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Report on the performance of activities of the National Preventive Mechanism for 2014

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CONTENTS

I. PERSONS DEPRIVED OF LIBERTY AND ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM 7

1. INTRODUCTION: PERSONS DEPRIVED OF LIBERTY AND ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM 8

2. PROTECTION OF THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY BY ACTING ON COMPLAINTS 8

2.1. Complaints of persons deprived of liberty in the prison system 8

2.2. COMPLAINTS OF PERSONS WITH MENTAL DISORDERS 12

2.3. Complaints on the conduct of police officers during an arrest 13

3. NATIONAL PREVENTIVE MECHANISM 13

3.1. Visits to psychiatric institutions 13

3.1.1. Neuropsychiatric Hospital "Dr. Ivan Barbot“ 16

3.1.2. Psychiatric Hospital Ugljan 17

3.1.3. Psychiatric Hospital Rab 18

3.1.4. Psychiatric Hospital Lopača 19

3.1.5. Psychiatric Clinic Vrapče 21

3.2. Visit to the Aliens Reception Centre (Ježevo) 22

3.3. Visits to police stations and detention units 23

3.3.1. Zadar County Police Administration: police stations in Pag, Obrovac, Benkovac, Biograd na Moru, 2nd police station in Zadar and the detention unit 23

3.3.2. Sisak-Moslavina County Police Administration: police stations in Kutina, Novska, Hrvatska Kostajnica, Dvor, Gvozd, Petrinja, Sunja, Sisak, Glina and the detention unit 24

3.4. Amendments to the Act on National Preventive Mechanisms 25

3.5. International cooperation within the performance of NPM activities 26

3.5.1. Independent Report of the Ombudsman to the UN Committee against Torture 26

3.5.2. Cooperation with other states and international organisations 27

3.6. Capacities of the Ombudsman's Office for performance of NPM activities 27

4. ASSESSMENT OF THE CURRENT SITUATION IN TERMS OF RESPECTING THE RIGHTS OF PERSONS DEPRIVED OF THEIR LIBERTY 28

4.1. Persons with mental disorders in psychiatric institutions 28

4.2. Persons deprived of liberty in the prison system 34

4.3. Asylum seekers, asylees and illegal migrants 37

4.4. Persons deprived of liberty in police stations and detention units 40

5. CONCLUSION AND RECOMMENDATIONS: 40

II. SPECIAL REPORT ON HUMAN RIGHTS OF PERSONS WITH MENTAL DISORDERS IN PSYCHIATRIC INSTITUTIONS WITHIN THE SCOPE OF ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM IN 2014 43

1. INTRODUCTION **44**

1.1. National Preventive Mechanism and persons with mental disorders 44

1.2. Information on persons placed in psychiatric institutions 45

2. PLACEMENT IN PSYCHIATRIC INSTITUTIONS **47**

3. ACCOMMODATION CONDITIONS **50**

4. RIGHTS OF PERSONS WITH MENTAL DISORDERS DURING HOSPITALISATION **53**

5. MEANS OF COERCION AGAINST PERSONS WITH MENTAL DISORDERS **59**

6. OCCUPATIONAL THERAPY **63**

7. STAFF **65**

8. FUNDING OF PSYCHIATRIC INSTITUTIONS **67**

9. CONCLUSION **70**

10. APPENDIX: PHOTOS FROM PSYCHIATRIC INSTITUTIONS (2014) **72**

Dear readers,

for the last three years the Office of the Ombudsman has been performing activities of the National Preventive Mechanism (NPM) against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in establishments where persons deprived of liberty are placed, as well as persons ordered into any form of detention, imprisonment or placement in a public custodial setting which they are not permitted to leave at will.

We are authorised to perform activities of the National Preventive Mechanism under the Act on the National Preventive Mechanisms against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OG 18/11, 33/15).

Furthermore, the Ombudsman is the only independent national institution in Croatia with the "A" status accredited by the UN International Coordinating Committee in accordance with the criteria of the so called Paris Principles, meaning that it meets the highest international standards of operational independence and autonomy; this accreditation was confirmed in July 2013.

In front of you is the third annual report of the National Preventive Mechanism (NPM) for 2014. I'm glad to inform you that, again in this year, during our visits we did not observe any actions that would constitute torture. However, we did observe and reacted within our powers with regard to actions that could constitute degrading treatment.

In the last year, in addition to regular activities, special emphasis in our work was on making a concrete contribution to improving the treatment of persons with mental disorders in psychiatric institutions. Therefore, we have performed unannounced visits to several institutions selected according to their size and significance. These visits resulted in individual reports, which were subsequently integrated into a special *„Ombudsman's report on human rights of persons with mental disorders in psychiatric institutions as part of the activities of the National Preventive Mechanism in 2014"*, which is an integral part of this document.

This Report was accepted by the Croatian Parliament, thus confirming the NPM's authority in Croatia as well as the need to comply with standards of human rights protection of persons with mental disorders that were highlighted in the Report. Additionally, it is encouraging that, according to the delivered opinions, a high 75% or, more precisely, 99 of 131 recommendations given in individual reports were fully or partially accepted.

The 2014 Annual Report on the National Preventive Mechanism is primarily intended for local expert audience, state and public bodies, civil servants in prison, judicial, health, defence and

social care systems and civil society organisations. Additionally, it is also intended for international bodies involved in prevention of torture and for national preve ntive mechanisms of other countries. Further, it is intended for the media whose reporting may contribute to a broader informing of the public about the status of human rights of persons placed in institutions which they are not permitted to leave at will. Last but not least, this is an informative material for persons deprived of liberty, their families as well as the citizens seeking information on the level and developments of human rights protection in this field.

Lora Vidović
Ombudswoman

I.
PERSONS DEPRIVED OF LIBERTY AND ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM

1. INTRODUCTION: PERSONS DEPRIVED OF LIBERTY AND ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM

The Ombudsman protects the rights of persons deprived of liberty by examining individual complaints on violations of their rights and by performing visits of the National Preventive Mechanism aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment, improving accommodation conditions in places of deprivation of liberty and removing systemic deficiencies in line with legal requirements and international standards. The number of complaints submitted to the Ombudsman by persons deprived of liberty in 2014 (178) makes this area one of the four most represented and reflects systemic problems in the prison system, such as health care and overcrowding of particular wards. We also received a higher number of complaints from psychiatric institutions. Moreover, we have visited penitentiaries and prisons on more than ten occasions and, acting in accordance with the Ombudsman Act, carried out more than 30 individual investigative procedures.

In the third year of NPM activities, we have visited 22 establishments in which persons deprived of liberty are placed, which is an 83% increase compared to the previous year (seven visits in 2012 and 12 visits in 2013). In doing so, special attention was given to psychiatric institutions for which, based on five detailed reports on visits, the Ombudsman's Special report on human rights of persons with mental disorders in psychiatric institutions was prepared. The second important area of NPM activities in this year was the rights of asylum seekers and illegal migrants, within which we visited the Aliens Reception Centre for the first time. Visits to police stations in Sisak-Moslavina and Zadar counties were the third area of NPM activities in 2014.

2. PROTECTION OF THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY BY ACTING ON COMPLAINTS

2.1. COMPLAINTS OF PERSONS DEPRIVED OF LIBERTY IN THE PRISON SYSTEM

In 2014 we recorded a slight decline in the number of complaints made by persons deprived of liberty in the prison system which, *inter alia*, arises from the fact that no visits to penal institutions were made within the performance of NPM activities during the last year. Unlike in previous years, when complaints regarding the accommodation conditions were the most represented, a majority of complaints submitted in the last year were related to the quality of health care. The third most frequent cause for complaints was the conduct of penal officers.

The reduced number of complaints regarding the accommodation conditions may be viewed as a result of reducing the prison system's occupancy rate. In fact, according to the data of the Central Office of the Prison System Directorate of the Ministry of Justice (hereinafter: the Central Office), on 31 December 2014 the prison system's occupancy rate was 96%. However, despite these surely positive indications, the average occupancy rate in high security conditions, where the effects of overcrowding are most visible, is 106%, whereas in some prisons that rate is above 140% (157% in Osijek County Prison, 141% in Požega and 140% in Varaždin). It is worth noting that, legally, those capacities include rooms that were, before being turned into dormitories, used as living rooms, rooms for leisure activities or religious rituals. Their conversion increased the capacities, but this has reflected negatively on everyday activities of prisoners and their organised leisure activities.

Other than failure to provide the prescribed minimum of 4 m^2, many received complaints were related to non-compliance of prisoners' rooms with health and hygiene requirements. For example, acting on a complaint made by a group of prisoners, we conducted an investigative procedure in Bjelovar County Prison, in which it was established that walls in the toilet room are green from mould and that traces of dampness are visible on the part of the ceiling outside the toilet room. Pipes on the ceiling of the toilet have a bag tied around them to prevent the upper floor toilet from dripping on prisoners while they are using it. During the visit, the said bag was full of liquid. Although the identified deficiencies were removed after the investigation, and while considering the fact that, due to the age of the County Prison building and despite regular maintenance, it is impossible to avoid many defects, such accommodation conditions are unacceptable and may constitute degrading treatment.

The quality of health care is the most frequent cause for persons deprived of liberty to submit complaints. Likewise, the data made available by the Central Office shows that in 2014 the heads of penitentiaries and prisons received a total of 378 complaints, while as much as 135 or 36% of them were related to the quality of health care, clearly indicating the need for systematic and organisational changes in this area.

Some health care complaints are still related to long waiting periods for performing individual specialist medical examinations, recommended surgical treatments and physical therapy. For example, physical therapy recommended for some prisoners is not provided in a timely manner, which may even lead to more permanent damages. In one case, according to the specialist medical opinion, the prisoner's disability could have been prevented with a timely transfer to inpatient physical therapy; but now he needs therapy to attempt improving his condition and preventing further aggravation of disability. However, he is still waiting for his transfer to inpatient physical therapy because the Croatian Health Insurance Fund's committee does not approve it because the nature of injuries is now more permanent. Due to a large number of prisoners requiring physical therapy, it cannot be sufficiently provided in the penal institution until the time when the prisoner is transferred to inpatient physical

therapy. In order to remedy that, the penal institution is considering a purchase of several devices required for performing physical therapy.

Persons deprived of liberty still submit complaints on the manner of performing protective measures of mandatory psychiatric treatment and compulsory treatment of addiction. From some of the prisoners' complaints it may be concluded that they became addicted to Suboxone while serving their sentence, which is an issue that demands special attention and requires involvement of more experts, both from judiciary and health care, which was already highlighted in the last year's report.

Non-smoking prisoners continue to submit complaints on being placed in rooms with smokers against their will, so they are constantly exposed to passive smoking and fear for their health, which was also already reported. The Act on Restriction of Usage of Tobacco Products applies to penal institutions as well. While taking into consideration the fact that, due to overcrowding in some prisons and penitentiaries, it is very difficult to designate special rooms for smokers which will be available to them throughout a larger part of the day, we consider this is not sufficient cause to release the prison system from its obligation to protect the health of prisoners. Therefore, we again emphasize the need to take appropriate measures that would ensure protection from passive smoking in the prison system.

As all prisoners are, since 2014, insured by the Croatian Health Insurance Fund (hereinafter: CHIF), some complaints were caused by the fact that prison doctors may not issue referrals and prescriptions to prisoners as this is to be performed by selected doctors. Some of them have never seen their prisoners; consequently, all primary health care services were *de facto* performed by the prison doctor. An agreement between the Ministry of Justice and the Ministry of Health to find organisational solutions that would allow prison doctors to issue referrals and prescriptions is in progress, which will surely improve the quality of health care provided to prisoners and remove one of the potential causes of their dissatisfaction. However, none of these difficulties would exist if the prisoners' health care was to be organisationally transferred under the Ministry of Health, which is described in more detail in the section on the assessment of the current situation in terms of respecting the rights of persons deprived of liberty.

We have also received several complaints from vegetarian prisoners on the quality of meals. In one case it was established that some daily calorific values of meals met the prescribed energy value of at least 3,000 kcal only because of higher quantities of bread. In order to meet the prescribed energy and nutritional intake standards, it is required to consult a nutritionist when preparing and planning vegetarian meals.

Complaints regarding the conduct of penal officers in penitentiaries and prisons are still very frequent, especially with regard to the security department. There is a higher number of written and oral complaints of prisoners alleging that security department officers verbally insult them, belittle them and call them abusive names. Another concern is that many

complaints are related to insults and harassment on the grounds of national origin. We have warned the Central Office of this unacceptable practice, which sent a memo to penal institutions on the necessity of consistently implementing all legal provisions related to the prohibition of discrimination on any grounds. Moreover, the Central Office informed us that it will assess the need for additional training of penal officers on human rights and the protection of prisoners from all forms of cruel, inhuman or degrading treatment. However, it should be reminded that the need to carry out this type of training is not a question that depends on the Central Office's assessment, but it is the state's obligation arising from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

It is unacceptable to carry out disciplinary procedures against prisoners who attempted suicide. Acting on a prisoner's complaint, we established that a disciplinary procedure for attempting suicide was initiated against him and resulted in imposing a disciplinary measure for committing a more serious disciplinary offence of deliberate endangering of one's own health with the purpose of incapacitation for the performance of obligations. Such treatment not only shows a complete misunderstanding of the situation in which a person tries to take his life, but also a lack of knowledge or arbitrary interpretation of the relevant legal norms. Although the Central Office instructed all penal institutions not to initiate a disciplinary procedure for attempted suicide, it is required to review the legal definition of all disciplinary offences, so that every person clearly knows and understands in advance which behaviours are considered as disciplinary offences. In this context, we would like to recall the Constitutional Court decision U-I-659/1994 in which it is stated that the principle of the rule of law shall be honoured only in the case when legal provisions are sufficiently defined both in respect to those to whom they refer, in terms of their rights and obligations, as well as in respect to the procedure used to decide on these rights and obligations, and if consequences which will arise in a specific case are adequate to the legitimate expectations of the parties to whom they are applied.

Further, we received several complaints in which prisoners point out the issue of House Rules which prescribe that refusing the execution of a lawful order related to meeting the obligations from an individual programme for the execution of prison sentence is a more serious disciplinary offence. This provision is disputable because of the fact that disciplinary offences are prescribed by the Execution of Prison Sentences Act (hereinafter: EPSA), and not by the House Rules, and also because refusing the execution of a lawful order of an authorised official is already prescribed in the EPSA as a disciplinary offence.

In view of the fact that we have already for several years emphasized the inadequate efficiency of legal protection of persons deprived of liberty in the prison system, in the last year's report it was recommended to the Ministry of Justice to carry out a study on the efficiency of legal instruments for protecting the rights of persons deprived of liberty. However, the Central Office thinks that efficient instruments for protecting the rights of prisoners are already ensured by the existing legislation which is harmonized with international standards. Despite

this, the complaints we keep receiving do not support this opinion. For instance, based on a prisoner's complaint we established that he did not receive a written response to any of his eleven complaints made to the head of prison from August to December 2014. In one investigative procedure we established that the prisoner, pursuant to Article 17 of the EPSA, submitted to the competent executing judge a request for judicial protection, but the judge failed to issue a formal decision and responded by a memo. The European Court of Human Rights has already in similar situations ruled against Croatia for violation of the right to an effective remedy referred to in Article 13 of the Convention (Štitić v. Croati a, Pilčić v. Croatia). Since judicial authorities are competent for such actions, we have informed the Supreme Court of the Republic of Croatia, which at least once a year calls a meeting of judges responsible for the execution of sentences for the purpose of harmonizing the implementation of the EPSA.

2.2. COMPLAINTS OF PERSONS WITH MENTAL DISORDERS

The complaints made by persons with mental disorders in 2014 were mostly related to involuntary hospitalisation or placement without consent, when consent was instead of the person given by his/her legal representative, and placement in homes for adult persons with mental disorders; we were also contacted by persons with mental disorders or their relatives and non-governmental organisations. In the process of examin ing the received complaints in line with the Ombudsman Act, we visited the Psychiatric Clinic of the Clinical Hospital Osijek and the Home for adult persons with mental disorders in Bjelovar.

In taking actions on complaints and in accordance with our powers, we did not analyse psychiatric judgments or the process of diagnosing mental illness, or made conclusions on whether it is professionally justified to involuntarily detain or place someone in a psychiatric institution, although complainants often had such expectations, but we examined whether the complainant's constitutional and legal rights were violated. The Ombudsman may take actions towards the courts only in cases where it is apparent that the proceedings in question are being unnecessarily delayed or that powers are manifestly abused, which was not established in any specific cases. In cases of disagreement with the established diagnosis, we instructed complainants to submit their objections with regard to the forensic expert's work to the president of the court which appointed the forensic expert, while complaints regarding individual doctors may be submitted to the head of the institution in which the doctor is employed or to the Croatian Medical Chamber.

As mentioned in the last year's report, the issues that could lead to an uneven treatment of involuntarily hospitalised persons with mental disorders and violations of their rights are still present.

One of the reasons for an uneven treatment of involuntarily hospitalised persons with mental disorders is also the fact that some psychiatric institutions do not have closed wards in which the measure of involuntary medical treatment should be performed and sometimes this is one

of the reasons for the use of means of physical restraint, which is unacceptable. Patients who require medical treatment in a closed ward cannot be treated in psychiatric institutions which do not have it.

Involuntary taking of psychopharmaceutical medications is still one of the reasons for complaints of hospitalised persons with mental disorders, but there were also complaints regarding involuntary medication in cases of the so called "voluntary placement". One complainant stated that she had to choose whether she will agree to hospitalization or the procedure of her involuntary hospitalization will be initiated; such consent surely cannot be deemed to be free and informed although the complainant signed the consent for placement in a psychiatric institution.

We also received complaints regarding violations of the right to a second opinion under the Act on the Protection of Patients' Rights, which is the right of free persons as well as persons deprived of liberty. The issuing of a second expert opinion is not the same as performing a medical or psychiatric expert evaluation in court proceedings because the court is not bound by proposals of the parties and evaluates each item of evidence separately. As court decisions may be changed or annulled only by the court competent for the case in the procedure prescribed by the law, we instructed complainants to seek legal remedies.

2.3. COMPLAINTS ON THE CONDUCT OF POLICE OFFICERS DURING AN ARREST

Citizens' complaints on the conduct of police officers during an arrest are mostly related to excessively rough treatment. In addition to impolite conduct of police officers, they also complain about rough physical treatment which includes the turning of hands and putting cuffs on too tight. Moreover, they state that their remarks about impaired health caused by the current circumstances or long-term illness did not always result in a timely calling of medical assistance or transport to a medical institution, but that such assistance was provided much later. We have already in the last year's report pointed out the need to amend the Criminal Procedure Act so that arrested persons have the right to a medical examination and not only emergency medical assistance.

In 2014, police officers used the means of coercion – physical force, spray with an irritating agent or baton –in 4,608 cases, the means of restraint were used in 3,536 cases and firearms in 16 cases. In one case the use of a firearm was evaluated as unjustified.

3. NATIONAL PREVENTIVE MECHANISM

3.1. VISITS TO PSYCHIATRIC INSTITUTIONS

Within the performance of NPM activities in 2014, special attention was given to placement of persons with mental disorders in psychiatric institutions by performing five unannounced

visits to the following psychiatric institutions[1] selected according to their size and significance: Psychiatric Clinic Vrapče, Neuropsychiatric Hospital "Dr. Ivan Barbot", Psychiatric Hospital Rab, Psychiatric Hospital Ugljan and Psychiatric Hospital Lopača. The visits, which lasted two to four days, provided insight into the rights of different categories of persons placed in them: mentally incompetent persons (all forensic psychiatry wards are located in Vrapče, Popovača, Rab and Ugljan), persons with more severe mental disorders who are seriously and directly endangering their own life, health or safety, or the life, health or safety of other persons, and who have been involuntarily placed on the grounds of a county court decision (the so called "civil" involuntarily placed persons), children with mental disorders (Lopača), users of the social service of long-term accommodation (Ugljan, Lopača) and persons who pay for their own hospitalisation in psychiatric institutions (Lopača). The visits did not cover all rights of persons with mental disorders, but focused only on those relevant for national preventive mechanisms. Consequently, during these visits we did not analyse psychiatric judgments or the process of diagnosing mental illness, or made conclusions on whether it is professionally justified to involuntarily detain or place particular persons in a psychiatric institution.

During the visits, the 1997 Act on the Protection of Persons with Mental Disorders (OG 11/97, 27/98, 128/99 and 79/02, hereinafter: APPMD/97) was in force, and if the new APPMD (OG 76/14, hereinafter: APPMD/14), which is in force since 1 January 2015, regulates some right to which it refers differently, this is highlighted herein.

The inspected psychiatric institutions provided care for the total of 2,107 patients, whereas NPH Popovača has the highest number of patients, and PH Lopača the lowest. In addition, PH Ugljan and PH Lopača also accommodated the total of 39 users of the social service of long-term accommodation under decisions of social welfare centres; those persons are not under treatment in psychiatric institutions, but are provided the social service of accommodation outside their own family.

Table 1: Capacity, number of patients and users, and occupancy rate of inspected institutions

	Capacity	Number of patients	Number of users	Occupancy rate (%)
NPH Popovača	699	623	-	89.1%
PH Ugljan	483	376	19	81.8%
PH Lopača	181	126	20	80.6%
PH Rab	480	363	-	75.6%
PC Vrapče	881	619	-	70.2%
Total	2,724	2,107	39	77.3%

[1] After the visits, in addition to individual reports, we have also drafted the Special report on human rights of persons with mental disorders in psychiatric institutions as part of the activities of the National Preventive Mechanism.

The largest number of persons placed in the inspected psychiatric institutions is there on the basis of their own voluntary consent (voluntary placement) or, if the person is unable to give consent, on the basis of the consent given by their legal representative or competent social welfare centre (placement without consent). The share of involuntarily placed persons in the total number of patients is 18%, but it is required to differentiate "civil" involuntary placement (APPMD/97, Title V) from involuntary placement of mentally incompetent persons whose involuntary placement was ordered by the court in criminal proceedings (APPMD/97, Title VII).

Table 2: Number of voluntarily placed persons, persons placed without consent and involuntarily placed persons on the day of the visit

	Total number of patients	Voluntary placement and placement without consent	Involuntary placement	
			"Civil" patients	Mentally incompetent patients
NPH Popovača	623	426	6	191
PH Ugljan	376	325	6	45
PH Lopača	126	126	-	-
PH Rab	363	310	8	45
PC Vrapče	619	545	11	63
Total	2,107	1,731	32	344

In the total number of patients and users placed in institutions during the visits, 59% were men and 41% women. Only PC Vrapče had more women than men. PH Lopača is the only one of inspected institutions that provides accommodation for children as well, in this case six boys aged 14-16.

Regardless of some individual exceptions, psychiatric institutions in general encourage visits of family members even outside the times prescribed by the House Rules, which is especially visible in institutions located on islands.

Other than examples of good practice, we also established some problems common to all inspected psychiatric institutions.

The accommodation conditions in most of the inspected wards are unsatisfactory, particularly with regard to overcrowding of rooms. Although their average occu pancy rate is 77%, these calculations did not take into account the standards of accommodation which prescribe that a dormitory may have a maximum of 4 beds, and that each bed requires a surface of at least 6 m² for adults. The rooms where patients are staying are generally too small in terms of having a larger number of beds than prescribed, with some hospitals having up to 14 beds in a single room.

All five psychiatric institutions are clearly suffering from the lack of personnel, which is reflected in the quality of care and realisation of the rights of patients. The work in all

institutions is organised in shifts and the lack of personnel is most visible in evening and night hours. Improper keeping of records on the use of means of coercion, records of patients according to the type of placement (voluntary, without consent or involuntary) and records of submitted patients' complaints was established in the majority of institutions, which in turn increases the risk of violating their rights.

It was also established that a significant number of persons are still in hospital although, according to the opinion of their doctors, they completed their treatment and there is no medical reason to keep them; however, they cannot be released without an organised reception outside the hospital.

Further, it was established that all four psychiatric institutions that are part of the Public Health Service Network generated losses in 2014 due to less funds allocated by the CHIF. The largest share in total expenditure is allocated for employee expenses, whereas it is important to note that the number of employees is lower than the prescribed minimum in all visited institutions.

Each visited institution received a separate report with warnings and recommendations, which was also delivered to the Ministry of Health, the Ministry of Social Policy and Youth and, in some cases, the Croatian Health Insurance Fund, City Assembly of the City of Zagreb and the City Council of the City of Rijeka. We received feedback information regarding the measures taken to comply with recommendations from all aforementioned bodies and institutions, other than the Ministry of Health, which responded only in the case of receiving the report on visiting PH Lopača, stating its intention to carry out a health inspection.

Acting in accordance with the NPM recommendations, the Ministry of Social Policy and Youth delivered instructions to all social welfare centres with regard to finding appropriate accommodation for persons whose treatment is completed, but they require accommodation outside their own family, and with regard to fulfilling the centres' obligation to monitor the conditions in which their wards live.

3.1.1. Neuropsychiatric Hospital "Dr. Ivan Barbot“

As a county hospital of the Sisak-Moslavina County, it provides care for patients in this county (pop. 172,439), but also receives patients from a wider area which spreads from the edge of Zagreb's area to Croatia's eastern border (pop. around 1 million).

The NPM visited the wards of the Forensic Psychiatry Unit; Psychogeriatrics; Acute and Subacute Psychiatry; Prolonged Treatment; Neuroses and Borderline States, and the Work-Occupational Therapy and Rehabilitation Service. During the visit none of the patients complained of mistreatment by the hospital's employees, and no cases of inhuman or degrading treatment were established. Although there were some cases of altercations, the issue of violence between patients is not present. Female patients are placed in separate

wards, except in the single mixed gender ward of the Forensic Psychiatry Institute. There are no hospitalized juveniles because they are provided outpatient treatment.

The Hospital is subject to a bailout programme due to financial losses, but the funds allocated by the CHIF are insufficient for covering the costs of treating patients.

In the Forensic Psychiatry Institute, unlike male patients who may be staying in smaller rooms and apartments, female patients are in a less favourable position as they are, due to a significantly lower number of women, placed in a large room with nine beds.

The use of physical force for punishing a patient or the use of means of coercion that would constitute torture or inhuman treatment was not established in any of the cases. However, we did establish actions that are contrary to international standards and may cause violations of the rights of persons with mental disorders and constitute degrading treatment, such as restraining a patient in the hall in front of other patients. For example, in the Forensic Psychiatry Institute we observed some cases where a restrained person is placed in bed, which in such situations is located in the middle of the hall in front of other patients. Such treatment is contrary to guidelines of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: CPT) provided in its report on the visit to Croatia in 2007, under which restrained patients should not be exposed to the view of other patients as it may make a restrained person feel low self-esteem and constitute degrading treatment. Likewise, when the process of restraining a patient is performed in front of other patients, physical attacks on the restrained patient are possible, so such practice may also represent a security issue. Isolation as a means of coercion is not applied.

NPH "Dr. Ivan Barbot" (Popovača) has complied with all warnings and recommendations provided in the visit report.

3.1.2. Psychiatric Hospital Ugljan

As a county hospital, it provides care for patients in the Zadar County (pop. 170,017), but also receives patients from Split-Dalmatia, Dubrovnik-Neretva and Šibenik-Knin counties (pop. around 700,000) and other parts of Croatia.

The NPM visited the following wards: Forensic Psychiatry; Reception and Intermediary Treatment (Acute Male); Dementia, Elderly Psychiatry and Palliative Care of Patients with Mental Disorders; Dementia and Deterioration; Prolonged Treatment; Social Welfare; Non-Health Services, and the Work-Occupational Therapy and Rehabilitation Unit.

We did not observe any actions that would constitute torture and inhuman or degrading treatment or punishment of patients. We received a lower number of complaints from patients with regard to the quality of meals, accommodation conditions, inadequate contacts between doctors and patients and treatment of personnel. There was also a number of altercations, but not in the scope that would indicate a serious problem of violence between

patients. In terms of the earlier information as to the issue of wearing civilian clothes, patients are now allowed to wear civilian clothes, but that option is still not made available to all patients.

Because it has vacant beds, the forensic psychiatry ward also accommodates non-forensic patients without a clear therapeutic reason. Although such situations are not illegal, placement of non-forensic patients in forensic wards fails to provide appropriate conditions for their treatment, rehabilitation and resocialisation. Furthermore, the institution signed an agreement on mutual relations with the ministry competent for social welfare, so it also performs social welfare activities. However, in the case of providing the social service of long-term accommodation, the institution fails to provide all services in line with the prescribed standards, but some users are, for instance, placed in hospital wards. It should be understood that these are not users placed in a ward because of deterioration of their health and a doctor's referral to hospital treatment, but they *de facto* live in those hospital wards. Some are even placed in closed wards, in conditions that provide no privacy. Certain users stated that they demanded to be transferred to a social welfare institution, but their guardians told them there was no room for them.

The ward for dementia, elderly psychiatry and palliative care of patients with mental disorders includes two rooms, each with 14 female patients, in which the space between beds is extremely small and, due to the lack of space, the majority of patients have no night cabinets where they can keep personal belongings, while privacy is almost non-existent. The toilet rooms in this ward have squatting toilets, which is really inappropriate considering the age and health of patients.

The measure of isolation may last up to seven days and it is carried out in rooms which are, in general, equipped like ordinary patient rooms. When restrained, a person is kept separate from other patients and his/her condition is monitored by video surveillance with regular visits from health workers.

The occupational therapy does not include a resocialisation programme that would train patients for independent life and work in the community, such as social skills training (cooking, cleaning, money management), which is especially important for patients in the prolonged treatment ward.

PH Ugljan has complied with all warnings and recommendations provided in the visit report.

3.1.3. Psychiatric Hospital Rab

This county hospital covers around 500,000 inhabitants in the counties of Primorje-Gorski Kotar, Lika-Senj and Istria.

The NPM visited the following wards: Reception; Acute and Intensive Care; Neurocognitive Rehabilitation; Forensic Psychiatry, and units for integrated rehabilitation, prolonged treatment, and refractory functional psychoses.

During the visit no actions were observed that would constitute torture and inhuman or degrading treatment or punishment of patients.

As the Croatian Health Insurance Fund cut the Hospital's budget, in 2014 it started to generate losses and it is estimated that usual activities should be reduced by at least 30% to keep the operation within cost limits.

It must be noted that great efforts and investments into improving the patients' accommodation conditions are being made. For example, the neurocognitive rehabilitation ward fully complies with standards. However, the conditions of accommodation in some wards of this institution are still inadequate. For instance, most dormitories in the prolonged treatment ward have eight beds. In the reception, acute and intensive care ward, visits take place in the space in front of the manager's office, which is completely inappropriate for this purpose and does not even have chairs.

Isolation as a means of coercion is never applied, and neither is the use of leather belts to restrain patients.

This institution stands out as an example of good practice in structuring and organising occupational therapy. The rooms where it is performed are spacious, clean and modernly designed, offering various occupational therapy activities. Moreover, construction of a special garden intended for working with patients suffering from different forms of dementia was in progress during the visit.

PH Rab has complied with all warnings and recommendations provided in the visit report.

3.1.4. Psychiatric Hospital Lopača

PH Lopača is a special hospital founded by the City of Rijeka. It provides care for patients in the Primorje-Gorski Kotar County (pop. 300,000) and from other parts of Croatia as well. At the time of the visit, only 10 beds for children and adolescents were in the Pulbic Health Service Network. In addition to health care activities, the institution is also authorised to perform social welfare activities of providing accommodation outside one's own family for a maximum of 20 users, i.e. adult persons with mental disorders.

The NPM visited all wards in which patients and users are placed.

The institution is located in Rijeka's hinterland and there is no public transport to the first larger settlement, which aggravates resocialisation of patients and users as well as visits of their family members. Users of the social service of long-term accommodation are not placed in a separate organisational unit; they are dislocated in different wards. Female patients and

users are located in a separate women's section of the integrative psychiatry ward, while in other mixed gender wards they have separate rooms. Minors are separated from adults in the unit for children and adolescents.

The funding of PH Lopača is specific in comparison to the other four psychiatric institutions. While other institutions are in the public health service network and their medical treatment costs are covered by the Croatian Health Insurance Fund, PH Lopača had only 10 beds for adolescents that are included in the network. The City of Rijeka pays for the accommodation of about 50 socially vulnerable patients, while 20 users are covered by a contract with the Ministry of Social Policy and Youth and they do not receive treatment, but are provided the social service of long-term accommodation. Other adult patients (or their guardians) cover all medical treatment costs on their own, including hospital accommodation, despite usually having a health insurance policy with the Croatian Health Insurance Fund. The contract on hospital services they sign in such cases is of standard form, and prescribes payment of a deposit in the amount of five to eight thousand Kuna. Under the City Council of the City of Rijeka's decision on social welfare, the right to accommodation in PH Lopača has been established and regulated as a social welfare right, meaning that a socially vulnerable person may be placed there at the City's expense, provided that he/she is a chronic psychiatric and/or geriatric patient based on a psychiatrist's findings and opinion, and meets the social welfare criterion or the income criterion. As a result, it may be concluded that the City of Rijeka is co-financing the Hospital's social welfare activities for persons outside the number contracted with the Ministry of Social Policy and Youth without determining conditions for providing the social service of long-term accommodation for that excess number of users. However, if this is related to covering the costs of hospital treatment, it is questionable why persons with mental disorders, for which the City of Rijeka covers costs, are not sent to receive treatment at the expense of the CHIF in psychiatric institutions within the Primorje-Gorski Kotar County which are in the public health service network. In fact, the accommodation conditions in PH Lopača are not better than the conditions in those psychiatric institutions and are even worse in some segments.

The space used by the children and adolescents unit is inadequate for their accommodation. The unit is located on the last floor of the building above the social psychiatry unit in which chronic patients are placed, and the space is divided by the double-locked iron doors. The space and rooms where children stay, with minimum furniture and empty walls, are neither adjusted to their needs and age nor motivating, while the bathroom and toilet are in very bad condition (broken door, no handle and no artificial light).

An example of good practice in an adequate accommodation that fully complies with prescribed standards is the Ward for Organically Conditioned Mental Disorders.

Complaints are generally made orally and no written records are kept. Further, the lack of written complaints arises from the fact that patients are not adequately informed of their

rights or provided optimum conditions to submit written complaints, since there is only one Book of Complaints in the whole institution, and it is not easily accessible.

Isolation of patients up to two hours is used as one of the means of coercion. The measure of restraint lasts up to three hours, while patients are during that time in their room exposed to the view of other patients or, if it is considered necessary, restrained in the room for enhanced supervision with video surveillance. Some patients complained that, while being restrained in a room with video surveillance, they were not visited by a health worker for more than four hours.

Jobs that patients may perform in occupational therapy or fees they should receive are not prescribed in any of the psychiatric institution's regulations. During the visit we observed a few patients washing floors and walls, while some stated that they, as part of occupational therapy, performed laundry ironing, transport of deceased persons, etc., which is unacceptable.

PH Lopača has partially complied with the NPM's warnings and recommendations.

3.1.5. Psychiatric Clinic Vrapče

The Psychiatric Clinic Vrapče is the largest psychiatric institution in Croatia, treating patients from the City of Zagreb, Zagreb and Krapina-Zagorje counties as well as the most demanding patients from the whole Croatia.

The NPM did not observe any actions that would constitute torture and inhuman treatment, but it did observe actions that may be evaluated as degrading.

The accommodation conditions in the psychogeriatric ward, located in a run-down building, are below the acceptable level. The roof is leaking and plaster has fallen off in places, so urgent renewal, adaptation and reconstruction of the building are required. The living conditions are further aggravated by the overcrowding of patients' rooms, so it is also required to reduce the number of beds per room. Accommodation in such highly inadequate conditions constitutes degrading treatment.

The conditions of accommodation in which forensic patients are treated are also highly inadequate and do not comply with security requirements or create a therapeutic environment, thus causing violations of the rights of persons with mental disorders. The CPT has on two occasions (2003 and 2007) highlighted the extreme inadequacy of conditions in the Forensic Psychiatry Unit and recommended urgency in constructing a new building.

An example of good accommodation conditions in line with the prescribed standards is the Diagnostics and Intensive Care Unit.

In principle, patients are informed of the reasons for prescribing medicines, their therapeutic effects and potential side-effects and/or harmful consequences. However, in some wards and

institutes with not enough physicians and many patients, informing is not always performed in a satisfactory manner. With regard to the use of means of coercion, in some situations the Clinic uses leather belts as an addition to a magnetic belt or a protective jacket. Isolation is also used as a means of coercion, generally lasting up to 2 hours, during which the person is placed in a specially secured room devoid of dangerous objects. An example of good practice is the keeping of a single central record on the use of means of restraint for the whole institution, with data on the used means of coercion delivered every morning to the Clinic's director and head nurse; since the introduction of the single central record, the number of restraint measures is declining, which is additionally supported by the daily data analysis.

Jobs for patients in occupational therapy are prescribed as well as compensation to be paid to them for the performed tasks. PC Vrapče has complied with all warnings and recommendations provided in the visit report.

3.2. VISIT TO THE ALIENS RECEPTION CENTRE (JEŽEVO)

The NPM has carried out an unannounced visit of the Aliens Reception Centre (hereinafter: the Centre), the only facility for accommodation of illegal migrants in Croatia, with a total capacity of 96 persons. Under the Ministry of the Interior's decision, the Centre is used for detaining aliens who are in the process of deportation as well as of asylum seekers in situations prescribed by the law. All rooms where they are staying were inspected, while special attention was given to the conditions of accommodation. At the time of the visit, the Centre provided accommodation for 30 adult men, so no overcrowding was observed. Women and children are placed separately from men.

Since it is not possible to reconstruct the Centre's premises so as to ensure the separation of asylum seekers and illegal migrants, it is required to at least separate them by rooms, which would be in line with concluding observations of the UN Committee against Torture from 2014 and the Reception Directive.

The rights of involuntarily detained aliens during their stay at the Centre are respected, but some organisational and accommodation deficiencies were observed. For example, information on fundamental rights that an alien has during his/her stay at the institution is not posted anywhere in the Centre. No psychological assistance is provided in the Centre and the existing job systematization does not include any posts for psychologists. Since these are persons who are deprived of liberty and who have probably experienced trauma, it is required to provide psychological assistance in the Centre.

Aliens may submit an oral complaint to any officer, which is then turned into a report entered in the daily record, or they can schedule an interview with a police officer or the head of the Centre. There is no specific complaint box or any complaint forms, but aliens may request a pen and paper.

In the procedure of deciding on their expulsion, aliens who illegally reside or who are on a short-term stay in Croatia have the right to free legal aid, the costs of which are covered by the Ministry of the Interior. This right was still unavailable at the time of the NPM's visit because the procedure of selecting the legal aid provider pursuant to the Ordinance on Free Legal Aid in the alien expulsion or return procedure was in progress. Further, aliens are not entitled to free legal aid in the procedure of deciding on their detention in the Centre, but that aid is provided only in the procedure of appeal against the decision on expulsion or return.

Health care in the Centre is inadequate and does not comply with the Rules for Staying at the Reception Centre (OG 66/13). The infirmary is inoperative since January 2014, so the physician and nurse visit the Centre twice a week, which prevents the performance of entry medical examinations; additionally, because of the lack of physicians and nurses, medicines are distributed by a police officer, which is unacceptable.

The use of batons as a means of coercion is a measure of last resort, used only when disturbances may not be solved in another way, while the means of restraint are used preventively, for example if there is a risk of flight when entering a vehicle. However, police officers are openly carrying batons, which is contrary to the 2008 CPT recommendations.

Under the Ordinance on the Treatment of Aliens (OG 14/13, 26/13, 86/13 and 126/14), an alien may be subject to a measure of stricter police control, which means placement in a high security room and restriction of the right to receive visitors, which is contrary to the Aliens Act prescribing that a measure of stricter police control is to be implemented only by separation from others and restriction of the freedom of movement within the Centre, so the Ordinance should be aligned with the Aliens Act accordingly.

3.3. VISITS TO POLICE STATIONS AND DETENTION UNITS

The NPM visited the rooms for persons deprived of liberty in six locations under the Zadar County Police Administration and in nine locations under the Sisak-Moslavina County Police Administration, for the purpose of determining the manner of treatment of persons deprived of liberty and the conditions of accommodation in which those persons are detained or placed, in order to strengthen the protection from torture and other cruel, inhuman or degrading treatment or punishment.

3.3.1. Zadar County Police Administration: police stations in Pag, Obrovac, Benkovac, Biograd na Moru, 2nd police station in Zadar and the detention unit

During the visits, rooms for persons deprived of liberty were found to be clean, equipped with a bed on a wooden or concrete base, mattress and clean bed linen. They are equipped with video surveillance, but drinking water is not available. Most rooms have a toilet, except at

stations in Pag and Zadar where the toilet is outside the room. Some rooms have a concrete bench, but none of the rooms have tables.

The Zadar County Police Administration uses rooms for persons deprived of liberty at the 2nd police station Zadar as its central detention unit. Recommendations on improving accommodation conditions and functioning of the detention supervisor service are related to enabling direct communication between the detained person and detention supervisor by ringing a bell to call him/her. Further, we have recommended to increase the number of available detention rooms and to separate them from the ones used by the 2nd police station Zadar. It is also required to enable the use of a shower, which no police stations have, as well as to introduce video surveillance in rooms where the arrested person is staying and to ensure a space for walking and staying in the open air. Detention supervisors should not be performing other activities at the same time, for example in the operational communication centre. In the future personnel plans, it is required to ensure employment of female police officers.

After visiting police stations in Pag, Obrovac, Benkovac, Biograd na Moru and Zadar, we have issued recommendations with regard to enabling direct communication between the person detained in a room and the police officer, providing a direct flow of fresh air into the rooms for persons deprived of liberty, access to drinking water and toilet in the room, and a shower in the toilet room, use of a table and chair, and introducing video surveillance in all rooms where persons deprived of liberty may be present. It was also recommended to the station in Obrovac to disable video surveillance of the toilet, and to Obrovac and Benkovac stations to urgently fill out and keep all documents used to monitor the process of depriving a person of his/her liberty. Additionally, those two stations and the Pag station should secure sufficient funds for meals for persons deprived of liberty, so that this does not depend on their financial status. The stations that keep records only in electronic form should also keep written records.

3.3.2. Sisak-Moslavina County Police Administration: police stations in Kutina, Novska, Hrvatska Kostajnica, Dvor, Gvozd, Petrinja, Sunja, Sisak, Glina and the detention unit

Except in Petrinja and the detention unit, rooms for persons deprived of liberty in the inspected police stations were found to be clean, equipped with a bed on a wooden or concrete base, mattress and clean bed linen, and equipped with video surveillance. A drinking water tap is not available in rooms, other than in Gvozd. Most rooms also had a squatting toilet, except stations in Petrinja and Sisak, where it is located in a separate toilet room. A specific problem that most stations have is the video surveillance of toilets. No rooms have tables or chairs. The funds for meals for persons deprived of liberty are allocated in the budget, except in Novska and Gvozd, where the person pays for his/her own meals.

The Sisak-Moslavina County Police Administration uses the room for persons deprived of liberty in the police station Sisak as its central detention unit and, if it is required to detain more persons at the same time, premises in stations Kutina and Novska are used.

Recommendations for the detention unit were to increase the number of detention rooms, enable direct communication between the detained person and detention supervisor by ringing a bell and make drinking water available as well as a table and chairs. It is required to introduce video surveillance in all rooms in which detained persons may be present, ensure a separate room for communication between detained persons and lawyers; ensure a stay in the open air and, in the case of Novska, a shower for detained persons. Furthermore, we also recommended improving working conditions for detention supervisors which are inadequate due to the age of working space and equipment; additionally, supervisors should not at the same time perform other tasks in the operational communication centre.

After inspecting the rooms for persons deprived of liberty in police stations Kutina, Novska, Hrvatska Kostajnica, Dvor, Gvozd, Petrinja, Sunja, Sisak and Glina, we have recommended to enable unimpeded calls from the room by ringing a bell, introduce video surveillance in all rooms where persons deprived of liberty may be present, disable video surveillance of the squatting toilet, provide access to drinking water (except in Gvozd) and provide a direct flow of fresh air (for stations in Kutina, Dvor and Gvozd). Additionally, the station in Petrinja was given a recommendation to introduce heating and improve hygiene maintenance of the rooms and toilets.

3.4. AMENDMENTS TO THE ACT ON NATIONAL PREVENTIVE MECHANISMS

In order to increase the efficiency of performing NPM activities, the process of amending the Act on National Preventive Mechanisms against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OG 18/11, hereinafter: ANPM) was initiated in 2014. The Ministry of Justice has carried out a public debate on two occasions, each with duration of 30 days, during which we have on our website invited the interested public to join the debate and contribute to the creation of this regulation with their proposals and comments. The proposed amendments are focused on more active participation of nongovernmental associations and independent experts, and inclusion of specialised ombudsmen in the performance of NPM activities. Likewise, the proposed amendments will allow more visits to establishments in which persons deprived of liberty are or may be placed.

The possibility of more active cooperation with an unlimited number of NGOs and independent experts instead of just with two representatives of associations and academic community is extremely important and useful. More precisely, having in mind the variety of areas and the number of challenges in our everyday performance of NPM activities and recognising the role and significance of associations, academic community and independent experts, we believe these amendments will enable a more comprehensive approach to the

protection of persons deprived of liberty from torture and other cruel, inhuman or degrading treatment or punishment.

Similarly, cooperation with specialised ombudsmen will further strengthen the protection of specific particularly vulnerable groups of persons deprived of liberty. As specialised ombudsmen in line with their powers visit establishments in which persons deprived of liberty are placed, their findings will greatly contribute to the efficiency of performing NPM activities.

One of the reasons for amending the ANPM is to enable the performance of more visits to establishments in which persons deprived of liberty are or may be placed without a substantial increase of funds, because the proposed amendments will also allow for visits without representatives of academic community or associations. Such legislative solutions are present in legislation of most states where NPM activities are, as in Croatia, entrusted to the ombudsman. Concurrently, this avoids the situation where, due to illness of a representative during a visit, it has to be cancelled or it cannot be considered as an NPM visit, which has happened in practice. The proposed amendments will finally remove the shortcomings observed since the ANPM came into force two and a half years ago, which will in turn surely strengthen the protection of persons deprived of liberty from torture and other cruel, inhuman or degrading treatment or punishment.

3.5. INTERNATIONAL COOPERATION WITHIN THE PERFORMANCE OF NPM ACTIVITIES

3.5.1. Independent Report of the Ombudsman to the UN Committee against Torture

Acting as the "A" status accredited independent national human rights institution (NHRI), the Ombudsman delivered to the UN Committee against Torture an Independent Report with regard to Croatia's Second Periodic Report on implementing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Committee discussed in November 2014. Recommendations from the Independent Report were related to: the manner of establishment and operation of the NPM, work and capacities of the Ombudsman's Office, submitted complaints related to actions that could constitute torture or inhuman treatment and to conditions of accommodation in places of detention. Furthermore, we pointed out the problems regarding: detention and access to health care in police stations and detention units, implementation of detention on remand and overcrowding of the prison system, conditions in which minors serve their prison sentences and problems of persons deprived of liberty in psychiatric institutions. We have also delivered a number of recommendations related to strengthening the rights of persons deprived of liberty and improving the conditions in which they live. After the session, the Committee, in its concluding observations, provided recommendations primarily related to: the right of immediate access to a lawyer, insufficient monitoring of places of deprivation of liberty, amnesties for acts of

torture, violence against women and situation of people in psychiatric institutions. The Committee welcomed the efforts of the Ombudsman's Office, which also performs the function of an NPM, invested in protecting and strengthening the rights of persons deprived of liberty, but also voiced concerns about the insufficient monitoring of places of deprivation of liberty caused by the lack of funding. Accordingly, the Committee urged Croatia to provide the necessary financial and human resources for operation of the Ombudsman's Office with regard to NPM activities, in order to effectively and regularly monitor and inspect all places of detention without prior notice.

3.5.2. Cooperation with other states and international organisations

In the last year we have participated in three meetings of the South East Europe NPM Network attended by representatives of Albania, Austria, Bulgaria, Croatia, Macedonia, Montenegro, Serbia and Slovenia. The first meeting was held in Ljubljana on the subject of drafting annual NPM reports, the second in Skopje on the subject of supervision in psychiatric institutions for the purpose of protection from torture or inhuman treatment, and the third as an OPCAT forum held in Belgrade on the subject of preventing torture and fight against impunity.

In June 2014 we participated in a symposium on addressing children's vulnerabilities in detention that was held in Geneva by the Association for the Prevention of Torture (APT).

As part of the European Commission's project, the Macedonian NPM visited the Croatian one for the purpose of observing good practice examples, especially in the area of treatment of persons deprived of liberty, with special emphasis on particularly vulnerable groups, women and persons with mental disorders.

Additionally, in the area of asylum and migration, we participated in a meeting of the working group for asylum and migration of the European Network of National Human Rights Institutions and in a meeting of the Council of Europe, ENNHRI, Agency for Fundamental Rights and the European Network of Equality Bodies (EQUINET) on the rights of migrants and asylum seekers.

Upon invitation of the Ludwig Boltzmann Institute from Vienna and the Human Rights Implementation Centre of the University of Bristol, we participated in a workshop held in Vienna on strengthening the efficient implementation of follow-up recommendations against torture given by authorised international bodies.

3.6. CAPACITIES OF THE OMBUDSMAN'S OFFICE FOR PERFORMANCE OF NPM ACTIVITIES

The Service for Persons Deprived of Liberty was established within the Ombudsman's Office and it is managed by the Deputy Ombudsman. In 2014, this Service employed two persons, so now the total of six persons performs NPM activities and takes actions of complaints. Within

the allocated funds it is planned to additionally strengthen capacities in 2015 by employing two more advisors in the Service.

The amount of HRK 111,000.00 was allocated in the State Budget for 2014 under the special activity within the budget of the Ombudsman's Office for the performance of NPM activities, and the same amount is allocated for 2015. This does not include expenses for employees, but only material costs for performing NPM activities. It is certain that amendments to the ANPM will ensure more visits with the existing funds compared to previous years; however, further strengthening of both human and financial resources of the Office will be required to perform activities in their full scope and manner that arises from the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ANPM.

4. ASSESSMENT OF THE CURRENT SITUATION IN TERMS OF RESPECTING THE RIGHTS OF PERSONS DEPRIVED OF THEIR LIBERTY

4.1. PERSONS WITH MENTAL DISORDERS IN PSYCHIATRIC INSTITUTIONS

As one of the most vulnerable groups of citizens, persons with mental disorders are more exposed to violations of human rights, regardless of being in a psychiatric institution or not. Although the conduct of health care workers towards persons with mental disorders is, in general, very professional and in its visits to psychiatric institutions the NPM did not identify actions that would constitute torture and inhuman treatment, it did identify actions that may constitute degrading treatment and violation of constitutional and legal rights of persons with mental disorders.

Unnecessary restrictions or violations of the rights of persons with mental disorders are a result of regulatory deficiencies, insufficient financial and human resources, and sometimes even inadequate knowledge of international standards and provisions of the APPMD. Therefore, it is necessary to remove the listed deficiencies, primarily by improving regulations, continuous training of health care workers and ensuring the required funds.

Persons with mental disorders may be placed in a psychiatric institution voluntarily, while placement without consent covers hospitalisation of persons deprived of legal capacity, when consent is given by his/her legal representative or the competent social welfare centre. However, a person may also be involuntarily placed in a psychiatric institution by virtue of a court decision. Any mental illness cannot by itself constitute sufficient cause for involuntary placement of a person in a psychiatric institution, for which it is required that a person with a more severe mental disorder is, due to his/her condition, seriously and directly endangering his/her own life, health or safety, or the life, health or safety of other persons (Article 22 APPMD/97) or if a person is declared mentally incompetent in criminal proceedings and the

court ordered involuntary placement because of a more severe mental disorder and being a danger to others (Article 44 APPMD/97).

Psychiatric institutions also accommodate persons who, according to doctors, no longer require hospital treatment but, due to their psycho-physical state and conditions in which they live outside the institution, are incapable to take care of themselves and have no relatives or other persons who are legally obliged to take care of them. In general, they are not placed in hospitals' closed wards, but are still placed in a health institution without a medical cause, sometimes for even 30 years.

The question of their accommodation after release should be resolved in cooperation with the competent social welfare centres. In doing so, account should be taken that there is a lack of capacities for long-term accommodation of persons with mental disorders because the existing capacities of social welfare institutions are gradually reduced, and specialised foster care for this category of users is neither sufficiently developed nor there is a sufficient number of organised housing units intended for them. Nevertheless, the task of the social welfare system is to more actively deal with this issue in order to avoid any unnecessary stays in psychiatric hospitals of persons who no longer require hospital treatment.

In general, social welfare centres visit their wards placed in psychiatric institutions irregularly and some do not visit for years, although pursuant to the Family Act they are obliged to monitor the conditions in which their wards live. For all patients deprived of legal capacity who are in the hospital for more than a year, social workers employed in hospitals should analyse the frequency of visits from employees of social welfare centres, especially when they are also acting as guardians, and to inform the directors of those centres about the results.

On the other hand, the health care system should be more involved in providing psychosocial support and additionally strengthening families into which persons with mental disorders return. In this case, there is an obvious lack of appropriate mental health care services at the local level, whose activities would, *inter alia*, reduce the rate of institutionalisation of persons with mental disorders and facilitate their staying with their own families. It is certainly not advisable to leave families to deal with mental health issues on their own, without organised support at the local level. Moreover, without adequate outpatient mental care services in the local community, there is a high risk that the health of many patients may worsen quickly after leaving the hospital. Shortage of funds may not be used as the reason not to have efficient professional support at the local level because, in the end, accommodation outside one's own family i.e. within the social welfare system surely represents a higher cost.

The law provides that health institutions may also perform social welfare activities, so PH Ugljan and PH Lopača signed an agreement on mutual relations with the ministry competent for social welfare. These are not users placed in a ward because of deterioration of their health and a doctor's referral to hospital treatment, but users who live in those hospital wards. Some are even placed in closed wards in conditions that provide no privacy, while in interviews the

users state they demanded to be transferred to a social welfare institution, but their guardians told them there was no room for them. These two hospitals fail to make a sufficiently clear distinction between patients and users of social welfare services, which is not acceptable.

Moreover, the legal basis for restricting the freedom of movement of social welfare users of long-term accommodation service, i.e. locking the wards where users stay and having bars on windows, other than for Alzheimer's and other dementia (middle/late stage of illness), is questionable because the focus of providing social services is on social inclusion and psychosocial rehabilitation. The impression is that this is not the goal of the users' accommodation in this case. In fact, while not questioning the purpose of concluding social service provision agreements, it has to be clear which services are provided to those users and who is responsible for them. Furthermore, if it is assessed that specific users, based on monitoring their health status, must be placed under enhanced supervision and have assistance of another person in meeting their needs, or that their rooms are to be locked, it is first required to prescribe the conditions, method and duration of such treatment.

The accommodation conditions of persons with mental disorders are generally unsatisfactory. The size of rooms and the number of patients in them, non-availability of cabinets for personal belongings, general hygiene and equipment of bathrooms, and non-existence of appropriate rooms for visits and for smoking are among the most worrying conditions. Such conditions are contrary to the standards prescribed by the Ordinance on minimum conditions regarding premises, staffing and medical and technical equipment needed to provide health services and the CPT recommendations, violate the right to privacy, restrict the right of movement, aggravate treatment and rehabilitation, and in some cases may constitute degrading treatment, so it is required to urgently start adaptation in some institutions for the purpose of ensuring adequate accommodation conditions.

Moreover, persons with mental disorders are frequently insufficiently informed of their rights and ways to seek protection, while this is further aggravated by the fact that attorneys appointed *ex officio*, whose role is to protect the rights of involuntarily placed persons, often do not even contact their parties. Consequently, it is required to both orally and in writing introduce not only persons with mental disorders, but also their trusted persons or legal representatives with all their rights as well as responsibilities that an authorised person appointed from the ranks of lawyers has under the APPMD. In some cases, the right of persons with mental disorders placed in psychiatric institutions was restricted with regard to submitting claims, complaints, appeals or other legal remedies to competent judicial and other state bodies without supervision and restriction. Additionally, patients on more occasions complained about not being informed of court decisions, particularly those on extending the involuntary placement. Since this prevents them from seeking legal remedies, it is a clear restriction and violation of the constitutional right to appeal.

Since complaints to the head of the institution or ward are generally submitted orally, there are no records of complaints and therefore it is impossible to determine how often patients

submit complaints and what are the most frequent reasons for doing so. This information could definitely be used to improve the treatment of persons with mental disorders and remove potential causes of their dissatisfaction. Consequently, taking into account provisions of the APPMD/14, each psychiatric institution should establish and keep records of complaints.

The law does not equalize involuntary hospitalisation with a medical procedure without one's consent, unless failure to carry out that procedure would result in serious health damage. Therefore, it is required to explain potential procedures and involve persons in planning their medical treatment as much as possible. In the majority of cases involuntary placement is often no different from the so called involuntary treatment. In general, doctors consider that a decision on involuntary placement automatically gives consent to all necessary medical procedures as well. This is primarily caused by insufficient knowledge of the APPMD, which is something that certainly needs to be changed. Further, paternalism in medical treatment is present in most cases, which does not encourage patients to take a more active role and approach to their treatment. However, in some cases even the voluntary consent to treatment may be highly questionable.

The use of means of coercion on a person placed in a psychiatric institution is allowed only exceptionally, if that is the only method to remove the immediate danger arising from his/her behaviour. These are exceptional situations when the usual methods of treatment have failed to control an aggressive patient, so it is necessary to physically restrict his/her movement and actions or to separate him/her from other patients. The use of physical force for punishing a patient or the use of means of coercion that would constitute torture or inhuman treatment was not established in any of the cases. However, we did establish actions that are contrary to international standards and may cause violations of the rights of persons with mental disorders and constitute degrading treatment, such as restraining a patient in the hall in front of other patients. Likewise, there are great differences in the use of means of coercion, not only between psychiatric institutions, but also between individual wards in an institution, which is unacceptable.

Clearly defined and prescribed rules on the use of means of coercion are definitely one of the basic guarantees for respecting the rights of persons with mental disorders. However, both the APPMD/97 and its implementing regulations neither prescribe the types of means of physical restraint for aggressive patients nor the circumstances in which specific means are to be used. The APPMD/14 also fails to prescribe the types and methods for using means of coercion, which we pointed out already in the process of its adoption, but they are prescribed by the Minister in an ordinance. Since this is a restriction of the rights and freedoms of this particularly vulnerable group of citizens, it remains unclear why the use of means of coercion was not prescribed by the law in the same manner as it is prescribed in Title XXII of the Act on Police Activities and Authorities or Title XX of the Execution of Prison Sentences Act.

As regulatory deficiencies are the biggest source of potential misuse of means of coercion, the law needs to clearly prescribe the types of means of coercion as well as conditions and methods for their use. All psychiatric institutions in Croatia should consistently keep records on the use of means of coercion and ensure an efficient and effective system for complaints regarding their use, while persons with mental disorders, their legal representatives or trusted persons should, during or after their use, be informed of the right to submit complaints.

In that respect, the Ordinance on the minimum conditions regarding premises, staffing and medical and technical equipment needed to provide health services should prescribe the conditions which must be complied with by all health institutions or their units for specialist-consultative and hospital treatment in the field of psychiatry which carry out involuntary confinement and involuntary placement of persons with mental disorders.

It was also established that means of restraint were in some cases used at the patient's request, which should be performed with additional caution and in each single case established whether restraint is really a measure of last resort or is it still possible to neutralise aggressive behaviour by using standard methods and de-escalation procedures. Regardless of the means of restraint being used at the patient's request, it is necessary to record in detail the procedures that preceded it and to discontinue it as soon as the patient requests so. Moreover, there is a practice of preventively using restraints or immobilisation, generally for elderly patients. In most cases, means of restraint were used to prevent injuries caused by falling from bed, to support sitting in a chair or to facilitate the receipt of infusion therapy. It is surely positive and necessary to prevent falls and assist persons to sit in chairs instead of spending their entire day in bed, but it is required to use adequate equipment for such purposes and avoid tying patients to a chair with a sheet. This type of restraint, despite the fact that it is used for preventive purposes, should also be consistently recorded.

As involuntary placement, placement without consent and the use of means of coercion represent a restriction of the right to freedom, these procedures must be in the focus of all persons who perform them. Furthermore, the Government has to provide clear rules of procedure and prescribe appropriate and efficient protection mechanisms to prevent any possibility of abuse.

Although the occupational therapy programme exhibited some examples of good practice, there were also some irregularities. It is required to prescribe job positions for patients in occupational therapy and amount of the fee to be paid for performed tasks. It is unacceptable that patients/users, as part of occupational therapy, perform tasks listed in the job description of the hospital staff, such as laundry ironing, transport of deceased persons, etc. Further, no tasks performed in occupational therapy which the patient finds degrading may be regarded as an occupational therapy activity. The use of means of coercion to force participation in occupational therapy or any other use not stipulated by law represents a violation of the rights of persons with mental disorders and treatment contrary to fundamental principles prescribed in the APPMD and the Act on the Protection of Patients' Rights.

Since the insufficient number of staff in psychiatric institutions does not only diminish the quality of health care provided to patients, but also leads to violations of their rights, it is required to align the number of staff with the Ordinance on the minimum conditions regarding premises, staffing and medical and technical equipment needed to provide health services.

While aware of the severe financial situation in the health care system, it should not happen that budget cuts in psychiatric institutions result in violations of patients' rights. Although it is certainly necessary to rationalise the operation of hospitals, efforts to reduce medical costs may also have a negative effect on the quality, which is why the CHIF should recognise actual medical treatment costs. Further, each institution treats a smaller number of patients with no health insurance, meaning that their treatment costs cannot be invoiced, so psychiatric institutions bear the costs themselves, which is another issue that should be adequately regulated.

Patients with mental disorders without a contracted supplemental health insurance policy are charged a co-payment for medical costs during their involuntary placement in psychiatric institutions, unless their diagnosis is listed in the CHIF's decision on the list of diagnoses for which the entire treatment is covered by mandatory health insurance. Such procedure is unacceptable and involuntarily placed persons, regardless of their diagnosis, should never be charged a co-payment for medical treatment costs. The CHIF stated that the involuntarily placed person was charged a co-payment according to the Mandatory Health Insurance Act. However, as this was a clear non-compliance of laws until the entry into force of the APPMD/14, some involuntarily placed persons found themselves in an absurd situation of being charged a co-payment for medical treatment that they cannot terminate at will. As the APPMD/14 prescribes that funds in the state budget will be allocated only for the costs of involuntary placement of forensic patients in psychiatric institutions, it is required to supplement it so that funds are allocated in the state budget for all involuntarily placed persons, and to harmonize regulations governing co-payment for medical costs.

As regards the issue of paying hospital costs in PH Lopača, patients who provided their own consent for accommodation and signed a contract on hospital services with PH Lopača have agreed to cover all medical treatment costs. However, situation is more questionable in the case of patients for whom consent was given by their legal representative or the competent social welfare centre. For example, patient M. S. from Zagreb, a person deprived of legal capacity, was admitted to the Hospital in 2007 and is paying costs by himself from a family pension. In the meantime his apartment in Zagreb was sold. He is situated in the part of the Hospital intended for users of long-term accommodation under the Social Welfare Act, for which constant medical supervision is not necessary, although he does not have that status. From an interview with his doctor it is clear that he no longer requires medical treatment, but still remains in the Hospital.

Considering that PH Lopača is not included in the public health service network, it is suggested that persons who did not give consent for accommodation by themselves, but bear their own costs, should be transferred to a psychiatric institution in the Network.

4.2. PERSONS DEPRIVED OF LIBERTY IN THE PRISON SYSTEM

The assessment of the current situation in terms of respecting the rights of persons deprived of liberty in the prison system is based on the information collected with regard to acting on complaints and carrying out investigative procedures in prisons and penitentiaries and on the reports delivered by the Central Office. Likewise, we considered many other sources of information, including documents and reports of national and international bodies related to persons deprived of liberty, for example the Constitutional Court's report on the living conditions in prisons (OG 86/14), the UN Committee against Torture's concluding observations from December 2014 and the relevant case law of the Constitutional Court and the European Court of Human Rights, especially with regard to cases against Croatia.

Since overcrowding was one of the major issues in the prison system in the last ten years, we find it is positive and encouraging that on 31 December 2014 there were more available places than persons deprived of liberty. However, the fact that capacities in high security conditions are still insufficient and that the overcrowding rate in some prisons is above 140% indicate the need for further measures and activities focused on solving this major issue. It is also worth noting that data on the number of prisoners on remand shows that it is very likely that the trend of reducing overcrowding is only temporary.

More precisely, overcrowding is not only the inability to ensure 4 m^2 for each person, but it also entails restrictions of many other prescribed rights, such as accommodation that guarantees human dignity and health standards, stay in the open air, health care or work of persons deprived of liberty, and it has a significant impact on the organisation and quality of everyday activities of persons deprived of liberty, that is, on the purpose of execution of prison sentences. This situation is further aggravated by the fact that, according to the job systematisation, the rate of filled job positions in organisational units of the Prison System Directorate is 67%, meaning that there is a lack of 1,334 employees. Considering that persons serving a prison sentence retain all fundamental human rights, other than those removed or restricted by a court decision, despite the difficult financial situation the state is obliged to ensure conditions that will guarantee the respect of all rights of persons deprived of liberty.

The suspension of construction of new penal institutions could be justified in the light of the declining prison system's total overcrowding rate, but only if capacities in high security conditions are increased and all planned or allocated funds for construction are invested in improving the existing accommodation conditions that will ensure treatment in line with legal standards of respecting the dignity of convicted persons referred to in Articles 23 and 25 of the Constitution.

Judging by the number and content of prisoners' complaints regarding the quality of health care provided in the prison system, this is still a very important issue. When the state deprives its citizens of their liberty, it assumes the responsibility of providing for their health in terms of general conditions in which they are imprisoned, including medical treatment and other health care measures and activities whose quality and scope are equal to those set for mandatory health insurance policy holders. Prisoners' health should not be adversely affected by conditions of serving their prison sentence or by inadequate quality of health care, so that after serving a prison sentence their health is worse than before they were sent to prison. This responsibility is also reflected in the case law of the European Court of Human Rights, which was covered in more detail in the last year's report. Therefore, the quality of health care provided to persons deprived of liberty must be equal to that provided to free persons who have health insurance. However, many problems that were already pointed out in previous years are still present and continue to significantly aggravate the provision of sufficient quality of health care to persons deprived of liberty.

Under decisions of the European Court of Human Rights, in order to protect health it is necessary to ensure treatment in line with the diagnosis and not only to perform exams and diagnose the illness; however, the quality of health care in the prison system is still viewed through the number of performed exams. Some problems are surely a result of the still insufficient number of health workers, which includes both permanent and temporary employees of penal institutions. For example, because some prisons and penitentiaries are lacking a dentist, they generally provide only emergency dentist services (primarily extraction of teeth).

In some prisons and penitentiaries, a judicial police officer is still present in the infirmary during medical examinations of prisoners, excluding psychiatric evaluations. The presence of a person who is not a health care worker in medical exams, unless required for security reasons, represents a violation of the prisoner's right to privacy. In general, medical exams should be performed in the presence of a judicial police officer only exceptionally (based on the security risk assessment), and the fact that a person is deprived of liberty does not automatically deprive him/her of the right to privacy as a patient.

Moreover, some prisons and penitentiaries still have a problem with respecting confidentiality of the patient's information because in the request form for medical exam, which prisoners give to non-health workers i.e. judicial police officers, it is required to provide reasons for requesting a medical exam. Prisoners must be allowed to use health care services in a confidential manner.

With regard to measures of compulsory psychiatric treatment and compulsory treatment of addiction, in order to achieve their purpose, it is required to prescribe the methods of their implementation, which often vary depending on the institution which is implementing them. The Execution of Prison Sentences Act prescribes that prisoners to whom the protective measure of compulsory addiction treatment has been pronounced in addition to the prison

sentence, and prisoners addicts who are in addiction treatment during the execution of the sentence, shall serve their sentence in a special social therapy prison or a special social therapy ward. Unfortunately, such a special prison or ward has yet to be established.

Since the first half of 2014 all prisoners are covered by the CHIF's mandatory health insurance policy. In addition to a number of benefits, some prisoners with a low economic status, who do not fulfil the requirements for supplemental health insurance paid from the state budget, have refused examinations or medications for which they have to pay a co-payment. The quality of provided health care should not depend upon the prisoner's financial status, so the Central Office should consider the possibility of covering co-payment costs or supplemental insurance costs for such prisoners.

For the purpose of equalising the quality of health care provided to persons deprived of liberty with that provided to persons in general population, according to the Constitutional Court decision U-III/64744/2009 it is required to establish and carry out efficient supervision of the quality of health care in the entire prison system. In the period of four year since that decision, this has yet to be achieved.

In view of the current situation, the quality of health care would be improved if it would organisationally and financially be a part of the Ministry of Health. This is the most efficient way to ensure compliance with Article 40 of the Recommendation on the European Prison Rules (2006) of the Council of Europe's Committee of Ministers. This solution has already been present for years in some European countries (e.g. Norway, France, and Great Britain), while Slovenia's experience shows that the transfer of health care for prisoners into the public health network has improved the quality of health care, which is also supported by a significant drop in the number of prisoners' complaints submitted to the Slovenian Ombudsman. Additionally, this would be an optimal way to ensure the professional independence of doctors and the autonomy of patients, which is of critical importance in the prison system as well.

As regulatory deficiencies in the Execution of Prison Sentences Act, which were described in the last year's report, are still present, information that a new Execution of Prison Sentences Act will be drafted in 2015 is a positive step forward and we expect that this new law will further strengthen protection of the rights and improve treatment of prisoners. Likewise, the adoption of the Ordinance on the supervision over execution of detention at home (OG 151/14) is also a positive step forward, which will contribute not only to the humanization and respect of human rights of prisoners on remand, but also to reducing the occupancy rate in high security conditions.

However, to further strengthen the rights of prisoners on remand, it is necessary to amend the Criminal Procedure Act (hereinafter: CPA) in the part related to the execution of detention on remand. In fact, that title of the CPA has not been substantially amended since 1997 and contains many ambiguities and legal gaps, especially in the part prescribing disciplinary

offences and procedure for handling complaints. Additionally, under Article 139 of the CPA, prisoners on remand are discriminated in their communication with the Ombudsman compared to persons serving a prison sentence. Therefore, similarly as in the Execution of Prison Sentences Act, it is necessary to prescribe that a prisoner on remand is entitled to submit complaints to the Ombudsman without inspection of their contents and in that way align the CPA with the Ombudsman Act which prescribes that persons deprived of liberty submit a complaint and receive an answer from the Ombudsman in a sealed envelope, the contents of which may not be subject to any restrictions or inspection.

Regulations related to execution of prison sentences are still not harmonized, so it is not possible to execute sentences according to the valid legal provisions. More precisely, the Criminal Code, which is in force for more than two years, prescribes that prison sentences of up to one year may be executed at home. However, as the Execution of Prison Se ntences Act does not prescribe that method of executing sentences, this provision, which would certainly contribute to individualising the execution of prison sentences and reducing the occupancy rate, is still not applied.

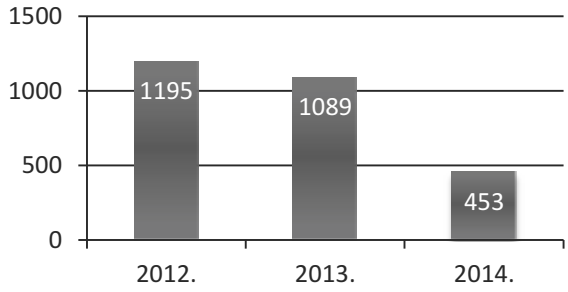
Inefficient legal protection is definitely one of the issues that persons deprived of liberty in the prison system are faced with. Heads of prisons and penitentiaries still fail to respond to prisoners' complaints within the prescribed legal period of 15 days. Sometimes complainants never receive a reply to their complaints, and sometimes they get it after a few months, by which this legal instrument becomes ineffective and loses its purpose. The information of the Central Office, according to which during the last year, in nine out of fo urteen prisons, no prisoners on remand submitted complaints to the head of prison, may be interpreted as a result of distrust of prisoners on remand in the efficiency of complaints as one of the basic mechanisms for protection of their rights. Similarly, p risoners often submit complaints regarding the judges responsible for the execution of sentences' duration of procedure or their failure to act upon the submitted request for judicial protection. This problem has also been confirmed by the European Court of Human Rights in several cases against Croatia, where it established a violation of the prisoner's right to an effective legal remedy referred to in Article 13 of the Convention. The last such decision was made at the beginning of December 2014 in the case Lonić v. Croatia. Therefore, it is necessary to further strengthen legal protection mechanisms available to persons deprived of liberty and to make legal remedies effective in practice as well.

4.3. ASYLUM SEEKERS, ASYLEES AND ILLEGAL MIGRANTS

The protection of fundamental human rights of asylees in the Croatian asylum system is becoming increasingly important, especially now when it is a part of the EU's common asylum system. Those issues are primarily handled by the Ministry of the Interior, international organisations (UNHCR) and different non-governmental organisations with which we have regular cooperation.

Although national legislation is aligned with the EU legal framework, every year over 80% of asylum seekers leave Croatia before a decision is made on their application, so the largest number of applications (251) is solved by terminating the procedure. More precisely, by applying the Dublin Regulation[2] and introducing mandatory taking of fingerprints which are sent to the central database system (Eurodac), the Member State responsible for examining an asylum application is determined, and in most cases it is the Member State in which the asylum seeker first submitted his/her application. Since most of asylum seekers in Croatia have already submitted an asylum application in other EU Member States, they often want to avoid the return to that state because their goal is to reach a state in the Schengen area, where there is no control of internal borders. Consequently, the number of applications in Croatia is declining, which is visible from the chart below.

Chart1: Number of submitted asylum applications (Ministry of the Interior's data)



Most asylum seekers come from Algeria, Syria, Pakistan, Egypt, Morocco, Nigeria, Bangladesh, Tunisia, Afghanistan and Ukraine. The total of 16 asylums and 10 subsidiary protections were granted.

The Ministry of the Interior's Asylum Department is responsible for deciding on asylum applications in the first instance, whereas an appeal may be lodged before the administrative court. The largest number of cases is submitted to the Administrative Court in Zagreb, where in most cases asylum seekers fail to appear, which results in negative decisions. According to the CMS information, asylum seekers evaluated as problematic the translation during proceedings, which certainly requires improvement.

All asylum seekers in Croatia are placed in two facilities - reception centres in Kutina and Zagreb - with a total capacity of 700 persons. However, there is no adequate solution in the case of a large and abrupt inflow of asylum seekers, so it is necessary to ensure additional capacities. For example, such a situation occurred in December 2014, when more than a

[2] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin Regulation II) and Regulation of the European Parliament and of the Council No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin Regulation II)

hundred workers from four failed companies from Tuzla headed for Croatia with an intention to seek asylum.

One of the main issues in reception centres is inadequate provision of health care; for example, the Reception Centre in Zagreb had no physician from February to April 2014, while after that the physician was available only two hours a day. The Reception Centre in Kutina, which is since June 2014 intended for accommodating vulnerable groups of asylum seekers (children without escort, families, women, elderly persons), still has no doctor, so when it is required persons are transported from Kutina to Zagreb. As medical costs of persons under international protection are no longer paid by the CHIF, but directly by the Ministry of Health, physicians who are unaware of this fact refuse to receive them; additionally, one of the issues is the lack of translation during medical examinations.

Although the Asylum Act prescribes that persons under international protection will be provided courses on Croatian language, history and culture, the Croatian language learning programme is not implemented since 2010, which significantly aggravates their integration into the society, especially in terms of further education and finding employment. In November 2014, the Ministry of Science, Education and Sports passed a decision on the Croatian language learning programme (OG 154/14) and assumed the obligation to organise courses at the beginning of 2015.

In addition to not speaking Croatian language well, when searching for employment asylum seekers are also faced with the issue of non-recognition of their qualifications. This is often the case for persons who did not bring with them documents on completed education or the acquired qualification does not correspond to that in Croatia, so they are not even entitled to additional education programmes offered by the CES. Even though the Asylum Act prescribes that a decision on non-recognition of foreign educational qualifications may not be based solely on the fact that no official documents exist, this is ignored in practice.

After two years in which they are provided accommodation, if they do not find employment, it often happens that asylees cannot bear the costs of housing, so they end up in a homeless shelter. However, if they manage to find employment, they are faced with problems in acquiring real properties. Under the 1951 Convention relating to the Status of Refugees, after a period of three years' residence, they should be exempted from the principle of reciprocity in acquiring real properties, but this provision is not applied in practice, so the right to ownership for asylees depends on the person's country of origin. Therefore, it is advisable to improve the legislative form that would regulate exceptions from the principle of reciprocity in cases of asylees acquiring real properties.

During 2014, 3,569 illegal migrants were reported and 1,408 deportations executed. Although the Aliens Act prescribes that the Ministry of the Interior is responsible for ensuring efficient supervision of deportations, this has not been applied until now; however, first supervisions

are planned in the first half of 2015, after the Ministry signs agreements with organisations that will perform those tasks.

In 2014 Croatia had a single facility for accommodation of illegal migrants - the Aliens Reception Centre in Ježevo. The construction of two more transit reception centres in Trilj and Tovarnik and the adaptation of a part of the intervention police facility in Sisak are in progress.

4.4. PERSONS DEPRIVED OF LIBERTY IN POLICE STATIONS AND DETENTION UNITS

Although we concluded that, generally, the conduct of police officers towards persons deprived of liberty is professional, there are still some situations that may lead to violations of human rights. The limited budget of police stations prevents investments in improving the accommodation conditions in rooms for persons deprived of liberty, even when it entails minimum costs. One of the more significant deficiencies we observed during visits to police stations was the failure to keep updated records, of which we informed the Police Directorate, and which is also the subject of the Constitutional Court decision U-III-6559/2010. Moreover, the European Court of Human Rights pointed to deficiencies in the conduct of police officers in cases Mađer v. Croatia and Đurđević v. Croatia.

Under the UN Convention against Torture, each state party shall ensure that its competent authorities carry out a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed. The fulfilment of this international obligation is certainly not supported by the fact that citizens who file complaints to the Ministry of the Interior's Commission for Complaints wait for a decision for more than a year, which is described in more detail in the section on the conduct of police officers. It remains to be seen whether the new solution from the Police Act, under which it is planned to establish commissions in each police administration, will aid in the implementation of the listed Constitutional Court decision requiring actual independence of investigators, possibility of public control of the investigation, and efficient access to the investigation by complainants.

For the purpose of improving the conduct of police officers, especially in the earliest stage of deprivation of liberty, when the rights of arrested persons are most exposed to violations, it is necessary to educate all police officers on human rights and international standards of treatment of persons deprived of liberty.

5. CONCLUSION AND RECOMMENDATIONS:

In the area of human rights of persons deprived of liberty, we continue to establish violations of their constitutional and legal rights. Violations and unnecessary restrictions of their rights are, generally, a result of regulatory deficiencies and insufficient financial and human resources.

The accommodation conditions in some wards of psychiatric institutions violate the right to privacy, restrict the right of movement, aggravate treatment and rehabilitation, and are contrary to international standards, which in some cases may constitute degrading treatment.

Despite the reduction of overcrowding, the conditions of accommodation in the prison system are still inadequate. Therefore, it is necessary to remove deficiencies and further strengthen legal protection mechanisms available to persons deprived of liberty and to make legal remedies effective in practice as well.

Although the situation in terms of human rights is not alarming, we are still establishing violations of fundamental rights of persons deprived of liberty as well as actions or conditions that may constitute degrading treatment. Violations or unnecessary restrictions of their rights are, generally, a result of regulatory deficiencies, insufficient financial and human resources and sometimes even inadequate knowledge of international standards. In conclusion, considering the fact that problems highlighted in the last year's report still exist, we stress the necessity of continuing to implement numerous measures and activities aimed at strengthening the respect of human rights of persons deprived of liberty and removing the listed deficiencies.

In the area of asylum and migration, there is a number of issues which are reflected in the rights of persons under international protection, such as inadequate health care and psychological assistance, and non-provision of Croatian language lessons.

The appointment of the Deputy Ombudsman, responsible for persons deprived of liberty and NPM, and employment of another Ombudsman's advisor in the Service for Persons Deprived of Liberty and NPM, resulted in a higher number of NPM visits in 2014. However, it is still required to further strengthen the Service's capacities and secure the funds sufficient for performing NPM activities in their full scope, in compliance with national legislation and assumed international obligations.

Persons deprived of liberty in the prison system:

1. The Ministry of Justice should align accommodation conditions with international and legal standards;
2. The Ministry of Justice and the Ministry of Health should separate health care for persons deprived of liberty from the judicial system and include it in the health care system;
3. The Ministry of Justice should, until health care for persons deprived of liberty is separated from the judicial system, ensure a sufficient number of health care workers and improve the quality of health care provided to persons deprived of liberty;
4. The Ministry of Justice should harmonize regulations related to the execution of prison sentences and remove the listed deficiencies in the Execution of Prison Sentences Act and the Criminal Procedure Act;

5. The Ministry of Justice should carry out systematic education of penal officers on the protection of prisoners from all forms of cruel, inhuman or degrading treatment;

Persons with mental disorders in psychiatric institutions:

In addition to the recommendations provided in the "Special report on human rights of persons with mental disorders in psychiatric institutions" as part of the activities of the National Preventive Mechanism in 2014, it is also recommended:

6. The Ministry of Justice should in the Act on the Protection of Persons with Mental Disorders prescribe the types of means of coercion and conditions for their use on persons with severe mental disorders placed in psychiatric institutions as well as any restrictions of use with regard to particular categories of patients;
7. The Ministry of Health should in the Ordinance on minimum conditions regarding premises, staffing and medical and technical equipment needed to provide health services prescribe conditions that must be complied with by all health institutions which carry out involuntary confinement and involuntary placement of persons with mental disorders;

Persons deprived of liberty in police stations:

8. The Ministry of the Interior should continue to improve accommodation conditions in rooms for persons deprived of liberty in police stations;
9. The Ministry of the Interior should ensure a sufficient number of detention supervisors, improve their working conditions and equipment, and prescribe that they are to perform only those tasks;

Asylum seekers, asylees and illegal migrants:

10. The Ministry of the Interior should ensure permanent and appropriate conditions in the Asylum Seekers Reception Centre and its sufficient capacities in the case of abrupt and large inflow of asylum seekers;
11. The Ministry of Health should ensure the provision of health care in the Asylum Seekers Reception Centre in Kutina and inform doctors that medical costs of persons under international protection are paid directly by the Ministry of Health;
12. The Ministry of Science, Education and Sports should, in accordance with the Asylum Act, provide the Croatian language learning programme to persons under international protection for the purpose of facilitating their integration and employment;
13. The Ministry of Justice should regulate by law exceptions from the principle of reciprocity in cases of asylees acquiring real properties;
14. The Aliens Reception Centre should separate asylum seekers and illegal migrants by rooms, ensure the provision of psychological assistance and implement the measure of strict police supervision in line with the Aliens Act;
15. The Ministry of the Interior should consider the possibility of providing free legal aid to aliens in the process of deciding on their placement in the Aliens Reception Centre;
16. The Ministry of Health should ensure the functioning of an infirmary in the Aliens Reception Centre in line with the prescribed health care.

II.
SPECIAL REPORT ON HUMAN RIGHTS OF PERSONS WITH MENTAL DISORDERS IN PSYCHIATRIC INSTITUTIONS WITHIN THE SCOPE OF ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM IN 2014

1. INTRODUCTION

1.1. NATIONAL PREVENTIVE MECHANISM AND PERSONS WITH MENTAL DISORDERS

The system of international and national prevention bodies was established in order to protect human rights of persons deprived of liberty, primarily the right to freedom and human dignity. The function of the National Preventive Mechanism in the Republic of Croatia is performed by the Ombudsman's Office in line with the competence granted under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[3] and the Act on the National Preventive Mechanisms against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[4]

International and national bodies performing national preventive mechanisms against torture and other cruel, inhuman or degrading treatment or punishment are authorised to examine how state administration bodies and bodies with public authorities treat all categories of persons deprived of liberty, including persons with mental disorders. Therefore, these bodies regularly visit psychiatric institutions which, in addition to voluntarily placed persons, hold persons who are involuntarily hospitalised, in accordance with civil and criminal law proceedings, in order to receive psychiatric treatment.

In fact, in 2014 the priority of the Ombudsman's Office was involuntary placement in psychiatric institutions and psychiatric institutions were visited for the first time as part of the National Preventive Mechanism[5]. In order to gain better insight into the system, the visit plan included the following institutions selected according to their size and significance: Neuropsychiatric Hospital "Ivan Barbot" (Popovača), Psychiatric Hospital Ugljan, Psychiatric Hospital Lopača, Psychiatric Hospital Rab and Psychiatric Clinic Vrapče. The visits to these institutions provided insight into the rights of different categories of persons placed in psychiatric institutions: involuntarily placed mentally incompetent persons (all forensic psychiatry wards are located in Vrapče, Popovača, Rab and Ugljan), persons with more severe mental disorders who are seriously and directly endangering their own life, health or safety, or the life, health or safety of other persons, and who have been involuntarily placed on the grounds of a county court decision (the so called "civil" involuntarily placed persons), children with mental disorders (Lopača), users of social welfare services (Ugljan, Lopača) and persons who pay for their own hospitalisation in psychiatric institutions (Lopača).

[3] Official Gazette – International treaties 2/2005

[4] Official Gazette 18/2011

[5] The following persons participated in NPM visits to psychiatric institutions: Lora Vidović, Ombudswoman, Mario Krešić, Deputy Ombudsman, Ira Bedrač, Ksenija Bauer, Ivana Buljan Ajelić, and Igor Lekić, Ombudsman's Advisors and external members: Slađana Štrkalj Ivezić, associations representative, Marija Definis Gojanović and Irma Kovčo Vukadin, academic community representatives and Miro Jakovljević and Katarina Đurić, independent experts.

This document contains the main findings derived from visit reports of respective psychiatric institutions, whereas it should be noted that the visits did not cover all rights of persons with mental disorders, but focused only on those relevant for national preventive mechanisms. More precisely, in view of their specific goals, the practice of international (e.g. CPT - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) and national bodies produced a specific methodology related to the method of performing visits as well as considering specific issues, such as prevention of abuse, living conditions, treatment of patients, staff, means of physical restraint, protection in the context of involuntary placement (initial decision on placement, protection during placement) since they can amount to torture, inhuman or degrading treatment[6]. In this regard it is especially important to point out that the National Preventive Mechanism is not authorised to analyse psychiatric judgments and the process of diagnosing mental illness or to issue opinions whether it is professionally justified to involuntarily detain or place individual persons in a psychiatric institution.

During the visits, the 1997 Act on the Protection of Persons with Mental Disorders[7] hereinafter: APPMD/97) was in force, and if the new APPMD[8] (hereinafter: APPMD/14), which is in force since 1 January 2015, regulates some right to which it refers differently, this is highlighted herein.

1.2. INFORMATION ON PERSONS PLACED IN PSYCHIATRIC INSTITUTIONS

During the visits, the inspected psychiatric institutions provided care for the total of 2,107 patients, whereas NPH Popovača has the highest number of patients, and PH Lopača the lowest. In addition, PH Ugljan and PH Lopača also accommodated the total of 39 users of the social service of long-term accommodation under decisions of social welfare centres; those persons are not under treatment in psychiatric institutions, but are provided the social service of accommodation outside their own family.

Table 1: Capacity, number of patients and users, and occupancy rate of inspected institutions

	Capacity	Number of patients	Number of users	Occupancy rate (%)
NPH Popovača	699	623	-	89.1%
PH Ugljan	483	376	19	81.8%
PH Lopača	181	126	20	80.6%
PH Rab	480	363	-	75.6%
PC Vrapče	881	619	-	70.2%
Total	2,724	2,107	39	77.3%

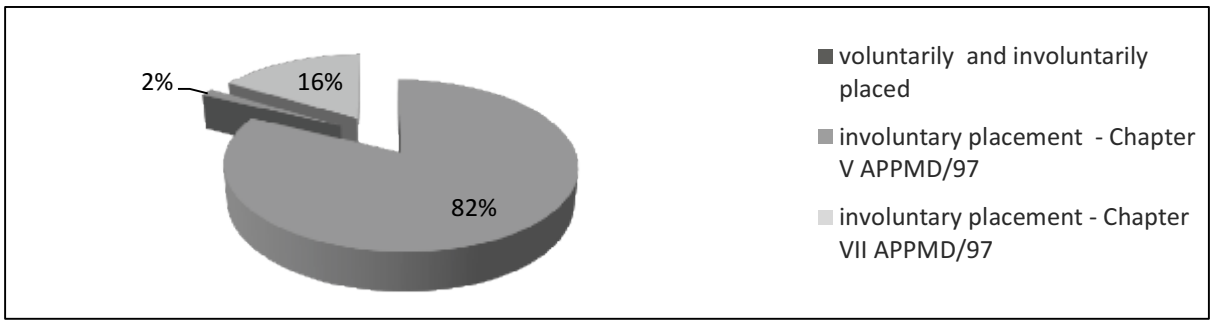
[6] CPT standards CPT/Inf/E (2002) 1 - Rev. 2013 p. 48, under the CPT's 8th General Report from 1998
[7] Official Gazette 11/1997, 27/1998, 128/1999 and 79/2002
[8] Official Gazette 76/14

The largest number of persons placed in the inspected psychiatric institutions is there on the basis of their own voluntary consent (voluntary placement) or, if the person is unable to give consent, on the basis of the consent given by their legal representative or competent social welfare centre (placement without consent). The share of involuntarily placed persons in the total number of patients is 18%, but it is required to differentiate "civil" involuntary placement (APPMD/97, Title V) from involuntary placement of forensic patients whose involuntary placement was ordered by the court in criminal proceedings (APPMD/97, Title VII).

Table 2: Number of voluntarily placed persons, persons placed without consent and involuntarily placed persons

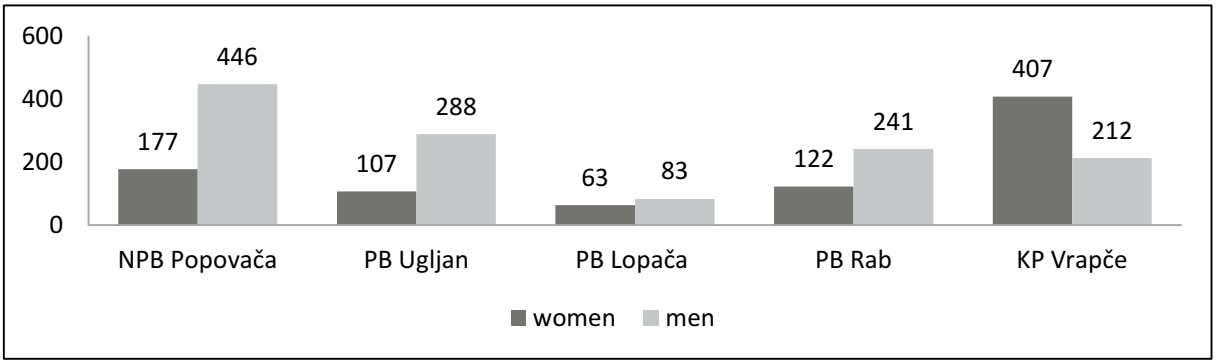
	Total number of patients	Voluntary placement and placement without consent	Involuntary placement	
			"Civil" patients	Mentally incompetent
NPH Popovača	623	426	6	191
PH Ugljan	376	325	6	45
PH Lopača	126	126	-	-
PH Rab	363	310	8	45
PC Vrapče	619	545	11	63
Total	2,107	1,731	32	344

Chart 1: The share of involuntarily placed persons in the total number of patients



In the total number of patients and users placed in institutions during the visits, 59% were men and 41% women. Only PC Vrapče had more women than men. PH Lopača is the only one of inspected institutions that provides accommodation for children as well; in this case six boys aged 14-16.

Chart 2: Patients/users by gender



2. PLACEMENT IN PSYCHIATRIC INSTITUTIONS

Persons with mental disorders may be placed in a psychiatric institution voluntarily, that is, with their voluntarily provided consent. On the other hand, placement without consent covers hospitalisation of persons deprived of legal capacity, when consent is given by his/her legal representative or the competent social welfare centre. However, a person may be placed in a psychiatric institution also without own consent or consent of his/her legal representative or social welfare centre. In those situations, involuntary placement represents a restriction of a fundamental human right to freedom, so such procedures have to be prescribed by law and based on a court decision. Any mental illness cannot by itself constitute sufficient cause for involuntary placement of a person in a psychiatric institution, for which it is required to fulfil the precondition that a person with a more severe mental disorder is, due to his/her condition, seriously and directly endangering his/her own life, health or safety, or the life, health or safety of other persons (Article 22 of the APPMD/97) or if a person is declared mentally incompetent in criminal proceedings and the court ordered involuntary placement because of a more severe mental disorder and being a danger to others (Article 44 of the APPMD/97).[9]

It was established that all inspected institutions do not keep records of patients with regard to whether they provided consent, or were placed on the grounds of placement without consent or involuntary placement. In fact, we were unable to immediately receive information for all patients who gave consent for their placement. This situation also indicates the high risk of insufficient differences in approaches to those categories of patients. For example, in PH Lopača we established the case of one patient who provided his own consent to be placed in a psychiatric institution, but when he asked to leave the hospital to visit his relatives, stating he will return and not run away, he was transferred to a secure ward as a flight risk. As this is a patient who himself provided consent to be placed in a psychiatric institution, we consider such treatment unacceptable.

Under the APPMD/97, it is sufficient that the patient provides oral consent for the proposed medical treatment, including admission and placement in a psychiatric institution, which should be entered in medical documentation. Cases of incomplete documentation where the patient's oral consent was not recorded were established in all hospitals, and in such cases we immediately requested that patients should either sign their consent or their refusal to be placed in a psychiatric institution. During the visits we established no cases where persons who can give their own consent for placement in a psychiatric institution were against their will placed in closed wards without initiating the procedure of involuntary hospitalisation.

[9] A mentally incompetent person is dangerous for his/her surroundings if there is a high degree of likelihood that the person, due to his/her mental disorder that caused mental illness, could again commit a criminal offence carrying a prescribed prison sentence of at least three years.

We have also established cases of placing non-forensic patients in forensic wards. Such cases are not disputable when those patients were previously treated in the relevant forensic ward, have a good therapeutic relationship with ward's physicians and agree to be placed in that forensic ward, since these cases can be considered as the institution's flexibility in the treatment of patients (e.g. PH Rab). However, cases where non-forensic patients are placed in the forensic ward because of the excess of vacant beds and without meeting the above mentioned conditions are unacceptable (e.g. PH Ugljan). We point out that, although such situations are not illegal, placement of non-forensic patients in forensic wards fails to provide appropriate conditions for their treatment, rehabilitation and resocialisation.

In the majority of cases, persons deprived, or in the process of deprivation, of their legal capacity do not bring their ID cards with them, which are instead held by their guardians, and such a situation was observed in all psychiatric institutions. The reason for this remains unclear. The identity card is the principal identification document which any person over 16 years of age with residence in the Republic of Croatia is obliged to have[10], keep it on him/her at all times and provide it for inspection of persons authorised by law. The fact that patients deprived of legal capacity do not have their own ID cards with them represents a kind of restriction of their freedom of movement because it is a misdemeanour for a person to be outside a psychiatric institution without his/her ID card. **If a patient is unable to have his/her identity card with him/her because of health reasons, then it should be stored in a place where other patients keep their personal documents.**

There is another group of persons placed in psychiatric institutions - wards of Social Welfare Centres - who, according to their physicians, no longer require hospital treatment, but still stay in psychiatric institutions because they are, due to their psycho-physical state and conditions in which they live outside the institution, incapable to take care of themselves and have no relatives or other persons who are legally obliged to take care of them[11]. One ward in PH Ugljan holds 10 such patients, while another ward holds more than thirty, with a similar situation in PH Lopača. Psychiatric hospitals cannot release them without an organised accommodation outside the hospital. In general, they are not placed in hospitals' closed wards, but are still placed in a health care institution without a medical cause, sometimes for as long as 30 years.

The issue of their accommodation after release should be solved in cooperation with competent Social Welfare Centres that need to make additional efforts in finding suitable accommodation for them. In doing so, it should be taken into account that, in general, there is a lack of capacities for long-term accommodation of persons with mental disorders because the existing capacities of social welfare institutions are gradually reduced, and specialised foster care for this category of users is neither sufficiently developed nor there is a sufficient number of organised housing units intended for them. Nevertheless, **the task of the social**

[10] Article 3 of the Identity Card Act, Official Gazette 11/2002, 122/2002, 31/2006, 68/2013)
[11] Article 42 of the APPMD/97

welfare system is to more actively deal with this issue in order to avoid any unnecessary stays in psychiatric hospitals of persons who no longer require hospital treatment.

In general, social welfare centres visit their wards placed in psychiatric institutions irregularly and some do not visit for years, although pursuant to the Family Act they are obliged to monitor the conditions in which their wards live. Employees of Social Welfare Centres should visit their respective wards at least twice a year, as well as any time a guardian or ward requests so. Therefore, for all patients deprived of legal capacity who are in the hospital for more than a year, social workers employed in hospitals should analyse the frequency of visits from employees of Social Welfare Centres, especially when they are also acting as guardians, and inform the directors of those centres about the results for the purpose of achieving compliance with this statutory obligation.

On the other hand, the health care system should be more involved in providing psychosocial support and additionally strengthening families into which persons with mental disorders return. In this case, there is an obvious lack of appropriate mental health care services at the local level, whose activities would, *inter alia*, reduce the rate of institutionalisation of persons with mental disorders and facilitate their staying with their own families. It is certainly not advisable to leave families to deal with mental health issues on their own, without organised support at the local level. Moreover, without adequate outpatient mental care services in the local community, there is a high risk that the health of many patients may worsen quickly after leaving the hospital. Shortage of funds may not be used as the reason not to have efficient professional support at the local level because, in the end, accommodation outside one's own family i.e. within the social welfare system surely represents a higher cost.

The law provides that health care institutions may also perform social welfare activities, so PH Ugljan and PH Lopača signed an agreement on mutual relations with the ministry competent for social welfare. These are not users placed in a ward because of deterioration of their health and a doctor's referral to hospital treatment, but users who live in those hospital wards. Some are even placed in closed wards in conditions that provide no privacy, while in interviews the users state they demanded to be transferred to a social welfare institution, but their guardians told them there was no room for them. However, these two hospitals fail to make a sufficiently clear distinction between patients and users of social welfare services, which is not acceptable.

In fact, in the case of its users of the social service of long-term accommodation, PH Lopača fails to ensure the conditions prescribed in the Ordinance on minimum conditions for the provision of social services[12]. The Hospital's patients and users of long-term accommodation under the Social Welfare Act use the same premises (placed in hospital wards) and it was established that there is no difference in their treatment and provided services, but only in who pays for their accommodation in the Hospital.

[12] Official Gazette 40/2014

Moreover, the legal basis for restricting the freedom of movement of social welfare users of long-term accommodation service, i.e. locking the wards where users stay and having bars on windows, other than for Alzheimer's and other dementia (middle/late stage of illness), is questionable because the focus of providing social services is on social inclusion and psychosocial rehabilitation. The impression is that this is not the goal of the users' accommodation in this case. In fact, while not questioning the purpose of concluding social service provision agreements, it has to be clear which services are provided to those users and who is responsible for them. Furthermore, if it is assessed that specific users, based on monitoring their health status, must need enhanced supervision and assistance of another person in meeting their needs, or that their premises are to be locked, it is first required to prescribe the conditions, method and duration of such treatment.

The fact that PH Lopača does not employ a resident social worker makes the work and provision of appropriate services to both patients and long-term accommodation users significantly more difficult. While visiting all wards, a number of patients asked many questions concerning their status, rights and their wishes to be released from the Hospital because they have been staying in it for years. In general, long-term accommodation users did not know that they are not patients, but users of long-term accommodation in the Hospital under the Social Welfare Act. In line with the users' expressed wishes and needs, the option of their transfer from the Hospital to another form of permanent accommodation or, if possible, their return into the local community, should be considered. This requires close cooperation between competent Social Welfare Centres and the Hospital, so their representatives should have regular joint meetings to agree on further treatment of particular users.

3. ACCOMMODATION CONDITIONS

During their stay in an institution, all persons with mental disorders are entitled to adequate accommodation conditions. Main problems that were observed during visits to all five institutions include the size of rooms and the number of patients in them, non-availability of cabinets for personal belongings, general hygiene and equipment of bathrooms, and non-existence of appropriate rooms for visits and for smoking, while in some cases rooms are untended and completely unsuitable for accommodation. These accommodation-related problems violate the right to privacy, restrict the right of movement, aggravate treatment and rehabilitation, and may indicate degrading treatment.

The average occupancy rate of inspected psychiatric institutions is 77%, whereas NPH Popovača has the highest rate of 89%, and PC Vrapče the lowest rate of 70%. Although not at full capacity, all institutions share the issue of overcrowding of rooms. More precisely, the conditions of accommodation do not comply with the standards prescribed in Article 43 of the Ordinance on minimum conditions regarding premises, staffing and medical and technical

equipment needed to provide health services (hereinafter: the Ordinance)[13], which prescribes that a dormitory may have a maximum of 4 beds, and that each bed requires a surface of at least 6 m² for adults. Contrary to that standard, the rooms where patients are staying are generally too small in terms of having a larger number of beds than prescribed, with some hospitals having up to 14 beds in a single room.

For example, in the case of PH Ugljan's ward for dementia, elderly psychiatry and palliative care of patients with mental disorders, there are two rooms, each with 14 female patients, with no space between the beds and, due to the lack of space, most patients have no night cabinets where they can keep personal belongings. Further, in the case of PH Rab's prolonged treatment ward, most dormitories have eight beds and, in the case of PC Vrapče's hospital ward of the Forensic Psychiatry Unit, there are eight patients in a 29.80 m² room, so patients keep their daily clothes in bags under the bed since only the most necessary personal belongings fit into their night cabinets.

Due to overcrowded rooms, it is not possible to ensure sufficient space between the beds in accordance with Article 43 of the Ordinance, which prescribes that the distance between hospital beds and between the bed and wall must be at least 75 cm, while in rooms for intensive care and isolation the distance between hospital beds must be 250 cm and 80 cm between the bed and wall. For example, in PC Vrapče's Psychogeriatric ward, Section for Chronic Care II, contains 13 rooms with two to seven beds per room. The beds are so close to each other that in most of the rooms the bed with a patient may be approached only from one side (out of 48 patients in the section, 45 are immobile), which aggravates the performance of medical exams and care for a heavy and immobile patient. Additionally, in PH Ugljan's Reception and Intermediary Treatment Ward, rooms are overcrowded and there is no prescribed distance between the beds.

The overcrowding of patient rooms is contrary to the prescribed standards (4 beds and 6 m² for each bed) and may negatively reflect on respecting the patients' right to privacy, so the adaptation of rooms is required.

Inadequate conditions of patients' accommodation may amount to degrading treatment. The accommodation conditions in PC Vrapče's Psyhogeriatric Ward, located in a run-down building, are below any acceptable level. The joinery is old, cracked, with colour fallen off, letting the air in because of rotting and decayed wood exposed to weather for too long; some windows and doors have started to rot, while in winter cold air comes in through closed windows. Floors and walls are very derelict, the roof is leaking and plaster has fallen off in places, so urgent renewal, adaptation and reconstruction of the building are required. In addition to the devastated building, accommodation conditions are also affected by overcrowding of rooms in all sections of the ward. For example, in the Section for Acute/Intensive Care, patients are placed in 6 compartments which are separated only by

[13] Official Gazette 61/2011

glass, and each compartment contains up to 6 beds. Consequently, accommodation of psychogeriatric patients in such conditions constitutes degrading treatment.

In some cases, spatial conditions do not meet the needs of additionally vulnerable categories of persons with mental disorders. For instance, premises of PH Lopača's unit for children and adolescents are inadequate for their accommodation. The unit is located on the last floor of the building above the social psychiatry unit in which chronic patients are placed, and the space is divided by the double-locked iron doors. The space and rooms where patients stay, with minimum furniture and empty walls, are neither adjusted to children's needs and age nor motivating, while the bathroom and toilet are in a very bad condition (broken door, no handle and no artificial light). Moreover, in PH Ugljan's Dementia and Deterioration Ward it was established that toilet rooms have squatting toilets, which is really inappropriate considering the age and health of patients. Similarly, in NPH Popovača's Forensic Psychiatry Ward, unlike male patients who may be staying in smaller rooms and apartments, female patients are in a less favourable position as they are, due to a significantly lower number of women, placed in a large room with nine beds. **The accommodation for specific categories of particularly vulnerable patients should be adjusted to their special needs.**

In some institutions, bathrooms and toilets are inadequate and do not comply with the Ordinance. In some cases, men's and women's toilets are not separated (Forensic Psychiatry Ward in NPH Popovača, unit for children and adolescents in PH Lopača). Bathrooms in some wards are not adequately equipped for bathing of immobile and semi-mobile patients (Psychogeriatric Ward in PC Vrapče, Dementia and Deterioration Ward in PH Ugljan). Such conditions, together with the insufficient number of personnel, may result in a lower quality of patients' care. In some institutions it is required to renovate bathrooms in order to ensure the respect of patients' rights to privacy and dignity. For instance, in PH Ugljan's Forensic Psychiatry Ward there are no doors on toilets and showers are missing curtains, while the latter also applies to PH Lopača's Social Psychiatry Unit. **During their hospital stay, rights to privacy and dignity of all patients must be respected, so it is required to adapt and equip bathrooms for patients accordingly.** Moreover, this complies with the CPT's recommendation[14], according to which sanitary facilities should allow patients some privacy, while the needs of elderly and/or immobile patients in this respect should be given due consideration.

The lack of separate visiting rooms was also observed, which may aggravate rehabilitation of patients. For example, in PH Ugljan's Reception and Intermediary Treatment Ward, living room is the place where patients eat, smoke, receive visits and where the therapeutic programme takes place. Further, in PH Rab's Reception, Acute and Intensive Care Ward, patients' visits take place in the space in front of the Ward manager's office, which is completely inappropriate for this purpose and does not even have chairs. Examples of good

[14] CPT standards CPT/Inf/E (2002) 1 - Rev. 2011 p. 51, under the CPT's 8th General Report from 1998, paragraph 38

practice are the Neurocognitive Rehabilitation Ward in PH Rab and the Initial Psychotic Disorders Ward in PC Vrapče, which have separate and suitably-equipped visit rooms. **It is necessary to provide an encouraging environment and separate rooms equipped with furniture intended for visits which can also be used for other purposes when there are no visits, if required.**

In some cases, inadequate conditions of accommodation render more difficult for patients to staying in the open air. In PH Rab's Forensic Psychiatry Ward, as it is located on the first floor, medical technicians have to carry patients with impaired mobility to the building's exit when they are going for a walk in the hospital's park. Further, PH Ugljan's Ward for Dementia, Elderly Psychiatry and Palliative Care of patients with mental disorders had two immobile patients who cannot be taken into the open air because of spatial and technical conditions, that is, the bed does not fit the door, and their physical state prevents the use of a wheelchair. **It is required to adapt the premises so as to ensure that immobile and semi-mobile patients may go out into the open air.**

Some institutions are missing separate smoking rooms; for example, patients in the hospital Ward of Forensic Psychiatry Institute in PC Vrapče are allowed to smoke in one living room and on the balcony, but the Ward was smoky because of constant opening of that living room's door, so cigarette smoke goes into the hall. A similar situation was found in other wards of PC Vrapče. **Pursuant to Article 13 of the Act on Restriction of Usage of Tobacco Products[15], it is required to designate one smoking room in each ward so that non-smoking patients would not be exposed to harmful effects of tobacco smoke.**

Examples of good practice in providing adequate conditions of accommodation that fully complies with the Ordinance is the Ward for Organically Conditioned Mental Disorders in PH Lopača, followed by the Neurocognitive Rehabilitation Ward in PH Rab and the Diagnostic and Intensive Care Unit in PC Vrapče.

4. RIGHTS OF PERSONS WITH MENTAL DISORDERS DURING HOSPITALISATION

Freedoms and rights of persons with mental disorders may be limited only by law if it is necessary to protect the health and safety of the mentally disordered person or other persons, but the dignity of this particularly vulnerable group must be protected and respected in all circumstances. A mentally disordered person is entitled to protection from any form of abuse or degrading treatment, and such persons may not be placed in an unequal position on account of their mental disorder. This chapter describes the situation in psychiatric institutions with regard to respecting the rights related to: medical treatment, informing, legal remedies,

[15] Official Gazette 125/2008, 55/2009, 118/2009, 94/2013

complaints, privacy and movement, communication and free time, while separate chapters describe the situation with regard to respecting the rights related to: accommodation conditions (Chapter 3) and rehabilitation/occupational therapy (Chapter 6).

a) Medical treatment of persons with mental disorders

Each mentally disordered person is entitled to the protection and improvement of his/her health and, if placed in a psychiatric institution, to conditions of medical treatment equal to those in other medical institutions. Medical treatment of persons with mental disorders must be organised in a manner that least limits their freedoms and rights, causes mental and physical discomfort or offends their personality or human dignity, while in medical treatment priority over means of coercion should be given to voluntary acceptance of cooperation and to respecting wishes and needs of a mentally disordered person.

It is clear from Article 9 of the APPMD/97 (identical provision in the APPMD/14) that the law itself does not equalize involuntary hospitalisation with a medical procedure carried out without one's consent and that a person with a more severe mental disorder may be without his/her consent subjected to an exam or another medical procedure intended to treat the mental disorder because of which the person is placed in a psychiatric institution, but only if the failure to carry out that procedure would result in a serious damage of health. Therefore, it is required to, as much as it is possible, explain potential procedures to such persons and involve them in planning their own medical treatment. In the majority of cases involuntary placement is often no different from the so called involuntary treatment, that is, subjecting a person with a more severe mental disorder without his/her consent to an exam or another medical procedure intended to treat the mental disorder because of which the person is placed in a psychiatric institution. In general, doctors consider that a decision on involuntary placement *de facto* gives consent to all medical procedures necessary for treating that person. This is primarily caused by insufficient knowledge of the APPMD's provisions. Therefore, it is required to organise training of all employees of psychiatric institutions concerning regulations and international standards governing the treatment of persons with mental disorders in psychiatric institutions. Further, paternalism in medical treatment is present in most cases, which does not encourage patients to take a more active role and approach to their treatment. However, in some cases even the voluntary consent to treatment may be highly questionable. For instance, one patient stated she was given a choice between taking medication in the form of pills or shots or, if she refused both, involuntary hospitalisation. The patient agreed to take pills, but the voluntary nature of her treatment is questionable. Attitudes towards the patient's refusal of an individual treatment plan are different even within the same hospitals. For example, in PC Vrapče, if a patient in the Biological Psychiatry Unit (Innovative Treatment Ward) refuses to take psychopharmaceuticals and requests only psychotherapeutic treatment, he/she is released and referred to an institution that primarily deals with psychotherapy, while in the Unit for Teatment of Addiction Disorders they are more flexible and support the patient in his/her decision to attempt treatment without medication;

however, in the absence of positive results, the treatment is continued with psychopharmaceuticals.

In psychiatric institutions there is no independent body/person who would arbitrate in cases where a patient refuses an individual treatment plan, so it is proposed that such cases are to be considered by the expert board or in some cases even the expert council, for the purpose of harmonising procedures within the hospital. In any case, **involuntary medical treatment, that is, involuntary pharmacotherapy should be clearly indicated in medical documentation in a manner that makes it distinct from other voluntarily accepted treatment with psychoactive medications, and the process of involuntary psychopharmacotherapy should be standardised.**

In principle, patients are informed of the reasons for prescribing medications, their therapeutic effects and potential side-effects and/or harmful consequences. However, in some wards and institutes with not enough physicians and many patients, informing is not always performed in a satisfactory manner (e.g. Unit for Prolonged Treatment in PC Vrapče). Additionally, in some wards of psychiatric institutions patients stated that they do not often have an opportunity to speak with physicians and would wish to do so. Therefore, it is required to increase the number of medical doctors and align it with, at least, the minimum conditions for health care institutions regarding the number of personnel (covered in more detail in Chapter 7).

In general, psychiatric institutions have at their disposal new generation psychopharmaceuticals which are very often received through donations (e.g. in PC Vrapče and PH Rab). No restrictions in prescribing new psychopharmaceuticals were established, other than those set by CHIF on the basis of therapeutic guidelines. However, the therapeutic guidelines are outdated and may represent an obstacle to successful treatment of some patients because, under the guidelines, older and cheaper medications are to be tried first, and they can prove to be ineffective. Newer psychoactive medications, which have been on the CHIF's list of approved medicines for over ten years, may be used only in the case of tolerance. These newer psychopharmaceuticals are not expensive as they were before, at the moment of their registration, since now there are many generic parallels, so high prices of medicines may no longer be a reason for exclusion from the list. Therefore, the Ministry of Health should, pursuant to Article 2 of the Act on the Protection of Patients' Rights which, *inter alia*, prescribes that each patient has a general and equal right to the quality and continuity of health care appropriate for his/her health condition in line with generally accepted professional standards and ethical principles, in the patient's best interest, **harmonise old guidelines with recent knowledge in the field of psychopharmacology and the current situation in the market of medicines**.

b) Informing persons with mental disorders of their rights

All persons with mental disorders are entitled, upon admission and later at their request, to

be informed of their rights and ways to exercise them. In general, during the admission process psychiatrists in all visited psychiatric institutions briefly inform the person of his/her rights. However, during the admission some persons are, due to their health condition, stress caused by admission into the hospital or some other reason, unable to understand or remember their rights and ways to exercise them. On more occasions during the visits patients themselves confirmed that a psychiatrist said something about their rights during the admission, but they do not remember it. Further, we have observed that psychiatrists sometimes, because of the larger number of admissions, do not have sufficient time to inform persons with mental disorders, in a way understandable to them, of their rights and ways to exercise them. Therefore, **in order to avoid that introduction to the rights becomes only a formality aimed at complying with regulations without achieving its purpose, even after admission each person must be introduced to his/her rights in an understandable way and not only on his/her request**.

Additionally, patients are informed of their rights via bulletin boards, leaflets and brochures; persons in psychiatric institutions must be introduced to the provisions of the APPMD/14 which are relevant for them, but the practice is very uneven. The wards of some psychiatric institutions have all the relevant information posted and patients have access to leaflets (e.g. in some wards of Forensic Psychiatry Institute in NPH Popovača), in other institutions only the schedule of daily activities is posted on bulletin boards, while some wards do not even have a bulletin board. Therefore, **for the purpose of patients being better informed of their rights, in all wards it is required to post on bulletin boards the relevant provisions of the APPMD and the Act on the Protection of Patients' Rights. Likewise, it is required to post provisions of the house rules on bulletin boards, but not only the section related to daily schedule but also sections related to patients' rights and obligations.** Additionally, patients may be better informed of their rights by using leaflets and brochures that clearly explain the rights and mechanisms for their protection, which was also pointed out by the CPT during their visit to the Republic of Croatia in 2012.

c) Legal remedies

In some cases, the right referred to in Article 11 paragraph 1 item 7 of the APPMD/97 was restricted; it prescribes that persons with mental disorders placed in psychiatric institutions are entitled to submit claims, complaints, appeals or other legal remedies to competent judicial and other state bodies without supervision or restriction. In fact, patients on more occasions complained about not being informed of court decisions, particularly those on extending the involuntary placement. For instance, after a complaint from a patient in PH Rab, we examined his medical file and established that it contains two copies of the decision on extending involuntary placement. Neither of the copies contains any record on whether and when the patient was informed of the decision or when it was delivered to him. Moreover, by examining the medical file of a patient in PH Lopača it was established that it contains a

decision on appointing the guardian and a memo from the competent court requesting that the patient should be delivered the decision on deprivation of legal capacity, but no record of whether and when the patient was introduced to its contents or received the decision. Since this prevents him from applying for legal remedies, it is a clear restriction and violation of the constitutional right to appeal. **Therefore, it is necessary that all patients in the Forensic Psychiatry Ward are given any decisions related to them after their receipt, which the patient must confirm by signature and date. If a copy of an individual decision has not been delivered to the patient for justified reasons, then it must be clearly recorded who, when and in what way informed the patient of the contents of that decision and list the reasons why the patient did not receive the decision immediately after its delivery.**

In PH Ugljan, one patient claimed that he sent complaints to the Ombudsman, but did not receive any response because the memos intended for him were directly inserted in his medical file without him being previously informed of their contents, which is also a violation of the right referred to in Article 11 paragraph 1 item 7 of the APPMD/97 and Article 20 of the Ombudsman Act on preventing the lodging of a complaint.

Further, during the visits patients often complained of never talking with their *ex officio* appointed attorney. For example, a record from the court hearing states: "The authorised person (attorney) leaves the decision on involuntary placement to the court in line with the doctor's opinion and requests payment of the fee according to the prescribed tariff". Such practice may point to insufficient or non-existing protection of the rights of persons subject to involuntary treatment, while the role of authorised persons appointed from the ranks of lawyers who only appear at the hearing and ask for their fee represents only a formal compliance with Article 30 paragraph 1 and Article 45 paragraph 2 of the APPMD/97. According to the received information, attorneys who are not appointed *ex officio* contact their clients much more frequently, so it may be concluded that low-income persons who cannot afford to hire an attorney by themselves are placed in a less favourable position, especially when they are not even invited to the hearing.

d) Lodging of complaints and objections to the head of the institution or ward

Pursuant to the APPMD/97, persons placed in psychiatric institutions had the right to submit complaints to the head of the institution or ward. That only partially implemented the constitutional right to submit complaints since the legislator failed to prescribe the right to receive a response. Moreover, the APPMD/97 failed to recognise the difference between oral and written complaints or the procedure for handling submitted complaints. Therefore, the APPMD/14, which prescribes that persons with mental disorders are entitled to submit complaints and receive oral responses without delay and, on their written request, receive written responses within a period of not later than eight days, represents a positive step forward in this regard. However, all written complaints should be answered in writing regardless of whether the complainant requested so in writing or not.

In general, complaints are submitted orally, which is understandable in cases where there is trust between health care workers and patients. Nevertheless, the lack of written complaints also arises from the fact that patients are neither adequately informed of their rights nor provided optimum conditions to submit written complaints. For instance, generally there are no written complaints in PH Ugljan although each ward is equipped with a complaint box, which can partly be explained with the patients' insufficient level of information about their rights. Further, each institution has the so called book of complaints where patients may write their complaints, but it is often not easily accessible. For example, PH Lopača has only one book of complaints located in the infirmary in the main building; however, during the visit some patients stated that they requested it but could not receive it. **Therefore, patients should be clearly informed of their right to submit complaints to the head of the institution or ward, what that right includes and in which way they can exercise it. Furthermore, it is required to facilitate the procedure of submitting written complaints by providing forms available to patients in all wards, while a complaint box should be placed in rooms where patients frequently stay.**

Since complaints are generally submitted orally, there are no records of complaints and therefore it is impossible to determine how often patients submit complaints and what are the most frequent reasons for doing so. This information could definitely be used to improve the treatment of persons with mental disorders and remove potential causes of their dissatisfaction. Therefore, taking into account the provisions of the APPMD/14, **each psychiatric institution should establish and keep records of submitted complaints**.

e) Privacy

The accommodation in rooms with more beds than the prescribed standard (accommodation conditions are covered in more detail in Chapter 3), where in cases of changing clothes of semi-mobile or immobile patients, who are sometimes not even separated by gender, there is practically no room to place protective barriers because they prevent the work of nurses, significantly restricts the patients' right to privacy. Particularly in mixed-gender wards, it is important to ensure all preconditions for protecting the privacy in order to prevent unwanted contacts between sexes. The fact that a mentally disordered person is placed in a psychiatric institution does not deprive the patient from his/her rights to privacy and dignity; therefore, **the respect of patients' privacy is one of the more important tasks of all employees**.

f) Movement, communication and free time

According to the information received during the visits, persons with mental disorders placed in psychiatric institutions are not denied the right to socialise with others or to receive visits; however, some patients have not been visited by anyone for years. Such is the case in PH Rab's forensic psychiatry ward with seven patients who never received visitors. Further, persons with mental disorders may without supervision or restriction send mail and packages, follow

television programmes and, within the scope possible in the psychiatric institution in question, participate in religious activities.

However, in some wards, such as the hospital ward of the forensic psychiatry institute in PC Vrapče, patients cannot use their own mobile phones, and phone calls can be received on the phone located in the ward, or they can use the social worker's phone when she is available. Such treatment is different from good practice in other institutions, where patients may have a mobile phone or use it during a specific part of the day Therefore, considering the practice in other visited institutions, it is recommended to change this practice.

In some institutions, the possibility of staying in the open air on a daily basis is restricted due to spatial limitations or insufficient number of health care workers (covered in more detail in Chapter 3).

5. MEANS OF COERCION AGAINST PERSONS WITH MENTAL DISORDERS

The use of means of coercion against a person placed in a psychiatric institution is allowed only exceptionally, if that is the only method to remove the immediate danger arising from his/her behaviour. These are exceptional situations when the usual methods of treatment have failed to control an aggressive patient, so it is necessary to physically restrict his/her movement and actions or to separate him/her from other patients. As opposed to Article 54 of the APPMD/97, which prescribed that physical force can be used in cases of violently destroying or damaging someone else's property of higher value, Article 61 of the APPMD/14 prescribes that measures of coercion may be used only if a person is seriously and directly endangering his/her own, or someone else's, life or health, which is a positive step forward. Considering that these means and methods restrict the rights of persons with mental disorders, special attention was given to the use of means of coercion or, more precisely, its compliance with valid regulations and international standards.

The use of physical force for punishing a patient or the use of means of coercion that would constitute torture or inhuman treatment was not established in any of the cases. However, we did establish actions that are contrary to international standards and may cause violations of the rights of persons with mental disorders and constitute degrading treatment, such as restraining a patient in the hall in front of other patients (NPH Popovača). Likewise, there are great differences in the use of means of coercion, not only between psychiatric institutions, but also between individual wards in an institution, which is from the aspect of human rights, particularly with regard to the use of means of coercion, unacceptable.

Clearly defined and prescribed rules on the use of means of coercion are definitely one of the basic guarantees for respecting the rights of persons with mental disorders. However, both

the APPMD/97 and its implementing regulations neither prescribe the types of means of physical restraint for aggressive patients nor the circumstances in which specific means are to be used. The APPMD/14 also fails to prescribe the types and methods for using means of coercion, which we pointed out already in the process of its adoption, but they are to be prescribed by the minister competent for health in an ordinance issued within 30 days from the date of entry into force of this law, that is, by 31 January 2015. Since this is a restriction of the rights and freedoms of this particularly vulnerable group of citizens, it remains unclear why the use of means of coercion was not prescribed by the law in the same manner as it is prescribed in Title XXII of the Act on Police Activities and Authorities[16] or Title XX of the Execution of Prison Sentences Act[17].

In general, magnetic bands, magnetic and leather belts/straps and straitjackets are used for restraining patients. The fact that the difference between individual means of restraint is not clearly defined and that there are no clear criteria when to use specific means and no clear rules as to the use of multiple means of restraint opens up the possibility of arbitrary decision-making which should be avoided in cases of restricting human rights. For example, in the Forensic Psychiatry Unit PC Vrapče, in some situations leather belts are used in addition to a magnetic belt or a protective jacket. Contrary to that, no leather straps are used for restraining patients in PH Rab. Similarly, some institutions use the measure of isolation of patients (e.g. PC Vrapče, PH Ugljan and PH Lopača), while other institutions do not use this measure of coercion (e.g. PH Rab and NPH Popovača). Moreover, we have also observed significant deviations in the method of implementing isolation of patients. Namely, in PC Vrapče this measure generally lasts up to 2 hours, during which the patient is placed in a specially secured room devoid of dangerous objects, while in PH Ugljan this measure may last up to 7 days and it is carried out in rooms which are, in general, equipped like ordinary patient rooms. Therefore, the question is whether it is justified to use a particular means of coercion, if that same means is not used at all in some other institutions. **In order to avoid arbitrary and unequal treatment of persons placed in different psychiatric institutions, it is required to clearly prescribe and define the types of the means of coercion, in what cases may an individual means be applied and to prescribe the conditions required for potential simultaneous use of multiple means of coercion.**

In some institutions, restrained patients are taken to a separate room[18], in some they are restrained in their rooms, and in some they are placed in hallways. This is the case with the Forensic Psychiatry Unit forensic psychiatry institute in NPH Popovača, where, in some cases of restraint, a bed with the restrained patient is placed in the middle of the hall in front of other patients. Such treatment is contrary to the CPT's guidelines in line with which restrained

[16] Official Gazette 76/2009 and 92/2014

[17] Official Gazette 128/1999, 55/2000, 59/2000, 129/2000, 59/2001, 67/2001, 11/2002, 190/2003 – consolidated version, 76/2007, 27/2008, 83/2009, 18/2011, 48/2011, 125/2011, 56/2013 and 150/2013

[18] These are, in general, intensive care rooms, isolation rooms and enhanced supervision rooms.

patients should not be exposed to the view of other patients.[19] In fact, exposure to the view of other patients may make a restrained person feel low self-esteem and amount to degrading treatment. Likewise, when the process of restraining a patient is performed in front of other patients, physical attacks on the restrained patient are possible, so such practice may also represent a security issue. **Therefore, for the purpose of protecting the dignity and safety of restrained patients, in accordance with the CPT's recommendations and guidelines it is required to prescribe that a restrained patient must be separated from other patients, unless he/she specifically requests their company**.[20]

Pursuant to Article 57 of the APPMD/97, it was mandatory to provide continuous monitoring of a restrained person's physical and mental status by professional medical staff. However, the definition of continuous monitoring (whether that is a visit from a psychiatrist every two hours or a continuous presence of a health care worker) is differently interpreted in the practice of visited institutions. For example, continuous monitoring in provided in those wards where restrained patients are placed in intensive care rooms, which are separated from the infirmary by a glass barrier (e.g. the reception, acute and intensive care ward in PH Rab, the emergency and admission service in PC Vrapče). In PH Ugljan, a patient's condition is monitored by video surveillance with regular visits from health care workers.[21] However, during the visits some patients complained that, while being restrained in a room with video surveillance, they were not visited by a health care worker for more than four hours (PH Lopača). We have also observed that the monitoring of restrained patients by psychiatrists is much less frequent during the night. Since the use of physical force should last only until it achieves its purpose, **any irregular monitoring of patients represents a potential danger for unnecessary and, thus, illegal use of the means of coercion. Therefore, it is required to define a method for active monitoring of a restrained person's physical and mental status by nurses and psychiatrists.**[22]

Further, although the records on restraint measures are one of the more important mechanisms for protecting the rights of persons with mental disorders, there is a number of differences and inconsistencies in their keeping. The fact is that the visited psychiatric institutions not only keep records in different ways, but differences were also observed between individual wards in the same psychiatric institution, which prevented the collection of complete data and their comparative analysis. In some institutions, the use of means of coercion is recorded only on temperature charts, which prevented the inspection of the frequency of their use. Likewise, although in some visited institutions the use of means of coercion is recorded in several places (on temperature charts, in medical files, in *decursus*

[19] The CPT's guidelines in its report on the visit to Croatia in 2007 (paragraph 120).
[20] The CPT's 16th General Report from 2006, paragraph 48
[21] The CPT's 16th General Report from 2006: video surveillance cannot replace the presence of a health care worker who should be continuously present with the restrained person (paragraph 50).
[22] In its 16th General Report from 2006, CPT states that psychiatric establishments should consider adopting a rule whereby the use of a restraint lapses after a certain period of time, unless explicitly extended by a psychiatrist (paragraph 45).

morbi and on different forms), we were unable to establish which measures were used, how many times and in what wards since there is no single central record.[23]

Additionally, data is inconsistently entered into the records, so it is impossible to establish when the measure of coercion ended, how often a psychiatrist checked the condition of a restrained patient and whether different means of coercion were used simultaneously. Such incomplete data prevents the reaching of conclusions on the justification and grounds for using the means of coercion. **Accordingly, all psychiatric institutions in the Republic of Croatia are required to establish and keep records on the use of means of coercion, including information on who, when and for what reason ordered the use of physical force, which type of physical force was used, what measures preceded the use of physical force, as well as information on monitoring the patient's physical and mental status and the time at which the measure began and ended.[24]** These records not only provide information on the use of means of coercion, but their analysis can help avoid future mistakes and thus improve the treatment of persons deprived of liberty. For example, PC Vrapče keeps a single central record on the use of means of restraint, while data on the used measures of coercion is every morning delivered to the Clinic's head nurse.[25] In the morning meeting, all heads of institutes, the Clinic's head nurse and physicians on duty analyse the data on the use of measures of coercion and, since the introduction of the single central record, the number of restraint measures is declining, which is additionally supported by the daily data analysis.

During the visits we also established cases where the means of restraint were used at the patient's request. This type of restraint should be performed with additional caution and it should be in each single case established whether restraint is really a measure of last resort or is it still possible to neutralise aggressive behaviour by using standard methods and de-escalation procedures. Regardless of the means of restraint being used at the patient's request, it is necessary to record in detail the procedures that preceded it and to discontinue it as soon as the patient requests so. Moreover, there is a practice of the use of restraints or immobilisation, generally on elderly patients, for preventive purposes (in most cases they were used to prevent injuries caused by falling from bed, to support sitting in a chair or to facilitate the receipt of infusion therapy). It is surely positive and necessary to prevent falls and assist persons to sit in chairs instead of spending their entire day in bed, but it is required to use adequate equipment for such purposes and avoid tying patients to a chair with a sheet. Furthermore, this type of restraint, despite the fact that it is used for preventive purposes, should also be consistently recorded.

[23] The need to introduce central records on the use of means of coercion was listed in the CPT's guidelines provided in its report on the visit to Croatia in 2007 (paragraph 120).

[24] The requirement to establish and keep such records also arises from Article 64 paragraph 4 of the APPMD/14, under which each psychiatric institution should at least two times a year inform the Committee about the used measures of coercion.

[25] As of 2 December 2005, all data on restraint measures from each ward are delivered on a form to the director and head nurse every morning. The electronic database on restraint measures and analysis in the morning meeting were introduced on 1 January 2012.

Moreover, it is required to point out the signi ficance of providing continuous education on the use of means of coercion. Although health care workers participate in such trainings, they usually do not include practical exercises, which is necessary to adopt procedural techniques and methods in line with international standards, general ethical standards and standards of professional conduct. As an example of good practice we can point out PC Vrapče where the Clinic's head nurse educates employees on communication with agitated patients, desensitising techniques and use of physical force. A complete training course, including exercises, was provided to 50 nurses and technicians in PC Vrapče and the workshop was approved and evaluated by the Croatian Chamber of Nurses.

6. OCCUPATIONAL THERAPY

Article 11 of the APPMD/97 prescribes that a mentally disordered person is entitled to participate in occupational therapy activities and receive compensation if such work generates revenue for the institution, so special attention was given to the organisation and implementation of occupational therapy. We noted that PH Rab stands out as an example of good practice in organising occupational therapy. The rooms where occupational therapy is performed are spacious, clean and modernly designed, offering various occupation al therapy activities, such as independent living skills training, social skills training, workshop for making jewellery and other decorative items, individual work with a therapy dog and social games. Moreover, construction of a special garden intended fo r working with patients suffering from different forms of dementia is in progress.

In NPH Popovača, the patients' magazine "Dawn" is published within the occupational therapy programme, while the Association for Rehabilitation and Resocialisation of Persons with Mental Disorders in the hospital Popovača was established in 1986 within the activities of the work-occupational therapy and rehabilitation service. In the context of improving the health of patients, the Association for Psychosocial Assistance and Rehabilitation – Zagreb, operates within PC Vrapče, including activities such as: providing assistance in the process of socialisation and adaptation of psychiatric patients and persons with mental disorders, organising workshops aimed at sociotherapy, cre ation of network of self-help groups, organising expert consultations in the field of health, social and legal protection and organising seminars, consultations and other forms of action. The Association's Section for Providing Social Assistance to Patients in PC Vrapče was established in 1932 with the purpose of providing care in terms of the social status of psychiatric patients during treatment and rehabilitation in PC Vrapče.

Some institutions have defined price lists for works, in which compensation is determined for patients who perform works during occupational therapy. For example, NPH Popovača has the price list for works, and patients receive compensation amounting to 30% of the established work price (or 70% in cases when the patient brings his/her own materials for

performing work), while in PC Vrapče patients may get up to HRK 150 per month for gardening, up to HRK 400 for working in the kitchen and up to HRK 500 for masonry works. In contrast, PH Lopača has no documents that would prescribe works that patients may perform in occupational therapy or compensation that they would receive, although according to the comments of staff, this is generally known in the institution for many years and those compensations are paid. **It is required to prescribe job positions for patients in occupational therapy and amount of the fee to be paid for performed tasks.** In PH Ugljan, patients were receiving HRK 50 per day, but such practice was cancelled because the hospital does not generate income from such work, so now patients are given coffee, cigarettes, chocolate, etc. in the value of HRK 50 per week, as reward for their effort and work.

In some institutions a lack of specific activities within occupational therapy was established, that is, performance of tasks that should not be covered by occupational therapy. For example, the occupational therapy in PH Ugljan does not include a resocialisation programme that would prepare patients for independent life and work in the community, such as social skills training (cooking, cleaning, money management), which is especially important for patients in the prolonged treatment ward.

It is unacceptable that patients/users, as part of occupational therapy, perform tasks listed in the job description of the Hospital's staff, such as laundry ironing, transport of deceased persons, etc., which is practiced in PH Lopača. Further, no tasks performed in occupational therapy which the patient finds degrading may be regarded as an occupational therapy activity (PH Rab). **The use of means of coercion to force participation in occupational therapy or any other use not stipulated by law represents a violation of the rights of persons with mental disorders and treatment contrary to fundamental principles prescribed in the APPMD and the Act on the Protection of Patients' Rights[26].**

[26] Official Gazette 37./2008

7. STAFF

According to the CPT's recommendations, staff resources should be adequate in terms of numbers and categories of staff (psychiatrists, general practitioners, nurses, psychologists, occupational therapists, social workers, etc.), and their experience and training.[27] However, during visits to all five psychiatric institutions we have observed the problem of the lack of personnel, which is reflected in the quality of care and in the realisation of patients' rights.

All institutions are lacking psychology specialists and medical nurses/technicians, whereas in some cases, such as the Forensic Psychiatry Unit in NPH Popovača[28] or the Psychogeriatric Ward in PC Vrapče, this problem is most visible considering the number and specific needs of patients. On the day of visiting PC Vrapče, the Psychogeriatric Ward's Section for Chronic Care II had 45 immobile patients and the morning shift was covered by only 2 nurses, because others had to accompany physicians for out-of-institution exams.

Additionally, some institutions have an insufficient number of social workers (e.g. PH Lopača, the Geriatric Psychiatry Ward in NPH Popovača) and physiotherapists (mostly in Geriatric Psychiatry Wards, e.g. in PH Ugljan and PC Vrapče). The insufficient number of social workers and physiotherapists is particularly reflected in the conditions on Geriatric Psychiatry Wards, because of elderly population in those wards and increased needs for performing tasks related to guardianship and informing patients of their rights as well as performing tasks such as stretching, exercise and physical therapy for the prevention of bed sores and muscular atrophy in immobile patients.

The work in all institutions is organised in shifts and the lack of personnel is most visible in evening and night hours. For instance, the Integrative Psychiatry Ward in PH Lopača has only one nurse on duty over nights, weekends and non-working days.

A lack of the required staff may directly prevent the realisation of some rights of patients. In PC Vrapče's Urgent Psychiatry and Geriatric Psychiatry Wards, it was established that patients who cannot by themselves or with family members' assistance go into the open air, usually do not even go out, while the lack of staff is listed as the primary reason for not respecting this right.

In order to ensure full respect of the rights of persons with mental disorders, it is required to increase the number of staff in hospitals in line with the minimal number of staff prescribed in the Ordinance on the minimum conditions regarding premises, staffing,

[27] CPT standards CPT/Inf/E (2002) 1 - Rev. 2013 p. 53, under the CPT 8th General Report from 1998, paragraph 42

[28] In the visit report related to NPH Popovača we recommended to fill the systemised jobs of psychology specialists and medical nurses/technicians. After that, based on the published job vacancies and prior approval of the Ministry of Health, the Hospital employed 2 physicians specialising in psychiatry, 1 social worker, 1 occupational therapy bachelor and 5 medical technicians.

medical and technical equipment needed to provide health services[29] and the CPT's recommendations.

During the visit to PH Ugljan we conducted an anonymous survey which was filled out by 10 health care workers from four wards. Almost all participants pointed out good human relations in their respective wards, team work and good contacts with patients, while as the main deficiency they pointed out accommodation conditions, especially with regard to the excessive number of beds in rooms. Further, in their opinion, increasing the number of staff or reducing the number of patients and an increased involvement of other professions in working with patients, such as psychologists, occupational therapists and the like, would improve the quality of work with patients. The highlighted problems also include the professional burnout syndrome caused by the insufficient number of health care workers in wards and the need for continuous training.

An example of good practice with regard to staff training is NPH Popovača. More precisely, it was observed that all nurses in NPH Popovača's Acute Psychiatry Ward (Women's High Security Ward) participate in additional trainings, regardless of whether they are organised within or outside the Hospital. Further, significant efforts are invested in organising various trainings at the level of the Hospital, for which employees show a great interest, which indicates that they are aware of the demanding nature of work with mentally disordered persons and that they are motivated to do it.

[29] Official Gazette 61/2011

8. FUNDING OF PSYCHIATRIC INSTITUTIONS

The budget cuts in psychiatric institutions are surely contributing to the lowering of standards for patients, despite the efforts invested by hospital administrations to reduce further losses.

The revenues of psychiatric hospitals are, in general, insufficient to cover all costs, whereas the majority of visited hospitals started to generate losses in 2014. For instance, until 2014 PC Vrapče's financial operations were stable, solvent and required no bailout. However, in the period from 1 Jan to 31 October 2014, it had a revenue deficit of HRK 3,981,752.04, which was primarily caused by the CHIF's reduction of the hospital's monthly limit by HRK 480,000.00 in April 2014. It should be noted that the largest share in total expenditure is allocated for employee expenses (73.3%), whereas the number of employees is lower than the prescribed minimum number of staff. This is also the case in PH Rab, with an even worse ratio between employee expenses and the monthly limit.

NPH Popovača is subject to a bailout programme due to financial losses, but the funds allocated by the CHIF are insufficient for covering the costs of treating patients. Further, the cost per patient day in Acute Wards is between HRK 405 and 476, and in Chronic Wards HRK 342, while the CHIF was in 2014 paying the hospital HRK 250 per patient day.

Although it is certainly necessary to rationalise the operation of hospitals, efforts to reduce medical costs may also have a negative effect on the quality of treatment of this particularly vulnerable group; therefore, the CHIF should start to recognise actual medical treatment costs. Further, each institution treats a smaller number of patients with no health insurance, meaning that their treatment costs cannot be invoiced, so psychiatric institutions bear the costs themselves, which is another issue that should be adequately regulated.

If their diagnosis is not listed in the CHIF's decision on the list of diagnoses for which the entire treatment is covered by mandatory health insurance, patients with mental disorders without a contracted supplemental health insurance policy are charged a co-payment for medical costs during their involuntary placement in psychiatric institutions,. Such procedure is unacceptable in situations involving involuntary placement, and involuntarily placed persons, regardless of their diagnosis, should never be charged a co-payment for medical treatment costs as the APPMD/97 prescribes that funds in the state budget will be allocated for the costs of judicial proceedings and for involuntary confinement and involuntary placement of persons with mental disorders in psychiatric institutions. The CHIF stated that the involuntarily placed person was charged a co-payment according to the Mandatory Health Insurance Act, which regulates the rate of co-payment for health services. However, as this was a clear non-compliance of the two laws until the entry into force of the APPMD/14, rights of some involuntarily placed persons were violated and they found themselves in an absurd situation of being charged a co-payment for medical treatment that they cannot terminate at will. **As the new APPMD, which entered into force on 1 January 2015, prescribes that funds in the**

state budget will be allocated only for the costs of involuntary placement of mentally incompetent persons in psychiatric institutions, it is required to amend the APPMD/14 so that funds are allocated in the state budget for the costs of involuntary placement of all involuntarily placed persons in psychiatric institutions, and to harmonise regulations governing co-payment for medical costs.

The funding of PH Lopača, which was founded by the City of Rijeka, is specific in comparison to the other four psychiatric institutions. More precisely, NPH Popovača, PH Ugljan, PH Rab and PC Vrapče are in the Public Health Service Network and their costs of treatment are covered by the CHIF. However, other than 10 beds for adolescents, PH Lopača is not included in the health service network and cost of hospitalisation of patients is paid from several sources. The City of Rijeka pays for the accommodation of about 50 socially vulnerable patients, while 20 users are covered by a contract with the Ministry of Social Policy and Youth and they are accommodated under decisions of Social Welfare Centres. Other adult patients (or their guardians) cover all medical treatment costs on their own, including hospital accommodation, despite usually having a health insurance policy with the CHIF. The contract on hospital services they sign in such cases is of standard form, and prescribes payment of a deposit in the amount of 5-8 thousand Kuna. The City Council of the City of Rijeka's Decision on Social Welfare prescribes the social welfare rights provided by the City of Rijeka, eligibility conditions, social welfare users and procedure for exercising those rights. This decision established and regulated the right to accommodation in PH Lopača as a social welfare right, meaning that a socially vulnerable person may be placed there at the City's expense, provided that he/she is a chronic psychiatric and/or geriatric patient based on a psychiatrist's findings and opinion, and meets the social welfare criterion or the income criterion. As a result, it may be concluded that the City of Rijeka is co-financing the Hospital's social welfare activities for persons outside the number contracted with the Ministry of Social Policy and Youth without determining conditions for providing the social service of long-term accommodation for that excess number of users. However, if this is related to covering the costs of hospital treatment, it is questionable why persons with mental disorders, for which the City of Rijeka covers costs, are not sent to receive treatment at the CHIF's expense in psychiatric institutions within the Primorje-Gorski Kotar County which are in the Public Health Service Network. In fact, the accommodation conditions in PH Lopača are not better than the conditions in those psychiatric institutions and are even worse in some segments.

Patients not deprived of legal capacity, who provided their own consent to hospitalisation in a psychiatric hospital and signed a contract on hospital services with PH Lopača, have agreed to cover all medical treatment costs by themselves and their accommodation is not in question. However, situation is more questionable in the case of patients for whom consent was given by their legal representative or the competent Social Welfare Centre and who are paying their own costs of hospital services. For example, patient M. S. from Zagreb, a person deprived of legal capacity, was admitted to the Hospital in 2007 and is paying costs by himself from a family pension. In the meantime his apartment in Zagreb was sold. He is situated in the

part of the Hospital intended for users of long-term accommodation under the Social Welfare Act, for which constant medical supervision is not necessary, although he does not have the status of a user of the social service of long-term accommodation. From an interview with his physician it is clear that he no longer requires medical treatment, but still remains in the Hospital.

If the Hospital does not join the Public Health Service Network, it is suggested to transfer persons who did not give consent to hospitalisation in a psychiatric institution by themselves, but pay their own costs, to a psychiatric institution in the Network. In the case that such transfers are not possible, it is required to regulate payment of the costs of their hospitalisation in another way, since it remains unclear why, if there is a need, they are not treated in psychiatric institutions within the Network, where they would not have to pay the costs of their treatment.

9. CONCLUSION

As one of the most vulnerable groups of citizens, persons with mental disorders are more exposed to potential violations of human rights, regardless of being in a psychiatric institution or not. In view of the role and tasks of the National Preventive Mechanism, it is our goal to improve treatment of this category of persons during their accommodation in psychiatric institutions and to strengthen protection and respect of their rights.

Although the conduct of health care workers towards persons with mental disorders is, in general, very professional and we did not identify actions that could amount to torture and inhuman treatment, we did identify actions that may constitute degrading treatment and violation of some constitutional and legal rights of persons with mental disorders.

Violations or unnecessary restrictions of the rights of persons with mental disorders are a result of regulatory deficiencies, in some cases inadequate knowledge of international standards and provisions of the APPMD, and insufficient material and human resources. Therefore, it is necessary to remove the listed deficiencies and strengthen the respect of the rights of this particularly vulnerable group of citizens, primarily by improving regulations (especially in the part related to restricting the rights of persons with mental disorders), continuous training of health care workers and ensuring the required funds.

Moreover, persons with mental disorders are frequently insufficiently informed of their rights and ways to seek protection, while this is further aggravated by the fact that attorneys appointed *ex officio*, whose role is to protect the rights of involuntarily placed persons, often do not even contact their parties. Consequently, it is required to both orally and in writing introduce not only persons with mental disorders, but also their trusted persons or legal representatives, with all their rights as well as responsibilities that an authorised person appointed from the ranks of lawyers has under the APPMD.

The accommodation conditions of persons with mental disorders are generally unsatisfactory. The size of rooms and the number of patients in them, non-availability of cabinets for personal belongings, general hygiene and equipment of bathrooms, and non-existence of appropriate rooms for visits and for smoking are among the most worrying conditions. Such conditions are contrary to the standards prescribed by the Ordinance and the CPT recommendations and in some cases may constitute degrading treatment, so it is required to urgently start renovation in some institutions for the purpose of ensuring adequate accommodation conditions.

As regulatory deficiencies are the biggest source of potential misuse of means of coercion, the law needs to clearly prescribe the types of means of coercion as well as conditions and methods for their use. Respecting the principle of the rule of law, this will equalise the treatment of patients regardless of the psychiatric institution in which they are placed. Likewise, in order to prevent potential abuse or illegal use of the means of coercion and limit

their duration strictly to the period necessary to achieve their purpose, it is required to prescribe the rules for monitoring the patient's condition and ensure conditions for its implementation. All psychiatric institutions in Croatia should consistently keep records on the use of means of coercion and ensure an efficient and effective system for complaints regarding their use, while persons with mental disorders, their legal representatives or trusted persons should, during or after their use, be informed of the right to submit complaints.

As involuntary placement, placement without consent and the use of means of coercion represent a restriction of the fundamental right to freedom, these procedures must always be in the focus of all personnel who perform them. Furthermore, the Government has to provide clear rules of procedure and prescribe appropriate and efficient protection mechanisms to prevent any possibility of abuse. Those protection mechanisms should ensure that the likelihood of conflicts of interest or abuse of power is reduced and that measures are proportionate adjusted to personal circumstances and applied for the shortest possible period of time as well as subject to regular reviews of a competent, independent and impartial body. Protection mechanisms should be proportionate to the degree that such measures affect the rights and interests of a person.

Although occupational therapy programmes exhibited examples of good practice in different institutions, there were also some irregularities related to forced participation in occupational therapy and patients performing tasks listed in the job description of employees.

Since the insufficient number of staff in psychiatric institutions does not only diminish the quality of health care provided to patients, but also leads to violations of some of their rights, it is required to align the number of staff in psychiatric institutions with the minimal number of staff prescribed in the Ordinance on the minimum conditions regarding premises, staffing and medical and technical equipment needed to provide health services.

While aware of the severe financial situation in the health care system, it should not happen that budget cuts in psychiatric institutions result in violations of patients' rights.

10. APPENDIX: PHOTOS FROM PSYCHIATRIC INSTITUTIONS (2014)

Figure 1: PH Ugljan, forensic psychiatry ward, bathroom

Figure 2: PH Lopača, integrative psychiatry ward (women's section), bathroom

Figure 3: PH Lopača, integrative psychiatry ward (women's section), out-of-order bathroom used as storage

Figure 4: PH Lopača, social psychiatry unit, unusable wash-basins

Figure 5: PC Vrapče, forensic ward, excessive number of beds in rooms

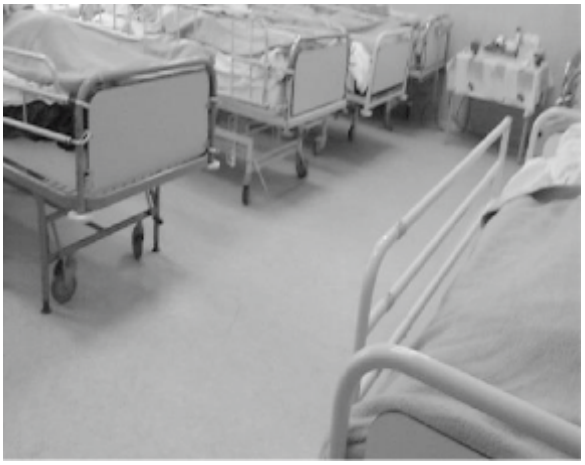


Figure 6: PC Vrapče, psychogeriatric ward, overcrowding of rooms (mostly immobile patients)

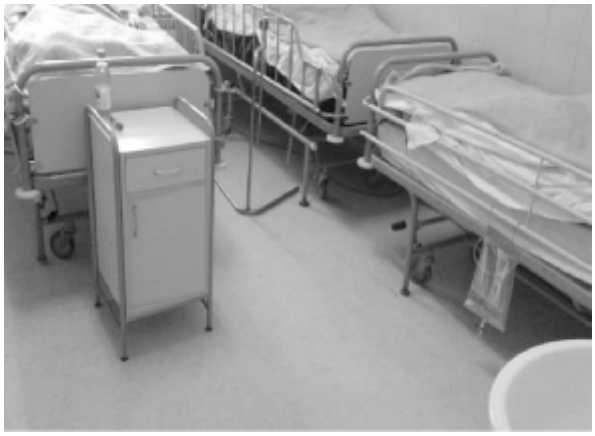


Figure 7: PC Vrapče, psychogeriatric ward, insufficient distance between beds and inability to approachpatients

Figure 8: PC Vrapče, psychogeriatric ward, old and run-down building

Figure 9: PH Rab: construction of a special rehabilitation of persons suffering from different forms of dementia.

Figure 10: PH Rab, example of good practice: garden for occupational therapy rooms