



REPUBLIC OF CROATIA  
**Ombudswoman**

# **REPORT ON THE PERFORMANCE OF THE ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM FOR 2020**

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## TABLE OF CONTENTS

INTRODUCTION	2
1. PERSONS DEPRIVED OF THEIR LIBERTY AND THE FUNCTIONING OF THE NATIONAL PREVENTIVE MECHANISM	4
1.1. THE PRISON SYSTEM	4
1.1.1. Performing the functions of the NPM in the prison system	6
1.1.2. Assessment of the situation in the prison system	11
1.2. THE POLICE SYSTEM	13
1.2.1. Protection of citizens' rights, including persons deprived of their liberty, in police treatment	13
1.2.2. Visits to police stations and police detention units	17
1.3. PERSONS WITH MENTAL DISORDERS WITH RESTRICTED FREEDOM OF MOVEMENT	21
1.4. APPLICANTS FOR INTERNATIONAL PROTECTION AND IRREGULAR MIGRANTS	24
1.5. INTERNATIONAL COOPERATION AMONG NPMs	31
2. RECOMMENDATIONS:	32
CONCLUSION	34

## INTRODUCTION

The report on the functioning of the National Preventive Mechanism for the prevention of torture and other cruel, inhumane or degrading treatment or punishment (NPM) for 2020 contains an evaluation of the state of human rights of persons deprived of their liberty, as well as an overview of the activities undertaken with the aim of preventing torture and other cruel, inhumane or degrading treatment or punishment.

Following our established reporting practice, the report in front of you is based on the data collected during unannounced visits, our work based on citizen's complaints, and the cases opened on our own initiative by the institution of the Ombudswoman as the designated body performing the tasks of the NPM. The report also contains 20 recommendations to authorities responsible for eliminating systemic problems.

Following the trend from the previous years, during 2020, treatment that might represent torture or inhumane treatment was not found although such that may be considered degrading was. For this reason, well-designed and effective activities aiming to further combat such behaviour certainly need to be continued.

The events that marked this year the most, such as the Covid-19 epidemic and the catastrophic earthquakes that struck Central Croatia in March and December, also strongly affected the rights of persons deprived of their liberty, additionally highlighting the existing problems addressed in our previous reports. However, these events also affected the functioning of the NPM. After the Covid-19 epidemic was declared, until July 2020, the NPM temporarily discontinued its visits, gathering data by alternative methods, which will be discussed in more detail later in this Report. Later on, NPM visits were conducted in line with the guidelines issued by the Croatian Institute of Public Health (CIPH), drafted in cooperation with the Office of the Ombudswoman so as to take into account the specificities that performing the tasks the NPM mandate entails, while applying the existing epidemiological measures.

The earthquakes, especially the December one, that struck the Sisak-Moslavina County and the wider region, significantly affected the ability of persons deprived of their liberty to exercise their rights. This was primarily due to the damage it caused to certain penal institutions, thus further reducing the already inadequate capacities of high security units.

Other problems that we observed during the visits and that were cited in the citizens' complaints are largely similar to those observed over the past years, concerning, for instance, inadequate healthcare in the prison system, disproportionate use of police powers, inadequate accommodation conditions in the police system, as well as patients with mental difficulties not being informed about their rights.

Likewise, in this Report we continue to highlight the need for an independent investigation into the allegations of violence committed against irregular migrants and the MI's failing to provide the Ombudswoman with direct access to the relevant data.

This year, the Croatian NPM chaired the South East Europe NPM Network (SEE NPM Network), organising two meetings where, in addition to representatives of the 13 member-NPMs and representatives of affiliated institutions from additional six countries, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) also participated. Likewise, within the European Network of National Human Rights Institutions (ENNHRI), the Croatian NPM chaired the Asylum and Migration Working Group, within which work was continued on the project to promote and protect migrants' rights.

Aside from persons deprived of their liberty and employees of the bodies and institutions that fall under the NPM's purview, this report is also intended for the professional, as well as the wider public, including representatives of the legislative, executive and judicial branches of government, but also for civil society organisations (CSO), the academic community, the media and many others. The data, information and recommendations contained therein are intended above all to improve the existing situation, to help to resolve the problems described, as well as any other problems, with the aim of achieving the necessary changes, and thus enhancing the respect for human rights and freedoms of individuals, as well as the advancement of society as a whole.

# 1. PERSONS DEPRIVED OF THEIR LIBERTY AND THE FUNCTIONING OF THE NATIONAL PREVENTIVE MECHANISM

During 2020, the epidemiological measures, such as the ban to spend time outside, the suspension of visits, officers working in teams, and others, were implemented in the bodies and the institutions accommodating the persons deprived of their liberty, significantly affecting their rights and treatment. In addition, they have also made it more difficult to carry out the tasks defined in the Act on the National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ANPM), as, guided by the "do no harm principle, we had to temporarily discontinue our visits". Instead, alternative data-gathering methods were employed, primarily written submissions and telephone contact, while in two penal institutions anonymous surveys of prisoners were conducted.

As the epidemiological situation improved, in May we requested that the Croatian Institute of Public Health provide us with written guidelines on the protective measures that we need to apply in order to be able to resume our visits. The guidelines we received recommended using the same kinds of protective equipment as that prescribed for the employees in the bodies and institutions being visited, while adhering to the standard protective measures. Having received the guidelines, and adhering to all the epidemiological measures, we conducted 26 NPM visits, of which 20 were to police stations (PS) and three to police detention units (PDU), one to a Juvenile Correctional Facility, two to closed psychiatric units in two different hospitals and 17 on-site inspections, 14 of which in the prison system, and 3 related to international protection seekers and irregular migrants.

4

## 1.1. THE PRISON SYSTEM

During 2020, we worked on a total of 183 cases. Of the 150 that were initiated during 2020, 26 concerned restrictions of the prisoners' rights resulting from the epidemic measures, while the others pertained to the problems which we have already highlighted in our earlier reports, such as inadequate healthcare provision, staff conduct, inadequate accommodation, ineffectiveness of legal remedies, and violence amongst prisoners.

In March and April, inmates' and their families' complaints concerned the way the epidemiological measures were implemented in penal institutions. They were concerned about the difficulties in maintaining social distance as well as what they viewed as insufficient quantities of protective equipment that they had at their disposal. As the first wave of the epidemic waned, the prisoners' complaints became focused on the need to relax the preventive measures, for instance, by allowing unsupervised visits, temporary release privileges, and the like. In early autumn, with the arrival of the second wave of the epidemic, the complaints again began to focus more on the way the protective measures were being implemented.

*"...there are sixty or seventy people in the building, only three of the showers are working, so it's hard to maintain proper hygiene. The toiletries, such as soap, shampoo, toothpaste toilet paper are handed out every three months. It's impossible to maintaining proper hygiene using only a few small shampoo sachets, a single bar of soap and four rolls of toilet paper in a three-month period."*

The accommodation conditions are still substandard, with one prisoner complaining that during his stay at the Diagnostics Centre in Zagreb, for a period of time he had to share a 21m<sup>2</sup> room, 1.57m<sup>2</sup> of which was occupied by the toilet, with six other inmates. We also received complaints by inmates suffering from chronic illnesses, with one, suffering from a serious form of ulcerative colitis, stating that he was accommodated in a room with ten other people, sharing a single toilet, which was a great problem for him due to his illness. Although he was eventually transferred to a room occupied by a smaller number of prisoners, it is unacceptable that he was held in such conditions, as this can be degrading. Several complaints concerned the accommodation conditions in the Zagreb Prison Hospital, which the complainants claimed were extremely unsuitable both in terms of the prison and the healthcare system standards.

Individual prisoners have contacted us for help to keep the option of contacting their family members via video-link even after the epidemic is over, arguing that for various objective reasons, especially travel expenses, some families find it hard to visit, and this would improve the quality of the communication. Complaints regarding being prevented from working and education, especially finishing primary school for adults, have also grown in frequency.

5

Prisoners continue to complain about the long waiting lists for specialist check-ups, their dissatisfaction further increased by the failure to receive feedback about whether they have even been referred for them. They also point to problems communicating with their chosen GPs and dentists, especially if they had retained their doctors from before being sent to serve their prison sentences. Compared to previous years, there has been an increased trend of complaints about the manner in which medical treatment was administered, but in those cases, we instructed the complainants to address the Ministry of Health (MH), which is in charge of the supervision of healthcare provision for prisoners. Complaints have been repeatedly made over the (im)possibility of having dentures made for them, especially in penal institutions in the areas where few prosthodontists have contracts with the CIPH (for instance, Glina).

Although for years now we have been highlighting the need to increase the effectiveness of the legal remedies, prisoners have frequently contacted us about inadequate actions taken following the complaints they have filed with the Directorate for Prisons and Probation (SUZSP). The answers supplied by the SUZSP are formulaic, and in several instances we have found that they contained

identical sentences, stating that no irregularities pointing to rights violations have been found. Such conduct is in complete contravention of the instruction that the SUZSP, acting on our warnings, issued to all penal bodies as far back as 2017. The instruction states, among other things, that upon receiving a written complaint, it is necessary to carry out an investigation, that is, a detailed examination of the complainant's allegations, and, within a legally defined period of time, provide them with a fully substantiated answer, which needs to specify which actions have been taken, the facts established, and the provisions in the primary and secondary legislation that form the basis for assessing the validity of the complaint. Such conduct on the part of the SUZSP has directly reduced the effectiveness of complaints, and may even be understood as a message to wardens, that when responding to complaints, they do not need to adhere to the aforementioned instruction. In addition, the SUZSP has not been responding to complaints within the 30-day legal deadline, which is another matter about which we have again warned them. The problem faced by illiterate prisoners wishing to make a complaint, which we have written about in earlier reports, has still not been systematically and adequately resolved. As things stand, in certain penal bodies, illiterate prisoners have the possibility to complain through treatment and security department officers, which is not in keeping with the international standards of directness and confidentiality in the complaints procedures, as highlighted by the Committee on the Prevention of Torture of the Council of Europe (CPT) in its 2018 Annual Report.

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6

Prisoners still contact us regarding threats received from other prisoners, stating that they are at risk of physical, psychological or sexual violence. They often belong to especially vulnerable groups, such as members of national minorities, most often Roma, people with intellectual disabilities, or those who get labelled as "snitches". Although there have been efforts by some penal institutions, for instance the Lepoglava Penitentiary, to combat inter-prisoner violence, such as immediate transfers of prisoners to other sections and gathering all the relevant facts, such measures are most often reactive, and thus also insufficient. Thus, it is necessary, taking into account all the phenomenological specificities of inter-prisoner violence, to systematically apply preventive measures throughout the entire prison system, in line with the positive obligations arising from Art. 3 of the European Convention on Human Rights (ECHR).

### 1.1.1. PERFORMING THE FUNCTIONS OF THE NPM IN THE PRISON SYSTEM

The epidemic has also affected performance of the tasks of the National Preventive Mechanism. Thus, with the exception of the visit to the Turopolje Juvenile Correctional Facility, most of the data-gathering on the conditions faced by the persons deprived of their liberty and their treatment was done in writing. In addition, we conducted a telephone survey, in which we collected data from all

the penal institutions on the implementation of epidemiological measures and the difficulties they may be facing. Moreover, we conducted anonymous on-site surveys in the Glina Penitentiary and the Zagreb Prison to gather data on the conditions in which prison sentences are served during the epidemic from the persons deprived of their liberty themselves.

In March, we requested information about the measures that are being taken to protect the health of both the persons deprived of their liberty and the staff of the penal institutions and to detect possible outbreaks of the disease on time and prevent it from spreading. According to SUZSP information, the prison system began implementing preventive measures back in February, with the effect that the system has long withstood against the virus penetrating it, while the odd outbreaks in individual penal bodies have successfully been contained.

In line with the CIPH and the Civil Protection Directorate of the Republic of Croatia (CPD) recommendations, in March, the prison system began to implement protective measures including, among other things, limiting visitation rights other than in exceptional circumstances, and prohibiting the use of the temporary release privileges. In order to reduce the harmful effects of these measures, the SUZSP has instructed that the persons deprived of their liberty be allowed longer phone-calls and extended time in the open air, and that additional structured free-time activities be organised. In addition, since April, the "Pilot project for video-visits for children of prisoners" was extended with UNICEF support to include all persons deprived of their liberty.

Simultaneously with the beginning of the implementation of the measures, efforts were made to reduce the overcrowding of the prison system, by approving terminations of prison sentences or paroles. However, according to the available data, from the beginning of the implementation of the measures until 15 May, the courts received a total of 75 requests for the termination of sentences due to Covid-19 were but granted only 12, which certainly does not contribute significantly to the aforementioned goal.

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In late March, we used telephone surveys to gather data from all the penal institutions on the implementation of the preventive measures. All regularly cooperated with the local Institutes of Public Health, while in some, such as the Lipovica-Popovača Penitentiary, an IPH doctor held an education session on contagious diseases and Covid-19 for all employees and interested prisoners, which is welcome. Many penal bodies, especially early on, had troubles procuring protective equipment and necessities, but soon received help from the Ministry of Justice and Public Administration (MJPA) and local civil protection directorates. The reception procedures remained largely the same, although there have been changes in the possibilities of spending time in the open air. In some penal bodies, people who had to self-isolate after reception were allowed time in the



open air (e.g. in the Sisak Prison), while others (e.g. the Rijeka Prison) did not allow this. Although the situation is a newly-emerged one, such inconsistencies are not beneficial.

As the epidemiological situation was optimistic in early May, we recommended to the SUZSP to consider revoking or relaxing the measures limiting certain prisoners' rights. In late May, the first stage of relaxing measures began, and the temporary limits on visitation rights were lifted. However, the number of visitors per visit has been limited to no more than two adults, along whom up to two children could come to see their parents. No physical contact between visitors and prisoners was permitted, nor were open or unsupervised visits.

In September, we anonymously surveyed 69 prisoners in the Glina Penitentiary. Although the majority stated that the media and the Penitentiary staff kept them well-informed about the Covid-19 disease and its mode of transmission, 22% stated that no-one informed them about the measures. Two thirds believed that they were well-supplied with protective equipment and necessities. They estimated their own adherence to the measures with an average 2.8 out of 5 points, and the staff's with a 3.4. They believed there was a high risk of the staff introducing the virus, so they were highly attentive to whether they adhered to the measures and used the protective gear. They gave the example of a judicial policeman who did not wear a mask as a rule, and when warned, said that they did not have to fear him as "he lives in a rural area, drives a tractor and drinks rakija, and that the virus can't come from the country".

8

According to the survey, the majority of the prisoners communicated with their family and friends by phone or letters, 16 used video-visits, and 22 had had supervised visits. 55% state that this entailed difficulties for them, both financial (the phone in the prison system is too expensive for them), and technical when it comes to video calls, leading some to give up on the calls. Those whose families visit from more distant places complained of the short visitation periods, stating, for example, that "it's too expensive for my folks for such a short time together, so I rarely see them". They also complained of difficulties communicating during visits ("it's difficult to have a clear conversation") because of the mandatory mask-wearing, in addition to the noise from several visits taking place at once. They resented not being able to hug their wives and children during visits. The prisoners whose so-called conjugal visits had been discontinued believed that they should be re-introduced, provided the wife has a certificate that she has tested negative for Covid-19. Two prisoners were embittered by the rule that a father can be seen by only two of his children during a single visit. They suggested that temporary release privileges be reintroduced, on the condition of adhering to certain rules (for instance, constantly wearing a mask; going into a two-week quarantine upon return, etc.), and that non-adherence to protective measures be subject to disciplinary action. They also missed the activities that had been conducted in cooperation with civic organisations, which had been cancelled. They also could not receive visits from a pastor or other person they have entrusted with their spiritual guidance, which several prisoners profoundly missed. Some took it hard that their labour activities were limited due to the epidemic. Overall, the volume of activities was diminished, they were bored, and the situation was made worse still by the fact that they do not have TV sets in their

rooms. The majority of prisoners were in favour of relaxing the measures, while 15% were against this. They were demotivated, they believed that they were deprived of a number of their rights, and that this should be compensated in some way (for instance, by expedited release; longer visiting hours; relaxing the conditions inside the institution, for instance by allowing longer walks, more free-time activities, longer periods during which rooms are unlocked, etc.).

When the epidemiological situation began to worsen in October, visitation rights were once again limited, which is the context to be kept in mind when considering the results of the anonymous survey of 49 people deprived of their liberty that conducted in November in the Zagreb Prison. Nearly 30% stated that no-one had acquainted them with the measures

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undertaken in the prison system. The majority received masks, but two stated that they received nothing from the Prison, but were given theirs by another prisoner. Two thirds believed that the quantities of protective equipment and necessities were insufficient. Among those surveyed, prisoners on remand gave their own adherence to the measures an average mark of 1.6, and those serving a prison sentence gave themselves 3.1. The staff's adherence was given an average mark of 3.4. Fear of getting infected is markedly higher among the second group, especially among those who belong to at-risk groups (the elderly and those suffering from chronic illnesses).

The biggest problem for the remand prisoners is the protracted procedure to send letters, while one detainee stated that his telephone numbers had not been approved for two months. A large number believed that the telephone sets are not being disinfected, and that some are semi-operational, meaning that the person on the other end of the line can often barely be heard. They also highlighted that telephone calls from the prison phone booth are too expensive and represent a heavy financial burden ("the system has prohibited visits, but they continue to overcharge for phone-calls – they should be either cheaper or free now"). The prisoners highlighted that telephone calls could not replace visits ("I haven't hugged my child in four months"), especially taking into account the fact that they only get up to 30 minutes of call time over a week. Nearly everybody highlighted the lack of visits, lack of activities, organised workshops and education programmes as problems, and some found it particularly difficult that there was no Sunday Mass. They stated that they were spending 24 hours a day locked in their rooms.

Members of particularly at-risk groups of prisoners opposed the relaxation of the protective measures, while those who were in favour suggested reinstating visits if the person visiting has a doctor's certificate that they are not positive for Covid-19. What the majority missed the most were sports activities.

In addition to the epidemic, the prison system has also faced earthquakes. While the March earthquake in Zagreb only damaged the Prison Hospital building, causing minor material damage, the destructive earthquake that struck the Sisak-Moslavina County caused serious damage to the Sisak Prison and the Glina Penitentiary. One prisoner in Sisak was lightly wounded, while a judicial policeman with the Glina Penitentiary, who was not on duty at the time of the earthquake, was killed. The Sisak Prison had to be closed due to the damage, and all the prisoners transferred to other penal institutions. In Glina, the "Internat" ("boarding school") buildings, which housed 118 prisoners on 29 December, the day the earthquake struck, were seriously damaged, as were those housing the infirmary and the press, rendering them unsafe to use. Consequently, 82 prisoners were transferred to other penal bodies. Moreover, the penitentiary kitchen was out of use until mid-January 2021, so meals were prepared instead at the Topusko hotel. Apart from these two penal bodies, according to the available information, there has also been damage to the Karlovac Prison building, while the damage the Prison Hospital sustained in March was exacerbated.

## Turopolje Juvenile Correctional Facility

During 2020, we made an unannounced visit to the Turopolje Juvenile Correctional Facility, monitoring how minors deprived of their liberty were treated, how they exercised their rights and contacts during the epidemic, how order was maintained and how complaints were handled as well as the accommodation conditions. In line with the ANPM, if need arises, the Ombudswoman can cooperate with the special ombudspersons in performing her tasks; however, the Children's Ombudswoman did not participate in this visit, as they visited the Facility last year.

10

In view of the prohibition of visits and of the temporary release privileges, the Facility allowed the minors continuing contact with their family members by means of more frequent phone-calls, introducing video-visits from early April. Despite the limitations on physical contacts, a consultative-instructive form of teaching was held in full adherence to the rules of social distancing, limiting teachers' contacts to one or two pupils. The Facility was not overcrowded, a new building had been built to house the school, the diagnostics department and the increased care and monitoring, while the existing residential buildings had been renovated.

The Facility carries out primary education for adults, as well as courses in secondary education. The premises are modern and equipped with all the necessary materials, while the common rooms are decorated with pictures and mosaics – the results of work with minors and younger adults accommodated in this institution. The primary school is attended by 10 pupils, who also have courses for cooks and waiters at their disposal. The examinations are taken at the Education Centre in Velika Gorica.

They had no records of received complaints, stating that these were not complaints in the strict sense, but requests or other questions that are being resolved as they arise. However, the Ordinance

on the Mode of Carrying Out the Corrective Measure of Referral to a Juvenile Correctional Facility stipulates that each complaint has to be examined, and a written decision related to it issued within three days, meaning therefore that they have to be registered and acted upon.

In the course of our visits we established no torture or inhuman treatment by the judicial police or other staff. In addition to complaints regarding the smoking ban and the poorly equipped gym, several concerned bullying, but also the use of restraints during the removal of persons to special rooms. Restraints are used due to the risk of self-harm, which leads to the

**Turopolje Juvenile Correctional Facility had no records of received complaints, stating that these were not complaints in the strict sense, but requests or other questions that are being resolved as they arise.**

conclusion that the special rooms have not been adequately fitted to make them safe. The use of means of restraint is contentious in itself, as it has not been prescribed as a special measure for maintaining order and security, as the Law on the Execution of Sanctions Issued to Minors for Criminal and Misdemeanour Offences only determines that such measures can be used exclusively during the apprehension and the discharge, when the minor's hands may be tied on the head of the institution's order.

The Facility uses the services of the Turopolje Penitentiary doctor, who visits three times a week. The doctor conducts the obligatory check-up within 24 hours of reception, most often in the presence of judicial policemen. However, medical confidentiality requires that check-ups are conducted without their presence, something the CPT also warned of in its 2018 Report. In line with the Report, the Facility management should inform the State Attorney's Office whenever a minor is found to have any kind of injury, not just serious injuries, which requires the Ordinance to be amended.

### **1.1.2. ASSESSMENT OF THE SITUATION IN THE PRISON SYSTEM**

The epidemic has further highlighted the existing problems in the prison system to which we have drawn attention in our earlier reports. There is a lack of organised activities in most penal institutions, and the prisoners spend most of their time in their rooms, regardless of their status. As a rule, common (group) activities have been discontinued, as well as all CSO activities. On the limitations of certain rights introduced due to the epidemiological measures have not been adequately compensated. For instance, longer telephone calls have been allowed, but their costs, which are above the market rate, are generally borne by the inmates themselves, and represent a significant financial burden for them. It should also be taken into account that due to the epidemiological measures, their ability to work has also been limited.

There is an increasingly pronounced shortage both of space and staff, which we have persistently highlighted. For years, no measures to stimulate employment have been adopted in the prison

system, especially when it comes to healthcare workers, meaning that staff shortages in this area are becoming more and more pronounced and leading to numerous problems. For instance, due to the lack of nurses and medical technicians, in some penal institutions, in the evening hours and/or on weekends, medical therapies are still being administered by judicial policemen, who do not have the requisite education. This is unacceptable, and a sufficient number of healthcare workers need to be employed.

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The insufficient capacities of the high security units have become still further pronounced after the December earthquake, as the serious damage has rendered the Sisak Prison building unsafe to use, and reduced the capacity of the Glina Penitentiary. Thus, it is necessary to start with the repairs on these objects, or build new ones in these two penal bodies. In the Glina Penitentiary, the lack of staff is an additional problem, despite the temporary transfer of part of the Sisak Prison staff. Thus, for instance, there are now between 40-45 prisoners in individual treatment groups, making any kind of more intense treatment impossible.

12

As of the writing of this Report, despite our requests, we have not received data on whether the Prison Hospital is authorised to provide healthcare. Likewise, the status of the so-called infirmaries in penal institutions that provide primary healthcare has also not been regulated. The MJPA holds that a new Enforcement of Prison Sentences Act (EPSA), currently before Parliament, needs to be adopted. The Healthcare Act (HA) stipulates that healthcare departments in penitentiaries and prisons operate under the MJPA, providing primary healthcare to the persons deprived of their liberty, in line with the statute adopted by the CIPH with prior consent by the Health Minister. However, the CIPH does not wish to adopt the statute, as it believes that the HA does not provide the legal basis for it. The Ministry of Health needs to review this stance in line with its competences, take appropriate measures to resolve the issue of primary healthcare provision in the penal institutions, and, together with the MJPA, ensure that the preconditions for the operation of the Prison Hospital as a healthcare institution are met.

Inappropriate handling of complaints continues to be present despite our having highlighted this problem for a number of years, which is unacceptable. It is necessary to take measures that will result in responses, primarily the SUZSP's, being more thorough and timely, and thus in the increased effectiveness of this legal remedy.

The problem of inter-prisoner violence, especially in larger penal bodies, demands that more decisive preventive measures are undertaken. Therefore, keeping in mind the CPT's recommendations from its 2018 report, it is necessary to design an effective strategy for combating

this form of violence, that would ensure that all prisoners serve their prison sentences in safe conditions.

In December, the Final draft legislation on the enforcement of prison sentences has been laid before the Parliament. Although the majority of the amendments we put forward during the public consultation process have been rejected (38 out of 43), we have noticed that several have subsequently been accepted, for instance to allow prisoners to appear in the media, with the SUZSP's permission. However, the Final draft is a missed opportunity to implement fundamental reform and improve the prison system.

Despite the numerous challenges faced by the prison system during 2020, our cooperation with the penal bodies was good, although there still remains room for improvement of our cooperation with the SUZSP.

## 1.2. THE POLICE SYSTEM

### 1.2.1. PROTECTION OF CITIZENS' RIGHTS, INCLUDING PERSONS DEPRIVED OF THEIR LIBERTY, IN POLICE TREATMENT

#### Complaints to the Ombudswoman

*"The police came to my address, the apartment I am renting. I'm a student, I have registered residence at that address. None of them ID'd themselves. They said they'd knocked but nobody answered the door. They said they were looking for migrants. They wore police uniforms. I was sitting at my laptop, watching a movie with headphones in my ears. I'm still in shock. Can the law enforcement authorities treat people like that in a democracy? I didn't know to whom to complain. Let me reiterate: I'm still in shock. I can provide proof for everything I just said, under criminal liability."*

13

During 2020, we took action in 101 cases, based both on citizen complaints and on our own initiative. In addition to overstepping of police authority in carrying out identity checks, entering people's homes, searching individuals and the use of the means of coercion, the complaints also concerned police behaviour in enforcing epidemiological measures.

Proportionality between using police powers and achieving their purpose with a minimum of encroachment of individuals' liberties and rights is necessary in the performance of all police duties, and its violation has been the most frequent cause of citizens' complaints during 2020. Police officers must act when necessary, in ways that are grounded in law, and with respect for citizens' dignity. However, during a public gathering in Korlat, near Benkovac, individuals were identified solely

because the officers in question recognised them from previous incidents, requesting they show them their identity card in a tactless and verbally aggressive way. In this case, there was neither the legal basis for identity checks as defined in the Police Duties and Powers Act (PDPA), nor the necessity for the police officers to use their powers.

Proportionality was also questionable in the case of the actions taken against an 18-year-old for not carrying an identity card. He claims that after being stopped by the police, he used his phone to call his parents to tell him his personal identification number (PIN), but when he asked the plain-clothes policemen what the reason was for stopping him and, on his parents' advice, their police identification numbers, he was told that he was being taken to the police station for the offence of not having an identity document. In their statement, the police said that the 18-year-old was apprehended as he matched the description of a wanted person, and that his identity could not be reliably verified in the public space, as he was accompanied by two minors. However, had this been so, the personal information and PIN could have been verified by contacting the station by radio or phone. Thus, in order not to create an impression amongst citizens that deprivation of liberty is merely an act of repression for daring to ask what are the grounds for police action and to be shown the numbers on the badges that plain-clothes police must present to identify themselves in line with the Act on Police Services and Authorities (APSA) (other than in exceptional circumstances), it is expected that when deciding to deprive a person of their liberty, this should be done with the utmost respect and making sure that the highest legal and constitutional standards are adhered to.

14

Questionable respect for citizens' dignity and the principle of proportionality in using police powers and in pursuit of their goals is also evident in the actions of a border policeman taken when a citizen crossed the state border, when after searching the vehicle, the individual in question was also searched. From the police report it appears that the inspection did not corroborate the complainant's allegations, that he was asked to take off his trousers and underwear, but that only a visual search of the clothes and belongings was conducted, as well as that the policeman did not ask questions about drugs consumption, nor stated that only consumers of soft drugs carried cigarette papers and filters. In fact, taking things out of one's backpack or emptying their pockets would represent a search, for which a warrant is needed. Keeping in mind that the officer's actions have not resulted in anything to confirm the suspicion that a punishable offence had been committed, it is understandable that such conduct, especially demanding that the citizen strip, if it did indeed take place, would be seen as a violation of one's right to freedom and personhood, as well as their dignity, reputation and honour.

The principle of the necessity of using police powers is especially important in the context of the constitutionally guaranteed right to the inviolability of one's home. Thus, we received a complaint from a Pula-based student, who was in his room when policemen entered it unsolicited. As he was sitting at his computer with earphones on, his back turned to the door, he did not hear them enter, so their presence frightened and distressed him. The Police Directorate justified such actions by stating that the policemen had grounds to believe that migrants might be present, and inspected



the premises accordingly. Their legal grounding is in the APSA, which allows police officers to enter and inspect buildings belonging to state agencies, legal entities and business entities. The police claimed that the intervention had taken place on the premises of a former store, and that two business entities were registered at the address. Therefore, they determined that there were no legal obstacles to entering the premises. However, in our recommendation, we insisted on such a legal interpretation being unsupportable in view of Art. 34 of the Constitution, which stipulates that the home is inviolable, and which envisages exceptional circumstances that can make it permissible for the police authorities to enter a home without a warrant or consent and conduct a search thereof. An investigation established beyond doubt that the complainant was properly registered at the address, which means that the rented room he lives in is considered a home, rather than a business or a public entity vested with public authorities. In the specific case, none of the conditions that Art. 74 of the APSA lists as legitimate reasons for police officers to inspect another person's home without a written warrant were met. This way, they violated the Constitutional provision guaranteeing the inviolability of the home.

Proportionality is especially important when it comes to the use of means of coercion. This is highlighted by CPT standards, according to which the use of force and means of coercion may not be greater than necessary. Furthermore, the CPT has pointed to the need for police actions to be in keeping with the principles of legality, proportionality and appropriateness, while the European Code of Police Ethics (Rec(2001)10) stipulates that the police may use force only when this is necessary, and only to the extent necessary to achieve a legitimate goal. Additionally, according to ECtHR practice, the use of force must be absolutely necessary, and based on the principle of strict proportionality (*McCann vs the UK*, 1995; *Nachova and others vs Bulgaria*, 2005).

An example of disproportionate use of means of coercion can also be found in police officers' treatment of a citizen who refused to wear a mask on a train, thus disturbing public order. In contrast to the police statement asserting that there were grounds for the police to use their powers, the complainant denied that he had used active resistance or disturbed the public order. Further suspicion arose from the fact that police records cite different grounds for the use of means of coercion. Thus, the Report on the grounds for action states that they were used in order to prevent active resistance, while the Report on the circumstances of use states that they were used in order to prevent flight and averting danger. In this case, the proportionality of the actions is questionable, especially when the citizen has been flung to the ground and a restraining device used on him in the presence of his under-age child, who was distressed by this event. Therefore, the use of the means of coercion and the arrest were not necessary; the police officers could have found that a misdemeanour had been committed and filed charges, using the police powers with the least amount of impact on freedoms and rights, while serving the purpose of their work.



*Photo: Facebook page  
"Trnje – the last line of defence"*



The public was also distressed by the police treatment of a citizen in Zagreb, who video recordings show was already lying face down, when a police officer used his knee to press down on his body, either in the neck or the upper back region. A statement by the police that was requested indicates that the incident involved unauthorised entry into a building that was the site of an investigation, of which the citizen in question was warned several times and ordered to stop filming with his phone, which was taken away from him when he refused to comply. The police claim that he was disturbing public order, and when he did not calm down after being ordered to do so several times, moving towards the policemen instead and belittling them, after one last unsuccessful order to stop him from approaching them, physical force and means of restraint were used. The Ministry of the Interior (MI) stated, in contrast to what had been written in the media and on social networks, that the policeman did not press his knee against the citizen's neck, but that this was a way of immobilising by pressing the shin against the upper back, level with both shoulders, and far enough from the neck, for several seconds until both hands were restrained. However, recordings from the scene of the incident do not indicate that the citizen, lying face down, his left arm immobilised while the right arm was stretched out in front of him in a position that did not represent danger to anyone, offered resistance or had dangerous intentions, that is, that the reason for using the leg to immobilise him was the fact that the policeman was holding a mobile phone in one hand.

16

Disproportionate police conduct was also observed in assisting the enforcement of epidemiological measures. Thus, we received a citizen's complaint according to which police officers carried out a field inspection of his father's adherence to the measure of self-isolation based on an anonymous report. The police looked for the complainant's father at his address, even though none of the family members knew that he was required to self-isolate, which made them feel stigmatised in their neighbourhood. The inquest into the case found that acting on the anonymous report, the policeman consulted the MI Information System, and established that in the case of the person named by the informant as having violated the measure of self-isolation, such a measure had not been issued. Despite the fact that the records of self-isolation orders are under the jurisdiction of the State Inspectorate of the Republic of Croatia (SIRC), and that, in line with the Decision by the CPD and the MH, quarantine and self-isolation orders are also entered into the MI Information System, the intervention at the complainant's family home was justified by the early stage of the implementation of the system for enforcing measures to monitor citizens, as well as by the need to establish through direct contact whether the measure has been issued. However, according to the SIRC, the records of the issued self-isolation measures are held in the Central Repository, which is accessible to the MI, the CIPH, GPs and the Sanitary Inspectorate. Thus, the policemen could resolve any uncertainties by also reviewing the data in the Central Repository, instead of an unnecessary

police intervention at the citizen's home address. In view of the fact that according to the Law on the Protection of the Population from Infectious Diseases (LPPID), police officers provide assistance in monitoring the enforcement of the measures to protect the population from infectious diseases, there were no legal grounds for recourse to the police powers defined by the APSA.

In addition, there have also been cases of inappropriate communication by police officers while enforcing epidemiological measures. Thus, during the evacuation of a home for the elderly in the city of Split, a riot policeman aggressively obstructed the work of a television crew, and was consequently referred for additional education. The inappropriate communication was also confirmed by the MI in the case of conduct towards a female citizen while the Decision on the measure of strict restrictions on loitering on streets and other public places was in effect. After a policeman's warning to comply with the measures, there ensued a disturbance of public order and the use of police powers, during which the police officer used inappropriate language. As a result, disciplinary measures were taken against the officer in question.

An example of good practice can be found in the actions taken by the Bjelovar-Bilogora County Police Administration (CPA). In order to conduct an independent and effective investigation following a complaint about police conduct, the CPA interviewed all parties, as well as impartial witnesses, a necessity which we have highlighted in previous reports. The CPA requested statements from police officers, interviewed the complainant, reviewed CCTV recordings, and compiled a report, which together with the collected investigation reports, was forwarded to the Municipal State Attorney's Office in Bjelovar and to the Ombudswoman.

### **1.2.2. VISITS TO POLICE STATIONS AND POLICE DETENTION UNITS**

In view of the epidemic, and with the aim of preventing the spread of the disease, in early 2020 we temporarily discontinued NPM visits to police stations and police detention units, guided by the "do no harm" principle. In the challenging epidemiological situation, it was necessary to take preventive measures to protect the persons deprived of their liberty (PDL) and police officers from the epidemic. It is important, however, that this does not lead to a reduction in PDLs' rights to contact their attorneys, to be given medical treatment, and to be properly fed. The police have informed us that the necessary distance is kept when interviewing PDLs, that their rights are exercised without limitations, as well as that vehicles used for their transport are regularly maintained and disinfected. Likewise, during our visits we did not establish that the PDLs we came across had any objections in this respect.

During September, October and November we visited 17 police stations and three police detention units (PDU) in the following County Police Administrations (CPA): Krapina-Zagorje, Lika-Senj and Split-Dalmatia. The visits to the police stations in Krapina-Zagorje CPA were regular, while those to the PSs in the Lika-Senj CPA were aimed at establishing the extent to which the warnings and

recommendation issued after our previous visits were being implemented. Three night-time visits were also conducted, in order to evaluate police conduct towards PDLs held overnight.

During each visit, NPM representatives were equipped in line with the CIPH instructions that were adopted in collaboration with the Office of the Ombudswoman, which took into account the specificities of the NPM mandate. Temperature was taken when entering police stations, police officers wore protective masks and kept the necessary distance, which led to the conclusion that police stations were implementing all the epidemiological measures necessary for prevention and protection from Covid-19. Furthermore, cooperation with police officers during visits was satisfactory, and there were no restrictions on carrying out the NPM mandate, with access given to all the data and records, whether on paper or in digital form.

## Regular visits

### Accommodation conditions

During the regular visits to seven police stations, it has been established that CPT standards are being partially met. Although in the majority of PS, the custody suites where PDLs are held are spacious enough, with both natural and artificial light, have ventilation and heating, and contain bunk bed, rubber mattresses and blankets, the accommodation conditions are not fully in line with the MI's Standards for rooms accommodating the persons deprived of their liberty (Standards) and the international standards (CPT standards), which may represent degrading treatment. For instance, the custody suites in the Zlatar Bistrica PS are not being used, as they do not meet the Standards, while this PS's practice, wherein due to a lack of space, medical examinations are carried out in the hallway, in contravention of medical confidentiality and possibly constituting degrading treatment as the person is being examined in full view, thus violating their privacy, is concerning. The aforementioned PS does not even have a vehicle for transporting PDLs.

Furthermore, the Standards prescribe that the custody suite must have a sanitary facility with a flushing toilet, as well as that there must be drinking water. Despite this, some detention suites, for instance, in Klanjec and Krapina, do not have sanitary facilities. The majority of detention suites are covered by surveillance cameras, while hallways and other spaces where PDLs also move are not. In the Krapina and Klanjec PSs, surveillance cameras also cover the sanitary facility, which is outside the detention suite, which is a violation of the right to privacy and is potentially degrading, in contravention of CPT standards, according to which video surveillance may not cover the sanitary facilities, but must cover all the other spaces where PDLs may find themselves (for instance, the corridors of a building). Since some PSs do not have appropriate vehicles to transfer PDLs at their disposal, which is a hindrance, such vehicles must be procured for all the PSs.

## The rights of persons deprived of their liberty

As we have stated in earlier reports, access to procedural guarantees in the first hours of police custody is important, as it guarantees a fair trial in line with Art. 6 of the ECHR, while simultaneously being the most effective way to prevent torture and other forms of violence. Therefore, respect for the rights of the arrested and detained persons as regards contacting an attorney, allowing medical assistance and informing a family member or a third party, has again been a focus of monitoring during this year's visits.

A direct inspection of the cases has established that the arrestees are informed as to the reasons for their arrest and their rights, including the right to an attorney. However, it is surprising that although they have the option of using free legal assistance in line with the Criminal Procedure Act (CPA), they rarely call an attorney, that is, the majority waive their right to an attorney. Moreover, although in line with our recommendation, the Arrest Report form was changed to make filling out documentation as easy and simple as possible, separating the register of actions taken in relation to the arrestee and (if applicable) their later arrival in the PDU, in certain PSs the time of their release is still not registered, which may constitute a violation of citizens' constitutional right to freedom.

During our visit to the Krapina-Zagorje CPA, it has been established that the PDU and the majority of the police stations are cooperating well with Emergency Medical Services (EMS), which most frequently arrive when summoned, while if need be, police officers take the person in need of assistance to be examined. Although the EMS are summoned regularly, providing necessary medical assistance to all PDLs, the Police Directorate should find a solution that will not create additional financial burdens on the CPA so that police officers are not forced to make initial assessments on the need to call EMS. According to UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, every PDL needs to be offered appropriate medical care as promptly as possible after their admission to the place of detention or imprisonment.

Additionally, inspecting a randomly chosen case, the documentation did not make it clear whether the search was conducted by a person/police officer of the same sex. In such cases, we recommend composing an official note about the search, which would clearly state which police officers performed the search.

## Follow-up visits

During 2020, follow-up visit to the Lika-Senj CPA was conducted, more specifically, to a PDU and six PSs, in order to ascertain the extent to which the recommendation issued after the regular visits conducted during 2017 were being implemented.

The follow-up visit found that only 23% were fully implemented, 24% partially, while 53% have not been implemented, and were therefore reissued.

The Korenica PS implemented the most recommendations, while the Novalja and Otočac PSs implemented theirs partially. The Gospić PS, which does not have its own premises, has fulfilled the recommendation pertaining to registering PDLs, but the premises used by the PDU still do not meet all the standards. Contrary to the Standards, video surveillance does not cover all the rooms accessible to PDLs. Despite the fact that the Police Directorate included the Karlobag PS in its 2018 Investment Plan in order to refurbish the custody suite to meet the standards, this has not been done.

It is surprising that in most PSs, the recommendations that do not require large investments have not been implemented, such as installing call buttons, replacing ceramic tiling, and others. The Korenica PS is a positive example as, in line with the recommendations, a call button has been installed in the detention suite, video surveillance of the sanitary facility disabled, and access to drinking water secured.

## Night visits

In order to evaluate on-duty police officers' treatment of PDLs held in overnight custody, night visits were made to the Police detention unit of the Split-Dalmatia CPA, 2<sup>nd</sup> PS in Split, the Kaštela PS, the Trogir PS and the Omiš PS.

20

During the night visit to the Kaštela, Trogir and Omiš PSs, there were no arrested or detained persons there, while three PDLs were found in the Split-Dalmatia CPA detention unit. As the PDLs were asleep at the time, the supervision of their treatment was carried out by inspecting the video surveillance system. They were accommodated in tidy rooms with mattresses and blankets. The custody supervisor monitors PDLs through video cameras installed in every room; however, no alarm system (call button) has been installed in the PDU, which the Standards require. The documentation that was inspected was in order and properly filled in.

During the night visit to the 2<sup>nd</sup> PS in Split, a single arrestee was found there, accommodated in a room without mattresses, although the adjoining room did have a mattress. He was lying on a bunk bed, with two old blankets to cover himself with, so he complained that he was cold, as the blankets were not enough to keep him warm. Such treatment is contrary to CPT standards, as a mattress and a sufficient number of blankets during winter need to be provided. He also complained of excessive use of means of coercion by the members of the riot police who he alleges attacked him after he expressed his dissatisfaction with a raid conducted at a night club. However, he wrote the opposite in the official form which he signed, as he had hoped that he would be released. Although he was informed about the reasons for his arrest, he was not advised about his right to call a doctor and inform a family member. An inspection of the documentation found that the information given by the arrestee and those entered in the Arrest Report were contradictory, with further doubt caused by the fact that he refused to sign the Arrest Report. Therefore, the police officer was given a verbal

recommendation to draw the arrestees' attention to his rights and inform him about the possibility of making a complaint to the Split-Dalmatia CPA, as well as a verbal warning over the lack of a mattress while the arrestee was in the custody suite. An investigation has been initiated over the complaint about the excessive use of force.

### **1.3. PERSONS WITH MENTAL DISORDERS WITH RESTRICTED FREEDOM OF MOVEMENT**

During 2020, we received 24 complaints from persons with mental disorders, pertaining to detention and commitment, non-consensual medical procedures and coercive measures, and accommodation conditions in psychiatric institutions. In addition, in line with our mandate as the body responsible for the performance of the NPM activities, we made unannounced visits to locked psychiatric wards in the Šibenik General Hospital (PUŠGH) and the Zadar General Hospital (PUZGH).

On the basis of complaints and information gathered through conversations and focus groups with persons with mental disorders during our visits, this year again we noticed that the patients in psychiatric institutions are not always adequately informed as to the reasons they are there, what is their treatment plan and what their rights are, even though almost all have consented to being committed. Consent itself is part of the mandatory medical documentation, giving approval to a certain medical procedure which involves reception, admission and commitment, and diagnostic procedures and treatment. However, patients who have been committed to locked wards voluntarily have emphasised that they gave their consent in fear of being held forcibly, that is, of a court order. To be considered informed, and thus valid, consent must be the expression of the freely expressed will of the person with a mental disorder. Therefore, giving them inaccurate or incomplete information and influencing their decisions run counter to the concept of informed consent. Moreover, the patients are often not acquainted with their treatment plan, do not know which therapy they are taking, and often ask when they can go home or for a walk without knowing why this is denied to them, or why they are in a locked ward even though they were committed voluntarily. They are inadequately informed regarding their rights, including to submit complaints, and therefore it is necessary to create flyers, put up lists of rights on notice boards, and further educate the staff about patients' rights. In order to make the complaints mechanisms more accessible, it is necessary to install letterboxes and provide forms for filing complaints.

In addition, the data from both hospitals about the frequency of the use of means of coercion show that people sign their consent during reception, and a short while later, means of coercion are used against them. As such methods can only be applied in particularly urgent cases, and only if they are the sole means to remove danger from a person's behaviour, with which the person seriously and directly threatens their own or another person's life or health, it is questionable how only minutes before, an individual could understand, memorise and use information necessary to give medical consent, only to become unable to "calm down" afterwards, even with the use of all the milder measures. This way, the point of voluntary commitment is lost, with the result that such individuals

are in an even worse legal situation than those who have been forcibly committed, that is committed without consent, as they do not have the guarantees that are used to verify whether their commitment is justified (the court, an attorney, a second psychiatric opinion, the ombudswoman for persons with disabilities).

For instance, in the first six months, restraining measures were used 136 times, on 46 individuals in the PUŠGH, with time spent in restraints lasting 18 hours on average. During the first ten months, only eight of the residents had been forcibly committed. In the PUZGH, restraining measures were applied 62 times on 31 persons during the first six months, with an average duration of restraint of 8-12 hours. Only 12 people had been forcibly committed there during the first ten months. These data indicate that restraints are overwhelmingly used on voluntarily committed patients. This is not in line with CPT standards, as if it is considered that it is necessary to apply measures of restraint in voluntary commitment, and the patient does not consent to them, the patient's legal status ought to be reviewed.

Medical documentation lack the data on the de-escalation measures taken before coercive measures were resorted to, that is, the alternatives have not been exhausted.

In addition, the medical documentation lack the data on the de-escalation measures taken before coercive measures were resorted to, that is, the alternatives have not been exhausted. According to ECtHR case law, in *Bureš vs the Czech Republic* (2012), a measure of coercion is a serious measure that must always be justified by the prevention of

immediate danger to the patient or their surroundings, and must be proportional to this purpose. Therefore, it is necessary to conduct educational programmes for healthcare workers about de-escalation techniques and treatment of aggressive patients, and the provisions of the Act on Protection of Persons with Mental Disorders (APPMD) and the Ordinance on the Forms and Modes of Application of Coercive Measures on Persons with Severe Mental Disorders. In addition, the restraining measures are not carried out by a minimum of five persons, as stipulated in the Ordinance. In the PUŠGH, all patients are put in a diaper when restraining measures are taken against them, which can constitute degrading treatment.

Despite the recommendations we gave in all our annual reports since 2016, no special records of coercive measures have still been set up, that would allow their monitoring and analysis. Thus, there is no information, other than in patients' individual records, about who ordered their use, when and why did they order it, which measures preceded it, nor about the monitoring of the patient's physical and psychological condition after the measures have ceased. In addition, in both hospitals, nurses' documentation about coercive measures has been systematically kept, but the doctors' documentation is missing.

Moreover, it has been found that there were insufficient rooms for increased monitoring of patients, as well as a shortage of medical staff for monitoring the use of coercive measures. Thus, in the



PUZGH, only one room is used for increased monitoring of patients, which contravenes the Ordinance, which stipulates that an emergency psychiatric ward must have a minimum of two monitoring rooms equipped with a modern video surveillance system. The shortage of staff is an additional problem, as in both hospitals only two medical technicians work in a shift, so that at times admission of new patients and regular work on the ward mean that they cannot continuously monitor the use of restraining measures.

It has been established during our visits that the accommodation conditions are not up to the international and national standards, especially due to the lack of adequate rooms for patients' daily activities. For instance, neither the PUŠGH nor the PUZGH have special rooms for work with groups, which contravenes the Ordinance on the Norms and Standards for Regulating Healthcare Provision, and which makes it impossible to properly carry out socio-therapy with the aim of the patients' full re-socialisation and social reintegration. Planning the patients' daily activities is related to this problem. In the PUŠGH, it has been found that the hospitalised patients freely use the canteen and the living room, where they mainly watch TV. They complain about the lack of recreation, games,

**Patients' treatment must include a broad spectrum of rehabilitation and therapy activities, that is, occupational therapy, group therapy, individual psychotherapy, as well as arts, drama, music and sports activities.**

literature and IT equipment, highlighting that their stay there is made more difficult by their inability to receive visitors due to the epidemic. As the patients have the right to just one phone-call a day, in prior arrangement with the medical staff, this option realistically represents their only form of socialising with people outside the institution. This is a violation of the APPMD, which stipulates that people with mental disorders have the right

to send and receive, at their own cost and without supervision or limitations, mail, packages and publications; to make telephone calls, and to use electronic technology and communication. According to the December CPT info-sheet, in all social welfare institutions, which include psychiatric institutions, patients need to be allowed appropriate contact with the outside world, that is, sending and receiving letters, telephoning and receiving visitors; and it is a commendable and recommended practice to allow visitors from further away to stay overnight on the institution's premises.

As one therapist works with smaller groups in the Daily Hospital, while the other is at work on triage at the main entrance to the Hospital, the PUŠGH currently does not have an organised therapeutic community, in contravention of CPT standards that mandate that patients' treatment must include a broad spectrum of rehabilitation and therapy activities, that is, occupational therapy, group therapy, individual psychotherapy, as well as arts, drama, music and sports activities.



## 1.4. APPLICANTS FOR INTERNATIONAL PROTECTION AND IRREGULAR MIGRANTS

While great emphasis was placed in 2020 on the importance of solidarity in order to protect the most vulnerable among us, both those at an increased risk of COVID 19 and those who lost their homes in the earthquakes, solidarity with refugees, who had also lost their homes, was unfortunately not recognised to the necessary extent. As EU member states failed to reach a common position on the mutual distribution of responsibility for examining the applications for international protection, some have assumed disproportionately greater responsibility solely because of their geographical position, while others refused to show solidarity and accept transfers to their territory. The EC has been trying to overcome the political stalemate in the reform of the Common European Asylum System through the adoption of the Pact on Migration and Asylum (the Pact), which represents a new approach to migration through a series of legislative and other measures. It has thus proposed the adoption of a Regulation on Asylum and Migration Management that would introduce solidarity measures between the Member States. Each Member State would be given a choice of whether to support the State under pressure by accepting applicants for international protection through resettlement, sponsoring the return of persons who have been refused international protection, or by providing technical or financial support on the ground. It is questionable, however, whether such a mechanism can lead to a balanced participation of all Member States, without which the asylum system cannot be fair or functional.

24

UNHCR estimated that the number of forcibly displaced persons globally has risen to over 80 million by the mid-2020. At the same time, receiving those in need of international protection was made even more difficult by the pandemic. Epidemiological measures have reduced the general mobility of the international protection seekers so that significantly fewer people managed to apply for asylum in the EU in 2020, as the EU introduced controls of its internal borders and temporary restrictions on non-essential travel. In the Republic of Croatia, however, a decrease in the number of applicants compared to 2019 amounted to only 3% - there were 1986 in 2019, and 1932 in 2020.

**Allegations of pushbacks across the EU external borders have persisted, despite requests from the CoE, some MEPs and many international and national organisations to stop such practices.**

Like most other EU Member States, Croatia postponed transfers of applicants to the States responsible for considering their application (Dublin III Regulation), and imposed a self-isolation measure on newcomers, including as many as 1348 of them during the year. Reception centres for asylum seekers were adapted to epidemiological measures, daily presence of physicians was ensured, and access for persons not essential for the functioning of these facilities was restricted.

At the same time, allegations of pushbacks across the EU external borders have persisted, despite requests from the CoE, some MEPs and many international and national organisations to stop such practices. In these requests, great attention was paid to the treatment of irregular migrants and asylum seekers by the Croatian police. In 2020, we opened 39 cases specifically related to such treatment, which sometimes referred to larger groups of people.

For example, two investigative proceedings were launched concerning articles published in the Guardian magazine. The first one following allegations that police officers took money, mobile phones and footwear from persons who were found illegally staying in Croatia or crossing the state border with Bosnia-Herzegovina, and forcibly returned them across the green border without any legal procedure. Even more disturbing were allegations that they drew crosses on migrants' heads with spray, which may indicate religious intolerance. A day after the article appeared, the Police Directorate reported that checks had been carried out and found no wrongdoing by police officers towards migrants, stressing, as usual, that police conduct respected their fundamental human rights and dignity, enabling them access to the international protection system. Since we subsequently received complaints from seven irregular migrants from this particular group, we asked the Ministry of the Interior (MI) to supplement their answer and provide documentation on the checks carried out. According to documents provided, police officers were found to have treated two complainants, one from a nine-member group in one police station, and the other from a 22-member group in two police stations. The first complainant had been found in a densely forested area and brought to the police station. The conversation with him and other members of the group was conducted in English, and after it was established that they had no visible injuries, did not complain of respiratory problems, and did not seek international protection, they were issued a formal decision on return with the deadline of leaving the EEA in seven days. The second complainant had been returned from Slovenia through readmission and brought to the police station which took him over and carried out part of the procedure, after which he was taken to the police station in the state border area, which completed the procedure. The procedure was also conducted in English, during which the complainant expressed no intention to apply for international protection, had no visible injuries and did not complain of any health problems. After having been issued a formal decision to return to Bosnia-Herzegovina within seven days, he left the area under the jurisdiction of this police station. The MI found no records related to the treatment of other complainants who had contacted us. However, there is no mention that the investigation into the allegations, both those made by the complainants and those referred to in the Guardian article, involved the conduct of police officers outside the police station premises, even though the migrants stressed that they were returned to Bosnia-Herzegovina without any legal procedures carried out. Additionally, most migrants do not have identification and/or travel documents (none in these two groups had them), and, as they were returned to a (border) police station where there is no organised public transport, it is questionable how they could have (legally) fulfilled the obligation to leave the EEA within just seven days. On the other hand, the pandemic has reduced the availability of flights and other modes of transport, and the restrictive measures imposed by third countries have affected the possibility of both voluntary and forced returns, so it is unclear how the MI enables and supports individuals to fulfil the

obligations from the formal decisions it issues. All this points to a conclusion that the purpose of transporting migrants to remote police stations with a lack of available public transport is their removal from Croatia across the green border.

The second investigative proceeding was based on one of the Guardian articles focused on a report by the Danish Refugee Council, which documented a series of cases of violent treatment of irregular migrants and asylum seekers at the border between Croatia and Bosnia-Herzegovina. According to the article, over 75 migrants had reported inhuman treatment, even sexual abuse. In addition, we received three complaints in which the complainants described police conduct during their apprehension, time spent in the police station, and return to the border. They allege they were only taken to the bathroom twice a day during the two days of detention, which was also their only contact with the police officers. They were provided water, and had their own food. After the detention ended, they were taken to court as witnesses, after which the police handed them over to ten armed men dressed in black and wearing balaclavas, and they were transported by a van to an unknown location. Upon arrival, they were ordered to undress and stay in their underwear, lie down facing the floor, and stretch their hands with palms on the ground. Then the men stood on their hands and started beating them with their legs, branches and something like a whip, which lasted for about 15 minutes. One of the complainants also alleged that, after 7-8 minutes, one of the men pushed a branch hard into his anus, piercing his underwear, while the other black-clad men laughed. He somehow managed to pull a hand from under his boot, turn his body around and thereby prevent further penetration. After that, the migrants entered the van again and were taken to the border line near Šiljkovača, where they were told not to return to Croatia. Upon arrival at the camp in Bosnia, they were examined and sent to the hospital in Bihać. The investigative proceedings found that the MI had requested an opinion of the Border Police of Bosnia-Herzegovina, which said that it had no knowledge of these migrants, that their officers had not treated them, and that any other information should be requested through international legal aid. However, such data have not been provided, and we have no knowledge as to whether appropriate checks within the MI have been initiated or whether the MI, given the seriousness of the allegations, has notified the State Attorney's Office of the Republic of Croatia.

We launched another investigative proceeding following complaints from five people who described police officers' conduct towards them and 11 other members of a group caught in an attempt to cross Croatian territory towards Western Europe. According to their allegations, eight police officers in black uniforms and black balaclavas first fired in the air, then for five hours beat them with batons and pistol grips, tied them to trees, and then smeared ketchup, mayonnaise and sugar onto their bloodied heads. They were then handed over to the border police, who drove them to the border with Bosnia-Herzegovina in a van and ordered them to walk off. The complainants cited the time and place of the conduct, and everything was published on Amnesty International's website. The MI completely denied treating them, saying that "after sustaining injuries by accident or in physical clashes between themselves, migrants always declare that they were beaten by the police of the country they want to enter," and "NGO activists, who are not independent and objective journalists,

duly record their statements and forward them to the media as a final fact, and the media publish them accompanied by bombastic headlines.”

According to the available information, the State Attorney's Office did not conduct an investigation in any of these cases. Therefore, this year again we emphasise that investigation into actions that may constitute violations of Article 3 of the ECHR (prohibition of torture, inhuman or degrading treatment or punishment) is imperative, and that, in order to remove suspicions or confirm claims, such investigation should be carried out by a body independent from the suspected civil servants (ECtHR, *Bolcenko vs. Moldova* (2010)). Otherwise, state representatives would be allowed to abuse the rights of those under their control with impunity (*Labita v. Italy* (2010) and *Muradova v Azerbaijan* (2009)). Investigating such procedures is crucial to maintaining the rule of law in which no one, especially the police, can be above the law.

**Pact on Migration and Asylum requires each Member State to establish a so-called independent monitoring mechanism that should at all times monitor respect for fundamental rights during its implementation regarding the conduct of border proceedings, which would apply to persons found in irregular border crossings and the implementation of the applicable national rules in case of detention.**

It is therefore not surprising that there are more and more requests for independent monitoring of the actions of police officers at the border. Within the framework of the Internal Security Fund, the instrument for financial support in the field of external borders and visas, emergency assistance, the project “Reinforcement of Border Control Activities at the Croatian Border Due to Increased Migratory Pressure” (EMAS project) granted by the European Commission to the Republic of Croatia, a part is intended for monitoring the conduct of police officers. However, the European Ombudsman decided to examine how the EC ensures that the fundamental rights of migrants are respected by the Republic of Croatia in the context of border management activities financed by EU funds, based on the Amnesty International complaint. It states that the EC has not responded to continuous allegations of serious human rights violations by the Croatian authorities in the context of border management operations, and has not checked whether Croatian authorities have put in place an effective monitoring mechanism to ensure that border management activities are fully harmonised with fundamental rights and EU law. We requested information from the MI regarding both the amount earmarked for this monitoring mechanism and the activities carried out, but we received none with the explanation that office employees “did not participate in the implementation of the project”.

Furthermore, the Pact requires each Member State to establish a so-called independent monitoring mechanism that should at all times monitor respect for fundamental rights during the implementation of the Pact on Migration and Asylum regarding the conduct of border proceedings, which would apply to persons found in irregular border crossings and the implementation of the

applicable national rules in case of detention. Border procedures would include security, health and identification checks during which a person could apply for asylum and, in accordance with what has been established, subsequent procedures would be determined (regular asylum procedure, accelerated asylum procedure, return and, in case of health needs, special guarantees or isolation). However, since the pushbacks, according to migrants, are often carried out in violation of any legal procedures, the adequacy of such mechanisms envisaged for their monitoring is dubious. Likewise, since establishing monitoring is left to the Member States themselves, it is unclear how its independence, as a precondition necessary for effective supervision, will be achieved, and what the consequences will be if irregularities are indeed detected.

We also conducted investigative proceedings concerning foreigners' access to free legal aid at the Detention Centre in Ježevo. We found that they were not adequately acquainted with having this right, nor can they contact anyone for legal advice and/or legal representation. Since the rights of the persons deprived of their liberty are of little importance if they are not aware of their existence, we recommended that notifications about free legal aid be printed out in all the languages foreigners frequently use in return procedures, that copies of the form be posted on the Centre's billboards, and submitted to each foreigner when deciding on their return.

Furthermore, investigative proceedings following the interception of 30 persons found in the avoidance of border control showed that they had boarded a train in Serbia, hiding in specially constructed cargo wagon hideouts, which were later loaded with clay. The migrants were found at the Dobova border crossing with Slovenia and the group included 15 children and 4 women among them, one of them pregnant. Apart from the gender and age structure, the group also differed according to the countries of origin and thus the languages they could understand. Although the group was heterogeneous, according to several criteria, and included vulnerable individuals, no interpreters were present during the procedure, so it is rather questionable how relationships among the group members were determined, apart from their own statements made in "bad English", and how the children's best interests were taken into account. Additionally, during their stay at the station, that is in the evening, night and morning, they were kept in rooms that did not meet the CPT standards. After the completion of a part of the procedure, they were transported to a police station on the border with Serbia, and only then were handed a formal decision on return with a seven-day deadline for leaving the EEA, although they had little money, no travel documents, and exit from Croatia was hampered by restrictions on entry into third countries due to the pandemic, i.e. the requirement to possess a negative test for COVID 19. Therefore, when conducting a return procedure, the MI should take into account, inter alia, that public authorities carrying out administrative proceedings and dealing with administrative matters are obliged to act in accordance with the principles of the Administrative Procedure Act, in order to ensure the legality, efficiency and economy of such procedure. A legal or actual inability to execute a decision is one of the conditions for a formal decision to be declared null and void. Agreements should therefore be concluded with public authorities of other EEA member states, as well as third countries, to encourage voluntary

returns and, in the case of vulnerable groups, assistance in obtaining travel documents and tickets provided.

We also carried out an investigative proceeding into the treatment of two Nigerian citizens who arrived in Croatia in late 2019 for an inter-university table tennis competition. According to their allegations, the police stopped them in Zagreb and, as they did not have passports on them, forced them, without prior verification of their residence status, into Bosnia-Herzegovina, on a spot not intended for legal border crossing. Soon after that, they were returned to Nigeria. In its reply, the MI stated that a criminal investigation had been carried out but that complainant's allegations were not been verified, and a special report on the inquest conducted was sent to the Bureau for the Prevention of Corruption and Organised Crime (USKOK), which in turn assessed that there were no grounds for further action. Since it is unclear why and how they ended up in the very state into which, according to numerous reports, the Croatian police forcibly returns migrants, we expect that further cooperation with the State Attorney's Office will provide us with an additional insight into the circumstances of this case.

The performance of the Ombudswoman's mandate should not depend on the interpretation of international treaties and laws by individual police officers. Even more so as this varies by places of visit, as all such data are made available to us when visiting police stations/departments that are not related to migrations.

In performing activities of the NPM, pursuant to Articles 4, 19, and 20 of the OPCAT, and Articles 3 and 5 of the ANPM we are authorised to perform unannounced visits to places where persons are or may be deprived of their liberty, and to freely access data on the treatment of persons deprived of liberty, that is, those who have been placed in detention, imprisonment or accommodated in a place under public supervision and who cannot leave freely, which unambiguously includes visits to (border) police stations and access to

information on irregular migrants detained there. However, as in the previous two years, we have been denied this by the MI.

In the course of 2020, in accordance with the NPMA competences, we made unannounced visits to the 6th Police Station in Zagreb, Border Police Station Cetingrad and Border Police Station Hrvatska Kostajnica. In none of them were we given access to records on the treatment of irregular migrants from the MI's Information System, with a justification that we had no authority/passwords for that, nor did we have the opportunity to get printouts of the requested data. However, Border Police Station Hrvatska Kostajnica did allow us to access all case files and supporting unofficial records, unlike Border Police Station Cetingrad, which granted no access to records or case files related to the treatment of irregular migrants, with an explanation that the mandate of the Ombudswoman to perform tasks of the NPM covers only the treatment of arrested persons, and not of irregular migrants. The performance of the Ombudswoman's mandate thus depends on the interpretation of international treaties and laws by individual police officers, which varies by places of visit, as all such

data are made available to us when visiting police stations/departments that are not related to migrations.

In this regard, the EC initiated four meetings with the Ombudswoman in order to consider the possibility of improving the police conduct monitoring system and ensure access to the relevant data, and some were attended by the representatives of the MI as well. Additionally, two meetings were held with the MI without EC's presence, specifically focused on data withholding. The MI, however, insists on its interpretation, arguing that the NPMA is inadequate and must be amended, without taking into account the OPCAT provisions and ignoring the fact that signed and ratified international treaties have primacy over domestic law. Unfortunately, despite the minister's express willingness to change this practice, we were not provided access to the Information System during an unannounced visit to Border Police Station Hrvatska Kostajnica in December. The performance of the Ombudswoman's mandate should not depend on the interpretation of international treaties and the laws by individual police officers. All the more so because they interpret them in different ways, withholding data in police stations/departments related to migrations while making data available in others.

Furthermore, the CPT conducted a five-day ad hoc visit to Croatia in August in order to examine the treatment of persons detained by the police when attempting to enter the country. They visited Border Police Stations Cetingrad, Donji Lapac and Korenica, the Karlovac Intervention Police Unit, and the Ježevo Detention Centre. The delegation also visited several temporary detention centres and informal accommodation facilities in Bosnia-Herzegovina, where they talked to a number of migrants. A report on the visit was accepted in November and the CoE Commissioner for Human Rights urged Croatia to publicise it, in line with the common practice for CPT reports to be made public, with rare exceptions.

In conclusion, borders that are already hard to cross for applicants for international protection have been further closed by measures restricting entry and transfer in order to prevent the spread of the pandemic, while anti-migrant discourse within the EU is not abating. On that account, the Commission has employed the Pact on Migration and Asylum to call for respect of the fundamental rights of migrants and the importance of access to the asylum system. However, the solutions offered by this document still focus greatly on externalising the asylum system, with possibilities for legal avenues for those in need of international protection not sufficiently elaborated. The Pact provides for the establishment of border checks, including security checks, and the extension of the application of accelerated asylum procedures. However, it is questionable whether this can contribute to reducing violations of the rights of irregular migrants or could, on the contrary, endanger human rights and the non-refoulement principle due to, among other things, the speed of procedures, manner of conducting security checks and identifying vulnerabilities.



## 1.5. INTERNATIONAL COOPERATION AMONG NPMs

Due to the pandemic, 2020 was also specific when it came to international cooperation. We chaired the South East Europe NPM Network (SEE NPM Network), and, in cooperation with the Association for the Prevention of Torture (APT) and the Boltzman Institute, organised two meetings supported by the Council of Europe (CoE).

Due to the epidemiological measures, both meetings took place online, and were attended by members of the Network, the representatives of affiliated institutions from another six countries, as well as representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). The first meeting was dedicated to monitoring procedural safeguards in the first hours of police custody, while the other was about monitoring the recommendations for procedural safeguards during police custody and monitoring during Covid-19 as one of the greatest challenges in the performance of our mandate.

Additionally, as part of the SEE NPM Network, we participated in an online meeting organised by the Serbian NPM as the chair of the medical group within the SEE NPM Network, on the subject of monitoring the treatment of the persons in the prison system who are addicted to psychoactive substances, and took active part in all the EU NPM Forum discussions.

We continued our work on the project to promote and protect migrants' rights at the borders within the ENNHRI's Asylum and Migration Working Group, which we chaired in 2020. Among other things, we issued guidelines for monitoring, both of conduct on the borders, as well as, more generally, migrations in the context of the challenges presented by the Covid-19 pandemic. We took part in the NHRI Academy, organised by the OSCE/ODIHR, the ENNHRI and the FRA, on the topic of "Framing migration from a human rights perspective: the role of the NHRI".

Two meetings of the IPCAN Network were also held in 2020, with discussions on police conduct, with a spotlight on the challenges in police work caused by the Covid-19 pandemic, and we also participated in an online CoE Conference about the role of the police in democratic societies in the context of the European Code of Police Ethics.

This year, we also participated in numerous webinars organised by the APT, the Boltzmann Institute, the Hungarian Helsinki Committee for Human Rights and the Associazione Antigone, concerning the rights of the persons deprived of their liberty, the treatment of vulnerable groups, the implementation of disciplinary measures, detention standards in the EU and the role of NPMs, and at the close of the year, we presented our experiences from visits undertaken during the Covid-19 epidemic at the International Conference organised by the Tunisian NPM.



## 2. RECOMMENDATIONS:

### The prison system:

1. To the Ministry of Justice and Public Administration, to enhance the handling of complaints submitted in line with the Execution of Prison Sentences Act and the Ordinance on Prison House Rules for E Execution of Remand Custody;
2. To the Ministry of Justice and Public Administration, to draft a strategy to combat inter-prisoner violence;
3. To the Ministry of Health and the Ministry of Justice and Public Administration, to regulate the issue of healthcare provision within the prison system, in line with the Healthcare Act;
4. To the Ministry of Justice and Public Administration, to urgently start the reconstruction of, and construction of new units in, the Sisak Prison and the Glina Penitentiary;
5. To the Ministry of Justice and Public Administration, to determine the conditions for using means of coercion when enforcing the corrective measure of referral to a youth detention centre;
6. To the Ministry of Justice and Public Administration, to change the Ordinance on the mode of carrying out the corrective measure of referral to a Juvenile Correctional Facility, so that the State Attorney's Office and a Youth Magistrate are informed about any, not just severe, physical injuries to a minor;

### The police system:

7. To the Ministry of the Interior and the Police Directorate, to use police powers in a way that least interferes with human rights and freedoms, while achieving the purpose of the police work, especially when limiting citizens' freedom and apprehending them;
8. To the Police Directorate, to ensure that a person's identity is only checked and verified when there are legally established grounds to do so and that the person in question is informed about the reason for the identity check;
9. To the Ministry of the Interior and the Police Directorate, to ensure that the inviolability of the home is respected in the performance of police activities;
10. To the Ministry of the Interior and the Police Directorate, to examine not only the legality and merit when assessing the use of means of coercion, but also adherence to the principles of proportionality and gradualness;
11. To the Police Directorate, to conduct ongoing education programmes on conduct towards citizens, in line with the legislation and the Code of Police Ethics;
12. To the Ministry of the Interior and the Police Directorate, to secure accommodating conditions in rooms for PDLs that are in line with international and local standards;
13. To the Ministry of the Interior and the Police Directorate, to set up video surveillance in all the areas where PDLs may find themselves, as well as an alarm system (a call button), which should be accessible to detention supervisors in operations and communications centres;

### Persons with mental disorders with restricted freedom of movement:

14. To the Ministry of Health, to systematically conduct education programmes for healthcare workers about the rights of people with mental disorders and the use of means of coercion;
15. To the Ministry of Health, to keep records of the use of means of coercion in all psychiatric units;

16. To the Ministry of Health, to harmonize accommodation conditions in all psychiatric institutions with the international and legal standards;

**Applicants for international protection and irregular migrants:**

17. To the Ministry of the Interior, to carry out procedures in line with international and EU law in relation to irregular migrants apprehended on the Croatian territory;
18. To the Ministry of the Interior, to enable employees of the Office of the Croatian Ombudswoman and representatives of the NPM free access to the data on the treatment of irregular migrants, in line with the OPCAT, the ANPM and the Ombudsman Act;
19. To the Ministry of the Interior, to establish an independent monitoring mechanism of the police activities at the borders;
20. To the Ministry of the Interior, to enable adequate interpreting during the implementation of the return measures.

## CONCLUSION

The Covid-19 epidemic and the aforementioned earthquakes have greatly marked 2020 as a year in Croatia, including in the field that falls under the mandate of the National Preventive Mechanism. Although certain positive shifts when it comes to protection of the rights and liberties of persons deprived of their liberty have been observed, it is necessary to continue to implement measures and activities to enable lasting positive change.

For instance, inter-prisoner violence inside the prison system is still a challenge, and adopting a strategy to combat it would certainly be a basis for an effective solution to this problem. Improvements are also necessary to the way the Central Office for the Prison System handles complaints, and the problems faced by illiterate prisoners when submitting complaints also need to be systematically resolved, which is an issue we have also highlighted in the previous years.

It is also important to regulate healthcare provision within the prison system, and the prison buildings damaged in the earthquake need to be reconstructed as soon as possible or new ones built in the cases where reconstruction is impossible, so that both prisoners and staff can live and work in adequate and safe conditions. The police system still has the problem of inadequate accommodation conditions for persons deprived of their liberty, which need to be brought up to international and national standards.

Citizens continue to complain about the use of police powers, which must be used proportionately and in a manner that represents the least amount of interference with citizens' freedoms and rights, while achieving the purpose of police work, especially during apprehensions and when using means of coercion. Therefore, it is important, when assessing whether their use was justified, not to consider only legality and merit, but also the principles of proportionality and gradualness. Ongoing education for police officers about conduct towards citizens can also contribute to a better handling of such situations.

Systematic education for healthcare workers about the rights of persons with mental health issues would improve the level of respect for such individuals; for instance, education programmes on applying measures of coercion and de-escalation techniques would contribute to a reduction in the number of times coercive measures are used as well as to the better keeping of legally-mandated records.

There are still many challenges related to the treatment of irregular migrants found within Croatian territory; it is important to bring it into line with the national legislation and international and EU law. When processing foreign citizens, these individuals must be provided with the adequate translation to a language they understand, so that they are fully informed of the measures and activities taken that concern them. Likewise, the NPM staff need to be allowed free and unimpeded access to all data concerning the treatment of irregular migrants, in line with the OPCAT, the ANPM and the Ombudsman Act.

These examples are only some of the possible solutions to the problems described in this Report, and are covered by the recommendations focused on preventing torture, inhuman or degrading treatment or punishment, and strengthening the protection of human rights of persons deprived of their liberty.