives to pre-trial detention are being implemented, including non-custodial measures. Please provide information on the number of remand prisoners for the reporting period and on the average length of detention of prisoners awaiting sentencing. Also please specify whether remand prisoners are detained separately from convicted prisoners.

Decisions on imposing, extending or terminating detention on remand are made by the judiciary and the Ombudsperson has no authority to take actions on complaints concerning the duration or reasons for imposing detention on remand.

In addition to a declining number of prisoners in the prison system in the last three years, according to the data listed in the Ministry of Justice's reports on the situation and functioning of penitentiaries, prisons and correctional facilities, the number of prisoners on remand has also declined between 2009 and 2012, but it has risen again in 2013.

Number of prisoners on remand on 31 December 2010 to 2013

	2010	2011	2012	2013
Number of prisoners on remand	1 191	895	767	943

By monitoring the case law, it may be concluded that detention on remand is in most cases imposed not as a last measure, but as a normal practice. Similarly, precautionary measures are still insufficiently used.

Despite the valid provisions of the Criminal Procedure Act according to which detention on remand may be executed at home under particular circumstances, this alternative is never used by the courts, probably because of shortcomings in the regulations on carrying out supervision over the execution of detention at home. Implementing the provisions on executing detention at home would substantially contribute to the humanization and respect of human rights of individual groups of especially vulnerable persons deprived of liberty, such as pregnant women, persons with disabilities and elderly persons.

In the prison system, remand prisoners are generally kept separate from persons who are finally convicted and are serving their prison sentence. Only in exceptionally rare cases

during inspections or visits it was established that they are placed together with persons serving their prison sentence.

With regards to Article 11

Question 18: Please provide updated information on measures taken to improve conditions in all detention facilities, including places of detention for police suspects, remand prisoners, asylum-seekers, irregular migrants, the prison hospital, and psychiatric institutions, to bring them in line with international minimum standards. In particular, please provide information on efforts to alleviate the problem of overcrowding, to ensure adequate sanitation, physical and mental health care, and to improve the regime of activities, including the possibility of working. Please provide information on any efforts undertaken to improve contacts and increase interaction between prison guards and prisoners and to raise the number and proportion of female staff in all places of detention. In addition, please provide information on progress towards ending the practice of staff openly carrying batons.

Unfortunately, a large number of facilities intended for accommodating persons deprived of liberty is yet to be harmonized with international standards. For example, we inspected 10 police stations in 2012 and established that the accommodation conditions do not comply with international standards. Although the Ministry of the Interior has informed us that new facilities are being prepared in some of the inspected police stations, while some cannot be adapted and measures are taken to find new facilities (e.g. at PS Poreč), in our follow-up visits we established there were no significant improvements and facilities, even those that cannot be adapted, were still used. In the Annual Report for 2013 we have again warned that the use of facilities which do not comply with the minimum legal and international standards should be discontinued because staying in them may constitute inhuman or degrading treatment.

In the Prison Hospital, which is a two-floor building, despite the expiry of the period prescribed in the Constitutional Court decision (U-III/64744/2009 dated 3 November 2010) by which the Government was ordered to, within a reasonable time not longer than three years, ensure undisturbed mobility of prisoners with disabilities, the elevator has yet to be installed. The failure to comply with the Constitutional Court decision aggravates and prevents immobile or disabled persons deprived of liberty from staying in open air. In particular cases, judicial police officers have carried persons to the walking yard located on the building's ground floor.

According to the data from the Ministry of Justice, a decline in the prison system overcrowding was recorded in the last several years, which is primarily a result of amendments to criminal legislation.

	2010	2011	2012	2013
Number of persons	5 165	5 084	4 741	4 352
Capacities	3 351	3 771	3 771	3 771

Despite that, the situation is still unsatisfactory, particularly in light of the fact that the average occupancy rate in high security conditions *in prisons* is around 150%, and in some prisons (according to the data for 31 December 2013) is around 200% (e.g. Osijek County Prison). The standards of accommodation are also illustrated by the fact that in Lepoglava State Prison there are over 200 final decisions from executing judges on the violation of rights in terms of the accommodation conditions. The fact that the prison system's accommodation conditions are a systematic problem is also confirmed by the Office of the Representative of the Republic of Croatia before the European Court of Human Rights' Report for 2012, where it is stated that Croatian cases related to execution of prison sentences are characterised by a high share of repetitive cases and that in 2012, among 46 Croatian cases which were marked as "leading cases", there is also the so called Cenbauer group i.e. the group of judgments related to conditions in the prison system. According to the data received, the Central Office of the Prison System Directorate of the Ministry of Justice has in 2013 received a total of 412 applications for alternative dispute resolution with regard to compensation of damages, whereas the accommodation conditions and overcrowding are the most frequent reasons for seeking compensation.

The Ombudsperson regularly points out the problem of overcrowding and gives recommendations for taking measures aimed at mitigating the adverse effects of overcrowding, especially those that require no further financial investments, e.g. unlocking, during a particular part of the day, the doors of rooms where persons deprived of liberty are placed.

The prison system overcrowding has a particularly negative effect on the accommodation conditions of persons detained on remand, because their opportunities for work or other activities are significantly reduced, so they as a rule spend 22 hours a day in their rooms. For example, up to seven prisoners are placed in 16 m² dormitories in Zagreb County Prison. The table on which the prisoners eat, because meals are distributed in dormitories, is located immediately next to the toilet, which is partially separated from the rest of the room by a barrier not reaching the ceiling. Beds are very often, contrary to valid regulations, placed next to each other, and because of the insufficient number of chairs, remand prisoners eat on their beds, where they usually spend the largest part of their day. Moreover, there is not enough cabinets for personal belongings, so remand prisoners often have to keep their belongings in bags on the floor.

The largest number of complaints received from remand prisoners relates to accommodation conditions, lack of daily activities and provision of health care. A very small number of remand prisoners are allowed to work.

The overcrowding of rooms and other prison conditions, such as privacy in using the toilet, option to participate in leisure activities, to work or to have family visits may undoubtedly constitute degrading treatment. The Constitutional Court issued a decision of (U-III/4182/2008 dated 17 March 2009), by which the Government was ordered to, within a reasonable time not longer than five years, adjust the capacities of Zagreb County Prison to the needs for accommodation of detained persons in conformity with the standards of the Council of Europe and case law of the European Court of Human Rights, which shall not be demeaning to detained persons or prisoners. However, the works have not even begun.

The Criminal Code, which entered into force in 1 January 2013, prescribes that a prison sentence up to one year may be executed at home in accordance with the provisions of a special act. Considering that the Execution of Prison Sentences Act contains no provisions on executing prison sentences at home, this possibility is not implemented in practice. According to the available information, the conditions for implementing this institute have not been ensured in 2014.

The prison system has yet to fully adopt the recommendation related to ending the practice of open carrying of batons. For instance, during the visit to Turopolje Correctional Institute it was established that judicial police officers, contrary to Article 51 of the Act on the Enforcement of Sanctions Imposed on Juveniles in Criminal or Misdemeanour Proceedings, are openly carrying batons. During the visit we were told that uniforms have special pockets for batons, but that uniforms tear if batons are carried in them. We have indicated the unacceptability of this practice in our Annual Report for 2013.

Psychiatric institutions in the Republic of Croatia have no maximum security wards which should be, for the purpose of providing appropriate treatment, established in psychiatric institutions which are designated for accommodation and medical treatment of persons with mental disorders. Furthermore, as no subordinate regulation prescribes the conditions regarding premises, staffing and medical and technical equipment for providing health services which have to be complied with by health institutions designated for accommodation and medical treatment of persons with mental disorders (the existing Ordinance on the minimum conditions regarding premises, staffing and medical and technical equipment needed to provide health services very briefly lists the required additional facilities and medical and technical equipment for psychiatric wards), these conditions should be prescribed. Inappropriate facilities and technical conditions for implementing involuntary hospitalisation, affects the frequency of using means of physical restraint. Therefore, patients who require medical treatment in a high security ward, should not be treated in psychiatric institutions that do not have one.

A certain number of persons with mental disorders who no longer require hospital treatment, are kept in psychiatric institutions because of the lack of the community support system. Due to their psycho-physical state and conditions in which they live outside the institution, they are incapable to take care of themselves and have no relatives or other persons who are legally

obliged to take care of them. Their accommodation should be resolved in cooperation between health care and social welfare systems.

Question 19: Please clarify whether deprivation of liberty of persons under the age of 18 is used only as a measure of last resort, whether the State party has established special detention centres for persons below the age of 18, and please provide the number of detained persons below the age of 18, disaggregated by age, sex, and place of detention. In addition, please clarify whether juveniles and unrelated adults are accommodated separately at the Ježevo Detention Centre for Illegal Immigrants, as recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Although Article 66 of the Act on Youth Courts prescribes that minors against whom detention on remand was imposed shall be placed in an enclosed institutional facility, this type of institution has not been established, so minors detained on remand are placed in prisons. In 2013, Minister of Justice issued the Decision on establishing special detention units for minors detained on remand, under which a special detention unit for minors is established in County Prisons in Bjelovar, Dubrovnik, Gospić, Karlovac, Osijek, Požega, Pula, Rijeka, Sisak, Split, Varaždin, Zadar, Zagreb and both State Prison and County Prison in Šibenik, in which minors will be placed during their detention on remand, until the establishment of enclosed institutional facilities. Although this decision represents an improvement in the position of juvenile remand prisoners, the fact is that the enclosed institutional facilities which would have wards for diagnostics, education and work in small groups, were not established, surely affects the level of respect of the rights of juvenile remand prisoners as an especially vulnerable group.

According to the data from the Ministry of Justice's reports on the situation and functioning of penitentiaries, prisons and correctional facilities, in 2013 there were 57 minors detained on remand. The number of days spent by minors in detention on remand ranges between 1 day to 150 days.

There are only two Correctional Institutes, one for boys in Turopolje and one for girls in Požega, both located in isolated places with poor transport connections. Such a situation is unsuitable for the rehabilitation of minors because visits from all parts of Croatia are aggravated (considering that this mostly involves families with a low socioeconomic status, so it often happens that a minor never receives visits), as well as their resocialisation.

Question 20: Please provide information on efforts to end practices contrary to the dignity of detained persons, including the placement of non-partitioned toilets in shared cells, sometimes in view of video surveillance cameras, the escorting of female prisoners to the showers by male guards, the use of enclosed restraint beds in psychiatric institutions, and practices in kindergartens of locking children in toilets for punishment. Please provide information on the application of and restrictions on (including relevant legislation, rules and instructions) the use, length and conditions of solitary confinement depending on the

type of institution, as well as efforts to ensure that the application of solitary confinement is always recorded, is not applied arbitrarily and does not amount to cruel or degrading treatment.

In facilities intended for accommodating persons deprived of liberty under the authority of the Ministry of the Interior, the toilets are not under video-surveillance. However, during inspection of police stations in 2011 we have established that in several police stations in the Šibenik-Knin County Police Administration the toilet was not shielded from surveillance, of which we immediately informed the Police Directorate. The observed shortcoming was urgently removed by installing a partition.

Solitary confinement, pursuant to the Execution of Prison Sentences Act, may be imposed as a disciplinary measure after the disciplinary proceedings. The prisoner is entitled to a lawyer's assistance and, in the period of 3 days from receipt of the decision on a pronounced disciplinary measure, may submit an appeal to the executing judge. The executing judge has to decide on the appeal within the period of 48 hours. Pursuant to Article 147 of the Execution of Prison Sentences Act, the disciplinary measure of solitary confinement may not exceed 21 days. If one prisoner is subject to several disciplinary measures of solitary confinement pronounced in several disciplinary proceedings, the interval between executing two consecutive measures may not be less than eight days. The room in which the disciplinary measure of solitary confinement is executed must have at least 4 m² and 10 m³ of space, it must be airy, illuminated by day and artificial light, heated in line with climate conditions, furnished with a bed and linen, a table and a chair. The prisoner has to be provided with unlimited access to drinking water and sanitary facilities. The supervision of a doctor is mandatory prior to executing the measure and once every 24 hours during its course.

Conditions in rooms used for solitary confinement generally comply with international standards, but there are cases where it was recommended that the rooms used for solitary confinement should be harmonized with international standards and that their use should be suspended until then. For example, in Požega State Prison the surface of the room for executing the disciplinary measure of solitary confinement is 3,92 m² and its volume is 13,80 m³. Although the room's surface is slightly less than the prescribed standard, while its volume complies with the prescribed standards, the room is unsuitable for executing this disciplinary measure. More precisely, the room's width, which is only 1,32 m after the bed and table are lowered, prevents movement in the room, so as a result we issued a recommendation to the Central Office of the Prison System Directorate to stop using that room i.e. to turn the existing four rooms for solitary confinement into two that will meet the standards.

During our visits to prisons and penitentiaries special attention is given to imposing, recording and implementing the disciplinary measure of solitary confinement. Generally, execution is implemented in accordance with the valid regulations, but treatment contrary to the law was established in rare cases. For example, during the visit to Lepoglava State Prison in 2013 several prisoners complained that during the execution of the disciplinary measure of solitary

confinement they were not supervised by a doctor. Acting on a complaint made by the prisoner M.J., we inspected the Register of executing the disciplinary measure of solitary confinement and established that the prisoner was subjected to the measure from 2 - 5 August 2012. Contrary to Article 147 paragraph 6 of the Execution of Prison Sentences Act, the records contained no findings or observations from the doctor. Moreover, notes in the records contained no information about the doctor's supervision nor was such information listed in the prisoner's medical documentation.

Disciplinary proceedings against remand prisoners will be ruled by an investigative judge, individual judge or president of the trial chamber, but the Criminal Procedure Act has not prescribed the possibility of imposing the disciplinary measure of solitary confinement on remand prisoners. Remand prisoners may be subject to specific measures of maintaining order and security, among which are separation from other prisoners (up to 30 days) and placement in a specially secured room devoid of dangerous objects (up to 48 hours). These measures are ordered by the head of the prison or a person authorised by him/her. The head of the prison informs the court which imposed detention on remand on implementing the measure.

During visits to psychiatric institutions, special attention is given to the use of means of restraint. Means of physical restraint should be used only when all other efforts have been taken and when less restrictive measures have failed. Specific irregularities in the use of means of physical restraint have been established, such as restraining a patient in front of other patients and failure to keep the prescribed records.

The psychiatric institutions have still not implemented the CPT recommendation (Reports on the visit to Croatia in 2007 and 2012) on what should guidelines for the use of means of physical restraint contain.

No enclosed restraint beds (cages/net beds) were found during inspections and visits to psychiatric and other institutions for accommodation of persons with mental disorders.

Question 21: Please provide information on the frequency with which placements in institutions for the care of the mentally ill or disabled are reviewed. Please also explain whether persons deprived of their legal capacity may effectively challenge the legality of their placements in court. In addition, how does the State party ensure that the judicial review of placement of young offenders in a re-education institution is always conducted by a judge and in the presence of a legal representative?

Persons deprived of their legal capacity often complain to the Ombudsperson about the procedure of placement in a psychiatric institution because they see it as involuntary hospitalisation without their consent and without judicial control.

The Act on the Protection of Persons with Mental Disorders prescribes two types of "voluntary" placement (placement where the person with a mental disorder provided a valid informed consent and "placement without consent" i.e. placement of the person with a mental

disorder who is unable to give consent, so that consent is given by his/her legal representative i.e. guardian or social welfare centre). "Placement without consent" is not carried out according to the procedure for involuntary confinement or involuntary placement, except in cases when the guardian refused to give consent for placement in a psychiatric institution.

The Act on the Protection of Persons with Mental Disorders is too widely interpreted with regard to what may jeopardize human rights of persons with mental disorders. For example, we have recorded cases in which psychiatric hospitals requested approval from social welfare centres for persons not deprived of their legal capacity or persons for whom the proceedings on the removal of legal capacity have not been initiated. Approvals were also requested in cases of patients with dementia (proceedings on the removal of legal capacity not initiated) and there were also individual cases indicating that the approval from the social welfare centre was requested in order to avoid using the institute of involuntary placement of the person with a mental disorder. After we pointed out this issue, some hospitals ceased to request approval for placement of persons not deprived of their legal capacity.

The voluntary nature of the placement is also questionable in cases when the person with a mental disorder did not give consent, and the procedure of *placement without consent* is not elaborated in detail

The new Act on the Protection of Persons with Mental Disorders, which will enter into force on 1 January 2015, contains stronger control mechanisms which should significantly reduce any potential abuse of the institute of involuntary placement. For example, placement of persons with mental disorders who are unable to give their consent will be put under judicial control, as well as the possibility of independent supervision over the decision of the legal guardian. Furthermore, pursuant to the new Act, the person who is deprived or partially deprived of legal capacity on whose involuntary placement the court is deciding shall be, for the purpose of realising his/her rights and interests, allowed to perform individual actions in the proceedings, in line with his/her capacity to understand the meaning of taken actions and their legal consequences. That the judge shall, without delay and at the latest within 72 hours from receipt of the notification on involuntary confinement by the competent court, visit the detained person in the psychiatric institution, inform him/her about the reason and purpose of judicial proceedings, and hear the person. The judge shall also inspect medical documentation and hear the head of the ward. The head of the ward shall ensure that the involuntarily committed person, if that is possible in view of his/her health status, receives no medical treatment that would prevent the judge's hearing. The lawyer of the involuntarily committed person must be present during the visit and hearing of the involuntarily committed person and the head of the ward.

Because of the importance of these new standards for protecting the rights of all involuntarily committed or detained persons with mental disorders, the systematic implementation of the provisions of the Act will be of extreme importance. Therefore, it is urgently required to establish efficient functioning of the Commission for the Protection of Persons with Mental Disorders.

With regards to Articles 12 and 13

Question 26: *Please provide information on measures undertaken, following the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, to ensure that all persons in detention have the right to complain to the competent authorities without fear of ill-treatment or intimidation. In addition, please provide information on action undertaken by the State party upon the recommendation by the Ombudsman to set out formally and ensure the transparency of the procedure for examining complaints to the Department for Internal Control of the Ministry of the Interior.*

Any person who believes that the conduct of a police officer violated his/her rights or the law may, under the Police Act, submit a complaint and within 30 days receive a response from the head of the competent police organisational unit, on the established facts and the measures taken. If the complainant is not satisfied with the response or the performed procedure, the case file is, without delay, via the Section for Internal Control of the Ministry of the Interior, submitted for further procedure and ruling to the Complaints Committee of the Ministry of the Interior.

In 2012, the Committee received 221 complaints from citizens and managed to take action in 50 cases, as it consists of only 3 members who are volunteers. The Committee informed the Croatian Parliament and the Ministry of the Interior that it's further functioning within the existing legal framework will certainly lead to backlog of cases, which the Committee under present circumstances will not be able to solve during a longer period.

In line with our recommendations, the procedure of investigating complaints submitted to police organisational units as well as the Section for Internal Control of the Ministry of the Interior is prescribed in an implementing regulation. The police officer who carried out verification of the statements made in the complaint must prepare a final report indicating the measures taken, established facts and opinion on the justification of each statement. Subsequently, evaluation on the justification of the complaint is made, followed by sending a response to the complainant.

With regards to Article 16

Question 33: *In light of allegations that there is a lack of accountability with regard to cases of violence against ethnic minorities, please provide updated information on measures taken to adequately prevent, combat and punish ill-treatment, including violent acts, and discrimination against ethnic and national minorities, and the lesbian, gay, bisexual and transgender (LGBT) community. Please provide statistical data on the number of complaints, investigations, prosecutions, convictions and sanctions, as well as on compensation provided to the victims of these acts, disaggregated by the age, sex and*

ethnicity of the victim. Please also provide data and information on minority returns, in particular Serb internally displaced persons (IDPs) and refugees, and on efforts to facilitate and encourage return, including at the level of local government. In addition, please comment on progress towards the effective prohibition of racist organizations in the State party.

Various preventive and educational activities were carried out, directed also at combating discrimination against ethnic and national minorities, of which some were carried out by state authorities, some by non-governmental organisations, some by the Ombudsperson as the National Equality Body, and some in cooperation. We are unaware if any of the preventive and educational activities were particularly focused on persons deprived of liberty or persons working with them, but the campaigns were mostly directed at the wider public and educational activities to widely defined groups of shareholders. Three wide public campaigns and three research studies on attitudes and awareness on discrimination and discriminatory manifestations were carried out; additionally, projects in which we participated also included educational activities for target groups (civil servants, judges and state attorneys, media representatives, representatives of civil society organisations, social partners). However, a lack of systematic education is still present.

Since the entry into force of the Anti-Discrimination Act on 1 January 2009, judicial bodies must keep records on court cases related to discrimination and deliver them to the Ministry of Justice, which forwards them to the Ombudsperson. We are receiving statistical data on court cases related to discrimination since 2010. However, as the forms did not contain appropriate data, it was not possible to perform their comprehensive analysis, because of which a new data collection methodology was developed and launched at the beginning of 2014.

According to the available information, there were 14 criminal proceedings and two final decisions related to discrimination in 2010. There were 17 proceedings and six decisions in 2011, 16 proceedings and four decisions in 2012 and 17 proceedings and one decision in 2013. In 2013, most criminal proceedings were for criminal acts related to discrimination on the grounds of race/skin colour and ethnic origin - five proceedings, followed by two on the grounds of gender and national origin and one each for sexual orientation, social position and marital and family status.

Refugee return to Croatia, most of whom are Serbs, has been quite reduced in the recent years, as can be seen from the UNHCR data , so in 2013 only 500 people returned in Croatia, while in 1998 there were 10,048 returns. The reasons for this are the passage of time since the war, including returnees' age and/or family life factors, but also difficulties that former tenancy rights holders, mostly Serbs who left Croatia during the war, have in obtaining their rights to housing care, as well as difficulties in finding employment which then inevitably leads to difficulties linked to local (re)integration.

We have no available data on the number of court decisions concerning criminal acts of public incitement to hatred and violence which, inter alia, prescribes the sanctioning of persons who organise, lead or participate in racist organisations.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

The process of accession of Croatia to the European Union had positive effects on raising the standards of human rights and a relatively good legal and institutional framework was established in the field of human rights as a whole and in the field of prevention of torture.

However, the deep and lasting economic crisis has a negative impact on both the level of respect of human rights and the taking of measures and activities aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment. Numerous recommendations of the Ombudsperson as well as the Constitutional Court decisions aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment, which require financial expenses, are not implemented.

Moreover, the fact that the expansion of the Ombudsperson's mandate was not followed by sufficient strengthening of the Ombudsperson's Office has a particularly negative effect on the Office's scope of activities, resulting in, for instance, a reduced number of preventive visits in the performance of NPM activities.

The National Programme for the Protection and Promotion of Human Rights for the period 2013 – 2016 prescribes a series of activities for improving the position of persons deprived of liberty and persons whose freedom of movement has been restricted. However, in light of the difficult economic situation, it is questionable whether the objectives listed in the Plan will be implemented. For example, although one of the objectives of the National Plan is to strengthen the prison system's capacity by hiring more employees, the Government of the Republic of Croatia, passed the Decision prohibiting any new employment of civil servants and employees in state administration bodies, professional services and offices of the Government of the Republic of Croatia.

An encouraging fact is that the European Court of Human Rights has in no case against the Republic of Croatia established the most severe form of violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – torture. However, the fact that the majority of established cases of inhuman or degrading treatment are a result of insufficient material conditions, whose harmonization with international standards requires significant financial investments, surely does not give hope for optimism in view of the current economic situation.

Recommendations

1. to harmonize the conditions in all facilities where persons deprived of liberty or persons with restricted freedom of movement are placed with international standards and to take measures from the Recommendation R(99)22 of the Committee of Ministers of the Council of Europe on prison overcrowding;
2. to urgently establish enclosed institutional facilities for accommodating minors detained on remand;
3. to ensure undisturbed movement of prisoners with disabilities in the Prison Hospital and to harmonize the accommodation conditions in Zagreb County Prison with international standards in line with obligations from the Constitutional Court decisions of 17 March 2009 and 3 November 2010 in the shortest possible period;
4. to urgently establish maximum security wards in psychiatric institutions designated for accommodation and medical treatment of persons with mental disorders;
5. in all psychiatric institutions, to use means of physical restraint of persons with mental disorders in accordance with the CPT recommendations and other international standards;
6. to prescribe the conditions regarding premises, staffing and medical and technical equipment which must be complied with by all health institutions for hospital treatment in the field of psychiatry which carry out involuntary confinement and involuntary placement of persons with mental disorders;
7. to remove shortcomings in the Criminal Procedure Act in the part related to the execution of detention on remand and to adopt the new Execution of Prison Sentences Act;
8. to ensure sufficient funds in the state budget for optimal functioning and fulfilment of legal powers of the Ombudsperson and for performing activities of the National Preventive Mechanism.