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Ombudsman

REPORT ON THE PERFORMANCE
OF ACTIVITIES OF
THE NATIONAL PREVENTIVE MECHANISM
FOR 2017

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Dear readers,

the main goal of activities performed under the National Preventive Mechanism is to prevent torture, inhuman or degrading treatment or punishment, which has been our mandate since 2012. One of the most valuable tools for achieving this goal is the Report on the Performance of Activities of the National Preventive Mechanism, and what you have before you, is a Report for the 2017.

As in previous years, this Report was prepared on the basis of data collected during unannounced visits to prisons, police stations, police prison units and homes for the elderly and infirm, as well as complaints received and procedures launched at our own initiative. The Report contains an analysis of the human rights situation of persons deprived of liberty and those not allowed to leave a place under public supervision, as well as 33 recommendations to competent authorities for elimination of detected systemic problems. These recommendations pertain to strengthening human rights protection of persons within prison and police systems, persons with mental disorders, those in homes for the elderly and infirm as well as applicants for international protection and irregular migrants.

Whereas positive news is that in 2017 no instances of treatment or conditions that would amount to torture have been detected, the negative is that there are examples that potentially amount to inhuman or degrading treatment as well as breach of constitutional and legal rights.

Hence, as regards the prison system, it is still necessary to work on greater compliance of accommodation conditions with legal and international standards as well as to set clear and consistent criteria for depriving persons deprived of liberty of their other rights or of limiting such rights. Unfortunately, none of the recommendations provided in the Report for 2016 has been fully implemented at all levels of the prison system. For this reason, the majority of previously detected problems still continue to exist.

Accommodation conditions are a major problem within the police system as well, with persons deprived of liberty often having no direct access to drinking water and not being able to freely use sanitary facilities. However, the bulk of complaints pertained to the use of force while exercising police powers. In addition, civil supervision over the police has still not been established, which is particularly worrying.

Vague regulations, poor accommodation conditions and degrading practices are a common cause of rights violations of persons with mental disorders; in addition, we have also received complaints regarding work performed by court-appointed attorneys. Furthermore, for the first time since the launch of NPM, an unannounced visit (of the University Hospital Centre Zagreb) had to be abruptly terminated due to insistence on the part of responsible persons that a written request for data be delivered. After we informed them about the issue, the Ministry of Health sent a letter to health care institutions as a reminder of the powers exercised under NPM.

One of the major problems faced by homes for the elderly and infirm is staff shortage, which results in human rights violations of their users and represents a threat to their safety. A good example of this is a home where during the night shift, only three employees are responsible for 344 people. In addition, admission agreements are still often signed by family members or other persons that have undertaken the obligation to pay for the accommodation services, and not users themselves, which is unacceptable.

In 2017, the number of applicants for international protection in the Republic of Croatia dropped by 15.46% in comparison to 2016. A total of 2,126 requests have been ruled upon, which represents an improvement in comparison to the earlier periods. A series of complaints pertained to the return of irregular migrants to Serbia without conducting legally prescribed procedures, which was also not subject to adequate investigation. This subsequently raised doubts with regard to the death of a girl at the border with Serbia. State Attorney General, Croatian Parliament and general public have been duly informed about our findings and conclusions related to this issue.

Described examples are a part of systemic deficiencies that we warn about in the Report on the Performance of Activities of the National Preventive Mechanism for 2017. This Report is intended primarily for persons deprived of liberty and those with limited freedom of movement, but it is also intended for members of the professional public: employees within state systems, officials of sectoral bodies, members of parliament, academic community, civil society organisations, the media as well as all other persons interested in the strengthening of human rights protection in Croatia. I sincerely hope that the information provided on the following pages, and in particular our recommendations, will be used for the purpose of achieving the necessary positive change, for the benefit of the entire society.

Lora Vidović,

Ombudswoman



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

1.1. THE PRISON SYSTEM

Persons in the prison system are deprived of their liberty, but they still enjoy fundamental human rights enshrined by the Constitution, legal acts and international legal documents. Nonetheless, they are often subject to different restrictions during their stay in prison. When analysing their complaints, our basic task is to determine whether the restrictions and treatments on the basis of which they file their complaints are proportional to the reasons for which they are implemented and whether they are crucial to achieve the goal as set by the law or, alternatively, whether they go beyond the inevitable suffering caused by deprivation of liberty.

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Unlike reactive approach to handling complaints, preventive visits of penal institutions that we make within the National Preventive Mechanism (NPM) aim to strengthen the protection of persons deprived of liberty and prevention of torture and other acts of cruel, inhuman, or degrading treatment. In 2017, we received 136 complaints, carried out 31 field investigative procedures and visited nine penal institutions.

1.1.1. Complaints filed by persons deprived of liberty in the prison system

Most of the complaints addressed the quality of healthcare, treatment by officers and accommodation conditions. The fact that the majority of complaints filed to the Central Office of the Prison System and Probation Directorate with the Ministry of Justice (COPSPD) dealt with the same problems confirms the fact that these problems cause most dissatisfaction among prisoners¹. In 2017, the number of complaints addressing the work of the treatment department was on the increase. In addition, prisoners complained about the effectiveness of legal protection and violation of their right to contact with the outside world.

The nature of the complaints against the quality of healthcare, as indicated in our previous reports, did not change in 2017. Prisoners complain that doctors in certain penal institutions refuse to grant them access to their medical records or provide them with the copies. This was the case of the Pula prison, for example.

¹ In this chapter, the term COPSPD shall be used as an acronym to denote the administrative unit of the Croatian Ministry of Justice that, *inter alia*, manages administrative and professional affairs regarding the prison sentence serving, execution of remand imprisonment and the so-called educational measures of referral to the juvenile correctional institution (JCI), regardless of the date of the entry into force of the Regulation on Internal Structure of the Ministry of Justice (Official Gazette NN no. 98/17), amending its name and scope of work.

Taking into account the fact that the prison transport system still relies on old special purpose vehicles, with side benches, insufficient lights, poor ventilation and without seatbelts, if prisoners with poor health find out that they will be transported to a medical check in external medical institutions in these vehicles, they sometimes refuse to undergo such a drive altogether. Prisoners with back problems who have to lie on old mattresses of poor quality are not allowed to get new mattresses on their own (since penal institutions cannot provide them with one) and as a result, they are often forced to take painkillers. They also complain that the time of therapy distribution does not match their needs. For instance, in some penal institutions, they have to take sleeping pills hours before they go to bed.

„...I don't smoke and I can't stand the smell of cigarette. The only place where I could read the papers was the common room with a TV and people could freely smoke in there. I noticed that prisoners had left the common room so I asked the prison guard to give me the papers because I don't smoke and I don't go to the common room. He told me he wasn't a mailman and that if I wanted to read the papers, I had to go to the smoking common room. Given that this type of bickering was pretty common ever since I had come to this prison, I told him that the chief prison officer allowed me to have the papers delivered to my room and, if he didn't believe me, he could check it with him...The prison officer retorted that it wasn't up to me to tell him what to do or how to do it, he unlocked the bars, approached my bed and emptied a whole pepper spray into my face!!! Feeling stunned, I realized that they took my clothes off, put the legcuffs and handcuffs to my ankles and wrists and threw me into the so-called "rubber room", but since I fainted, soon enough, they took me out and brought me back to my cell... They took me to the rubber room on two more occasions. So, instead of the papers, all I got was a spray, cuffs and a rubber room... Not to mention two additional disciplinary proceedings..."

Furthermore, some of the complaints addressed the accommodation conditions. For example, non-smokers objected they occasionally had to share the room with smokers and this was especially bothering those administered to the Zagreb Prison Hospital. Prisoners also indicated that the Rijeka Prison had problems with the heating because radiators were not getting hot enough after 4 pm. A prisoner who, due to the spine problems, had been experiencing pain and difficulty moving, objected to the fact that he had been accommodated to the upper floor of the Zagreb Prisons not equipped with an elevator. As a consequence, he did not spend much time outdoors.

Very often, prisoners pointed to the limited opportunities to talk to the treatment officials. In addition, they were dissatisfied with transparency of the assessment process and the procedure of granting benefits, noting that they relied on discretionary decisions.

Prisoners still complain about the time it takes to handle complaints filed against decisions made by the head of prison. In several cases, it was after the period of placement to special supervision department that the executing judge decided on a complaint against the placement decision, which is a practice that cannot be tolerated. Taking into consideration judicial independence, we have warned the Supreme Court against such practice, which was in breach of the Article 18 of the Croatian Constitution

and made any complaints-filing system completely pointless. We expect such a practice to end after, according to the available information, county courts executing judges were warned against not respecting the deadlines, during a joint meeting.

By acting on prisoners' complaints, we have noticed that telephone numbers of non-family members were not registered in the phone registry of the allowed numbers, even though such a practice is not based on the Execution of Prison Sentence Act (EPSA). The guideline issued to all penal institutions by the COPSPD, in line with our recommendation, stating that permission to make phone calls covers both family and non-family members and that the fact that a prisoner has family members does not preclude the possibility for a non-family member to be included in the list, should have positive effects on exercising the right to maintain contact with the outside world.

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1.1.2. NPM activities in the prison system

In 2017, we visited County Prisons in Bjelovar, Dubrovnik, Gospić, Karlovac, Osijek, Zadar and Zagreb, as well as Glina and Lepoglava State Prisons, without prior announcement. All NPM visits were regular, except the one to the Osijek County Prison, made to establish to what degree the warnings and recommendations issued after the previous visit had been implemented. Independent experts took part in four visits, representatives of the Office of the Ombudswoman for Persons with Disabilities participated in two of them and representatives of the Office of the Ombudswoman for Gender Equality and of the Ombudswoman for Children were involved in one visit.

■ MJ/COPSPD ■ Penal institutions



In order to promote prevention of torture and other acts of cruel, inhuman, or degrading treatment or punishment, the reports prepared after the visits included 20 warnings and 132 recommendations. The evaluation of their implementation will be made after all the feedback has been received and control visits have been carried out.

Accommodation conditions

Although, according to the records of the COPSPD, the occupancy rate in the prison system as of 31 December 2017 stood at 82.69%, accommodation conditions have still not been aligned with the standards. On that day, seven high security penal institutions accommodated more persons compared to the legally defined capacities. This was especially true of the Osijek County Prison, with 159% occupancy rate.

Persons serving the prison sentence within the misdemeanour proceedings (offenders) or persons subject to detention in line with the Misdemeanour Act are accommodated in extremely poor conditions.

Persons serving the prison sentence within the misdemeanour proceedings (offenders) or persons subject to detention in line with the Misdemeanour Act are accommodated in especially poor conditions. For instance, in the Zagreb County Prison, the room for offenders is packed with 24

beds. Compared to the room size (89.3 m²), this number exceeds the legally allowed limit by two beds. In addition, joint accommodation of a large number of persons is contrary to the position of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) because such conditions increase the risk of prison violence and cannot provide for privacy. This also applied to the Karlovac County Prison where, during our visit, nine offenders were accommodated in a room 26.33 m² in size. Given that it was furnished with 10 beds, its total size should equal 40 m². Furthermore, beds are only 45 cm apart, not enabling a minimum level of privacy. Rooms often lack chairs and tables so offenders are forced to eat in their beds that they occupy 22 hours a day. Due to the lack of bedside tables, some of them keep their personal belongings in bin bags or boxes that they keep under the bed. In both of these prisons, lavatories are not completely separated from the rest of the room and this makes the living conditions even harsher. During the visit to the Karlovac County Prison, an offender said that, after being put in a room in which everyone smoked, he took on smoking again, even though he quit several years ago. Serving prison sentence in such conditions represents breach of their rights and is degrading, which is why they have to be aligned with legal and international standards without delay.

Due to inappropriate accommodation conditions, some small prisons, for example, Zadar and Karlovac County Prisons, cannot provide for different organized free-time activities. Prisoners spend 22 hours a day locked in their rooms. In other words, they serve their prison sentence as if they were executing remand imprisonment.

During the field visits, special attention was paid to the quality of food available in the Bjelovar and Dubrovnik County Prisons. Standard menus contain information about energy content for each of the three meals, as well as the total energy content of a daily menu. No energy content is indicated for diet menus and additional meals. The Bjelovar County Prison does not apply written norms for preparation of food served in line with the diet menu. On the other hand, the Dubrovnik County Prison does not take into account all the parameters. In this context, it is not clear how doctors' dietary guidelines are taken into consideration for each individual health problem to control the disease and/or alleviate the symptoms thereof. A doctor determines a diet plan and employees working in a prison kitchen are issued written guidelines on the appropriate diet for certain medical conditions, but it seems that they do not comply with them.

Treatment work with prisoners

Insufficient number of officials working in the treatment departments has negative effects on respect of prisoners' rights. For instance, in order to ensure the minimum conditions for smooth work of the treatment department in the Glina State Prison, at least three officials have to be employed urgently. In

case of high security prisons and the Lepoglava State Prison, enough treatment officials of relevant professions have to be provided for (psychologists, social pedagogues, social workers) since these prisons accommodate prisoners serving long-term prison sentence, high-risk prisoners and recidivists. As a rule, recidivists are not separated from prisoners serving their first sentence. This is not in line with the Execution of Prison Sentence Act (hereinafter: EPSA). Plus, such a practice makes treatment work even more difficult.

Treatment officials usually talk to prisoners without judicial police officers being present. In some penal institutions (e.g. the Glina State Prison) each ward includes a special room for this purpose and generally, the conversations are enabled for all prisoners who apply. This is not the case in small penal institutions, e.g. the Karlovac County Prison, in which treatment officials have to talk to the prisoners in the judicial police's dining room.

Treatment work is difficult due to the insufficient treatment staff - in some penal institutions available treatment officials cannot cover the minimum conditions of work. This fact is even more exacerbated by inappropriate accommodation conditions and practice whereby, as a rule, recidivists are not separated from the prisoners serving their first sentence.

Lack of treatment staff has negative effects on their presence in prison wards and prisoners often complain that their talks are too short. In some prisons, e.g. the Bjelovar County Prison, prisoners on remand were not even aware of the fact that they can apply to have a talk with the treatment official. On the other hand, in the Zadar County Prison, they are invited to such meetings immediately upon their arrival. Such a proactive approach represents a good practice example, also applied by the treatment official of the Dubrovnik County Prison.

Compared to other penal institutions, security measures of compulsory psychiatric treatment and compulsory addiction treatment are much more easily implemented in the Glina State Prison given a full-time employed psychiatrist.

Available free-time activities are not diverse. Objective factors come into play in terms of their organization (insufficient premises, poorly equipped workshops, lack of brushes and paints, computers are in poor condition etc.). Some prisons do not even ensure organized free-time activities so persons deprived of liberty have to take initiative to organize them on their own, for example in the Bjelovar County Prison.

Apart from managing treatment groups of prisoners, treatment officials carry out special programmes established within individual programmes of execution of prison sentence, depending on the assessment of prisoners' criminogenic risks and treatment needs. For instance, 25% of prisoners in the Lepoglava State Prison are involved in different special programmes, such as modified clubs of treated alcoholics, treated addicts, PTSD treatment etc. Yet, due to the data confidentiality issues in terms of information that they might disclose during these meetings, some prisoners refuse to take part in programmes managed by treatment officials who are obliged to report serious disciplinary breaches, so prisoners might think that these programmes are not very useful since they cannot speak up openly.

Due to the lack of treatment staff, some prisons, for instance, the Bjelovar County Prison, do not organize special programmes that require group work. Others (the Karlovac County Prison) do not

organize these programmes very frequently given the low turnout of prisoners who could form a group. The Karlovac County Prison serves as a good role model in terms of cooperation between the treatment and security departments: treatment work is carried out by one official only, so two judicial police officials help him in implementing the *Driver as a Safety Traffic Factor* special programme.

Despite large demand, in general, programmes of completion of primary education for prisoners are not being implemented for participants over 21 because penal institutions are not legally obliged to carry them out. The Dubrovnik County Prison organizes English and IT lessons (these courses are in high demand) and plans to organize these lessons for prisoners on remand as well. This practice could be a good model to follow given the significant lack of activities for this group of prisoners. Also, the same prison allows them to join the clubs of treated alcoholics and treated addicts.

Some of the prisoners are extremely dissatisfied with performance evaluation of implementation of individual programmes of execution of prison sentence because they think that the criteria is biased and the evaluation process not transparent enough.

Some of the prisoners are extremely dissatisfied with performance evaluation of implementation of individual programmes of execution of prison sentence because they think that the criteria is biased and the evaluation process is not transparent enough so they do not know what aspects of their behaviour should be modified. This is understandable, given the fact that their potential benefits depend on performance evaluation

("assessment"). In some prisons, for instance the Karlovac and Zadar County Prisons, heads of prisons adopt written decisions on performance evaluation of implementation of individual programmes of execution of prison sentence for each prisoner and the accompanying benefits granted on the basis of the evaluation. This might be a good practice example, since it ensures data transparency and quick feedback to prisoners regarding the performance evaluation of implementation of their individual programmes and the scope of granted benefits.

Most of the penal institutions do not prepare operational plans for prisoners at higher risk of suicide. This is not the case with the Lepoglava State Prison with 101 prisoners deemed at risk of suicide. A special operational plan has been developed for each prisoner, accompanied with intense supervision of the treatment official and increased security supervision. Nonetheless, officials working at other wards are not familiar with special procedures from the operational plan in order to prevent suicide among prisoners and/or are not familiar with risk factors for suicidal behaviour so they might deny the danger of situation and minimize the risk by describing the suicidal behaviour of a prisoner as his manipulation.

Maintenance of order and security

According to records of the COPSPD, 1,647 special measures for maintenance of order and security were implemented in 2017 and this represents a 7% drop compared to 2016. Records are still not being kept in a continuous manner. Plus, there are some differences in terms of how different institutions record these measures. Unlike Glina, the Lepoglava State Prison did not record the measure of increased security supervision of prisoners at risk of suicide, which does not represent a good practice example because implementation of a measure must be entered into records, regardless of the reasons for its adoption. Also, during our visits, we have noticed that instances of restraining were often not

entered into records, especially when applying means of coercion, as indicated in our previous reports. We have warned the COPSPD against irregularities and inconsistencies in terms of collecting information about implementation of special measures because they were extremely important for evaluation of treatment of persons deprived of liberty and respect of their rights.

Despite the decrease in the total number of implemented measures, the severest special measure - isolation - was implemented in 19 cases, which represents a 73% increase compared to 2016. In the majority of cases (15 out of 19) it was implemented in the Lepoglava State Prison that, in accordance with the Framework Measures for Referral and Categorization of Prisoners for Execution of Prison Sentence, accommodates high risk prisoners and recidivists. Although the EPSA lays down a provision according to which implementation of a measure shall be suspended if reasons for which it was adopted no longer apply, isolation is mostly implemented for the maximum period of three months. This shows that the need for its implementation is not considered frequently enough or in detail. Furthermore, medical supervision of the isolation measure is still not being carried out in line with the EPSA that stipulates medical checks of prisoners in isolation twice a week. For instance, during the visit to the Lepoglava State Prison, we found out that the isolated prisoner had not undergone a medical check for two months – such a practice is unacceptable bearing in mind potentially detrimental effects on his mental health. In addition, it is not clear how a head of prison can fulfil his obligation to propose suspension of the isolation measure to the executing judge on the basis of a medical opinion if prisoners covered by the measure are not subject to a medical check for two months.

Also, the time span between the incident that brought to implementation of the measure and the beginning of the implementation is rather problematic. For example, the prisoner in isolation during the visit to the Lepoglava State Prison said that he had gone into a fight with another prisoner and due to that incident, isolation measure had been proposed, the implementation of which lasted for a month. After the implementation had ended, he was referred to the ward under increased security supervision. One month after the incident had broken out, the State Prison was issued with a decision by the executing judge requiring isolation, but since no free rooms were available in the relevant ward at the time, the implementation began two months later. In the meanwhile, a statute of limitation was enacted for the disciplinary proceedings brought before the prisoner. This brings into question the necessity and, consequently, lawfulness of this measure. One can get the impression that this was not the case of a special measure for maintenance of order and security but rather a punishment for disciplinary breach. The fact that less severe special measures had successfully been implemented between the incident and the implementation of the measure since he had not posed a threat to order and security, illustrates this fact.

Inconsistencies in terms of giving orders and implementation of special measures, as indicated in our previous reports, still represent a problem. For example, unlike the Lepoglava and Glina State Prisons, the Zadar County Prison does not submit written decisions on isolation of prisoners. In other penal institutions, e.g. the Požega State and County Prison, decisions are not even formally adopted. Inconsistencies prevail when it comes to

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accommodation, in particular regarding the room with special security without dangerous items. According to records of the COPSPD, in 2017, this measure was implemented on 30 occasions, mostly (13 cases, 43%) in the Šibenik State and County Prison with the capacity of 119 persons. On the other hand, in the Zagreb County Prison, the largest penal body with the capacity of 626 persons, this measure was implemented only once. In the case of the Lepoglava State Prison (capacity 542 persons), the measure was not implemented at all in 2017. Eight out of 21 state and county prisons do not have such a room in the first place and this is also a cause of inconsistencies in the prison system.

Implementation of the measure "isolation from other prisoners" that is not implemented under supervision (as in accordance with the EPSA) and that does not require a special medical approval, is sometimes used in case of prisoners at risk of suicide. For instance, during the visit to the Lepoglava State Prison, one prisoner had been isolated, although, according to his Operational Plan of Activities to Prevent Suicide, *inter alia*, permanent stay in a group with other prisoners was to be provided for. Since isolation can have the opposite effect in these situations, it is better to avoid it as a special measure.

During our visit to the ward under increased security supervision, prisoners complained about the lengthiness of this measure because they thought that the need to extend its duration had not been examined in detail. They added that they did not find the criteria used to return to other prisoners clear enough. This problem was pointed out by the CPT in its 1998 report for Croatia. In addition, prisoners covered by this measure have very little scope of free-time activities. Potential educational activities are also limited, whereas their involvement in treatment activities becomes less intense compared to other wards. It must be emphasised at this point that some of the prisoners have been accommodated in this ward for over 10 years. Nonetheless, shortly after our visit to the State Prison, some positive moves have been made. For instance, prisoners have been involved in work programmes and officials employed at the treatment department have been engaged more intensely. These are promising signs.

When asked to assess the behaviour of judicial police officials in anonymous surveys and on the basis of the conversations that we had during our visits, the majority of persons deprived of liberty had a positive opinion about their conduct. Yet, the respondents pointed out that some individuals did not behave in a professional manner and that they derided and insulted them. Such a practice created negative impression about the work of the entire security department. Since unprofessional behaviour leads to breaches of rights of persons deprived of liberty, as well as underestimation of the efforts and professional conduct of their colleagues performing this demanding task, these allegations should be analysed in detail.

According to records of the COPSPD, means of coercion were applied in 46 cases, which represents a 19% decrease compared to 2016. The mace spray with allowed harmless substances was used on 25 occasions, while the acts of bringing in and defence techniques were applied in 21 cases. These means of coercion were mostly applied in the Šibenik State and County prison (on 11 occasions). In case of two largest penal institutions, they were applied in five cases – on two occasions in Zagreb and three times in Lepoglava. This is not necessarily indicative of higher repression in the relevant penal institutions, but it does call for evaluation of uniform procedures in the prison system. Records are kept regularly and all prisoners subjected to the use of means of coercion were examined by a physician.

During our visits of penal institutions, prisoners complained of unclear or trivial reasons for use of means of coercion. For instance, one of them stated that a mace spray with allowed harmless substances was used against him because he opposed the judicial policeman when asked to put the cigarettes in the glove compartment before being brought to the courtroom. He also added that some judicial policemen had previously allowed him to take cigarettes with him to the court and that, as a rule, he had done that. Although the fact that prisoners are requested to obey legitimate order by an authorized official should not be brought into question, it is not clear to what degree inconsistent treatment on the part of judicial policemen affects prisoners' behaviour.

As a rule, assessment of lawfulness of use of means of coercion is still based on allegations given by judicial policemen, raising issues regarding their impartiality. For that reason, for example, the Zadar County Prison could be a role model to other prisons in that respect: in this prison, the use of means of coercion was considered unjustified due to the error on the part of a judicial policeman who had not been in the ward where two prisoners got into fight.

Disciplinary proceedings against prisoners on remand

Due to shortcomings of the Criminal Procedure Act, prisoners on remand are put in a more difficult position compared to prisoners serving a prison sentence. Restrictions in terms of visits and correspondence are the only type of disciplinary proceedings that may be brought before prisoners on remand, without reference to punishment or the relevant persons covered by restrictions.

On the other hand, the EPSA does not lay down provisions allowing for restrictions of contact with family members. Prisoners covered by the severest form of disciplinary proceedings – solitary confinement – may thus maintain contact with family members and receive visits. Furthermore, in some cases, prisoners on remand were subject to disciplinary proceedings in terms of restrictions of correspondence, for instance in Zadar, although this type of punishment was not in line with the Croatian Criminal Procedure Act. Numerous international standards have emphasised the importance of prisoners' contact with the outside world. For instance, the European Prison Rules state that prisoners shall be allowed such contact by way of letters, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons. Such restrictions shall nevertheless allow an acceptable minimum level of contact.

The Criminal Procedure Act enshrines restriction of visits and correspondence as the only type of disciplinary proceedings. This puts prisoners on remand in a more unfavourable position compared to persons serving a prison sentence, who are not deprived of contact with family members, even if they are subject to solitary confinement.

Inconsistencies in implementation of disciplinary measures due to shortcomings of the Criminal Procedure Act put prisoners on remand in an unequal position between themselves. For example, during a visit to the Karlovac County Court, we noticed that some judges implement disciplinary proceedings and hear prisoners on remand and witnesses, whereas others make decisions on the basis of written statements submitted to them with the report of a disciplinary breach. Some judges disregard suggestions of the heads of prison altogether. In order to prevent these inconsistencies, the Article 140

of the Criminal Procedure Act should be amended in order to prescribe different types and measures of punishment, as well as the procedure in terms of execution thereof.

Judicial protection

According to records of the COPSPD, in 2017, the number of complaints filed to the heads of prisons grew by 7%. At the same time, the Lepoglava State Prison accounted for the 68% of all the complaints. Although some positive trends have been observed during our visits to penal institutions, especially when it came to records keeping, persons deprived of liberty are still dissatisfied given the insufficient effectiveness of legal remedies. Mostly, they complain of the way complaints are handled – mostly superficially and in an incomplete manner, without providing the facts that the decision on their justification is based on.

They are dissatisfied with executing judges' behaviour and state that proceedings launched on the basis of their requests for judicial protection were too lengthy and that decisions are issued on the basis of penal institutions' reports only. According to records of the COPSPD, in 2017, only 36 requests for judicial protection were assessed as justified due to a breach of right to accommodation in line with human dignity and health standards. Judicial protection was granted to prisoners serving their sentence

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at the Lepoglava State Prison only, and not a single request put forward by prisoners from other penal institutions was assessed as justified.

Prisoners' allegations that, despite the obligations from the EPSA, executing judges did not visit them at least once a year, are backed by the records of

the COPSPD confirming that the executing judges did not at all visit four penal institutions, including the Zagreb County Prison in 2017. Also, prisoners on remand complain about irregular visits of the relevant judge. For example, the relevant County Court judge visited the Dubrovnik County Prison on four occasions in 2017, although he was obliged to visit prisoners on remand at least once a week. Since, in accordance with the Criminal Procedure Act, judges are obliged to apply measures to correct irregularities observed during prison visits, we have notified the Ministry of Justice about this problem and its potential negative effects on respect of rights of prisoners on remand.

Prisoners' work

In accordance with the EPSA, the right to prisoners' work is considered to be a positive element in serving a prison sentence and may not be used for purposes of imposing additional punishments. Prisoners can choose the type of work within the framework of jobs offered in line with their professional background and options available within the prison. Work represents an important element of individual programmes of execution of prison sentence and, as such, it is available to prisoners depending on their health conditions and knowledge, provided that they pass a test on legislation regarding occupational health and safety. In accordance with the EPSA and the Ordinance on Work and Professional Training, List and Job Descriptions of Prisoners and Compensation for Work and Awards, a special List and Job Description for Prisoners is being prepared. It includes the details regarding the necessary time for training, coefficient of job complexity and number of persons engaged in work.

Prisoners' work is evaluated and as such plays an important role in adopting a decision about benefits. That is why it is extremely important to make a decision regarding the posting of prisoners at workplace in line with their health condition, education and knowledge. It is also important to make sure that they are appropriately fit for jobs assigned to them and monitored by their trainers. That is why prison directorates were advised, after the visits to the Zagreb, Dubrovnik and Gospić County Prisons and the Glina State Prison, to consider the option to list all the jobs performed by prisoners within wards and subwards that include engagement of hired trainers, in order to evaluate their work accordingly.

Some penal institutions (for instance, the Zagreb and Dubrovnik County Prisons) have not carried out risk assessment, i.e. it is not clear what jobs require an obligatory opinion of the OM (occupational medicine) specialist as opposed to jobs that call for the opinion of the prison physician only. Other penal institutions had developed risk assessments. On the other hand, the Glina State Prison failed to refer prisoners to an examination by an OM specialist due to austerity measures, although they were performing jobs that required such an examination. Furthermore, although the EPSA states that, when assigning prisoners to work, a physician's opinion must be obtained, the Act does not stipulate in detail the content thereof, so if, in order to assign prisoners to workplace, it is necessary to obtain the opinion of the official physician of a penal institution, COPSPD should, in collaboration with the Ministry of Health, develop guidelines as a basis for formulation of such opinions.

Apart from the Dubrovnik County Prison, none of the penal institutions allow work engagements for all prisoners who want to work. For that reason, prisoners who are eager to work should thus be assigned to posts that do not call for any special professional qualifications or health requirements, i.e. the required number of workers should be engaged to cover all the workplaces envisaged by the above-mentioned List.

Vacancies have been registered for certain posts, especially in the catering industry, usually filled by prisoners from the medium security wards in the Lepoglava State Prison. Given the strict criteria that prisoners have to meet, they cannot be transferred to medium security wards in sufficient numbers, so those assigned work in the catering industry work overtime as defined in accordance with general regulations.

None of the penal institutions keep records on the number of prisoners engaged to work in accordance with the decision on work assignments. These records, particularly in case of large numbers of prisoners deployed, would allow for transparency regarding available vacancies, monitoring of prisoners' work assignments and compliance in terms of the number of workers with the List.

In 2017, on average, 1,148 prisoners were assigned to work each month, of which 1,060 full time, whereas 88 of them worked overtime. In line with the contracts concluded between penal institutions and employers, no more than 112 persons were assigned to work, as opposed to 879 of non-engaged prisoners, who had not been provided with job opportunities, although they had said they wanted to work. New forms of work assignments covering more prisoners should be considered by taking into account all the elements listed above, in particular, the structure of prisoners in terms of their qualifications, work capability, criminological characteristics, length of sentence, possibility to refer them to certain types of imprisonment and availability of jobs.

Provision of healthcare to persons with severe forms of disability

One representative of the Office of the Ombudswoman for Persons with Disabilities took part in the visits to the Glina State Prison and Bjelovar County prison. Her role was to evaluate the provision of healthcare to prisoners with severe forms of disabilities who were wheelchair or prosthesis users (tetraplegia, spine injuries, amputation of extremities).

In the Glina State Prison they did not complain about the provision of healthcare they needed given their situation or availability or orthopaedic aids. A paid assistant (another prisoner) was at their disposal to assist them when walking or carrying out different tasks (e.g. tidying up their room, pushing the wheelchair). According to the opinion of the Ombudswoman for Persons with Disabilities, the right to provision of healthcare for persons with disabilities through physical therapy and medical rehabilitation has not been violated. In addition, orthopaedic and other aids were available to them according to their needs, as well as other medical services.

The Bjelovar County Prison did not accommodate prisoners with severe forms of physical disabilities or those that used orthopaedic and other aids since these persons were referred to the Glina State Prison that was accessible to this group of prisoners. During our visits, we did not record prisoners with mild forms of physical or other disabilities. In terms of rights to physical therapy (PT) and medical rehabilitation, officials were familiar with the obligation to ensure the same level of healthcare for prisoners with disabilities that they would have enjoyed at liberty.

1.1.3. Assessment of the situation in the prison system

Systematic problems that we have warned against in our earlier reports still persisted in 2017. The Zagreb Prison Hospital and the so-called infirmaries, i.e. prisoners' healthcare wards, which are established in each penal institution, are still not organized in accordance with the Healthcare Act. Although the Ministry of Health did not deliver the required data, according to our information, the premises within the penal institutions designated for the provision of healthcare still do not meet the Ordinance on Minimum Standards of Space, Workers and Medical Equipment for Providing Healthcare to Persons Deprived of Their Liberty. Also, despite the expiry of the deadline set by the Decision of the Constitutional Court U-III/64744/2009 of 2010 on the establishment of efficient supervision of quality of healthcare in the entire prison system, it has not been implemented yet. Such a practice is unacceptable. In accordance with the new internal structure of the Ministry of Justice, the prison hospital shall be equipped with only two (instead of the previously established five, in accordance with the Ordinance on Minimum Standards of Space) wards for treatment of prisoners, namely, the healthcare ward and the forensic psychiatry ward.

The current situation in the prison hospital is alarming due to the number of specialists that have left. More precisely, the lack of psychiatrists is most severely felt, since out of eight previously employed, only one has remained. The prison hospital has concluded a temporary service contract with another external specialist. Since, apart from treatment of ill prisoners and prisoners on remand on account of a mental disorder, the prison hospital also has a role in implementation of a security measure of

compulsory psychiatric treatment with prison sentence, vacancies in this respect have a direct effect on the implementation of court decisions.

A new dental clinic in the Glina State Prison has been fully equipped, but it is still not functional. This means that the issues regarding the dental protection for prisoners have not been solved.

According to records of the COPSPD, no more than 111 prisoners have taken out government-funded supplemental health insurance. The majority of prisoners who do not have regular monthly income do not enjoy the benefits of supplemental health insurance so some of them refuse to undergo therapy to avoid accumulating debts on their deposit accounts. Despite the fact that we have pointed out that therapy should be administered by healthcare practitioners, only seven out of 21 penal institutions comply with this instruction.

The current situation in the prison hospital is alarming due to number of specialists that have left. More precisely, the lack of psychiatrists is most severely felt, since out of eight previously employed, only one has remained. The Prison hospital has concluded a temporary service contract with another external specialist.

Execution of prison sentence relies on rehabilitation-based approach that presupposes individualization of sentence by implementing individual programmes of execution of prison

sentence and a number of specialised treatment programmes for selected groups of prisoners. Greater diversity among treatment groups in terms of age, criminal records etc., calls for implementation of a larger number of specialised programmes. On the other hand, the insufficient number of treatment officials, impossibility to cover enough prisoners by group work to implement the programmes etc. cause organizational issues. In the last couple of years, smaller penal institutions have been implementing preventive programmes. Rather than being focused on behavioural change depending on the criminal act, they put emphasis on the acquisition of special skills and knowledge, problem-solving and improving the quality of life and personal relations. A social skills training is a good case in point.

In the majority of penal institutions, treatment officials do not apply proactive approach. Instead, they talk to persons deprived of liberty only after they apply. In some penal institutions, offenders and prisoners on remand very rarely apply for a conversation with treatment staff because they are not informed about such a possibility. For this reason, treatment officials should visit all wards with offenders, prisoners on remand and prisoners at least once a week so as to allow them to engage in a conversation with them without having to apply first and ensure better availability of treatment staff across wards.

Prisoners are not likely to enter into an employment relation and engage in rehabilitation programmes without having first completed primary education. For that reason, it is necessary to step up activities that focus on their education. In other words, everyone has to be given an opportunity to complete primary education in order to enter the labour market regardless of their age.

In order to ensure more prisoners' involvement in resocialization programme, the performance evaluation of implementation of individual programmes of execution of prison sentence should be made more transparent and should include more feedback to the prisoners regarding the necessary changes in their behaviour.

Accommodation conditions in numerous penal institutions are not appropriate to ensure human dignity and health standards. In some cases, they can even be considered degrading. Non-compliance with spatial standards, lack of privacy when having to go to toilet, joint accommodation for both smokers and non-smokers represent only some of the problems that we have indicated in our previous report and that still remain unresolved. Although spatial adaptations require significant investment, this fact may not be used as an excuse to postpone harmonization of accommodation conditions with legal and international standards.

In addition, inconsistencies still remain a challenge, as previously pointed out. Lack of clear and consistent criteria, especially in terms of deprivation and restriction of rights, puts persons deprived of liberty in an unequal position and provokes feelings of injustice and arbitrariness, that can create some negative trends. Since shortcomings in the legislative framework have a direct effect on inconsistencies in practice, it is necessary to improve and harmonize it with international standards as soon as possible. Also, in line with the EPSA, the Prison System and Probation Directorate should continuously monitor and analyse how persons deprived of liberty are being treated and take measures to harmonize practice.

Although some positive trends have been observed, acting on prisoners complaints in the prison system often boils down to form only, without detailed and impartial examination of allegations. Efficiency of

Lack of clear and consistent criteria, especially in terms of deprivation and restriction of rights, puts persons deprived of liberty in an unequal position and provokes feelings of injustice and arbitrariness.

legal remedies is still not sufficient, and effective examination of all allegations about possible abuse is still not being carried out. This is illustrated by the fact that the Decision of the Constitutional Court U-III Bi/369/2016 of 2017, established the breach of procedural aspects of

rights guaranteed by the Articles 23 and 25 of the Constitution and the Article 3 of the ECHR. Namely, the Prison System Directorate did not reply to the complaint filed by a prisoner on remand but only forwarded it to the Zadar County Court. The Court failed to submit any feedback to the complainant or adopt a decision. Furthermore, although, in line with the case law of the Constitutional Court, access to court represents a part of a fundamental human right to fair trial, procedures launched on the basis of applications for judicial protection and complaints against decisions of heads of prison are often too lengthy, making the adopted decisions meaningless. By taking into account the fact that the efficiency of judicial protection represents a precondition for respect of prisoners' rights and fight against impunity of crimes involving any forms of torture, inhuman or degrading treatment or punishment, the existing situation calls for immediate improvements.

Amendments to the Criminal Procedure Act from 2017 strengthening the remedies to provide judicial protection to prisoners on remand represent a positive step in that direction. Nevertheless, despite our recommendations from the previous reports, the amendments of provisions on the execution of prison on remand have again been implemented only partially. This puts prisoners on remand in a more difficult position compared to prisoners serving a prison sentence in situations when this is not necessary and this fact should be taken into consideration when drafting next amendments.

Since the adoption of a new EPSA was prescribed in the Annual Normative Activities Plan for 2015, 2016 and 2017, formation of a special working group entrusted with drafting the legal text including the representatives of our Office was regarded as a positive step. On the other hand, although the working group created a complete draft between April and September 2017, its members have not met since. Regardless of our efforts, we have failed to obtain information regarding the status of preparation of a new EPSA, but the fact that it has not been included in the Annual Normative Activities Plan for 2018 does not sound very promising. Also, we took part in the preparation of the Action Plan for the Development of the Prison System in the Republic of Croatia but we did not get any information regarding its adoption.

We evaluate our cooperation with the COPSPD in 2017 as good, but there is still room for improvement. Better cooperation would result in better respect for the rights of persons deprived of liberty and prevention of torture and other acts of cruel, inhuman, or degrading treatment. Although some positive changes in some penal institutions have been registered, none of the seven recommendations from our 2016 Report have been implemented in the whole prison system, which is why we repeat them in this year's Report.

1.2. THE POLICE SYSTEM

1.2.1. Protection of citizens' rights, including persons deprived of liberty in police treatment

Complaints to the Ombudswoman

"I was walking down the street with my hands tied, as if I was in some sort of a circus. Police officers wanted to degrade me and make me feel miserable."

In 2017, the Ombudswoman acted in 148 cases regarding police treatment on the basis of citizens' complaints and on her own initiative. Just as in previous years, a significant number of complaints addressed overstepping of authority in procedures involving the use of force and resulting in deprivation of liberty and infliction of injuries.

In accordance with the ECHR case law, any injury sustained in detention or confinement, gives rise to suspicions about police violence, even abuse. In such cases, efficient investigation should be carried out *ex officio* in order to prove that police officers have not overstepped their authority, regardless of the fact whether criminal charges were brought. However, it was not initiated in cases in which the competent state attorney's office had insights into alleged police violence, and it acted only after the aggrieved party brought criminal charges. For instance, during the questioning, a detainee reported a case of police violence to the state attorney's office. This report did not lead to a prompt reaction,

whereas, in another case, the municipal state attorney's office took official action only after criminal charges for police violence have been brought. Conducting efficient investigation ex officio in case of clear indication of possible abuse is referred to in ECHR decisions *J. L. v. Latvia* (2012) and *Hassan v. UK* (2014).

Citizens' complaints also dealt with the methods of using means of coercion during arrest. When assessing the need for their use, it is necessary to determine whether these methods were crucial and

Even though use of means of coercion represents police authority that may be applied provided that the appropriate legal conditions have been met, it is necessary to respect the dignity, honour, reputation and honour of every individual, by taking into account the ECHR decision *M. and M. v. Croatia* (2015) that establishes that treatment is found to be degrading if it causes fear, suffering and sense of subordination on the part of the victim, i.e. if it degrades or belittles the individual.

proportional, because, in accordance with the ECHR case law, if it is deemed unjustified and excessive, they may represent inhuman and degrading treatment. For instance, arrest of a citizen on account of the alleged breach of public order by using means of coercion was carried out in a degrading manner because

he had to walk down the street handcuffed. Even though use of means of coercion represents police authority that may be applied, provided that the appropriate legal conditions have been met, it is necessary to respect the dignity, reputation and honour of every individual, by taking into account the ECHR decision *M. and M. v. Croatia* (2015) that establishes that treatment is found to be degrading if it causes fear, suffering and sense of subordination on the part of the victim, i.e. if it degrades or belittles the individual.

Use of means of coercion has to be lawful and well-founded. Also, a police officer has to report the application thereof to his superior in written, in order to make decision about its justifiability and lawfulness. Yet, in one case, use of means of coercion applied against a citizen in order to bring him in to be questioned about a criminal act was not reported at all. In addition, after gaining knowledge about the use of means of coercion, the evaluation of its justifiability and lawfulness was not carried out.

Police use of means of coercion applied against persons with mental disorders in psychiatric institutions is regulated by the Act on Persons with Mental Disorders (APMA) that prescribes obligation on the part of police to treat these persons with special attention, protect their dignity and follow instructions of the healthcare staff. The complexity and the need to pay more attention to police treatment in such cases is seen in that of a person with mental disorder, against whom means of coercion had been applied and who had inflicted injuries upon herself, only to die when paramedics provided her with medical aid and transport services later on. She was handled by law enforcement officers because the law does not prescribe formation of specialized police units trained to deal with persons with mental disorders (as is the case with juvenile offenders, for instance). The need to train police officers in that area is in line with the ECHR decision *Shchiborshch and Kuzmina v. Russia* (2014) which states that officers need to undergo training that would make them fit to deal with persons with mental disorders. In that sense, it is necessary to take into account the order issued by the head of the General Police Directorate of 2017 calling for consistent compliance with and respect for provisions of the Act on Police Duties and

Authorities (APDA) and Ordinance on Conduct of Police Officers with a special emphasis on treatment of vulnerable groups, including persons with mental disorders, to minimize interference with their freedoms and rights.

Even though the APDA prescribes special treatment of persons with mental disorders and even though the Ordinance on Arrest and Treatment of Arrested Person and Detainee allows for administration of ongoing therapy even before a person is detained, contrary practices have been recorded. In one case, a person was deprived of the ongoing therapy, which led to exacerbation of medical problems. On the other hand, in line with the ECHR decision *Rupa v. Romania* (2008), if a person's health condition gets worse after a medical examination conducted by a GP, a psychiatric examination must be provided for in order to assess whether the person's mental condition is compatible with detention.

The UN's Code of Conduct for Law Enforcement Officials makes reference to special measures to secure medical attention in order to ensure full protection of persons in detention. Taking into consideration the importance of psychiatric examination to assess whether a person with mental disorders may be arrested and kept in a police station and our recommendations, the Ministry of Interior has launched the initiative to introduce amendments to the Ordinance on Arrest and Treatment of Arrested Person and Detainee.

Keeping people inside a police van at outside temperatures of 39.4 °C, without proper ventilation or water, represents a form of degrading treatment. Transport vans may be used for their primary purpose, i.e. transport from the place where persons deprived of liberty are being kept, rather than for detention purposes.

In one case, although - according to complaints filed by citizens - police officers put citizens' lives, health, dignity and honour in danger during an eviction procedure, the Police Directorate concluded that use of means of coercion was lawful and justified. Also, keeping people inside a police van at outside temperatures of 39.4°C, without proper ventilation or water, represents a form of degrading treatment. Transport vans may be used for their primary purpose, i.e. transport from the place where persons deprived of liberty are being confined, rather than for confinement purposes.

Nevertheless, while acting on a complaint about police treatment while providing assistance to a court-appointed executant, we have established that officers had not paid special attention to protect dignity of the affected person, and our warnings and recommendations have prompted the head of the General Police Directorate to issue an order to all police directorates regarding consistent compliance with and respect for provisions of the APDA and Ordinance on Conduct of Police Officers addressing appropriate treatment of citizens. This is a good example of cooperation between the Ministry of Interior and the Office of the Ombudswoman that should bring about fewer breaches of citizens' human rights, especially the most vulnerable groups.

Allegations about inappropriate police treatment could not have been confirmed in some investigative procedures carried out in 2017, since video surveillance was not installed in all premises in which persons deprived of liberty were accommodated or located. In some cases, the footage was kept for a short period which did not provide for establishment of facts. For that reason, by allowing for complaints to

be filed on the thirtieth day of the day when breach was made known, the storage of the footage should be regulated so as to provide for its use within that period or even longer in each individual case.

Citizens also complained about insufficient provision of information regarding the actions taken after their applications, even though police officers had acted promptly and were engaged in field work. Such a practice may be misleading because applicants might think that they filed a complaint for criminal offence whereas the police considered it as misdemeanour. This was the case with complaints filed by two citizens: one of them thought that she had complained about a criminal offence, whereas the police had initiated misdemeanour procedure for the alleged breach of the peace; the other one thought that the police would bring charges *ex officio*, only to find out that the police officers considered the alleged offence an accident. In accordance with the APDA, a police officer is obliged to warn the applicant on justifiability of his/her complaint. In case of a criminal offence where the defendant is prosecuted *ex officio* or if the event does not have the characteristics of a criminal offence, the officer is obliged to inform the applicant thereof.

1.2.2. Visits to police stations and detention units

In line with its authorities, with the aim of preventing torture and other acts of cruel, inhuman, or degrading treatment, the NPM visited 17 police stations within three police directorates and the detention units of the Lika-Senj and Zadar Counties. All the visits were regular, apart from the visits to the detention unit of the Pag Police Directorate and Police Station and the Zadar Second Police Directorate, whose aim was to establish the level of implementation of warnings and recommendations issued after the previous visits. Accommodation conditions were inspected, as well as records on persons deprived of liberty. It was determined that the accommodation conditions were not completely in line with international standards, which may represent degrading treatment and is contrary to the Standards of Rooms Where Persons Deprived of Liberty Are Held.

Accommodation conditions

Although the Ordinance and CPT standards provide that the detention unit has to have appropriate lighting (daylight, if possible), ventilation, a place to rest (fixed chair or bench), availability of drinking water, availability of a lavatory with appropriate hygiene standards and possibility to spend time outdoors, the visits showed that these standards are still not implemented.

Even though, in line with the warnings and recommendations to the Zadar Police Directorate, the General Police Directorate informed us that the installation of water supply network would ensure drinking water access to persons deprived of liberty and that small-scale construction works next to the premises for accommodation of prisoners should ensure space for outdoor stay, none of these two projects have been carried out. For instance, despite spatial adaptations, persons deprived of liberty in the Pag Police Station still lack direct access to drinking water and a lavatory.

In addition, three premises of the detention unit within the Lika-Senj Police Directorate, as well as some police stations, do not have access to daylight. Artificial lighting coming from reflectors inside corridors is insufficient to enable reading. Access to daylight and fresh air represent basic living conditions that each person deprived of liberty is entitled to and their restriction can lead to development of diseases.

Some police stations still lack premises for the accommodation of persons deprived of liberty. For instance, they are temporarily confined in a side room of the Zadar Police Station designated for seized possessions and later taken by police officers to the Gračac Police Station 40 kilometres away. Such a practice makes police activities much more difficult.

Access to daylight and fresh air represent basic living conditions that each person deprived of liberty is entitled to and their restriction can lead to development of diseases.

Furthermore, the CPT standards prescribe that rooms for confinement purposes must have a squat toilet with a flusher, as well as access to drinking water. Despite these requirements, lavatories are mostly located outside of such rooms and it is highly unacceptable to locate them on a floor different to the one where the room for confinement purposes is situated, as in Otočac.

Also, ventilation systems are not installed in the majority of rooms. Sometimes windows facing the corridor of the police station are used for the same purpose. Most of the premises lack alarm switches. To attract officers' attention, prisoners are forced to wave at the video surveillance cameras. The situation in the Rab Police Station is particularly serious: the room lacks the alarm switch, whereas CCTV cameras do not function properly, which means that persons deprived of liberty cannot communicate with the relevant police officer. Video surveillance systems are installed in the majority of rooms where persons deprived of liberty are accommodated, unlike corridors and other premises where they move. In case of the Korenica Police Station, a camera is installed in the lavatory and this is regarded as a breach of privacy and lack of respect for these persons' dignity. For these reasons, video surveillance should be installed in all rooms where persons deprived of liberty are accommodated or where they spend time, apart from the lavatory.

In that respect, the Mali Lošinj Police Station can serve as an example of good practice since it has fixed windows with glass tiles to allow for daylight. All rooms are equipped with lavatories that include stainless steel squat toilets with a flusher and partition. Water is readily available. Video surveillance and alarm switches are installed in all rooms.

Rights of persons deprived of liberty

Records on persons deprived of liberty (arrested, detained or confined) were inspected during the visits. When issuing orders on isolation in separate rooms or Report on Arrest, police stations do not keep records on the time when a person was deprived of liberty or released. This represents a breach of the constitutional provision stipulating inviolability of freedom, as well as the fact that it may not be limited or taken away by a third party, unless provided by law, in which case the relevant decision must be rendered by a court.

Furthermore, treatment of persons under the influence of intoxicants is not regulated by a special ordinance. In accordance with the Misdemeanour Act, if a person is found to be under the influence of intoxicants while committing an offence and if special circumstances indicate that a person will continue committing an offence, he/she may be put in a special room by a police. Apart from deadlines, the Act does not lay down details regarding the special circumstances so these issues have to be regulated by

a special ordinance, as is the case in terms of treatment of the arrested or detained persons. In this way, confined persons would have the same rights as those who are arrested or detained. In addition, this would decrease the risk of police officers making arbitrary decisions.

Foreign citizens have to be provided with interpretation during the arrest and the relevant consulate / embassy has to be informed about the arrest. On the other hand, letters of rights informing the arrested person about his/her rights often lack the interpreter's signature, which makes it difficult to determine whether interpretation was provided and whether, in line with the request, the consulate/embassy was informed about the case.

To prevent situations in which provision of sufficient meals for the arrested persons depends on police officers' estimates only, it is necessary to regulate the provision stipulating their right to an appropriate number of meals during deprivation of liberty, in the same way as enjoyed by detainees.

In terms of meals provision, different treatments of arrested persons as opposed to detainees have been recorded. In accordance with the Ordinance, a detainee is entitled to a minimum of three meals a day, of which one must be a full meal. Quite the opposite is true: the number of meals provided to an arrested person depends on the time since the last meal was consumed and the arrest time. To prevent situations in which

provision of sufficient meals for the arrested persons depends on police officers' estimates only, it is necessary to regulate the provision stipulating their right to an appropriate number of meals during deprivation of liberty.

Records on use of means of coercion were inspected during the visits and the evaluation of their justifiability was requested. The findings have shown that, in some cases, the evaluations were made after the expiry of the set deadline of 24 hours from the submission of a written report.

Despite earlier recommendations issued to the Ministry of Interior, detention supervisors still perform the tasks of officials of the operations and communications centre, which is not good, because performance of two tasks can result in overburdening them. In accordance with the Ordinance, a detention supervisor is in charge of correct implementation of regulations on treatment of detained persons and must warn them of their rights and duties. Since detention units do not have detention supervisors who would be entrusted with these tasks only, it is not clear whether they can monitor how detained persons are being treated. Furthermore, since the Ordinance does not prescribe possible delegation of responsibilities to other police officers, it is questionable whether they can implement the Ordinance in full and monitor treatment of detained persons because it may pose a risk of inhuman and degrading treatment.

1.2.3. Assessment of the status of respect of rights of persons deprived of their liberty in the police system

In 2017, the system of civic supervision of police work was not established since commissions to handle citizens' complaints had not been formed in the Ministry of Interior (MoI) and police directorates because of insufficient applicants at two public calls organized for this purpose. This type of civic supervision is important because it gives opportunities to citizens to have their complaints examined

even after they have received feedback from the Internal Control Department. The Government Plan of Legislative Activities for 2018 does not include amendments to the Police Act, which means that the current method to form commissions, although evidently inefficient, still remains in force. On the other hand, in order to ensure efficient work of commissions, appropriate conditions for its functioning must be ensured, including complete autonomy and independence.

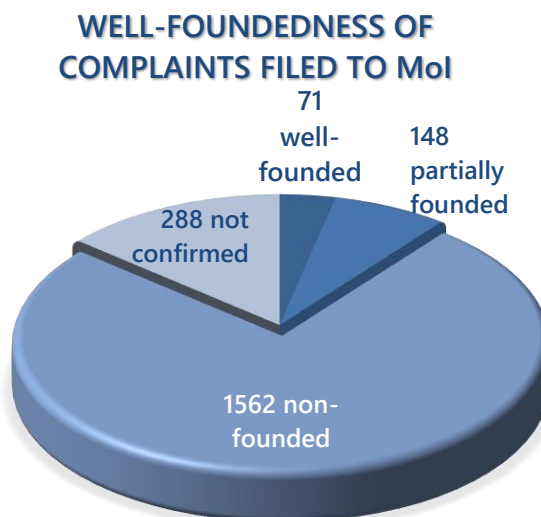
According to records of the Ministry of Interior (MoI), of the total number of complaints about police treatment filed in 2017, 10% were well-founded or partially founded, and applicants objected to 167 of the non-founded. Since objections are submitted if the applicant is not satisfied with the findings, it is important to strengthen the internal supervision over police treatment. This type of supervision is carried out by the Police Directorate and the Internal Control Department.

Once again, the majority of complaints in 2017 addressed the use of means of coercion when exercising police authority. In that respect, it is important to assess the justifiability and lawfulness thereof in order to prevent inhuman or degrading treatment. In the case of *Bouyid v. Belgium*, the ECHR found that unjustified use of force by police officers represented degrading treatment. That is why video footage is extremely important because it may help citizens protect themselves from unlawful and unethical treatment. On the other hand, it may protect police officers from unfounded complaints.

As previously, accommodation conditions are not completely in line with prescribed standards of premises in which persons deprived of liberty are located. Frequently, they are accommodated in rooms without access to drinking water, daylight and ventilation or a lavatory with appropriate hygienic standards. Also, they cannot stay outdoors. These things represent basic living conditions that any person deprived of liberty is entitled to. Any restriction of access as indicated above may amount to degrading treatment. Plus, it may contribute to onset of a disease. One case

in point remains problematic - after the warnings and recommendations of the Office of the Ombudswoman, spatial adaptations have been made; yet, the relevant premises still lack access to drinking water and a lavatory.

Police officers often fail to keep records regarding the time when a person was deprived of liberty or released in the Order on Accommodation to Separate Room or Arrest Report and this may be considered violation of citizens' constitutional rights. Despite earlier recommendations issued to the Ministry of Interior, detention supervisors still performed the tasks of officials of the operations and communications centre, which does not contribute to the protection of rights of persons deprived of liberty.



1.3. PERSONS WITH MENTAL DISORDERS WITH RESTRICTED FREEDOM OF MOVEMENT

“Given the enforcement orders, my marriage was ruined. I lost everything, it was all their fault... Debts just kept accumulating. At one point, I wanted to put an end to everything, but I was too weak to go to the very end. They took me to this ward. Initially, I refused to be treated. I thought that I was doomed. Then, that place helped calm me down. Talking to my doctor was helpful. He understands me... But, other patients told me that I may have to pay for the two weeks when I didn't sign the admittance form. Where will I get the money for that? Will this ever stop?”

In 2017, we received 19 complaints filed by persons with mental disorders regarding involuntary hospitalization, i.e. subjection to involuntary medical procedures during in-patient treatment in psychiatric institutions. We visited the Psychiatric Clinic of the Rebro University Hospital Centre and the Dubrovnik General Hospital (psychiatric institution)².

Some complained that doctors threatened to launch the involuntary detention procedure if they refused to take medicines. Although the Act on Protection of Persons with Mental Disorders does not treat involuntary detention and involuntary treatment as synonyms, insufficiently clear standards may lead to different interpretation of terms and non-uniform treatment on the part of psychiatrists. Most of them think that involuntary detention also includes involuntary treatment. If this was not the case, then detention would boil down to “keeping a person inside”. Others think that the legal basis for involuntary treatment may be applicable only for forensic patients. For this reason, this area has to be regulated in a more stringent manner in order to prevent different interpretations and possible violations of rights of persons with mental disorders.

Persons with mental disorders are still dissatisfied with the work of their lawyers appointed *ex officio*. Sometimes, they did not even know who had been assigned to them because he/she did not take an

Persons suffering from acute psychiatric disorder who do not have supplemental health insurance plan still have to take part in cost sharing to cover the costs of treatment, despite the fact that they were not allowed to terminate the treatment of their own free will.

active part in the procedure. Active participation of lawyers/defence counsels appointed *ex officio* represents an exception rather than a rule. Generally, complainants were more satisfied with the work of lawyers of their own choice. Lawyers appointed *ex officio* need to play a more important role in the process, otherwise their work boils down to pure compliance with the rules, rather than

protection of rights of persons with mental disorders.

The Croatian Health Insurance Institute (CHII) did not report on the number of insured persons who were obliged to take part in the cost sharing scheme to cover the treatment costs for their condition

² In this chapter, the term *psychiatric institution* refers to a healthcare institution or a unit for specialist and in-patient psychiatric treatment.

during involuntary detention or accommodation. The Institute provided us with the data regarding the total number of people covered by the cost-sharing scheme, which includes those staying in the institutions of their own free will. Persons suffering from acute psychiatric disorder who do not have supplemental health insurance plan still have to take part in cost sharing during involuntary detention and accommodation because the diagnosis they were given is not covered by the CHII List of Diagnoses eligible for funding through mandatory health insurance. In accordance with the Act on Mandatory Health Insurance, CHII fully covers the costs of treatment of chronic psychiatric diseases only. Such a practice is unacceptable in cases of involuntary detention and accommodation. Regardless of the diagnosis, treatment costs should be covered by the CHII in full. In that respect, in our previous reports we called for amendments to the Act on Mandatory Health Insurance. Despite our efforts, the amendments have not been made yet and this puts some patients in an absurd situation whereby they are partially charged costs of treatment that they cannot terminate of their own will.

During our visits, we did not register instances of inhuman treatment, but we did observe some cases of degrading behaviour. As a rule, patients were satisfied with the approach of nurses/technicians and doctors. In particular, patients of the Psychiatric Clinic of the Rebro University Hospital Centre praised the quality of treatment. On the other hand, high security psychiatric ward does not meet the Ordinance on Minimum Standards of Space, Workers and Medical Equipment for Providing Healthcare to Persons Deprived of Their Liberty. For example, some rooms are equipped with as many as six beds. Of all the psychiatric institutions visited by the NPM, the psychiatric ward of the Dubrovnik General Hospital has the best accommodation arrangements. *Inter alia*, windows are without bars and made of shatter resistant glass and this creates positive environment for therapeutic engagement in treatment. In both of these institutions, patients in the high security psychiatric ward cannot spend time outdoors.

Use of means of coercion against persons with mental disorders is allowed in exceptional circumstance only, if very urgent cases of serious and direct threat to the person's own or someone else's life, health and safety occur. In these cases, in line with the Ordinance on Types and Methods of Use of Means of Coercion against Persons with Mental Disorders, all patients are entitled to protection from restricted movements or isolation, if unjustified from a medical point of view. For this reason, data on frequency of use of means of coercion and justification thereof from a medical point of view are extremely important to determine to what degree their rights are being respected. Yet, none of the psychiatric institutions made the data fully available.

In line with the Ordinance on Types and Methods of Use of Means of Coercion against Persons with Mental Disorders, all patients are entitled to protection from restricted movements or isolation, if unjustified from a medical point of view.

Some of the healthcare staff applying the means of coercion are not at all familiar with provisions of the APPMD and Ordinance so all psychiatric institutions should establish and regularly keep records on the applied means of coercion.

that, in accordance with the APPMD, psychiatric institutions are obliged to submit a report to the Commission for Protection of Persons with Mental Disorders (CPPMD) on the use of means of coercion, they do not

comply with this obligation and this renders a perspective on the state of the play rather unclear. In the Dubrovnik General Hospital, in some cases, it was impossible to determine how long means of coercion were applied because the hospital staff did not appropriately record the data on the day and hour when the use of means of coercion had began and ended, nor the type of the measure as prescribed by the specialist doctor. Also, notes on supervision of restrained patients are not regularly kept with medical files. Assessment of the need for additional restraint, especially in cases of patients restrained during the night, is not carried out every four hours. The justification for such practice is questionable from a medical point of view. In addition to breaching the Ordinance, such treatment is unacceptable because restraint methods can be applied for up to several days (as is the case in the Dubrovnik General Hospital, for example) and may lead to unnecessary and unlawful restriction of rights. Plus, some of the healthcare staff applying the means of coercion are not at all familiar with provisions of the APPMD and Ordinance. For these reasons, in order to strengthen the rights and freedoms of persons with mental disorders, all psychiatric institutions should establish and keep records on the means of coercion applied against their patients and organize regular trainings for the staff regarding the application thereof.

During our visits, we made note of treatment contrary to regulations and international standards, as indicated in our previous reports. For example, the restraint procedure, contrary to the Ordinance, does

Although we keep emphasising it is unacceptable to put adult diapers on restrained persons, even if they do not suffer from incontinence, this degrading practice is still applied.

not include five persons carrying out the process. As a rule, restrained persons are left in their rooms with other patients. Not only does this pose a security threat, but also causes feelings of low self esteem and may be regarded as degrading. In addition, although we keep emphasising it is unacceptable to put diapers

on restrained persons, even if they do not suffer from incontinence, this degrading practice is still applied.

Electroconvulsive therapy (ECT), applied only in the Psychiatric Clinic in Croatia, is used in modified form only, with anaesthesia and muscle relaxants. This practice is in line with the WHO recommendations and COT standards. The therapy is administered to patients with certain disorders who, in general, do not react to medical therapy or those with life-threatening side effects of use of neuroleptic medicines. The Clinic does not have general guidelines for ECT use. The healthcare staff are self-trained and we think that this is commendable, yet, all the team members applying this procedure should develop standard guidelines for preparation and application of ECT and follow-up procedures. A single record keeping mechanism should be set in place, covering indications and conditions for ECT application, as well as a detailed description of results for each individual treatment. This would allow for quality monitoring. Other patients not subject to ECT are not in a position to see the application thereof, but the Clinic does not dispose of a special room for the administration of therapy. Instead, six-bed rooms in high security wards are used for the purpose. Patients accommodated in this room who are not administered the therapy leave their beds and go to the living room only to be replaced in their beds by patients subject to ECT. According to the staff statements, after being administered the therapy, they stay for two additional hours in the room and their health status is being closely monitored. This method of applying ECT is completely inappropriate. Since only the Psychiatric Clinic administers this type of treatment, appropriate conditions must be ensured. Plus, the therapy must be applied in three rooms:

one should act as a patients' waiting room, the other one as an application room so that people waiting their turn do not have to witness to the process. Finally, the third room should be designated for post-therapy rest, in line with the CPT opinion in its Report on 2007 Visit to Turkey.

Generally, patients submit written consent but, according to our findings, in exceptional circumstances, the procedure is applied even without grating the consent. In these situations, a written consent of a family member or a guardian is obtained, as well as the opinion of the ethical committee. This is contrary to provisions of the APPMD that lay down that ECT is allowed only with a written consent provided by the patient, and not by another individual. According to the information of the Psychiatric Clinic, this practice takes place only if all other types of treatment were tested out and if it is expected of the ECT to render real and direct benefits for the person's health, without adverse effects; and if patients are diagnosed with, for example, catatonia, that prevents them from communication and if not applying ECT could lead to serious and direct threat to life and health. That is why it is crucial to carry out an analysis to determine with clarity whether there are exceptional circumstances that would call for ECT application without explicit written consent provided by the patient. If there are, they have to be clearly defined. In addition, the APPMD has to be amended accordingly, taking into account that ECT must not be applied if the individual concerned opposes to it. In the meanwhile, the practice of administering ECT without the patient's written consent must be suspended.

According to the data provided, generally, all recommendations that do not require allocation of significant funds, as issued during the visits, were adopted or in the state of implementation.

For the first time since the NPM started performing its role, a visit was interrupted. During the second day of the visit to the Psychiatric Clinic, the NPM representatives were informed about the stance taken by the management of the University Hospital Centre. According to their opinion,

For the first time since the NPM started performing its role, a visit was interrupted. The management of the University Hospital Centre did not approve access to data without previous announcement in writing. The Ministry of Health and Croatian Parliament were informed of the matter.

although, in line with their duties, the representatives may pay an unannounced visit to the Clinic, they cannot be provided with any data whatsoever unless they request it beforehand from the assistant director for legal affairs. They were allowed, in line with the opinion, to visit the rooms only. That being said, the report on visits was prepared on the basis of the previously collected data and does not allow for a comprehensive overview of the situation regarding the respect of rights of persons with mental disorders from the scope of work of the NPM. The Ministry of Health and Croatian Parliament were informed of the matter. The Ministry was required to inform all healthcare institutions accommodating or potentially accommodating persons deprived of liberty of rights and responsibilities of the NPM. The Ministry has fulfilled this obligation.

1.4. HOMES FOR THE ELDERLY AND INFIRM

'I'd love to get out of bed, sit in my wheelchair and go out, into the sunlight. But there are very few nurses in our home and they have so much work that I don't have the heart to ask them to put me into the wheelchair, and I can't get up on my own. I'm not complaining about them, there really aren't many of them and I see they are doing something all the time. So I spend my time lying in bed and waiting...'

In 2017, we paid unexpected visits to the homes for the elderly and infirm in Viškovo, Makarska and Osijek in order to establish the level of respect for human rights, with special attention paid to the situations that might constitute limitation of freedom of movement.

The Home in Viškovo is a private one, whereas the other two are decentralized, county homes. All the inspected facilities were neat and clean, and great effort was invested in making sure they had the best possible equipment.

The lack of staff was an issue in all three homes, which necessarily implied the violation of the rights of accommodated persons. For example, the Home in Osijek had only one nurse and two caretakers in the third shift, taking care of 180 users accommodated in the in-patient wards and 164 users accommodated in the residential part, which was insufficient and could significantly impact the users' safety. In the Home in Viškovo, due to the lack of nurses and caretakers, individual users with mobility issues never ask to get out of bed and go for a walk, so they usually spend their day in bed. There was a similar issue in the Home in Makarska, where due to the lack of caretakers, users with mobility issues and dementia usually do not go out, so one of them, who has been there for five years, never went out for some fresh air. The lack of staff also made employees overburdened, and the users noticed that the caretakers would yell at them when they were too tired.

In the majority of cases, accommodation contracts were not signed by the elderly, but by the family members or other persons covering the accommodation costs, which is inadmissible. The in-patient wards often do not have a dining room, because as a rule, in these wards meals are served in the

The Home in Osijek had only one nurse and two caretakers in the third shift, taking care of 180 users accommodated in the in-patient wards and 164 users accommodated in the residential part, which was insufficient and could significantly impact the users' safety. In the Home in Makarska, due to the lack of caretakers, one user has not gone out for some fresh air for five years.

rooms, despite the wish expressed by individual users to eat together with others. Not enough attention is devoted to adapting special diet menus to individual health conditions and they are not always harmonized with the appropriate guidelines for the nutrition of patients, but for example contain white flour, white rice, etc. In all the

homes we noticed an ever-present issue we warned about repeatedly, i.e. during the provision of nursing care in shared rooms, the staff does not use screens or curtains, which violates the users' right to privacy.

Through various organized free-time activities, the Home in Osijek encourages the elderly with mobility issues to get out of bed and leave their rooms. However, in the Home in Makarska, due to the lack of organized activities, people with dementia spend their time sitting in the living room, in their room or walking around the hallway of the closed ward, which only has one caretaker.

Individual bedridden users in the Home in Makarska say that the lack of diapers is a specific problem because they only get two in 24 hours, so they are forced to use toilet paper along with the diapers, which is humiliating. Although some employees denied this, due to the lack of individual records of care, these allegations could not be verified.

Inappropriate accommodation conditions also affect the level of respect for users' rights. For example, Makarska Home's branch in Runović does not have an elevator and it accommodates bedridden persons on the first floor, which brings their safety into question in case of urgent evacuation. Additionally, as the stairs do not have a wheelchair ramp, their freedom of movement is limited.

The communication protocol with the users of the Home in Osijek is an example of good practice because it enables filing complaints to the director about the staff conduct, which the users drop in the box intended for this purpose. However, these complaints are then dealt with "informally", so this should be regulated by an internal act. Each room has a bell to call the nurses when needed. Calls, as well as the staff's responses, are recorded in the computer, allowing to check whether there was an appropriate reaction to each call and in what time, which is also an example of good practice.

The users of the accommodation unit usually have their ID cards with them, whereas the ID cards of the permanent care patients are usually with their families or guardians, which is unacceptable and constitutes a form of limitation of freedom of movement. Namely, the ID card is the basic identification document, which every person over the age of 16 residing in the RC is obliged to have with them and present to the authorized persons. Therefore, the users who leave the facility premises without their ID card with them are committing an offense. If, due to medical reasons, an elderly person cannot have it with them, it should be stored in an appropriate place in the facility.

Some homes lock the wards that accommodate people who cannot leave at their own will. It is clear that, for example, those with Alzheimer's dementia, due to severity of their mental disorders, need this kind of accommodation, but this should be legally regulated because it violates Article 5 of the European Convention on Human Rights and Article 16 of the Constitution, and, de facto, constitutes a case of deprivation of liberty without a legal basis. Namely, the guardian's consent cannot be seen as the consent to the accommodation if the user objects to it.

The Act on Protection of Persons with Mental Disorders (APPMD) prescribes control mechanisms for involuntary accommodation in a psychiatric institution, but no act prescribes similar mechanisms for permanent accommodation in social care homes, which usually lasts much longer than treatment at a psychiatric institution. This means that a person

Some homes have closed wards that accommodate people who cannot leave them as they wish. The Act on Protection of Persons with Mental Disorders prescribes control mechanisms for involuntary accommodation in a psychiatric institution, but no act prescribes similar mechanisms for permanent accommodation in social care homes, which usually lasts much longer than treatment at a psychiatric institution.

can live in such conditions for years without a legal basis and without possibility to leave, that is, their freedom of movement is limited without judicial review.

In accordance with the APPMD, coercive measures against people with severe mental disorders placed in social care homes can be used in the same way and under the same conditions as in psychiatric institutions. This means, inter alia, that the decisions on their use, except in emergency situations, are made by psychiatrists who also monitor the use of the measure. Since social care homes do not employ psychiatrists, the use of coercive measures is not legal and can result in unnecessary limitation or violation of the rights of persons with mental disorders. Additionally, social care institutions do not keep records on the use of coercive measures, which they refer to as restrictive procedures, so it was not possible to determine the frequency of their use. Although they are rarely used, non-compliance with legal procedures violates the rights of users with mental disorders.

The use of various security measures is not regulated, either, such as immobilization and fixation during night-time sleep, which is justified with the need to prevent falls. However, the conditions and methods of their use should be regulated, because inappropriate use can lead to health issues and death.

1.5. APPLICANTS FOR INTERNATIONAL PROTECTION AND IRREGULAR MIGRANTS

Modern migrations are characterized by their diversity, both in terms of permanence of residence and forced, i.e. voluntary migrations. Political instability and increasing differences in the level of development of individual countries have strongly influenced international political and economic migrations. In the last couple of years, all the countries on the migration routes have been faced with many challenges; transit countries with a large number of people who want to pass through their territory and destination countries with challenges posed before the system of application for international protection and integration. Border EU countries, as the states of first entry, have been the most exposed in the process, especially Italy and Greece. The EU relocation mechanism based on solidarity tries to mitigate the pressure on these countries. This mechanism implies a relocation of the

Although faced with further insisting on the application of the Dublin Regulation and principle of solidarity in the distribution of migrants, i.e. refugees, the competent authorities of the Republic of Croatia still do not find it necessary to adopt a new migration policy.

agreed number of persons, who meet the criteria for granting international protection, to other member states. Transit countries, especially the second in line on the migration route, are trying to prevent irregular entries through stricter border control. By doing so,

they are also trying to avoid being competent for resolving applications for international protection or applying return measures by implementing Dublin and Eurodac Regulations.

On the other hand, after the agreement between the EU and Turkey and the end of migration crisis, seen as refugee crisis because of the structure of people in it, the countries had to deal with a large number of migrants who remained after the route was closed, as well as with an increased number of people who were returned to these countries because of the application of the Dublin Regulation, and the ones who, although in smaller numbers, were still coming through the so-called Balkan Route and across the Mediterranean.

In 2017, the consequences of the mass movement of refugees and migrants were still felt in the EU, as well as in the so-called Balkan route countries. Although by adopting the European Migration Programme in May 2015, the European Commission tried to alleviate the crisis through urgent measures, in September the same year there were still mass arrivals for which no member state was prepared. Transit countries dealt with this issue by opening their borders and organizing further transits, which violated national and EU legislation, primarily due to lack of registration. This was the reason the EC initiated a procedure against the RC due to incomplete transposition and implementation of the Common European Asylum System. Besides, allowing transit through the state territory resulted in the procedure regarding the status of migrants upon entering the RC in the period of crisis, and the EU Court of Justice ruled that, according to the Dublin Regulation, allowing entry and transferring migrants to neighbouring countries was *de facto* irregular entry. Such ruling, due to the expiry of deadlines and appeals submitted, did not result in a large number of applicants for international protection who were returned to the RC under the Dublin Procedure, and thus it did not significantly impact the increase in the number of applicants in 2017. Namely, out of 677 applications granted based on the Dublin Procedure, only 249 were returned to Croatia. This decision will certainly be used as a framework for future procedures in case of major migrant movements, which might not be solved by receiving migrants and organizing their transfer to the desired destination countries.

Upon scaling down to national legislative frameworks, and thus the Common European Asylum System, the EC framed its migration policy within the European Migration Programme and four previously defined pillars that tried to relieve the pressure imposed on the EU member states. It included reducing motivation for illegal migration, border control, sound common asylum policy and a new policy on legal migrations, while insisting on relocation and transfer based on solidarity, in order to unburden the states of first entry, EU member states.

Distribution by relocation proved as a slow and inadequate response, and bringing actions before the EU Court of Justice against the EU Council's Decision on Relocation shows the resistance of the member states towards receiving the applicants, which may have a major impact on integration, and even cause secondary migrations, of forcibly received persons.

Although faced with further insisting on the application of the Dublin Regulation and the principle of solidarity in the distribution of migrants, i.e. refugees, the competent authorities of the RC still do not find it necessary to adopt a new migration policy. The key argument is the harmonization of the national legislation in the area of migration with the EU *acquis*, by which all the other aspects of contemporary mixed migratory movements are ignored, especially integration, which is discussed in more detail in the chapter on discrimination on the grounds of race, ethnicity or colour and national origin.

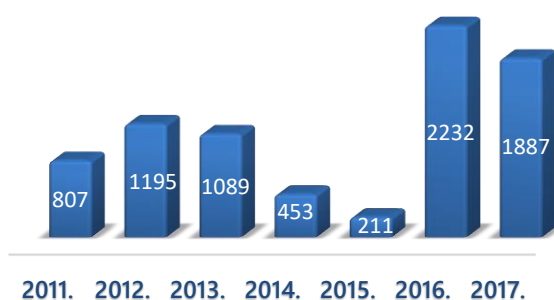
Applicants for international protection

One of the consequences of migratory movements is the increase in the number of applicants for international protection in the RC compared to 2015, which also needs to be seen in the context of amendments to the legal framework. Namely, the Act on International and Temporary Protection introduces early recognition of the status of applicant for international protection in relation to the Asylum Act, which begins with the migrant's expression of intention at the police station, and not after

the application has been submitted. Namely, persons who expressed the intention to seek international protection at the police station, and who did not check into the Reception Centre for Asylum Seekers (RCAS), were not counted as applicants before the amendments of the Act in 2015, but instead had the status of irregular migrants.

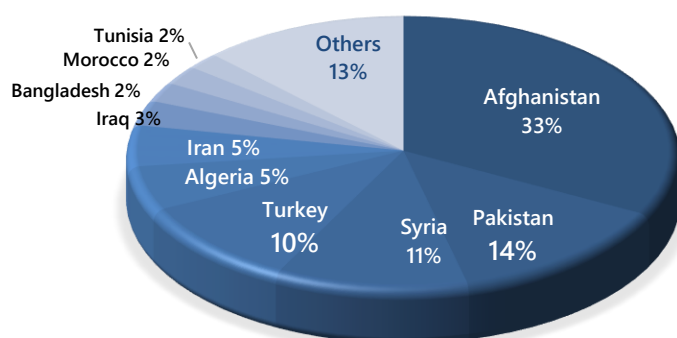
However, in 2017 there were 15.46% fewer applicants for international protection than in 2016, with the gender and age structure not differing significantly from the one in the previous years, characterized by a high percentage of men aged 18 to 34 (44.22%) and children (23.16%). Out of 1887 applicants, 517 were children, among which 261 unaccompanied, and only 26 decisions were issued, three positive ones (one asylum and three subsidiary protections) and 22 suspension decisions. In order to protect the interests of children and find the best care possible, as well as due to the need for an early integration, solving their applications should be a priority.

NUMBER OF APPLICANTS FOR INTERNATIONAL PROTECTION IN THE RC



The number of decisions issued in relation to the number of applications, as well as their structure, show the continuation of the predominant trend of issuing suspension decisions, because the applicants would not check in at the RCAS, or leave it before the end of the procedure or withdraw the application for international protection. Therefore, in 2017 the percentage of such decisions amounted to 83.35%.

APPLICANTS FOR INTERNATIONAL PROTECTION BASED ON CITIZENSHIP



In 2017, decisions were issued for the total of 2,126 applications, which is also a progress compared to the previous years. Namely, 793 pending applications were transferred to 2017, so hiring 21 employees to work on the reception of migrants and procedures of granting international protection can certainly be seen as a positive example of how to respond to the challenges of migratory movements. However,

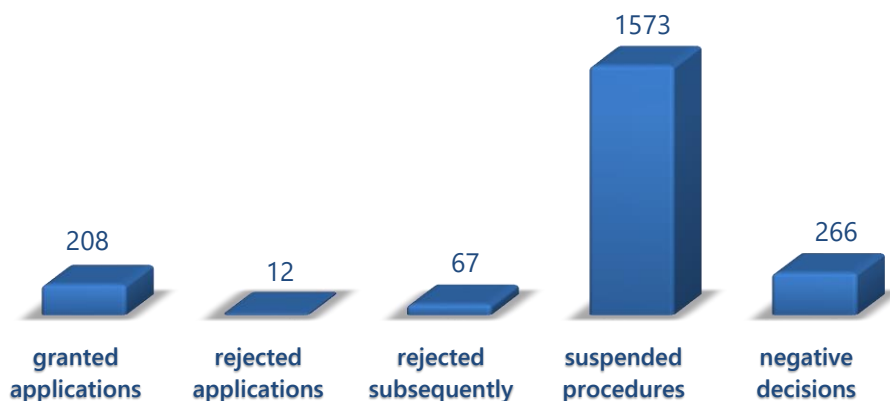
given the duration of the procedure and pending applications of unaccompanied children, hiring additional employees should be considered.

The year 2017 was also characterized by Mol's rejections of applications for international protection due to so-called security threats, based on the opinion issued by the Security and Intelligence Agency (SIA), thus out of 266 negative decisions, 66 refer to the exclusion from international protection due to security

threats. Consequently, 202 lawsuits were filed before administrative courts, and 55 against decisions issued precisely due to security issues.

Pursuant to the Act on the Security Intelligence System of the RC, security vetting is performed for persons obtaining Croatian citizenship and for foreigners whose stay is important for the security of the

THE STRUCTURE OF COURT DECISIONS BY ACTIONS BASED ON REJECTION OF INTERNATIONAL PROTECTION FOR SECURITY REASONS



country, while the Security Vetting Act stipulates that the SIA issues to the applicant, in this case the Mol, only an opinion on the (non-)existence of security threats, which is extremely problematic in the procedure of granting international protection. Due to the circumstances and causes of leaving the country of origin, the applicants cannot return to it, so the reason for denying residence in the country of reception is particularly important. This is especially true when the Mol assesses that there is a great possibility that the applicant could be faced with the risk of suffering serious injustice, torture, inhuman or degrading treatment or punishment in the country of origin. Yet, it still rejects the application, solely based on the opinion issued by the SIA, without even looking at its content.

Additionally, such decisions also order them to leave the EEA, which may constitute a violation of the principle of non-refoulement. In the decisions of administrative courts it was found that the Mol incorrectly or incompletely established the facts of the case during the administrative procedure. Namely, the reasons for refusing international protection were not the ones that could be brought into connection with the exclusion from asylum or subsidiary protection, and which are prescribed by the AITP. It is therefore necessary to issue decisions on international protection on the basis of a fully established factual situation, after reviewing the opinion issued by the SIA on the existence of security threats and by stating the reasons for exclusion from asylum or subsidiary protection. This is also supported by the case law, which often annuls decisions of the Mol and sends them back into the procedure or modifies them and grants the asylum, which is also discussed in detail in the chapter on combating discrimination at national level.

In addition, security vetting is carried out on the basis of Security Vetting Questionnaire, an integral part of which is the consent for the procedure which needs to be filled out in person, and voluntarily signed by the person for whom it is being used, which will be elaborated in more detail in the chapter on

statutory rights. However, the applicants do not fill it out or sign the consent, which is in contradiction to the Security Vetting Act.

Other difficulties faced by the applicants for international protection in exercising their rights, especially the right to health care, work and education in the integration processes, are discussed in more detail in the chapter on discrimination on the grounds of race, ethnicity or colour and national origin.

Migrants in irregular situations and access to international protection

"I insisted on asylum, but they got angry and started yelling at us, they told us to go back to Serbia without turning back. I lost hope and asked them to allow us to stay there at least for the night and told them we would go back to Serbia in the morning. It was dark and we were very tired and small children could not walk any more and they were very hungry as well. Also, it was very cold and children were shaking. But they did not want to listen to us and made us walk."

The agreement between the EU and Turkey reduced the number of migrants and refugees coming to Croatia through the so-called Balkan route. However, due to reapplication of the Dublin and EURODAC Regulations, which also meant scaling down to the frameworks of the national legislation, stricter border controls were implemented in the states on the route from March 2016. The position of the RC is particularly sensitive due to several reasons. The wire fence erected along the Hungarian-Serbian border prevented migrants from accessing not only the territory, but also international protection in Hungary. On the other hand, Serbia took a so-called liberal approach in dealing with migrants, which implies insufficient control of their entry and movement, thus there are numerous informal gathering places along the border with Croatia and almost non-existent state border protection measures. Also, since the beginning of the refugee crisis in relation to the citizens who mostly move along the route, the agreement between the Croatian and Serbian Government on delivery and reception of persons whose entry or stay was illegal, was suspended. Therefore, the RC became solely responsible for resolving the status of such persons, be it in regards to the application for international protection or implementing return measures, and in cases when it was undoubtedly established that they entered from Serbia. All of this, paired with the Croatian strategic goal of joining the Schengen area, which implies efficient protection of the state border, also the external border of the EU, posed additional challenges before the MoI.

In such circumstances, the end of 2016 and beginning of 2017 were marked by a series of allegations from civil society organizations and the media about the return of persons to Serbia without conducting the procedure provided for in the Foreigners Act, according to which, depending on the return measure, a decision should be issued, and procedure should be conducted on an individual basis with interpreting provided. However, many migrants testified that they were not allowed to apply for international protection, although they wanted to, and during their return the procedures provided for in the FA were not followed. Moreover, documented complaints included allegations that Croatian

police officers beat them with bats, made them take their shoes off and kneel or stand in the snow, made them pass through a cordon where they would be beaten and insulted. During such events they were not allowed to speak, and some testimonies state that their valuables were taken from them, including money and mobile phones. Considering the number and content of these allegations, which also provide the dates and places where the migrants crossed the state border, as well as the medical documentation, the Ombudswoman's Report from 2016 warned that such conduct could constitute the violation of Article 3 of the ECHR, according to which no one shall be subjected to torture or to inhuman or degrading treatment or punishment, and warned about the necessity of conducting an effective investigation that must be adequate, detailed and conducted with due diligence. After the warning about the need to act on an individual basis and conduct procedures in accordance with the FA and AITP, the Mol stated that legal procedures are regularly implemented, with full respect of human and refugee rights, in accordance with the Universal Declaration of Human Rights. It also stated that it regularly implemented trainings for police officers on the protection of migrants' rights, and that the number of police officers on the border with Serbia was increased, which was primarily aimed at deterring illegal entry.

However, despite repeated requests, we did not get detailed information about the conducted investigations and their results. Namely, the Mol limited the verification of such allegations only to the review of its own records, which were not kept for prevention of illegal entrance, for example, or to the records from health care institutions in the Vukovar-Srijem Police Administration in which migrants avoid seeking help. Moreover, when we tried to verify the allegations made by an unaccompanied child about the police use of force, by directly checking thermal imaging cameras that showed the exact date and time of the event, we found that the part of the recording made at the time of the event was missing. The Mol stated that this technical system was intended primarily for border control, and not for temporary or permanent recording of events, and therefore no special rules were prescribed regarding storing and deleting records. However, it remains unclear why the Mol did not use all means that could eliminate the suspicion about the illegal conduct of police officers, regardless of their purpose. Although in 2017 the Ombudswoman stopped receiving allegations about such conduct, there was an increase in the number of complaints and allegations from CSOs about the return of migrants apprehended close to border crossing with Serbia without using procedures provided for in the FA, as well as about preventing them to seek international protection.

Despite repeated requests, we did not get detailed information from the Ministry of the Interior about the conducted investigations and their results, and the Ministry limited the verification of allegations only to the review of records that do not even exist, for example on prevention of illegal entrance.

One of the complainants stated that he came to the RCAS with the intention to apply for international protection, however, he was instructed to report to the police station. Upon arrival, he was detained and was not able to apply for international protection, but was taken to another police station or facility in a police vehicle, and then to the border with Serbia, where he was instructed to return to Serbia, but not through the border crossing. The Mol's Report states that he was apprehended in irregular stay together with another person at the police station's address, that he did not apply for international

protection and that, after the decision on return was issued, he left the premises of the police station, with a note that no information was received from border crossings that he left the territory of the RC, as was ordered by the decision.

By conducting further investigation at the police station and reviewing the case file we found that the reply of the MoI to the Ombudswoman was misleading, incomplete and inadequate, and subsequent explanations did not clarify the motivation for submitting such reply. Namely, the complainant was treated in accordance with the orders of the Illegal Migration Department of the General Police Directorate from 25 November 2016, which state that all irregular migrants apprehended within the territory, Afro-Asian citizens, who illegally enter Croatia from Serbia, and who are apprehended on the territory of the Zagreb Police Administration, must be escorted to the Tovarnik Police Station and

Although there is a written record of the order issued by the Illegal Migration Department of the General Police Directorate from 25 November 2016, even after repeated requests based on the Act on the Ombudsman we did not receive it for review, and the Ministry of the Interior continuously denies its existence.

handed over to the head of the shift on duty for further treatment. Unfortunately, although there is a written record of this order, even after repeated requests based on the Act on the Ombudsman, we did not receive the order, and the MoI repeatedly denied its existence. Additional instructions accompanying the order

state that police stations are obliged to fill out the form no. 6 (declaration of identity for foreigners without identification documents) and return decision on the form no. 11, as well as to inform the Detention and Escort Unit on the need to escort the foreigner to the Tovarnik Police Station.

A series of internal correspondence between the Zagreb Police Station and Zagreb Police Administration, as well as other documentation enclosed with the reviewed documents, show a systematic conduct in line with the given order, also confirmed by the review of documentation at the Detention and Escort Unit of the Zagreb Police Administration. However, the Tovarnik Police Station and Vukovar-Srijem Police Administration were not able to provide the Ombudswoman with the information on further treatment of migrants, or their approximate number, and by inspecting the Register of measures taken towards foreigners at the Tovarnik Police Station it was discovered that they were not even recorded.

Therefore, the conduct of police officers could be monitored at the police station at the site of apprehension and at the Detention and Escort Unit of the Zagreb Police Administration, but not after the officer on duty from the Tovarnik Police Station took over the migrants. The time they were released was especially hard to determine. We were therefore unable to obtain the data on the number of migrants treated in accordance with the given order for the period from 25 November 2016 to 15 February 2017.

In this way, during this time, all the foreigners to whom the return decision was issued with a deadline to voluntarily leave the RC, who were then transported in police vehicles (vans and even buses!) to the territory of another police administration that does not have the necessary documentation about their reception nor can provide any information, were deprived of liberty without legal basis by this police

conduct, which certainly constitutes the violation of the Constitution, ECHR and AA, as well as other international and national regulations governing deprivation of liberty.

The order of the General Police Directorate from 15 February 2017 introduced a new treatment of irregular migrants apprehended within the territory, which ordered all police administrations to escort irregular migrants to a police administration at the external border with a prior written announcement, regardless of the place at which they were apprehended. The police administration at the external border was then competent to define all the circumstances of their entry and stay. However, if the police administration that apprehended irregular migrants within its territory assessed that the escort to a police administration at the external border would not be useful for strengthening the external border control measures, it could conduct the procedure in accordance to the FA on its own.

From 15 February to 24 November 2017 (unfortunately the Mol did not provide us with full data for 2017), following the aforementioned order, the Tovarnik Police Station carried out the so-called summary procedure on 1,116 persons and issued return decision to all of them, and Bajakovo border crossing to 1,473 persons. Following the order, all case files included the printed form no. 6 (Declaration of Identity), foreigner's photograph, return decision on form no. 11, signed delivery note and official record. A copy of the official record was also submitted to the police officers at Tovarnik Police Station with the following statements: "the foreigner has no visible injuries and has not complained about his/her health", "it was determined that s/he speaks Arabic/Pashto and can communicate in English, an interpreter for this language was contacted but was unable to report to the Tovarnik Police Station, therefore an interview in English was conducted with the help of Google Translate, and during the entire procedure the foreigner did not express an intention to apply for international protection". Each reviewed file of the so-called summary procedure had an official record almost identical to the one above.

After such procedure, in which everything is assumed beforehand and an interpreter is not even contacted, a decision on voluntary return is issued, with a deadline by which the foreigner has to leave the RC, i.e. the EEA. Issuing a return decision in such circumstances does not allow irregular migrants to present all the circumstances important for issuing the decision, in due time and with an interpreter, in accordance with Article 30 of the APA. This also constitutes the violation of Article 7 of the APA, which refers to providing help to an illiterate party, or the recommendations from the trainings organized by the Mol on the treatment of migrants.

The review of the files found that, in the majority of them, the procedure was carried out on multiple persons, even 50 at once. Return decisions were issued, and the actions taken were described in a very short official record, which, besides the statements from the above given sample, also contained their names and a couple of sentences about how they crossed the border. Moreover, such very short official records on the implemented procedures were also made in cases of groups with unaccompanied children. They evidently show that social welfare centres or special guardians were not contacted, children were not taken to a mandatory medical examination, and it is especially not evident how family relationships within the group were established. It is therefore assumed that this was also defined only on the basis of the statement of an older group member, which again brings into question the

procedures for determining the best interest of the child and their protection from potential human trafficking. The Mol was warned about this in June 2017 and we were informed that they proceeded accordingly and warned the police administration about consistent implementation of the Protocol on Treatment of Separated Children – Foreign Nationals.

Additionally, because the new Tovarnik Police Station was under construction, the entire procedure was taking place in replacement, unfit premises on a road crossing. Migrants were kept in a police vehicle in front of the station for a few hours, without direct access to drinking water and toilet, which is contrary to CPT standards on the treatment of detained and apprehended persons. Also, a random selection of video recordings at the Tovarnik Police Station showed that persons who were brought there and who were processed did not even enter the station building, but were kept in a police vehicle the entire time, and after the completion of the procedure were not released, but taken away in the same vehicle. Such detention, discussed in more detail in the chapter on police treatment, may be seen as degrading treatment.

Also, migrants with no identification and travel documents, whose countries of origin have no diplomatic and consular missions in the RC where they could obtain necessary documentation on the basis of the issued return decisions, cannot legally leave the territory of the RC. It can therefore be concluded that there is no intention to solve the key issue, but that these are intentionally issued as formal legal acts. Namely, in the given situations, issuing a return decision is not useful nor it includes voluntary elements if activities foreseen by Article 121 of the FA are not taken. The Article foresees that the Mol can, in order to encourage voluntary returns, make agreements, obtain travel documents and travel tickets and make financial payments in order to enable and encourage voluntary returns. Implementation of these actions and imposing less coercive measures provided for in the FA, as well as providing accommodation, at least for vulnerable groups, would greatly contribute to the protection of migrants' rights, but also ensure enforceability of the decision.

According to the records of the Ministry of the Interior, on the basis of 3,107 issued return decisions only 1,025 persons legally left the Republic of Croatia, which does not contribute to the protection of their rights, let alone the protection of security and Croatian national interests, which the Ministry of the Interior constantly calls for.

Also, when a return decision is issued within the described, so-called summary procedure, it does not take into consideration the provision of the APA according to which the ministries, within their scope of activity, supervise how administrative matters are solved and ensure the legality, effectiveness and purposefulness of the administrative procedure. That is, since decisions that cannot be performed in a legally envisaged way are being issued, the given procedure is contrary to the principle put forward by the APA.

The explanation given by the Mol on the change of approach before and after 15 February refers to the necessity for migrants to show where they crossed the state border, so that future irregular entries could be prevented. However, due to the manner and circumstances under which they cross the border, it is not likely that they would be able to show precisely where they crossed it, and besides, the files did

not contain documents that would prove that these actions were taken in the procedure, whereas they were precisely what the Mol stressed as particularly important and thus justified the motivation for change in the treatment of migrants. From the file documentation one can conclude that migrants are being transported for hundreds of kilometres, only to have police officers ask them about the manner in which they crossed the state border, although they were asked the same question at the police station where they were apprehended, and again during a procedure in which an interpreter was not provided. Additionally, migrants who were apprehended close to the state border with Bosnia and Herzegovina and Serbia, for example at Beli Manastir or Stara Gradiška border crossings, were brought to the Tovarnik Police Station and Bajakovo Border Crossing, and it was assumed that they had crossed the border at Tovarnik or Bajakovo.

Also, after reviewing individual summary procedures taken at the Tovarnik Police Station, in relation to all the police administrations from which irregular migrants were brought, we found that none of the files contained fingerprints, which were not even taken at the police station at the place of apprehension. Besides browsing through albums with hundreds of photographs, there is no other way to clearly identify persons to whom return decisions were issued after they left the Tovarnik Police Station or Bajakovo Border Crossing. This leads to the conclusion that in the RC there is no system that could be used to monitor their movement and status, i.e. see whether they crossed the state border towards Serbia or stayed in Croatia, which certainly does not contribute to the protection of their rights, let alone the protection of security and Croatian national interests, which the Mol constantly calls for. This is especially important because, according to the records of the Mol, on the basis of 3,107 issued return decisions only 1,025 persons left the RC legally.

Thus, according to the data of the Vukovar-Srijem Police Administration, from February to November 2017, 1,116 irregular migrants were brought from other police administrations to the premises of the Tovarnik Police Station, designated for the treatment of irregular migrants and applicants. For example, 303 migrants were brought in from the Osijek-Baranja Police Administration. However, the review of cases from November, October and September showed a significant disparity between these data and established facts, because 401 irregular migrants were brought to the Tovarnik Police Station only from the Beli Manastir Border Crossing.

By visiting the Tovarnik Transit and Reception Centre we found that irregular migrants were placed there after the treatment at the Tovarnik Police Station, i.e. after decisions on expulsion and the restriction of freedom of movement had been issued. Pursuant to the Regulation amending Regulation on the Internal Organization of the Mol, irregular migrants with restricted freedom of movement should be placed in reception and transit centres, such as Trilj and Tovarnik, because they were apprehended at illegal border crossing, until they are transferred to the Foreigners Reception Centre or forcibly returned on the basis of readmission agreement. However, the FA refers exclusively to the Foreigners Reception Centre, so it is not clear how the competences of police stations were extended to transit and reception centres. The explanation given by the Mol, that the concept of foreigners reception centre in the FA is a generic one since it was used in plural and with a small first letter, and that it refers to all centres in which restriction of the foreigners' freedom of movement is imposed, is not correct. Namely, Article 115(1.8) states that the provisions of the FA refer to the "Foreigners Reception Centre"

and it is thus necessary to amend the regulation in order to regulate the treatment of irregular migrants whose freedom of movement is restricted due to their placement in transit and reception centres. This would ensure the legality of police treatment, as well as legal certainty of irregular migrants, especially in regards to potential longer restriction of freedom of movement, which is also not regulated.

**NUMBER OF APPLICANTS FOR INTERNATIONAL PROTECTION
AT THE TOVARNIK PS, UNTIL 24 NOVEMBER 2017**



In the procedure of issuing decision on expulsion/return at the Tovarnik Police Station and decision on restricting the freedom of movement by placing them at the Tovarnik Centre, the basic parts of the decisions are translated to the foreigners to the language they understand. However, the procedures themselves are conducted without an interpreter for the language which one justifiably presumes they understand and in which they can communicate. When an interpreter from the list cannot come to a police station, translation is provided using technological tools, primarily "Google Translate". First, the irregular migrant is treated in accordance with the FA, then a decision on expulsion is issued and then his/her freedom of movement becomes restricted by placing him/her at the Tovarnik Centre. After all this, the irregular migrant expresses the intention for international protection. If the migrants were informed about their rights, especially the right of applying for international protection, during the procedure and in a language they understand, this could be prevented and thus ensure urgent protection of vulnerable groups. Namely, according to the data collected on the ratio between persons placed at the Tovarnik Centre and the number of issued decisions on accommodation, it is apparent that these are primarily families with children, and the increase in number of applications for international protection coincides with the initial placement of irregular migrants in the Centre, where they probably received adequate information about solving their status. It is therefore very important that migrants, and especially vulnerable groups, in procedures in which return decision are issued, are informed in clear and adequate way about the possibility of applying for international protection in the RC.

During and after all conducted investigations and visits, especially regarding complaints about access to international protection, the Ombudswoman sent a number of warnings and recommendations to the MoI, especially emphasizing the obligation of conducting urgent and effective investigation and implementation of 2015 CPT standards that point out that there must be a clear understanding that

responsibility for ill-treatment extends beyond the actual perpetrators to anyone who knows, or should know, that ill treatment is occurring and fails to act to prevent or report it.

**STRUCTURE OF APPLICANTS FOR
INTERNATIONAL PROTECTION AT THE
TOVARNIK PS**

		AGE			TOTAL
		under 14	14-17	18 and older	
CITIZENSHIP	Afganistan	18	3	29	50
	Algeria			3	3
	Iraq	2		2	4
	Iran	3		6	9
	Cuba			1	1
	Pakistan			3	3
	Russia			1	1
	Syria	3		27	30
	Tunisia	1		1	2
	Turkey				0
	Uzbekistan	3		2	5
TOTAL		30	3	75	108

It is therefore particularly worrying that the Mol is persistently refusing to re-examine the previously described treatments of irregular migrants apprehended within the territory, as well as the lack of clear communication on the conducted activities following the complaints of international organizations and CSOs about the police conduct. It includes returning migrants to Serbia, sometimes even without any treatment, ignoring their requests for international protection, that is, sometimes taking them directly to the green border and instructing them to cross it, even using force at times. Arguments used by the Mol, that all migrants' statements about the police conduct are probably false and motivated by being prevented to reach

their destination countries, are inadequate, general, unacceptable and do not meet the requirements of an effective investigation.

Precisely this failure to conduct an appropriate investigation raised some suspicions regarding the death of a little girl on the border with Serbia. Namely, the complaint filed by her mother contained similar statements to the ones filed to CSOs and the Ombudswoman, which were never thoroughly investigated and which point to systematic implementation of procedures in the above described manner. Namely, the mother said that she decided to enter Croatia together with six children aged 15, 8, 6, 3 and 2. She crossed the two state borders on 21 November 2017 around 17.00, and walked for another hour before spotting police officers and seeking asylum. However, they instructed her to go back to Serbia and return next month. After she insisted on seeking protection, according to her statements, the police officers got angry and started yelling at her to return to Serbia. She then asked them to spend the night in the RC because the children were exhausted, but they did not listen and forced them to keep walking, and after a while a police vehicle arrived and drove them back, close to the railway, after which the police officers told her to follow the railway to Serbia. Soon after, a train killed her six-year-old daughter Madina. Since the family pressed charges, the

When the highest ranking officials of the Ministry of the Interior publicly accuse the Ombudswoman by saying that these issues should not be communicated with the public, because this is not in line with the political priorities of the Republic of Croatia, it represents a direct pressure imposed by the executive power on the work of an independent national human rights institution.

Ombudswoman notified the State Attorney General, Croatian Parliament and the public about the information she collected during this, but also previously conducted procedures.

We would like to mention that the Ombudswoman and the Mol are in regular communication and that the Ministry provides replies and responds to all inquiries in a timely manner. However, in terms of content they are often quite inadequate, generic, and sometimes, like in the case of the complaint we described earlier, even misleading, obviously in an attempt to cover the real conduct and obstruct the activity of the Ombudswoman in accordance with legal authority.

Also, when the highest ranking officials of the Mol publicly accuse the Ombudswoman by saying that these issues should not be communicated with the public, because this is not in line with the political priorities of the RC, this is a direct pressure imposed by the executive power on the work of an independent national human rights institution. Namely, Articles 19 and 27 of the Act on the Ombudsman stipulate that the Ombudsman informs the Croatian Parliament and the public about the perceived and established cases of violation of human rights and freedoms, and about the cases of major violation or threat to human rights or failure to take measures in accordance with the recommendations.

In conclusion, reduction of migration pressure cannot be expected in the near future because the international community has not adequately responded to the causes of migration, which are truly complex, and among others, involve numerous wars and conflicts on the African and Asian continent, as well as long-term insecurity, poverty and fear. The characteristic of all countries to which the migrants arrive, be it transit or destination countries, is reluctance to accept them. This fear is probably also conditioned by the EU's slowness in migration management, as well as by the proposed solutions, which obviously many countries have no confidence in, especially in relation to the proposed measures for unburdening the countries of entry affected by increased irregular entries and applications for international protection, and which, thus far, have not proven effective. Therefore, the majority of countries resort to stricter state border control, however, this does not really slow down migrants on their way to destination countries, but it does put them in the hands of smugglers and traffickers to a much higher extent.

RETURN MEASURES IN ACCORDANCE WITH THE FA IN 2017



Despite increased state border control and a large number of police officers engaged in its protection, data on the number of applicants and irregular migrants in the RC in 2017 does not differ significantly from the ones in 2016. In the RC, 5,512 persons were apprehended in irregular stay, whereas 1,887 applied for international protection, which shows that

closing the borders is not an answer to migration pressure, because it does not take into consideration the migrants' rights, which is why more effort is needed in promoting and advocating legal paths of migration and mobility.

We are aware of the difficulties arising from the territorial approach to the asylum system, which, together with the current framework of the Common European Asylum System and migration management, puts the RC into a difficult position. State border protection, which is also the external border of the EU, as well as the security of all citizens, is extremely important for national security and represents a legitimate political interest as a part of the Schengen evaluation process and assessment of the readiness of the RC to join the Schengen area. However, all activities must be carried out taking into account migrants' rights, especially enabling the access to international protection and individual treatment, in accordance with Article 13 and 14 of the Schengen Code, paired with effective implementation of return measures, in accordance with the FA.

1.6. INTERNATIONAL COOPERATION AND CAPACITIES FOR THE PERFORMANCE OF TASKS OF THE NPM

International Cooperation of the NPM

As in previous years, we were also active on the international level in 2017 and participated in the meetings of the South-East Europe NPM Network and EU NPM Forum.

Within the South-East Europe NPM Network, we participated in conferences in Belgrade on persons with mental disorders in detention, in Podgorica on healthcare in prisons and psychiatric institutions, and at the Network meeting in Belgrade which presented methodologies of work of the national and international bodies for preventing torture and other cruel, inhuman or degrading treatment or punishment.

We also made our contribution at the IPCAN Network Conference in Strasbourg on the topic of "Complaints about Police and Protection of Human Rights in the Context of Anti-Terrorist Policies", we were active at the EU NPM Forum meetings and at the invitation of the Council of Europe we participated in an international conference in Tunisia, focused on strengthening the capacities of newly-established NPMs. At the FRA Conference in Vienna, we participated on the topic of detention of children migrants, on the training of trainers for forced-return monitoring and in the conference on forced return monitoring and annual reviews held in Athens, organized by FRONTEX, ICMPD and FRA.

In 2017, the Office organized two study visits on the NPM work methodology: together with the Slovenian delegation we visited the Zadar Prison, and with the Moroccan delegation we visited the Split Prison and the Detention Unit of the Split-Dalmatia Police Administration. During the fifth regular tour of the RC, we held a meeting with the CPT representatives at the Office of the Ombudswoman, during which they were informed about the issues in the area of NPM activity, and we also maintained regular collaboration with the SPT.

Capacities of the Office of the Ombudswoman for the performance of NPM tasks

In 2017, tasks of the NPM were performed by a total of eight advisors, who also acted on the complaints of persons deprived of liberty, and a new deputy Ombudswoman was appointed. This year, one person was hired at the Department for Persons Deprived of Liberty and NPM in the Split Regional Office, thus strengthening the capacities of the NPM, in accordance with the CAT recommendations.

For special activity of the NPM, HRK 138,781.00 were allocated within the Office's budget from the state budget for 2017, the same as in 2016. The allocation of HRK 153,781.00 is foreseen for 2018, which is 10.8% more than in 2017, not including the expenses for employees.

I. RECOMMENDATIONS:

Persons deprived of liberty who are in the prison system:

1. To the Ministry of Justice, to adapt accommodation conditions in all penal institutions to comply with legal and international standards;
2. To the Ministry of Justice, to investigate in detail all allegations indicating possible torture and inhuman or degrading treatment, including allegations of verbal abuse and use of excessive force;
3. To the Ministry of Justice, to draft a proposal of the amendments to the Act on Execution of the Prison Sentence and necessary amendments to the Criminal Procedure Act that pertains to execution of remand imprisonment;
4. To the Ministry of Justice, to fill in systematized job positions in penal institutions;
5. To the Ministry of Health and Ministry of Justice, to provide supplemental health insurance for all prisoners who meet the requirements at the expense of the state budget;
6. To the Ministry of Justice, to adapt the space and equipment in the medical facilities of penal institutions to comply with the Ordinance on Minimal Conditions in terms of space, staff and medical and technical equipment of medical institutions that provide health care to persons deprived of liberty;
7. To the Ministry of Justice and the Ministry of Health, to make proposals for the necessary legislation amendments that would enable healthcare of prisoners to be covered by the public healthcare system;
8. To the Ministry of Justice, to consider the possibility of hiring a maximum number of people on jobs that do not require special qualifications and medical fitness;
9. To the Ministry of Justice, together with the Ministry of Health, to draft guidelines on the basis of which physicians employed within penal institutions could issue opinions regarding the work of prisoners;

The police system:

10. To the Croatian Government, to propose the establishment of effective civil supervision over police work;
11. To the Ministry of the Interior, to use means of coercion only to the extent necessary to achieve the purpose of their use;
12. To the Ministry of the Interior and the State Attorney's Office, to carry out an effective investigation ex officio of the allegations on possible police violence;
13. To the General Police Directorate, to monitor the implementation of police officers' duty to notify the management on all situations in which coercion measures are used, so that justification of its use could be made;
14. To the Ministry of the Interior, to establish video surveillance in all premises where persons deprived of their liberty are located, and to keep the records for the duration of the deadline in which citizens can file complaints about police treatment;
15. To the Ministry of the Interior and General Police Directorate, to enable medical treatment to detained persons initiated before the deprivation of liberty;
16. To the Ministry of the Interior and General Police Directorate, to consider the introduction of training for police officers specialized in the treatment of persons with mental disorders;
17. To the Ministry of the Interior and General Police Directorate, to adapt accommodation conditions in facilities for persons deprived of their liberty to comply with legal and international standards;
18. To the General Police Directorate, to issue the assessment of justification and legality of the use of coercion measures within 24 hours of receipt of a written report;
19. To the Ministry of the Interior and General Police Directorate, to provide three meals in cases when apprehension lasts for 24 hours;
20. To the Ministry of the Interior and General Police Directorate, to organize work processes so that detention supervisors can only be focused on that one task and not perform tasks at the operational and communication centre at the same time;

Persons with mental disorders who are in psychiatric institutions:

21. To the Ministry of Health, to adapt accommodation conditions in all psychiatric institutions to comply with legal and international standards;
22. To the Ministry of Justice, to draft a proposal of the amendments to the Act on Protection of Persons with Mental Disorders;

23. To the Ministry of Justice and the Ministry of Health, to draft legislation amendments to ensure that the costs of involuntary detention and involuntary institutionalization in a psychiatric institution are paid from the state budget;
24. To the Ministry of Health, for all psychiatric institutions to establish and consistently keep records on the use of coercion measures and on the treatment of persons they are used on;
25. To the Ministry of Health, to systematically organize trainings for healthcare workers on the rights of persons with mental disorders and use of coercive measures;

Homes for the elderly and infirm:

26. To the Ministry of Demographics, Family, Youth and Social Policy, to draft a proposal for necessary legal amendments that would regulate the accommodation within departments of social care institutions, which the users cannot leave voluntarily;
27. To the Ministry of Demographics, Family, Youth and Social Policy, to harmonize the use of coercive measures in social care institutions with the Act on Protection of Persons with Mental Disorders;
28. To the Ministry of Justice and the Ministry of Demographics, Family, Youth and Social Policy, to draft the proposal of necessary legal amendments that would regulate types and ways of using security measures in social care institutions;

Applicants for international protection and irregular migrants:

29. To the Ministry of the Interior, to additionally increase the number of officers at the Department for Asylum in order to speed up the process of issuing decisions regarding the applications for international protection;
30. To the Ministry of the Interior, to urgently take measures for adopting new migration policy;
31. To the Ministry of the Interior, to enable access to international protection to all migrants apprehended within the territory of the Republic of Croatia;
32. To the Ministry of the Interior, to ensure that migrants are fully informed on their rights in a language they understand when issuing decision on return/expulsion;
33. To the Ministry of the Interior, to have in mind the principles laid down by the FA and APA in the return procedures.

II. CONCLUSION

In 2017, no instances of treatment that might constitute torture have been detected; however, we have detected those that potentially constitutes inhuman or degrading treatment as well as breach of constitutional and legal rights of persons deprived of liberty and those with limited freedom of movement. What is especially worrying is the fact that most of the detected problems have already been raised before, including normative shortcomings, inconsistent treatment, lack of compliance of accommodation conditions with legal and international standards, insufficient officials' awareness of human rights and lack of material and human resources. These problems are present within every system for which the National Preventive Mechanism is competent.

In addition, the prison system should improve health care services provided to prisoners by including them in the public healthcare network and by using state budget funds to cover supplementary health insurance for prisoners who meet the requirements. In addition, it is necessary to thoroughly investigate allegations pertaining to torture and inhuman or degrading treatment as well as those regarding use of excessive force or verbal abuse, which is not being done at the moment.

Apart from introducing civil supervision over police activities, it is necessary that the Police Headquarters ensure up-to-date assessment of justification and lawfulness of usage of means of coercion and that the Ministry of Interior and State Attorney's Office conduct ex officio efficient investigations of allegations regarding potential occurrences of police harassment.

A number of persons with mental disorders are still required to pay one part of treatment expenses during their involuntary hospitalization, despite the fact they are unable to freely leave the institution. Such expenses should be financed by the State budget. In addition, it is extremely important that psychiatric institutions establish and duly keep records on the usage of means of coercion as well as on the treatment of persons subject to such measures.

Social welfare system does not regulate either the accommodation of persons in departments of homes for elderly and infirm that cannot leave of their own accord or the types and methods of usage of safety measures within such departments. Application of coercion measures in this type of institutions must be aligned with the Act on Protection of Persons with Mental Disorders.

Croatia has still not drafted a new migration policy, and it is necessary to promptly proceed to its preparation, at the same time ensuring it includes all aspects of contemporary mixed movements, especially integration. It is important, pursuant to applicable regulations and international conventions, to ensure access to international protection for all migrants present on the territory of the Republic of Croatia, as well as to provide them with minimum information on their rights in the language they understand when reaching decisions on return or deportation.

All of the foregoing is contained in a total of 33 NPM recommendations specified in this Report. Their implementation would raise the level of human rights protection for persons deprived of liberty and those with limited freedom of movement as well as the level of rule of law in Croatia, in accordance with the national regulations and international conventions that our country has undertaken to abide by.