

THE EUROPEAN NPM PROJECT

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A COUNCIL OF EUROPE/ EUROPEAN COMMISSION JOINT PROGRAMME:
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The European NPM Newsletter

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TABLE OF CONTENTS

1. European NPM Project.....	4
1.1. Objectives of the Project.....	4
1.2. Recent European NPM Project events.....	4
1.3. Forthcoming European NPM Project activities for 2012	5
2. European NPM Network.....	5
2.1. News from NPMs.....	6
2.1.1. News from the NPM of the Czech Republic	6
2.1.2. News from the NPM of Sweden	6
2.1.3. News from the NPM of "the former Yugoslav Republic of Macedonia"	7
3. United Nations	7
3.1. UN Sub-Committee on Prevention of Torture (SPT) news	7
3.2. Recent OPCAT news.....	8
3.3. Forthcoming OPCAT events	8
3.4. UN Committee against Torture (CAT)	8
3.5. UN Special Rapporteur on Torture.....	8
3.6. World Health Organisation (WHO)	10
4. Council of Europe.....	10
4.1. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	10
4.2. Parliamentary Assembly of the Council of Europe.....	11
4.3. Selected Article 3 cases before the European Court of Human Rights....	11
5. News from NGOs	12
5.1. The Association for the Prevention of Torture, Geneva (APT).....	12
5.2. Penal Reform International (PRI).....	12
5.3. Harm Reduction International.....	14
6. Special topic of this Newsletter Issue: "NPM unannounced visiting methodology"	14
6.1. Introduction	14
6.2. Overview and summary of the replies from the European NPM Network	15
6.3. Contribution from the SPT	17
6.4. Contribution from the NPM of New Zealand	18
7. Additional question asked of the European NPM Network concerning NPM annual report strategy?.....	19
7.1 Question from the NPM of Poland	19
APPENDIX 1.....	20
APPENDIX 2.....	27

INTRODUCTION

The “European NPM Newsletter” is a review of information deemed relevant for National Preventive Mechanisms against torture (NPMs)¹ in the Council of Europe region.

The publication of the “European NPM Newsletter” is part of the “European NPM Project”, which is funded by a joint European Union - Council of Europe Project entitled the “Peer-to-Peer II Project”, with co-funding from the Human Rights Trust Fund².

The European NPM Newsletter has been prepared by the Human Rights Directorate of the Directorate General of Human Rights and Rule of Law at the Council of Europe.

The purpose of the Newsletter is to keep the NPMs aware on an on-going basis of developments regarding their community and thus to nurture an active network of European NPMs.

Each Newsletter Issue covers retrospective news and information, but also contains information on forthcoming activities and events, including those under the European NPM Project, and provides updates regarding the establishment, the legislative bases and the functioning of NPMs in the Council of Europe region. In addition, each Newsletter Issue presents an issue considered to be of topical concern for the European NPM Network for discussion by members of the Network and associated experts.

NPMs are cordially invited to contribute to the “European NPM Newsletter” by sending information they wish to see circulated to francesca.gordon@coe.int. The Newsletter is sent to subscribers electronically.

The Directorate General of Human Rights and Rule of Law of the Council of Europe is responsible for the selection of news items and drafting of case summaries presented in the Newsletter. Other contributors are responsible for materials sent in for inclusion in the Newsletter from the European NPM Network. The compilers of the Newsletter retain the discretion to make linguistic changes for clarity if necessary.

Observations and proposals as to the format of the Newsletter are very welcome.

We hope that you will find this European NPM Newsletter to be of use and interest.

Francesca Gordon

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¹ As foreseen by the Optional Protocol of the UN Convention Against Torture (OPCAT). OPCAT obliges State parties to set up an NPM within one year of ratification.

² The Human Rights Trust Fund (HRTF) was established in March 2008 as an agreement between the Ministry of Foreign Affairs of Norway as founding contributor, the Council of Europe and the Council of Europe Development Bank. Germany and the Netherlands have joined in as contributors.

1. European NPM Project

1.1. Objectives of the Project

The Directorate General of Human Rights and Rule of Law of the Council of Europe has developed the European NPM Project with the aim to create an active network of the NPMs in the Council of Europe region to foster peer exchange and provide a forum for cooperation between this network and international actors, such as the United Nations Sub-Committee on the Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT). The ultimate guiding principle is to strengthen the prevention of torture at national level in all Council of Europe member States.

The project focuses on four main areas of activity:

- Creating an active network of NPMs in Europe to foster peer exchange, critical reflection and creative thinking on NPM work;
- Promoting awareness of CPT and SPT standards and working methods within the European NPM network;
- Promoting the cooperation between the SPT, the CPT and the NPMs; and
- Promoting the ratification of the OPCAT and the establishment of OPCAT compliant NPMs where they do not exist.

The European NPM Project is managed by the Directorate of Human Rights of the Council of Europe. The Association for the Prevention of Torture (APT), a non-governmental organisation with longstanding, universal experience in torture prevention, is the Implementing Partner for the Project. Silvia Casale from the UK, who combines experience as former President of both the CPT and the SPT, serves as the Project Adviser.

1.2. Recent European NPM Project events

European NPM Project 8th Thematic NPM Workshop: “the immigration removal process and preventive monitoring”, Geneva, 20-21 March 2012

European NPM Project’s 8th Thematic NPM Workshop on “the immigration removal process and preventive monitoring” was held in Geneva on 20-21 March 2012. This two-day NPM thematic workshop, hosted by the National Commission for the Prevention of Torture (the NPM of Switzerland), was geared at NPMs and international monitoring bodies, as well as thematic experts, involved in the monitoring of risks of torture or ill-treatment during the removal process and the deportation of irregular migrants. The workshop involved those experts working together with members of the SPT, the CPT, the APT as well as representatives from the European Commission, the International Organisation for Migration and expert medical doctors. Representatives of a Russian Public Monitoring Committee of places of detention (PMC) and of the nascent NPM of Austria attended as observers. The workshop comprised two days of discussions on the sharing of NPM methodology and key issues encountered by all preventive monitoring bodies while monitoring all stages of the removal process, focusing in particular on medical issues that could arise during deportation and on the role of the monitoring doctor during the removals process; the use of force during the whole removal process; and the NPM mandate and the EU Returns Directive status. A debriefing paper is currently under preparation and will be circulated to all participants shortly, and will be available on the Council of Europe NHRS Unit website.

European NPM Project: “Discussions on co-operation concerning the establishment of an OPCAT-compliant NPM in Ukraine”, Kyiv, 6 March and 2 April 2012

The Ukrainian Authorities officially requested the Council of Europe European NPM Project team’s assistance in the preparation of legislation for the establishment of an effective and independent NPM in Ukraine. The European NPM Project team, along with a small group of selected international torture prevention experts, started work on this in March 2012 and organised two working meetings in Kyiv (6 March and 2 April 2012) with the Ukrainian Presidential Administration. Co-operation is ongoing. The advice and proposed amendments from the Council of Europe group of experts has been taken into consideration by the Ukrainian authorities. Dialogue concerning the finalization of the draft proposals between the

CoE experts and the Ukrainian authorities was held following the two meetings. The draft law is due to be submitted to the Parliament in early May 2012.

“Methodology for visits by members of national parliaments to places of detention of irregular migrants and asylum seekers in Europe”, Strasbourg, 25 April 2012

The Parliamentary Assembly of the Council of Europe has set up a Sub-Committee to look at issues concerning detention of irregular migrants and asylum seekers. One area which the Sub-Committee plans to look at is the role of Parliamentarians in visiting places of detention of irregular migrants and asylum seekers. Within the Secretariat of the Council of Europe there is already a great deal of expertise on the issue of visits to places of detention, not only in the CPT (Committee for the Prevention of Torture) but also in the Office of the Commissioner for Human Rights, the Secretariat of the Assembly as well as in the newly established Migration Co-ordination and the European NPM Project team in DG I that has set up and is nurturing a network of all the National Preventive Mechanisms against torture that exist in Council of Europe member States. Members of the Secretariat met together on Wednesday 25 April to discuss with members of UNHCR, ICRC and APT (Association for the Prevention of Torture) how to assist Parliamentarians in carrying out visits to detention centres for irregular migrants and to examine the possibility of working with Parliamentarians on a handbook and practical training courses for those of them who wish to conduct visits to such places. As a result of the interest shown by participants at the meeting, it was decided to hold a follow up meeting during the June Part Session of the Assembly to see how to develop further the ideas put forward.

See: http://www.coe.int/t/dghl/cooperation/capacitybuilding/nhrs_en.asp

1.3. Forthcoming European NPM Project activities for 2012

Timetable of European NPM Project Activities in 2012

2. European NPM Network

Hosted by NPM or other body	NPM Heads and Contact Persons' meetings	Thematic Workshops & Inter-NPM thematic workshops	Project On-site Visits & Exchange of Experiences; and Inter-NPM activities	European NPM Project IMAP activities	Promoting the establishment of OPCAT - compliant CoE region NPMs
NPM of Spain				June 2012 IMAP exchange, An exchange between the Spanish NPM external medical experts with members of the IMAP.	
NPM of Serbia		12-13 June 2012, Belgrade. Workshop on: irregular migrants, Frontex and NPMs.			
European NPM Project Independent Medical Advisory Panel (IMAP)				Ongoing IMAP advice provision to NPMs on systemic medical issues of concern.	

2.1. News from NPMs

2.1.1. News from the NPM of the Czech Republic

'The Czech NPM held at Chamber of Deputies a Seminar dedicated to its findings from systematic visits of Facilities where institutional and protective education of children takes place. The Seminar took place on 5 April 2012. Its participants were among experts within social-care protection of child, heads of facilities for children, representatives of regions and municipalities, deputies and other experts that are engaged in care of children. The Czech NPM Pavel Varvarovsky pointed out that Czech children often end in institutional care unnecessarily, the facilities are not always suitable for this purpose and they lack personnel and specialised care.

Varvarovsky proposed that the care for endangered children go under the control of a single ministry and that prevention be upgraded so that children need not be placed in children's homes at all. The institutions themselves should be transformed into facilities of a family type, in which special care would also be provided to children with various handicaps. Placing an endangered child in substitute institutional care is a rule in the Czech Republic, far from exceptional, though it should be the last possible solution. Many children end in institutions for social reasons and due to their families' bad housing conditions. This can be solved by offering social housing to the families, for example.

The Czech NPM stressed that the authority for social and legal protection of children is overburdened, with the staff often failing to fulfil even their duties set by the law. The shortage of staffers hampers, if not entirely prevents, the state's social work with the families. The Czech NPM explained why so many children end in institutions, without social workers and the families concerned jointly trying to find another solution. Little regards are taken of ties between siblings. Children's home buildings are often unsuitable, either because they have too large capacity of beds or they are located in towns' outskirts, which excludes their small inmates from social life in their town. The children often share many-bed rooms, in bathrooms there are showers without curtains to draw, and the children's privacy is thus minimal.

In some facilities it sometimes occurred that under certain conditions a child was prevented from going out for a few days in a row as a result of correctional measures or the child's stay in medical isolation on its return after an escape. Sometimes children were punished for banalities such as exchanges of written messages between boys and girls, hair cutting or a refusal to watch news on TV.

The Czech Republic is short of special facilities for kids with a serious conduct disorder. The situation may further deteriorate in view of the Education Ministry's decision to reduce the number of staff at all facilities by 15 percent. Within the 10.5 million population of the Czech Republic, some 11,000 children are growing up in institutions, for which the country has been repeatedly criticised by international organisations. Planned new legislation is to change the system of care. Money should be transferred from the expensive institutional care to projects in support to children's own and foster families.'

2.1.2. News from the NPM of Sweden

On 12-14 September a multi-country seminar will be held in Stockholm. The seminar is being arranged by the EU (DG Enlargement). The seminar is intended for participants from the Ombudsman institutions, Data Protection Commissions and/or Access to public information agencies in all 9 enlargement countries. Migration and the role of Ombudsmen (and most likely NPMs) in monitoring conditions in detention centers for immigrants is one of the issues that will be dealt with.

A delegation from the Finnish Ombudsman will visit Stockholm in June as part of an exchange of experiences between the Swedish Ombudsman and the Finnish Ombudsman (mainly focusing on Opcat issues).

2.1.3. News from the NPM of "the former Yugoslav Republic of Macedonia"

Joint on-site visit with the Spanish NPM

On 23 April 2012, the NPM for „the former Yugoslav Republic of Macedonia“ conducted a joint on-site visit with two members of the Spanish NPM to the police station in Kavadarci („the former Yugoslav Republic of Macedonia“). The visit was carried out under the auspices of the Ombudsman twinning project implemented in cooperation with the Spanish Ombudsman and the French Mediator. The aim of the visit was sharing experience and methodology tools when visiting place of deprivation of liberty.

3. United Nations

3.1. UN Sub-Committee on Prevention of Torture (SPT) news

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment published its fifth annual report

On March 19 2012 the SPT published its fifth annual report . This report is the first to cover the work of the expanded Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Subcommittee) of 25 members – making the Subcommittee the largest of the United Nations human rights treaty bodies. The 5th annual report focuses on highlighting recent developments, introducing some matters of concern to the Subcommittee, setting out its position regarding a number of substantive issues and, finally, casting a forward look to the year ahead. According to the report, the Subcommittee carried out three visits in 2011 - from 16 to 25 May 2011 to Ukraine, from 19 to 30 September 2011 to Brazil, and from 5 to 14 December 2011 to Mali. Further summary information on all these visits, including lists of places visited, may be found in the press releases issued following each visit and which are available on the Subcommittee's website. The Subcommittee has also established and maintained contact with NPMs, in fulfilment of its mandate under article 11 (b) of the Optional Protocol. During its sessions in 2011 the Subcommittee held a meeting with the Estonian, Georgian, Honduras and Costa Rican NPMs as well as with the Senegalese authorities in order to discuss measures taken to enable the designated NPM to become operational.

As regards the Subcommittee's working practices there have been some organisational developments in the SPT. Led by the Subcommittee Chairperson, and reporting to the Plenary, the four Vice-Chairpersons now exercise primary responsibility for distinct areas of activity: Mr. Coriolano: National Preventive Mechanisms, Mr. Hajek: Visits, Ms. Jabbour: External Relations, Ms. Muhammad: Jurisprudence. In addition to the change in the modus operandi of the Bureau, the Subcommittee has now established regional task forces to enable more meaningful and structured engagement with NPMs. For the purposes of its internal work, the Subcommittee has divided States parties into four broad regions; Africa, Latin America, Asia-Pacific and Europe. Each of these task forces is headed by a Regional Focal Point, and is assisted by an NPM Team. Additional working groups have been established that will be responsible for leading and co-ordinating the Subcommittee's activities in relation to countries already visited by the Subcommittee. The Subcommittee is hopeful that this change will make its work with NPMs and State Parties more constructive and active.

During the year 2011 the Subcommittee has identified a number of issues in the course of its visits, which it wishes to highlight, and upon which it is reflecting. To assist in these reflections the Subcommittee has produced a number of papers which are summarized in the annual report. Such papers deal with following topics: „Mental health and detention“, „Preventing torture in prisons through the application of judicial procedural control and due process standards“ and „The right to development and the prevention of torture“.

In chapter V of the annual report the Subcommittee sets out its current thinking on a number of issues of significance to its mandate. Specific attention is paid to such issues as the importance of human rights education in the prevention of torture and the correlation between

legal aid, a system of public defence and prevention of torture. Both of those subchapters give NPMs good guidance regarding the planning of their activities in corresponding fields.

Regarding its work for the year 2012, the Subcommittee has identified a range of issues which it wishes to explore in its next phase of work. These include substantive issues concerning: torture in the prison context; the relationship between traditional justice of indigenous peoples; the prevention of torture and the detention of migrants. Organisational and procedural issues to be explored include: harmonising means of working with other bodies; determining the means for giving effect to article 16 of the Convention where States fail to cooperate, and the circumstances in which such action will be appropriate; exploring the possibility of building relationships with regional human rights bodies; and developing criteria through which States can access the Special Fund.

At the fifteenth session of the Subcommittee in November 2011, it was decided that the Subcommittee will conduct six country visits in 2012. The States parties to be visited are Argentina, Gabon, Honduras, Kyrgyzstan, Republic of Moldova and Senegal. In the case of Honduras, Republic of Moldova and Senegal, the Subcommittee will principally address issues regarding National Preventive Mechanisms (NPMs), as provided for under the Optional Protocol.

By Mari Amos, SPT member, Head of European NPM working group, SPT focal point for Europe

3.2. Recent OPCAT news

The Philippines acceded to the OPCAT on 17 April 2012.

3.3. Forthcoming OPCAT events

The SPT will hold their 17th Plenary session from 18 to 22 June 2012, for more information please see: <http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>

3.4. UN Committee against Torture (CAT)

Forthcoming event:

Committee against Torture's 48th session (7 May to 1 June 2012), for more information please see: <http://www2.ohchr.org/english/bodies/cat/cats48.htm>

3.5. UN Special Rapporteur on Torture

Commissions of inquiry can't fight impunity on their own – UN Special Rapporteur on torture, Geneva 5 March 2012

The United Nations Special Rapporteur on torture, Juan E. Méndez, said that commissions of inquiry into torture and other forms of ill-treatment are effective tools in the fight against impunity. However, he stressed, "a commission of inquiry by itself is never sufficient to fully satisfy a State's obligations under international law."

"Commissions of inquiry are strong and flexible mechanisms that can yield ample benefits for Governments, victim communities and the wider public," Mr. Méndez noted in his main report* to the UN Human Rights Council, "but they do not relieve States of their legal obligations to investigate and prosecute torture, and to provide effective remedies to victims of past violations, including reparation for the harm suffered and to prevent its reoccurrence."

Unlike other mechanisms commonly engaged in the aftermath of allegations of torture, such as criminal investigations and prosecutions, commissions of inquiry provide unique opportunities for a deeper understanding of the underlying context in which violations were committed, review of governmental policies, practices and institutional shortcomings, truth-telling and contributing to the healing of victim communities, and independent expert recommendations on reparation and guarantees of non-repetition.

Commissions of inquiry can also play an integral role in providing impetus and eventually facilitating the formal investigation of current systems or legacies of torture and other forms of

ill-treatment, and pave the way to effective and fair prosecutions. "Where possible," he says, "the possibility of national commissions of inquiry ought to be pursued before the establishment of an international commission."

"In these ways, commissions of inquiry may aid States in the fulfillment of their international legal obligations when allegations of torture and other forms of ill-treatment arise," the Special Rapporteur said, stressing nonetheless that "in the absence of judicial mechanisms, a commission of inquiry alone will not satisfy a State's obligations."

The report aims at generating further discussion of the standards that apply to the establishment and conduct of commissions of inquiry, and the relationship between such commissions and the fulfillment by States of their international legal obligations with regard to torture and other forms of ill-treatment.

The report will be further discussed in Geneva at a side event on "Accountability for human rights violations by States in the context of national security and countering terrorism". His report to the General Assembly will also be highlighted at a side event on "Solitary confinement and its human rights implications".

(*) Read the full report by the Special Rapporteur: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-61_en.pdf

For more information and media requests, please contact Ms. Sonia Cronin (+41 22 917 91 60 / scornin@ohchr.org) Ms. Yiyao Zhang (+41 22 917 91 58 / yzhang@ohchr.org) or write to sr-torture@ohchr.org.

Bahrain: UN human rights experts urge immediate release of Abdulhadi Al-Khawaja, Geneva, 13 April 2012

Four United Nations human rights experts on Friday urged the Government of Bahrain to immediately release human rights defender Abdulhadi Al-Khawaja who is serving a life sentence handed down by a military court on terrorism-related charges. The call comes amid serious concerns about the lack of due process and fair trial guarantees.

The National Safety Court, a military court, sentenced Al-Khawaja to life imprisonment on 22 June 2011, after his trial alongside a group of more than 20 human rights defenders. An appeal was rejected by the National Safety Court of Appeal on 28 September 2011. Al-Khawaja's case is now being reviewed by the Court of Cassation which is due to deliver its verdict on 23 April.

"I am seriously concerned that Mr. Al-Khawaja's trial and sentence are linked to his legitimate work to promote human rights in Bahrain," said Margaret Sekaggya, the Special Rapporteur on human rights defenders. "This case is sadly emblematic of the overall treatment of human rights defenders in Bahrain."

Maina Kiai, the Special Rapporteur on the rights to freedom of assembly and association expressed similar concerns about Mr. Al-Khawaja's detention being directly linked to his human rights activities in the context of the on-going protests in Bahrain.

"Any restriction to the exercise of the right to freedom of peaceful assembly must be proportional and must be closely reviewed with respect to its necessity and reasonableness," Mr. Kiai.

"Restrictions on the right to peaceful assembly on the grounds of national security should not be used to suppress the legitimate activities of human rights defenders and activists."

Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers, expressed grave concern about the trial of Al-Khawaja and other human rights defenders who were collectively tried before a military court despite being civilians. It is alleged that the group was held for a significant period of time in incommunicado detention before being allowed to seek legal counsel. Allegations that the defendants made confessions under duress have reportedly not been investigated and evidence obtained under torture was reportedly not excluded from the trial – in contravention of international law.

"The lack of due process which was alleged during the trials must be addressed by the court where his case is currently under review," Ms. Knaul stated.

The Special Rapporteur on torture, Juan E. Mendez, added that: "The Government of Bahrain has failed to take necessary measures to ensure the physical and mental integrity of Mr. Al-Khawaja in accordance with the Standard Minimum Rules for the Treatment of Prisoners."

Mr. Al-Khawaja has been on hunger strike since 8 February 2012. Despite assurances expressed by Bahraini authorities, reports and photos documenting his poor state of health continue to emerge.

"In view of the urgency of the matter, we strongly call on the Government to seriously reconsider the offer by Denmark to transfer Al-Khawaja, a dual citizen of Denmark and Bahrain, on humanitarian grounds, for medical treatment to Denmark," the experts urged.

Report to the Human Rights Council of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - A/HRC/19/61

On 18 January 2012, the most recent report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Prof. Juan E. Méndez, was published. Please see the report at: <http://www.ohchr.org/Documents/Issues/SRTorture/A-HRC-19-61.pdf>

3.6. World Health Organisation (WHO)

WHO has recently published its world report on disability which could be of significant interest and use to NPMs when carrying out their monitoring. The recent WHO report explains the different aspects regarding disability and environment, healthcare, amongst other issues. Report available at: http://www.who.int/disabilities/world_report/2011/report/en/index.html

WHO has recently published three short films that look at health in prisons in Azerbaijan, Denmark and Kyrgyzstan, and three snapshots offer an overview of health-related issues in the Belgian, Slovenian and Swiss prison systems. Available at: <http://www.euro.who.int/en/what-we-do/health-topics/health-determinants/prisons-and-health/news/news/2012/02/are-prisons-in-europe-healthy>

4. Council of Europe

For the 60th anniversary of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), the Directorate of Communication, in cooperation with many of the Directorates of the Council of Europe, has launched a website dedicated to the ECHR. The aim of the website is to make information on the ECHR's content and impact on daily life more accessible and available to the general public; it also has an educational aspect for students and actors in the field of human rights. The website is structured so as to allow easy access to all relevant resources and information concerning the ECHR.

The website is available in English and French: <http://human-rights-convention.org/>

4.1. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

Ukraine: Council of Europe concerned about ill-treatment by the police and detention conditions (12.03.2012)

The CPT expressed on 12 March 2012 concern over the treatment of persons deprived of their liberty by the police in Ukraine. Visiting police and pre-trial establishments from 29 November to 6 December 2011, the CPT delegation received numerous allegations from detained persons (including women and juveniles) that they had been subjected to physical ill-treatment at the time of arrest or during subsequent questioning by police officers. In a number of cases, the ill-treatment alleged was of such a severity that it could be considered to amount to torture. The CPT delegation called on the authorities to put an immediate end to the practice of handcuffing patients to hospital beds and to respect confidentiality of medical examinations. It also emphasised that the right to inform a close relative or another person of one's custody, the right of access to a lawyer and a doctor should be applied from the very outset of custody ([Read more](#)).

CPT published report on Bulgaria (15.03.2012)

The CPT published on 15 March 2012 the [report](#) on its visit to Bulgaria in October 2010, and the [response](#) of the Bulgarian authorities. The majority of the persons interviewed by the CPT's delegation said that they had been correctly treated by the police. Nevertheless, a considerable number of persons alleged physical ill-treatment at the time of their apprehension. In a few isolated cases, the delegation heard allegations of the infliction of electric shocks. The CPT welcomed an instruction aiming at setting up special police rooms equipped for making full electronic recording of questioning. However, the Committee also recommended that police officers are trained in acceptable interviewing techniques and that a code of conduct of police interviews be drawn up. It also reiterated the need to improve the screening for injuries and their reporting to the competent authorities ([Read more](#)).

CPT published report on Albania (20.03.2012)

The CPT published on 20 March 2012 the [report](#) on its visit to Albania in May 2010, together with the [response](#) of the Albanian authorities. The majority of the persons interviewed by the CPT delegation stated that they had been correctly treated by the police. However, a significant number of persons (including many juveniles) claimed that they had been subjected to ill-treatment (e.g. slaps, punches, kicks or truncheon blows) at the time of their apprehension or during questioning by police officers. Material conditions of detention were poor in most of the police establishments visited (dilapidated cells, very limited or no access to natural light, dim artificial lighting and poor ventilation). In their response, the Albanian authorities indicate that various police detention facilities were being renovated or completely reconstructed ([Read more](#)).

4.2. Parliamentary Assembly of the Council of Europe

“Methodology for visits by members of national parliaments to places of detention of irregular migrants and asylum seekers in Europe”, Strasbourg, 25 April 2012

The Parliamentary Assembly of the Council of Europe has set up a Sub-Committee to look at issues concerning detention of irregular migrants and asylum seekers. One area which the Sub-Committee plans to look at is the role of Parliamentarians in visiting places of detention of irregular migrants and asylum seekers. Within the Secretariat of the Council of Europe there is already a great deal of expertise on the issue of visits to places of detention, not only in the CPT (Committee for the Prevention of Torture) but also in the Office of the Commissioner for Human Rights, the Secretariat of the Assembly as well as in the newly established Migration Co-ordination and the European NPM Project team in DG I that has set up and is nurturing a network of all the National Preventive Mechanisms against torture that exist in Council of Europe member States. Members of the Secretariat met together on Wednesday 25 April to discuss with members of UNHCR, ICRC and APT (Association for the Prevention of Torture) how to assist Parliamentarians in carrying out visits to detention centres for irregular migrants and to examine the possibility of working with Parliamentarians on a handbook and practical training courses for those of them who wish to conduct visits to such places. As a result of the interest shown by participants at the meeting, it was decided to hold a follow up meeting during the June Part Session of the Assembly to see how to develop further the ideas put forward. See: http://www.coe.int/t/dghl/cooperation/capacitybuilding/nhrs_en.asp

4.3. Selected Article 3 cases before the European Court of Human Rights

Summaries of selected Article 3 cases for March 2012 can be found in Appendix 2.

[Melnitis v. Latvia](#) (application no. 30779/05) (Importance 2) – 28 February 2012 – Violation of Article 3 (substantive) – Poor conditions of detention in Valmiera Prison

[Samaras and Others v. Greece](#) (no. 11463/09) (Importance 2) – 28 February 2012 – Violation of Article 3 – Poor conditions of detention in Ioannina Greek Prison

[Austin and Others v. the United Kingdom](#) (nos. 39692/09, 40713/09 and 41008/09) (Importance 1) – 15 March 2012 – No violation of Article 5 – Measures of containment of a group of people

carried out by police on public order ground does not amount to a deprivation of liberty as long as the measures are unavoidable, necessary to avert a real risk of serious injury or damage and are kept to the minimum required for that purpose

[Parascineti v. Romania](#) (in French only) (no. 32060/05) (Importance 2) – 13 March 2012 – Violation of Article 3 – Domestic authorities' failure to provide the applicant, diagnosed with mental disorders, with specialised treatment and a minimum standard of hygiene in prison

[C.A.S. and C.S. v. Romania](#) (no. 26692/05) (Importance 1) – 20 March 2012 – Violation of Articles 3 and 8 – Domestic authorities' failure to conduct an effective investigation into allegations of violent sexual abuse and to ensure adequate protection of the applicant's private and family life

5. News from NGOs

5.1. *The Association for the Prevention of Torture, Geneva (APT)*

APT Annual Report 2011

The APT has published their Annual Report 2011 - Rapport Annuel 2011 where "2011 was an exceptional year for the APT, marked by the Global Forum on the prevention of torture and a renewed focus on quality partnerships." Available for download from the APT's website at: <http://www.apr.ch/>

APT OPCAT Briefing Series - October 2012 Elections to the Subcommittee on Prevention of Torture Guidance on the selection of candidates at the domestic level

The UN Subcommittee on Prevention of Torture (SPT) is the largest and most operational UN treaty body. It comprises 25 independent experts and elections take place once every two years to renew the membership. The next elections will take place in October 2012 in Geneva, Switzerland. To assist national actors in identifying the best candidates at the domestic level, the APT has published: Guidance on the selection of candidates at the domestic level - it describes the role of an SPT member, the practical aspects of the mandate, the specific skills and expertise needed to be an SPT member as well as guidance on the selection process at the domestic level.

Available in English and French at: <http://www.apr.ch/>

APT e-Bulletin N°18, March 2012

The APT has publishes in March its e-Bulletin with a focus on issues regarding detention of migrants. See <http://www.apr.ch/> for more details.

APT OPCAT News Briefing, November 2011 - March 2012

The APT OPCAT Briefing is a review of important issues regarding the ratification and effective implementation of the Optional Protocol to the Convention Against Torture, which have been brought to the attention of the Association for the Prevention of Torture. It is published every two months. www.apr.ch

5.2. *Penal Reform International (PRI)*

Torture Prevention

Georgia: Regional forum on torture prevention

PRI's South Caucasus Regional Office, in co-operation with the OSCE Office for Democratic Institutions and Human Rights (ODIHR), is organising a regional forum on 22-23 March in Tbilisi. The forum will focus on pressing issues in the field of torture prevention, the effectiveness of existing monitoring mechanisms and the possibilities for their further improvement. The importance of the psycho-social rehabilitation of torture victims and the obligations of states in this regard will also be discussed. Participants will include government officials, representatives of the National Preventive Mechanisms and local civil society

organisations, including public oversight mechanisms. International experts, including a UN Subcommittee on Prevention of Torture member, will also provide their input. Read more at <http://www.penalreform.org/news/regional-forum-combating-and-preventing-torture-and-ill-treatment>

Ukraine: Human Rights School

Last month PRI ran an event for 20 participants from 12 regions, as part of its torture prevention project, in cooperation with the local Association of Ukrainian Human Rights Monitors on Law Enforcement Bodies. All attendees had experience of monitoring visits to closed institutions. The programme combined Russian and Ukrainian materials for training public prison monitors and covered topics including international human rights standards, the history and principles of public monitoring, teamwork and effective interaction, and cases of human rights violations. It was also an opportunity to showcase films on the death penalty and carry out role plays to strengthen communication skills. 90% of the participants evaluated the training as extremely useful and informative and were very satisfied with the trainers.

UN HRC: Solitary confinement debated at side event

PRI co-hosted with ACLU a side event to the 19th session of the Human Rights Council, which featured as key speaker the UN Special Rapporteur on Torture, Juan Mendez. The issue of solitary confinement was likened to inhuman and degrading treatment, and all panellists called for its prohibition. Several countries in Europe were criticised for still using the treatment for up to a year and for pre-trial prisoners, and Justice Renate Winter described the devastating panic experienced by children who were not told for how long they would be isolated. See http://www.penalreform.org/files/UNsolitaryconfinement_flier.pdf for more details.

PRI hosts regional forum in Georgia on the prevention of torture in 9 CIS countries

From 22 - 23 March, PRI hosted a regional forum on torture prevention and rehabilitation in Tbilisi within the framework of PRI's project on Strengthening institutions and building civil society capacity to combat torture in 9 CIS countries. The project is funded by the European Union. The regional forum focused on pressing issues in the field of torture prevention, the effectiveness of existing monitoring mechanisms and the possibilities for their further improvement. The importance of the psycho-social rehabilitation of torture victims and the obligations of states in this regard was also discussed. Participants included government officials, representatives of the National Preventive Mechanisms and local civil society organisations, including public oversight mechanisms. International experts represented the OSCE/ODIHR, OSCE country offices in Armenia and Azerbaijan, the UN Subcommittee on Prevention of Torture, OSI Budapest office, the UN OHCHR regional office, CoE office as well as the EU delegation in Georgia. Read the [report of the conference](#).

PRI conducts training in Kiev to build civil society capacity to monitor places of detention

From 26-29 March 2012, 37 participants from 12 countries gathered in Kiev for a workshop, sponsored by the Open Society Institute and designed to build the capacity of civil society organisations to monitor human rights standards in places of detention, and to advocate and campaign for improvements based on their findings. Penal Reform International and our partner Public Advocate, Ukraine, organised the event jointly and it included visits to women's, men's and children's facilities. [Read more](#) on the PRI website.

PRI Newsletter №10 for Russia, Ukraine and Belarus - detailing the latest news and events in PRI's project, available on PRI's website

The Public Defender demands preliminary investigation concerning the ill-treatment case

The Public Defender of Georgia has addressed the Chief Prosecutor of Georgia with a proposal to launch a preliminary investigation into the facts of ill-treatment carried out by

employees of Penal Establishment No. 18 against convict G. Okropiridze. On December 24, 2011, representatives of the Public Defender visited Medical Establishment No. 18 where they met and talked with convict Giorgi Okropiridze. According to G. Okropiridze, in connection with the criminal case and due to health problems, in April 2011 he addressed the European Court of Human Rights. In October, the European Court sent a directive on administering treatment to him.

On December 1, 2011, the convict was transferred to Medical Establishment No. 18. As he explained, since the day he was transferred to Establishment No. 18, he has been systematically subjected to physical and verbal assault and threatened by the Head of the Regime Service of the establishment, Aleksandre Tolordava, the Head of the Security Service of the establishment, Giorgi Avsajanishvili, and other employees. The Head of the Social Service, Zurab Bulbulashvili, also threatened him with adding punishment.

The facts of ill-treatment carried out against G. Okropiridze are described in detail in his explanatory note which the Public Defender has sent to the Chief Prosecutor's Office.

Source: www.ombudsman.ge

5.3. Harm Reduction International

Harm Reduction International's newly published publication on the statistics of women in prisons in Europe and Central Asia for drug offences is available to download. The research includes 51 states across the region. Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the need for Legislative and Sentencing Reform,' Eka Iakobishvili, Harm Reduction International, March 2012. Available here at: http://www.ihra.net/files/2012/03/10/IHRA_WomenInPrisonReport_Web.pdf

Please see press release in English below; Russian version of the press release and the publication itself are available from: <http://www.ihra.net/contents/1179>

6. Special topic of this Newsletter Issue: “NPM unannounced visiting methodology”

6.1. Introduction

The thematic section for this Newsletter is based on the area of visiting ad-hoc/unannounced after normal working hours and on NPM experiences. The aim of this thematic topic is to explore the issues and experiences of each NPM associated with visiting ad hoc after normal working hours, how often night-time – or weekend – ad hoc visits are conducted in practice, and examine any issues concerning any of the main problems and challenges encountered by the NPMs of the European NPM Network. The thematic focus is to enable a glimpse at NPMs' own systems, internal guidelines, experiences and views concerning issues that could arise when visiting unannounced at times: when there is a staff change-over from day to night or when there might be less staff around; any specificities of the night staff; whether the management and staff are aware of the NPMs' mandate to visit at any time; whether any obstacles are encountered when visiting at this time; and generally what the issues and risk areas are when places of detention are generally quieter.

The Council of Europe's European NPM Project team sought to understand the European NPM Network's collective experience and views on this topic and posed a series of seven questions to the Network.

Questions centred on the freedom to access the institutions after hours: do the NPMs have effective and unhindered access at night or over the weekend/Sunday to conduct unannounced/ ad hoc visits? What was the average team size for an NPM on an unannounced after-hours visit? The NPM Network was also asked whether they had the ability to, under national law, bring along external/contracted experts for an ad hoc night or weekend visit.

The European NPM Network was then asked whether in the NPMs' experience they found that the institutions' management and staff that were visited after hours on an unannounced basis were aware and well-informed of the NPM's mandate and right to enter all premises

whenever, day or night. Questions were also posed to the NPM community on if and how they later communicated with the management to clarify the need for such a visit.

Lastly, the European NPMs were asked how often in practice, per month and/or per year, did they conduct night-time or after hours weekend unannounced visiting. Overall approximately what percentage of all NPM unannounced visiting are conducted at night / after normal working hours?

Many NPMs of the European NPM Network responded with full and insightful contributions on their views and experiences to the above questions posed on this topic and their responses are summarised in an overview below. The full answers are appended to this Newsletter in Annex I.

6.2. Overview and summary³ of the replies⁴ from the European NPM Network

Access: do NPMs have **effective and unhindered access at night** or over the **weekend/Sunday** to conduct **unannounced/ ad hoc visits**?

All NPMs have the ability to make ad hoc unannounced visits after hours, and in the replies received of those responding NPMs of the Network, with one exception, all undertake such visits in practice. The number of such visits undertaken however varies among the NPMs. Further, there are few obstacles or hindrances encountered to these visits, and in the main, NPMs have said that they generally have effective and unhindered access at night and weekends to all premises. An NPM flagged that if there are delays in getting access, the delays are noted in the Visit Report Form.

Some NPMs differentiated the places of deprivation of liberty in their answers, in the case of police cells, one NPM did not face any difficulties in carrying out unannounced visits at night and such visits are conducted occasionally. However in other facilities, such as psychiatric hospitals, social-care institutions or protective education, the approach of one NPM was different. In these cases the NPM started a usual unannounced visit during normal working hours and then, if it seemed relevant, an investigation at night was later continued – without prior notice. For another NPM, visits are systematically unannounced for police stations, and some of the NPM staff choose to start the visit at night, in order to get the opportunity to see the functioning of the custody at night and to talk to persons held in custody.

Another NPM has so far conducted only 2 after-working-hours regular unannounced visits to places of deprivation from liberty, both to police stations and both carried out on a Friday between 17:00-21:00 hrs. The regular methodological steps were followed during the visits and the NPM conducted the initial talk with management at the time of the visit. However, the NPM was not able to review two out of 4 police registries that are standard part of their visit methodology, i.e. the Registry for the use of means of restraint and the Registry for complaints submitted by the citizens are kept locked by the Deputy Chief of the police stations, who at the time of visit (after the regular working hours), was not at work.

One NPM stated that it does announced, un-announced and semi-unannounced after normal hours visits. An example of semi-unannounced was for a thematic report on Night Security in the Prison System, a few weeks before the inspection was carried out all prisons in the NPM's country received a letter with a general announcement that the NPM was planning a visit. The names of the prisons that were to be visited were not announced.

Once in, do NPMs have the ability to move quickly and freely in all premises, or are various areas inaccessible at night/after working hours?

Many NPMs responded that in all premises they can move freely without any impediment or delay, all the while taking into consideration the respect to the comfort and dignity of inmates or detainees if they take rest or sleep. Most NPMs generally find that all areas accessible at day are accessible also at night. One NPM however pointed out that while all areas of a given the place of deprivation of liberty are accessible at night/after working hours, the biggest area of inaccessibility after hours in practice is the detainees themselves as most are asleep and individuals are not woken unless there are concerns raised by the NPM.

What is the average NPM team size for a night ad hoc visit?

³ Summary of NPM responses prepared by Francesca Gordon, European NPM Project Manager.

⁴ Full replies to the special topic of surveillance for this Newsletter Issue are listed in Appendix 1.

Generally for all the responding NPMs, the total number of NPM visiting staff per visit ranges from 2 to 4 persons, with an average of 3 persons; on the whole a night visit team is the same size as a day visit/normal working hours visit.

Do NPMs bring along external/contracted experts for an ad hoc night or weekend visit?

The majority of responding NPMs said that they did not bring external / contracted experts on an unannounced night or ad hoc weekend visit, nevertheless their mandates and national laws did allow many NPMs to do so if they needed/wished to engage experts for such visits.

Four of responding NPMs however replied that selected contracted experts are brought along to conduct night visits if needed with respect to the type of facility. Another NPM highlighted that the visit team does include external independent medical experts.

Do NPMs find that the institutions' management and staff that they have visited after hours on an unannounced visit were aware/informed of the NPM's mandate and right to enter all premises whenever?

Generally the responding NPMs inform the head of facility or management of an institution that has just been visited that the NPM is entitled to carry out visits whenever, which could mean also at night. This is done, according to one NPM, to prevent a panic reaction by the staff and to avoid any misunderstanding. Other NPMs have found that the institutions' staff were well aware of the NPM's mandate and the right to enter all premises upon immediate request, however, the NPM flagged that it is their standard procedure at the initial talk to briefly introduce management to the NPM mandate again and disseminate leaflets for help raise awareness. One NPM however underlined that the need for a night visit is something that would not be specifically discussed with the institution's management.

While some NPMs said that there was generally a high level of awareness both among the management and custodial staff of the NPM mandate, other NPMs' experiences differed on this. In one case the NPM underlined that there is only very little awareness of the NPM's mandate among the normal staff, whereas the managing staff has an excellent and very detailed knowledge of our mission/mandate. Another NPM emphasized that the level of awareness depended on the age of the institution and for newer establishments 'preliminary interviews are conducted with the members of newly appointed administration explaining the functions, working methodology, format of NPM's work and the details of monitoring process to be undertaken'.

Do NPMs later communicate with the management to clarify the need for such a visit (either in addition to the visit report or within it)?

Some of the responding NPMs always explain the reasons why the NPM carried out the night visit both during the visit and in the visit report. Other NPMs clarify the need for such a visit on the spot, in their talks with the persons in charge, but not later in writing. While other NPMs, because they have not faced any problems during the inspections as regards any lack of knowledge and have not been challenged on any of the NPM activities, it has not been considered necessary to clarify on the spot or later in the visit report the need and meaning of such visits.

In practice how often per month/or year have you conducted night-time or after hours weekend unannounced visiting? Approximately what percentage of all unannounced visiting are conducted at night / after normal working hours?

The amount of unannounced outside normal working hours visits that the responded NPMs have conducted varies significantly.

One NPM member said that out of the 1,122 visits undertaken in 2010/11, 264 (24%) took place at weekends; and 127 (11%) took place between 2100hrs and 0900hrs. Another NPM stressed that during the prison visit a night visit is systematically organized. It is unannounced and takes place usually during the week of the visit, further as regards visit to the police stations, where the visits are systematically unannounced, some of the NPM staff actively choose to start the visit by a night visit.

Other NPMs made such unannounced night or weekend ad hoc visits a couple of times a year, between 2-10% of their total unannounced NPM visits. The target institutions vary from selected police stations, juvenile facilities, welfare homes, psychiatric establishments to prisons.

One NPM pointed out that although they only conducted a few such unannounced night visits per year they had however recently 'installed a permanent stand-by 24 hours a day at 7 days a week. The heads of penitentiary facilities are obliged to contact us by phone at any time and immediately in any case of decease of a prisoner. In this case our internal rules requires the NPM-member assuming the stand-by to displace himself immediately to the facility in order to gather ad hoc all information available as well as an integral copy of the prisoners medical file as well together with a copy of the certificate of decease. An extensive interview with the concerned medics/wardens has to be conducted'.

Concluding observations

In some concluding observations one NPM highlighted that night visits can be of particular added-value to an NPM given that 'usually the conditions and atmosphere to interview staff are more comfortable and quiet at night. There is a chance to give to staff more space to show and tell where they see problems. Staff does not feel being under pressure of the head or manager. The night visit has always been unexpected and it brought also interesting findings about the conditions inside – which sometimes didn't comply with official statements'. Another NPM underlined that some of the NPM staff choose to start the unannounced visit [to a police station] by a night visit, in order to get the opportunity to see the functioning of the custody at night and to talk to persons held in custody.

6.3. Contribution from the SPT

Visiting ad hoc after normal working hours

Everyone who has had at least some sort of connection with the theory of the NPM working methods has certainly been over flooded with guidelines imposing that ad hoc visiting is the only possible way to do proper torture prevention by checking the places of detention. Even more – if you want to see real life in all of its varieties, one should go over when least expected. That is exactly during nighttime (or really early morning), weekends, mealtimes, visiting hours etc.

The SPT has by itself been always a keen follower of that principle. All places we have visited during our country missions have been unannounced and spread all over 24-hour periods and whatever weekdays. Also SPT NPM guidelines are underlining the importance of being able to visit places of detention efficiently at all times. For example point 87 of the guidelines states that the NPM should be able to carry out visits in the manner and with the frequency that the NPM itself decides as well as have right to carry out unannounced visits at all times to all places of deprivation of liberty. This reflects also the rights and duties dedicated to NPMs by OPCAT. Nevertheless – no such good practices can be a mantra and they should be open to a critical approach. There is no need to prescribe absolute prohibition of announced visiting and promote only ad hoc and preferably outside the hours monitors. It is the NPM itself who decides the most suitable way of proceeding with its task of torture prevention given the particular circumstances. It is clear that all sorts of unexpected visiting can give a whole lot of interesting information and useful data. Still sometimes the target of the visit can be a specific one that can be achieved only during the day or even by announcing your arrival shortly ahead. That is true for example in cases if NPMs would like to meet specific members of personnel who might be off the duty outside normal working hours.

Another aspect that has to be taken into account when visiting institutions during unusual hours is keeping the order and regime. Unless it is absolutely necessary, visiting in large numbers must be avoided. Also premises entered should be carefully chosen to disturb detainees as little as possible (i.e. during nights). Strangers arriving during the night can create many emotions in some places, especially for people with mental health problems. It may be common understanding, but just to flag out – if a visit is done during rest time, noisy footwear, cameras with flash, mobile phones with their sound on etc., should be avoided. In case the internal order of the institution is maintained and if the NPM deems visiting after normal working hours necessary for the efficient torture prevention, all such activities should be encouraged.

By Mari Amos, SPT member, Head of European NPM working group, SPT focal point for Europe

6.4. Contribution from the NPM of New Zealand

NPMs have been increasingly using unannounced visits, and this is now standard practice. The Children's Commission for example, has just notified and confirmed with Child, Youth and Family that all visits in the coming year will be unannounced.

Unannounced visits have gone well, with good access to facilities and awareness and cooperation from staff. For example, on a recent unannounced visit to a health facility, the Ombudsmen were told by the manager that she had been waiting for their visit for a year – having heard that the NPM would be visiting every facility at some stage.

All visit teams on any sort of visit are still only very small, generally from 1 to 4 people. Due to our ongoing resource issues, each NPM only has a very small staff. Participating in each other's visits provides some additional personnel, but teams are very small. Similarly, while we are keen to establish a panel of experts to assist with visits, and are in the early stages of exploring that option, it seems unlikely that this will happen on our present level of funding. We do, however, have a variety of expertise within the NPM group (eg, legal, nursing, social work) and participating in each other's visits does help to share those different skills.

With regard to after-hours visits, the IPCA is the only NPM to have carried out visits after hours. They will send some further information on those visits to those interested. Of course the nature of police detention is such that there can be a lot happening overnight, and people coming and going at all hours. For this reason, since early on in this role the IPCA has visited police facilities at different hours. Other NPMs would carry out after-hours visits if they felt it necessary to do so. For example, if they received information or had suspicions that there were problems. However, generally, this is not part of our practice.

Overall, NPMs' ability to carry out visits of any kind, let alone after-hours, are limited by the funding available. For example, we have just heard that the IPCA funding for the next year is such that their ability to undertake a full programme of visits is likely to be severely curtailed.

Summary of the composition of the NPM of New Zealand⁵

In June 2007, the Minister of Justice formally designated, by law, five existing institutions as New Zealand NPM. The implementing legislation also allows for the establishment of new mechanisms, under the coordination of the central NPM.

1. New Zealand Human Rights Commission (Central NPM)

It coordinates all NPM activities and identifies cross-cutting issues.

2. Office of the Ombudsmen

It visits prisons, immigration detention facilities, health and disability places of detention, and, overlapping with the Office of the Children's Commissioner, youth justice residences.

3. Independent Police Conduct Authority (IPCA)

It is a civilian oversight body. The mandate of the PCA was extended by the Crime of Torture Amendment Bill. Under this Bill, it can monitor the treatment of persons in the custody of the police, in addition to its existing complaints and investigations role.

4. Office of the Children's Commissioner

It monitors all places where minors are kept in juvenile detention facilities.

5. Inspector of Service Penal Establishments

They are visiting officers appointed in accordance with relevant Defence Force Orders issued pursuant to sections 175 and 206 of the Armed Forces Discipline Act 1971. The Inspector visits Defence Force Service Custody and Service Corrective Establishments. This represents a significant development, as providing for the first time regular external monitoring of Defence Force detention facilities.

More information is available on the OPCAT Database: www.apr.ch/opcat

⁵ Summary provided by the APT.

7. Additional question asked of the European NPM Network concerning NPM annual report strategy?

7.1 Question from the NPM of Poland

The Polish NPM would be grateful to hear your views and any similar experiences on the following:

The government has written to the Polish NPM with a request to send them the NPM annual report before its publication, so they can take a stand to the NPM's findings (just like the CPT does). What do you think about that practice? The Polish NPM's opinion is that they send the authorities every post visit report to take a stand and the NPM always puts it in content of the annual report, so there is no use to do this again. However, they still refer to the practice of CPT. Do any NPMs have an opinion about this? Do other NPMs of the European NPM Network send their annual report to the government before its publication?

We would be grateful if you could kindly send any responses directly to the Polish NPM Contact Person Marcin Kusy at m.kusy@brpo.gov.pl with the European NPM Project team in copy so we can summarise the responses in an overview for the next NPM Newsletter.

APPENDIX 1

Detailed responses and contributions from the European NPM community to the discussion on the special topic: "NPM unannounced visiting methodology"

NPM of the Czech Republic

"1. getting in: do you have effective and unhindered access at night or over the weekend/Sunday to conduct unannounced/ ad hoc visits?;

In the case of Police Cells, the Czech NPM did not face any difficulties to carry out an unannounced visit at night and such visits are conducted occasionally.

Regarding other facilities such as Psychiatric Hospitals, Social Care Institutions or Facilities for Institutional and Protective Education the approach of the Czech NPM is different. In these cases we start an usual unannounced visit, always during normal working hours. And if it seems to be useful, an investigation at night is later conducted – without previous notice. The reason is that according to the Law on The Public Defender of Rights „the Defender shall be authorised, with the knowledge of the heads of the Authorities concerned, to enter all areas of the Authority concerned even without prior notice, in order to carry out a visit“. The Czech NPM finds it very difficult and inappropriate to notify the head of facilities at night that the Czech NPM starts the visit.

But having started his visit in normal working hours, the Czech NPM comes without any problems back to these facilities at night and keeps on conducting the visit.

2. once in, do you have the ability to move quickly and freely in all premises, or are various areas inaccessible at night/after working hours?;

Both in Police Cells (where typical unannounced visit is carried out) and in other facilities mentioned above the Czech NPM can move freely without any impediment or delay. Obviously with the respect to the comfort and dignity of inmates or clients if they take rest or sleep. All areas accessible at day are accessible also at night.

3. what is your team size for a night ad hoc visit, on average

On average the NPM „night team“ consists of 3 people. The minimum number is 2.

4. do you bring along external/contracted experts for an ad hoc night or weekend visit

Contracted experts are brought along to conduct a night visit if needed with respect to the type of facility (sometimes yes, sometimes not).

5. do you find that the institutions' management and staff that you have visited after hours on an unannounced NPM visit were aware/informed of the NPM's mandate and right to enter all premises whenever?;

The Czech NPM does not have accurate data regarding awareness or knowledge of heads of facilities that the Czech NPM can whenever carry out the visit.

The Czech NPM always informs the head of facility (which is just subjected to visit) that the Czech NPM is entitled to carry out visit whenever, it means also at night. The Czech NPM wants to prevent panic reaction of staff and avoid any misunderstanding. That is the reason why the NPM notifies the head of facilities generally that NPM can appear even at night.

6. do you later communicate with the management to clarify the need for such a visit (either in addition to the visit report or within it).

The Czech NPM always explains the reasons why the NPM carried out the night visit. Always during the visit and above that in report.

7. in practice how often per month/or year have you conducted night-time or after hours weekend unannounced visiting? Approximately what percentage of all unannounced visiting are conducted at night / after normal working hours?.

The Czech NPM made 4 night-time visits during last year. It represents 10 % all visit of that year.

Opinion of the Czech NPM regarding night visits:

Usually the conditions and atmosphere to interview staff are more comfortable and quiet at night. There is a chance to give to staff more space to show and tell where they see problems. Staff does not feel being under pressure of the head or manager. The night visit has always been unexpected and it brought also interesting findings about the conditions inside – which sometimes didn't comply with official statements. “

NPM of Estonia

“Getting in: do you have effective and unhindered access at night or over the weekend/Sunday to conduct unannounced/ ad hoc visits?”

During proceedings the Chancellor of Justice may freely access all relevant materials and places, may request written information from participants, obtain written statements and explanations and take testimonies, if necessary involving experts in the proceedings. Agencies and persons have to grant the Chancellor of Justice's unconditional and immediate access to all documents, materials and areas which are in the possession of the agencies and persons (§ 27 (1) of the Chancellor of Justice Act). The Chancellor has also an access to state secrets classified as top secret (§ 6¹).

The Chancellor may conduct inspection visits (either with or without advance notification) to agencies under supervision whose activities involve a higher risk of restricting fundamental individual rights (e.g. prisons, police detention centres, care homes, or schools for children with special needs etc). During a inspection visit the agency under supervision have to ensure the following to the Chancellor of Justice:

unrestricted access to the information required in order to verify whether the agency under supervision adheres to the principles of observance of the fundamental rights and freedoms and to the principles of good administration;

unrestricted access to the information concerning the persons staying in the agencies under supervision, their detention conditions and location;

access to the buildings and territory of the agency under supervision;

a possibility to interview each person with restricted rights staying in and staff of the agency under supervision without the presence of other persons.

The law establishes certain procedural guarantees in cases where agencies under supervision hamper the activities of the Chancellor of Justice by hiding information, providing incorrect or insufficient information, or denying free access. According to § 35 (2-3) of the Chancellor of Justice Act the Chancellor may request launching of disciplinary proceedings in respect of individuals hampering his activities; alternatively, he may inform the public about such situations.

In practice, the Chancellor of Justice and his advisers have not had any problems in conducting ad hoc inspection visits at night or over the weekend.

Once in, do you have the ability to move quickly and freely in all premises, or are various areas inaccessible at night/after working hours?

The Chancellor of Justice and his advisers have had free access to all premises and documents needed.

What is your team size for a night ad hoc visit, on average?

The number of the inspection visit team members has depended on circumstances and the size of the authority under supervision. The team has consisted of 2-6 persons. So far, the authorities inspected after working hours have been rather small.

Do you bring along external/contracted experts for an ad hoc night or weekend visit?

The Chancellor of Justice has involved into his ad hoc inspection visits independent medical experts and once an official from the Estonian Rescue Service.

Do you find that the institutions' management and staff that you have visited after hours on an unannounced NPM visit were aware/informed of the NPM's mandate and right to enter all premises whenever?

Most of the inspected institutions after working hours have been police authorities. The Estonian Police is very well acquainted with the mandate of the Chancellor of Justice (incl. NPM mandate) and the Chancellor of Justice and his advisers have not faced any problems during the inspections regard to the lack of knowledge or hindering.

Do you later communicate with the management to clarify the need for such a visit (either in addition to the visit report or within it)?

As the Chancellor of Justice and his advisers have not faced any problems during the inspections regard to the lack of knowledge and anyone has not challenged the inspection activities of the Chancellor either, it has not been considered necessary to clarify later in the visit report the need and meaning of such visits. The visit reports usually conclude discovered violations and suggestions of the Chancellor to enhance the situation.

In practice, how often per month/or year have you conducted night-time or after hours weekend unannounced visiting? Approximately what percentage of all unannounced visiting are conducted at night / after normal working hours?

The Chancellor of Justice has conducted such visits up to couple of times per year, which makes 2-5 % of the total unannounced inspection visits. “

NPM of France

“The CGLPL has an effective and unhindered access at night to all premises. During the visit of a prison, a night visit is systematically organised, by usually a team of two to three controllers. It is unannounced and takes place usually during the week of the visit. Concerning the police stations, where the visits are systematically unannounced, some of the controllers choose to start the visit by a night visit, in order to get the opportunity to see the functioning of the custody at night and to talk to persons held in custody. No external experts are brought along. The need for a night visit is something that would not be discussed with the institution's management. “

NPM of Germany

1. Getting in: do you have effective and unhindered access at night or over the weekend/Sunday to conduct unannounced/ ad hoc visits?

Yes.

2. Once in, do you have the ability to move quickly and freely in all premises, or are various areas inaccessible at night/after working hours?

The German NPM carried out one inspection visit at night till now. In that case, all areas were accessible for the visiting team.

3. What is your team size for a night ad hoc visit, on average?

Three or four members (two members of the commission and one or two research associates).

4. Do you bring along external/contracted experts for an ad hoc night or weekend visit?

In that case, the German NPM didn't bring along an external expert but we would do so if necessary.

5. Do you find that the institutions' management and staff that you have visited after hours on an unannounced NPM visit were aware/informed of the NPM's mandate and right to enter all premises whenever?

Yes, the management of the institution was informed about the NPM's mandate and rights.

6. Do you later communicate with the management to clarify the need for such a visit (either in addition to the visit report or within it).

Yes.

7. In practice how often per month/or year have you conducted night-time or after hours weekend unannounced visiting? Approximately what percentage of all unannounced visiting are conducted at night / after normal working hours?

As mentioned above, the German NPM carried out one unannounced inspection till today.

NPM of Georgia

“National Preventive Mechanism of Georgia implements its essential preventive functions in the format of regular and irregular working hours. All types of visits - Planned as well as the Ad Hoc visits might be carried out during the entire week, including weekends and at anytime of the day and night/on a 24-hour basis, depending on particular circumstances and requirements. Such visits are accomplished several times during the year and all are undertaken completely unannounced.

Based on the systematic and frequent visits practiced by National Preventive Group, administration of the establishments is well aware of the relevant functions and mandate of NPM as well of other practicalities and modalities applied by NPM, therefore the members of the Group may enter establishments without any impediments including week-ends and on a 24-hour basis. NPM Group does not experience any problem during the exercise of its authority at any time and is enabled to proceed with monitoring process in a right course, with a possibility to hold confidential interviews with detainees/inmates at any place preferable for them in the establishment.

When it comes to new establishment - preliminary interviews are conducted with the members of newly appointed administration explaining the functions, working methodology, format of NPM's work and the details of monitoring process to be undertaken.

The composition of National Preventive Group doesn't necessarily depend on exact day or time of monitoring. According to the purposes and special needs of a visit, the team is composed of two or more permanent members and the medical expert(s). "

NPM of Luxembourg

– getting in: do you have effective and unhindered **access at night** or over the weekend/**Sunday** to conduct **unannounced/ ad hoc** visits?;

Yes, our organic laws allows visits (announced or not) at any time. We already made such unannounced visits in the national Penitentiary an shortly announced one's (1 hour prior to the visit) in Police stations. All these visits took place late Saturday evening and lasted until early Sunday morning.

– once in, do you have the **ability to move** quickly and **freely** in all premises, or are various areas inaccessible at night/after working hours?;

Yes, our possibilities to move were exactly the same as for day-time visits.

– what is your **team size** for a night ad hoc visit, on average?;

Normally 2 NPM staff-members conduct those visits, exceptionally the national NPM-head assisted to one visit.

– do you bring along external/contracted **experts** for an ad hoc night or weekend visit?;

Our basic law allows this possibility, but we never made use of it until now.

- do you find that **the institutions' management and staff** that you have visited after hours on an unannounced NPM visit were **aware/informed of the NPM's mandate and right to enter** all premises **whenever?**;

Our experience shows that there is only very little awareness of the NPM's mandate among the normal staff, whereas the managing staff has an excellent and very detailed knowledge of our mission/mandate.

– do you **later communicate** with the management to clarify the need for such a visit (either in addition to the visit report or within it).

Yes, the decision of an ad hoc visit, especially at night is always explained to the managing staff and within a short time afterwards also to the head of the concerned institution.

– in practice **how often** per month/or year have you conducted night-time or after hours weekend unannounced visiting? Approximately what percentage of all unannounced visiting are conducted at night / after normal working hours?.

As we have a very small staff (2 members and the head) we only conduct such visits if there is a real need or a suspicion. The average is at about 3 visits of this type per year. We installed also a permanent stand-by 24 hours a day at 7 days a week. The heads of penitentiary facilities are obliged to contact us by phone at any time and immediately in any case of decease of a prisoner. In this case our internal rules requires the NPM-member assuming the stand-by to displace himself immediately to the facility in order to gather ad hoc all information available as well as an integral copy of the prisoners medical file as well together with a copy of the certificate of decease. An extensive interview with the concerned medics/wardens has to be conducted. The NPM requests also a copy of the autopsy report generally ordered by the judicial authorities. "

NPM of Netherlands

"1. Getting in: do you have effective and unhindered access at night or over the weekend/Sunday to conduct unannounced/ ad hoc visits?

The Dutch Inspectorate for Security and Justice (Inspectie Veiligheid en Justitie (IVenJ) is authorised to have access at 'all times to all locations where sanctions are implemented' (Article 4 of the Regulation). The Inspectorate will announce an inspection in advance to the institution concerned unless, in the interests of the investigation, an unannounced inspection is required. For the thematic report on Night security in the prison system the Inspectorate undertook semi-unannounced visits in 2008. A few weeks before the inspection was carried out all prisons in the Netherlands received a letter with a general announce that the Inspectorate was planning a visit. The names of the prisons that were visited were not announced. In 2006 the Inspectorate carried out an unannounced visit to detention boat in Rotterdam one week before the announced visit was scheduled.

2. Once in, do you have the ability to move quickly and freely in all premises, or are various areas inaccessible at night/after working hours?;

Inspectors have the ability to move quickly and freely in all premises, also during the night and after

working hours if necessary.

3. What is your team size for a night ad hoc visit, on average?;

The minimum size of visits is 2 persons. The total number of inspectors per visit ranges from 2 to 4 persons and the average is 3 persons.

4. Do you bring along external/contracted experts for an ad hoc night or weekend visit?;

This has not (yet) been the case but it might occur in the future if the reason for the visit requires so.

5. Do you find that the institutions' management and staff that you have visited after hours on an unannounced NPM visit were aware/informed of the NPM's mandate and right to enter all premises whenever?;

The mandate of the Inspectorate is clear for the institutions' management and for most members of staff. The recent appointment as NPM will not have an impact on this.

6. Do you later communicate with the management to clarify the need for such a visit (either in addition to the visit report or within it).

After each visit the prison receives a written report. Until now it has not been necessary to clarify the need for such visit.

7. In practice how often per month/or year have you conducted night-time or after hours weekend unannounced visiting? Approximately what percentage of all unannounced visiting are conducted at night / after normal working hours?

The Dutch Inspectorate carries out only unannounced visits when this is regarded as beneficial to achieve certain results. After 5 pm most prisoners are locked up in their cell and as a result of that most activities stop as well and most members of staff leave the prison. “

NPM of Poland

“The Polish NPM Team does not conduct visits at nights or over the weekends. However, it sometimes happens that we conduct them after normal working hours of their management. In that case, we inform the staff about our prerogatives and ask them to inform the management by phone about our visit. It is up to them if they come to meet us or not. All information we need we can get from the staff who is on duty. In case there is information that the people on duty do not have access to, we get them after our visit by phone, correspondence or fax from management. “

NPM of Sweden

“1. We would probably have access to all places of detention although the limited number of personnel could create some delays.

2. Probably not. Since we don't like the idea of being equipped with own keys, we would need help by the staff. In a prison with 100 prisoners, the number of personnel do normally not exceed 3 at night time. Under those circumstances, we would not be able to move freely or quickly.

3.-7. Pass”

NPM of Slovenia

“– **getting in: do you have effective and unhindered access at night or over the weekend/Sunday to conduct unannounced/ ad hoc visits?;**

Yes, so far, our NPM had effective and unhindered access at such times to conduct such visits.

– **once in, do you have the ability to move quickly and freely in all premises, or are various areas inaccessible at night/after working hours?;**

No areas were inaccessible at night/after working hours, we were able to move quickly and freely in all premises.

– **what is your team size for a night ad hoc visit, on average?;**

Team size for night ad hoc visit is the same as for regular visits - three to four NPM members.

– **do you bring along external/contracted experts for an ad hoc night or weekend visit?;**

So far, we have not brought along contracted expert(s) to any kind of visits to police stations. On the occasion of visiting one of the juvenile facilities after working hours, we brought our contracted expert with us, indeed.

– **do you find that the institutions' management and staff that you have visited after hours on an unannounced NPM visit were aware/informed of the NPM's mandate and right to enter all premises whenever?;**

Yes, we encountered no such problems thus far.

– **do you later communicate with the management to clarify the need for such a visit (either in addition to the visit report or within it).**

On all such occasions we clarified the need for such a visit on the spot, in our talks with the persons in charge. We did not make any special clarification in writing.

– **in practice how often per month/or year have you conducted night-time or after hours weekend unannounced visiting? Approximately what percentage of all unannounced visiting are conducted at night / after normal working hours?**

We conducted only a few such visits thus far – around two per year. The percentage of all unannounced nightly/after normal working hours visits is around 5 per cent at best. Mostly we make such visits to a few selected police stations, and once it was made to one of the juvenile facilities. “

NPM of “the former Yugoslav Republic of Macedonia”

‘The Macedonian NPM has so far conducted only 2 after-working-hours regular unannounced visits to places of deprivation from liberty, both to police station in Skopje and both carried out on a Friday between 17:00-21:00 hrs. The regular methodology steps were followed during the visits and the NPM conducted the initial talk with the official person highest in the hierarchy at the time of the visit. However, the NPM was not able to review two out of 4 police registries that are standard part of our visit methodology, i.e. the Registry for the use of means of restraint and the Registry for complaints submitted by the citizens are kept locked by the Deputy Chief of the police stations, who at the time of visit (after the regular working hours), was not at work.

The NPM was able to move quickly and freely in all premises upon our request. The composition of the Macedonian NPM team is standard for all the visits – composed of three torture prevention advisers employed in the Ombudsman institution. We have not yet started with the practice of hiring external experts due to budgetary limitations. The Macedonian NPM in both cases found that the police stations' staff was aware of the NPM's mandate and our right to enter all premises upon our request, however, it is our standard procedure at the initial talk to briefly introduce them with the NPM mandate and disseminate our leaflets. Both visits were carried out in a constructive manner and without the need for further later clarification on the need for such a visit'.

NPM of United Kingdom

“Below is a response from one of our 18 members – others will carry out night/weekend visits as well. The Northern Ireland Policing Board Independent Custody Visiting Scheme. They are volunteers from the local community who make very regular visits to police custody to monitor the treatment and conditions of detainees. They are chosen to represent the community rather than for their individual expertise. Police custody in Northern Ireland is also inspected by Criminal Justice Inspection Northern Ireland, a professional inspectorate body which visits police custody less frequently but which is also a member of the NPM. “

RESPONSE TO NPM RELATING TO VISITS AFTER NORMAL WORKING HOURS

Getting in: do you have effective and unhindered access at night or over the weekend/sunday to conduct unannounced/ ad hoc visits?

Yes – access in the vast majority of cases is within 10 minutes of arrival at the Police Station. All delays are noted in the Visit Report Form.

Once in, do you have the ability to move quickly and freely in all premises, or are various areas inaccessible at night/after working hours?

All areas of the Custody Suite are accessible at night/after working hours. The biggest area of inaccessibility is the detainees themselves as most are asleep and individuals are not woken unless there are concerns raised by the Custody Visitors.

What is your team size for a night ad hoc visit, on average?

All visits are undertaken by 2 Custody Visitors.

Do you bring along external/contracted experts for an ad hoc night or weekend visit?

No.

Do you find that the institutions' management and staff that you have visited after hours on an unannounced NPM visit were aware/informed of the NPM's mandate and right to enter all premises whenever?

Yes. This is also a statutory role under s73 of the Police (Northern Ireland) Act 2000.

Do you later communicate with the management to clarify the need for such a visit (either in addition to the visit report or within it)?

Yes. These visits arose from Independent Human Rights Recommendations in 2009. All Visit Report Forms are sent to the police Area Commander responsible for the Custody Suite.

In practice how often per month/or year have you conducted night-time or after hours weekend unannounced visiting? Approximately what percentage of all unannounced visiting are conducted at night / after normal working hours?

The NI Policing Board sets targets for the Custody Visitors in relation to out of hours and weekend visits:

- 20% of all visits should take place at weekends; and
- 10% of all visits should take place 2100hrs and 0900hrs.

Of the 1,122 visits undertaken in 2010/11:

- 264 (24%) took place at weekends; and
- 127 (11%) took place between 2100hrs and 0900hrs.

The figures for 2011/12 will be available in late May 2012."

APPENDIX 2

Selected European Court of Human Rights' Article 3 case summaries for March-April 2012

Melnītis v. Latvia (application no. 30779/05) (Importance 2) – 28 February 2012 – Violation of Article 3 (substantive) – Poor conditions of detention in Valmiera Prison

The applicant alleged that he had constantly felt dirty and humiliated for five months in Valmiera Prison on account of the lack of toiletries as well as of partition between the toilet and the rest of his cell.

The Court was not convinced that – as suggested by the Government – a complaint to the administrative courts at the time about detention conditions had been a remedy accessible in practice to detainees such as the applicant. It recognised the importance of allowing relatively new remedies to develop but stressed that their availability, scope and application had to be clearly set out and confirmed or complemented by the domestic courts' case-law and that it was up to the Government to submit examples. The Court had, regrettably, never received a copy of the administrative courts' decision allegedly recognising their competence to review detainees' complaints about their conditions of detention and in which it was shown that conditions of detention came under the notion of "the action of a public authority" in the sense of domestic law. The Court therefore rejected the argument that the applicant had not exhausted domestic remedies and declared the complaint admissible under Article 3. On the merits, the Court held that the detention conditions in which the applicant had been held had to have made him feel anguish, inferiority and humiliation which could have led to his physical and/or moral resistance being broken, in violation of Article 3. Under Article 41, the Court held that Latvia was to pay the applicant EUR 7,000 in respect of non-pecuniary damages.

Samaras and Others v. Greece (no. 11463/09) (Importance 2) – 28 February 2012 – Violation of Article 3 – Poor conditions of detention in Ioannina Greek Prison

The applicants complained about their conditions of detention at Ioannina prison (overcrowding, risk of contagion, lack of activities).

The Court noted in particular that **following his visit to Ioannina prison in 2009, the Greek ombudsman had noted that the dormitories and cells were "absolutely insufficient" for the number of detainees, that the ratio of space to detainees was "absolutely intolerable" and that the detainees did not even have one square metre of standing room each.** As there was no refectory and no tables and chairs, they were obliged to eat sitting on their beds. They had nowhere to exercise, and non-Greek nationals were not allowed to work; in fact only 57 of the 248 detainees were allowed to work, which was unsatisfactory. In this connection the Court further noted that on 19 January 2008 the Ioannina prison doctor had sent a letter to the prison governor informing him that the risk of disease and psychiatric disorders among the detainees was exacerbated by the overcrowding and the lack of physical exercise. In the light of the above, the Greek Government's argument that the detainees had been able to work for a small fraction of their total time in detention did not alter the fact that the applicants' conditions of detention had attained the minimum level of severity required to qualify as "degrading" treatment within the meaning of Article 3. The Court accordingly found that there had been a violation of Article 3. The Court held that Greece was to pay the applicants between EUR 7,000 and EUR 15,000 each in respect of non-pecuniary damage and EUR 1,500 jointly for costs and expenses.

Austin and Others v. the United Kingdom (nos. 39692/09, 40713/09 and 41008/09) (Importance 1) – 15 March 2012 – No violation of Article 5 – Measures of containment of a group of people carried out by police on public order ground does not amount to a deprivation of liberty as long as the measures are unavoidable, necessary to avert a real risk of serious injury or damage and are kept to the minimum required for that purpose

The case concerned a complaint by a demonstrator and some passers-by that they were not allowed to exit a police cordon for almost seven hours during a protest against globalisation in London. They complained that they were deprived of their liberty without justification.

The Court observed that **this was the first time it was called to consider the application of the Convention in respect of the "kittling" or containment of a group of people carried out by the police on public order grounds.**

It noted in particular that Article 5 did not have to be construed in such a way as to make it impracticable for the police to fulfil their duties of maintain order and protecting the public. Members of the public are often required to endure temporary restrictions on freedom of movement in certain contexts, such as travel by public transport or on the motorway, or attendance at a football match. The Court did not consider that such commonly occurring restrictions could properly be described as "deprivations of liberty" within the meaning of Article 5 § 1 so long as they were rendered unavoidable as a result of circumstances beyond the control of the authorities, were necessary to avert a real risk of serious injury or damage, and were kept to the minimum required for that purpose. In the present case, the Court found in particular that the police had anticipated a real risk of serious injury, even death, and damage to property if the crowds were not effectively controlled; that there had been space within the cordon; that the police had tried, continuously, to start releasing people; that the cordon was imposed to isolate

and contain a large crowd in dangerous and volatile conditions. In this context, the Court did not consider that the putting in place of the cordon had amounted to a “deprivation of liberty”.

Parascineti v. Romania (in French only) (no. 32060/05) (Importance 2) – 13 March 2012 – Violation of Article 3 – Domestic authorities’ failure to provide the applicant, diagnosed with mental disorders, with specialised treatment and a minimum standard of hygiene in prison

The applicant complained that he had suffered inhuman and degrading treatment as a result of being committed to an overcrowded psychiatric ward with very poor standards of hygiene.

The Court first observed that where conditions of detention in Romanian prisons were concerned it had already held, on the one hand, that the Government had not demonstrated the existence of an effective remedy to redress a complaint under Article 3 and, on the other hand, that a compensatory remedy alone could not prevent the continuation of the alleged violation. In this case, the Court noted that the applicant had given a detailed and coherent description of what he had endured and in particular the overcrowding and the very poor conditions of hygiene in the psychiatric hospital. The Court considered that such conditions, which were already inadequate for any individual deprived of his liberty, were even more so for someone like the applicant, who had been diagnosed with mental disorders and consequently needed specialised treatment as well as a minimum standard of hygiene. The Court found that there had been a violation of Article 3.

Under Article 41 (just satisfaction), the Court held that Romania was to pay the applicant EUR 6,000 in respect of non-pecuniary damage and EUR 300 in respect of costs and expenses.

C.A.S. and C.S. v. Romania (no. 26692/05) (Importance 1) – 20 March 2012 – Violation of Articles 3 and 8 – Domestic authorities’ failure to conduct an effective investigation into allegations of violent sexual abuse and to ensure adequate protection of the applicant’s private and family life

The case concerned a seven-year-old boy and his father’s complaint that it had taken the authorities five years to investigate the child repeated rape by a man, eventually acquitted, who had forced his way into the family flat when the boy had come home alone from school during four months. The applicants also complained that their family life had been destroyed and that they had been forced to leave the town in which they lived to rebuild a normal life.

The Court noted with concern that, despite the gravity of the allegations and the particular vulnerability of the victim, the investigation had neither been prompt nor effective. Indeed, the authorities had waited three weeks after the complaint of rape had been lodged before ordering a medical examination of the victim, two months before interviewing the main suspect, and, overall, the investigation had lasted five years. Furthermore, seven years after the incident, the suspect had been exonerated without the authorities even trying to find out if there was any other suspect. The Court pointed out that States had an obligation under Articles 3 and 8 to ensure the effective criminal investigation of cases involving violence against children, with respect for their best interests being paramount. It was particularly regrettable that the applicant had never been given counselling or been accompanied by a qualified psychologist either during the rape proceedings or afterwards. The failure to adequately respond to allegations of child abuse in this case cast doubt over the effectiveness of the system in place in Romania, in accordance with its international obligations, to protect children from all forms of violence. The Court therefore held that there had been a violation of Article 3 and 8.

Under Article 41 (just satisfaction), the Court held that Romania was to pay the applicant EUR 15,000 in respect of non pecuniary damages.