REPUBLIC OF CROATIA
Ombudsman

REPORT ON THE PERFORMANCE OF THE ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM FOR 2023

Contents

1. Introduction

The 2023 Activity Report of the National Preventive Mechanism for Preventing Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM) is based on data collected during 23 unannounced visits to police stations, detention units, border police stations, penitentiaries and prisons, psychiatric institutions and residential care homes. In addition, it provides an overview of activities aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment and includes 22 recommendations for protecting persons deprived of liberty or persons with restricted freedom of movement.

As in previous years, we did not identify any actions or conditions that would constitute torture. However, we did find examples indicative of inhuman and degrading treatment and violations of constitutional and legal rights of persons deprived of liberty.

In 2023, we visited 10 police stations and two detention units, noting that certain facilities for persons deprived of liberty did not fully comply with national and international standards, as there was a lack of direct access to drinking water and video surveillance was not installed in all areas accessible to persons deprived of liberty.

Installation of video surveillance in all areas of police stations accessible to persons deprived of liberty would represent an additional protection measure against potential abuse, as well as additional protection for police officers in cases of unfounded allegations of physical or psychological abuse or inhuman treatment.

Furthermore, in cases where women were arrested, it was not possible to determine whether the search was conducted by a person of the same gender, i.e., a female police officer.

Due to an increase in the number of persons expressing their intention to seek international protection, reception capacities were insufficient, leading to complaints about inadequate living conditions in reception centres for applicants for international protection. During our visits to these reception centres, we found that applicants for international protection were living in harsh conditions, exposed to hygienic, health and other risks, particularly infectious diseases, due to frequent occurrences of scabies and bedbugs. These issues likewise significantly impacted the working conditions of the persons responsible for their care. In 2023, as in previous years, civil society organisations were not allowed to enter reception centres for applicants for international protection to provide psychosocial assistance and support, legal aid or to conduct other appropriate activities (such as Croatian language classes, tutoring for children, etc.). Civil society organisations continued to report on pushbacks, and we assessed that sending people back without a case-by-case assessment of their needs could lead to violations of human rights guaranteed by European, international and national regulations.

In 2023, we visited three border police stations, and it remains concerning that we were not consistently granted access to all data regarding the treatment of irregular migrants, including those recorded in the information system of the Ministry of the Interior.

The situation in the prison system remains largely unchanged and has unfortunately worsened compared to previous years. Although efforts have been made to improve living conditions, primarily through the adaptation of accommodation areas for female prisoners in the Požega Penitentiary, overcrowding remains a major problem. There is still a shortage of staff, and low interest in working in the prison system further exacerbates the problem. The quality and limited availability of healthcare

for prisoners remains a major issue. Prisoners continue to complain about being transported in unsuitable vehicles, an issue which we also highlighted in previous years. Inter-prisoner violence and excessive use of force by officers when applying means of coercion were among the issues raised by persons deprived of liberty in surveys conducted during our visits to penal institutions. We therefore reiterated the need to develop a national plan to combat inter-prisoner violence. We also emphasised the obligation to conduct effective investigations, as failure to do so could send a message that such conduct is permissible and will not be punished.

In 2023, we visited three psychiatric institutions and two residential care homes. Conditions in psychiatric institutions remain inadequate, with financial constraints cited as the reason. We observed overcrowding a psychiatric hospitals, with up to eight patients in some rooms, limiting their mobility due to the confined space and eliminating any possibility of privacy. Such conditions fail to provide patients with even a minimal sense of security and autonomy, which hinders their treatment and rehabilitation.

As in previous years, patients were not sufficiently informed about their rights or the concept of informed consent to hospitalisation. For example, they were not aware that the voluntary nature applies to the entire duration of hospital treatment. During visits to psychiatric institutions, we found that medical records lacked individualised treatment plans, and deficiencies in recording the use of coercive measures were still evident.

A lack of primarily medical staff represents one of the crucial issues in residential care homes, which is particularly evident in inpatient units and units for persons with Alzheimer's disease and other dementias. As a result, regular outdoor activities for residents are hindered, leaving them dependent on family members, while the staff shortage affects the quality of care and healthcare services provided.

The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) visited Croatia for the first time in 2023, inspecting prisons, penitentiaries, police stations, migration centres and social care homes. During its visit, the SPT delegation visited a prison and a border police station together with NPM representatives, sharing experiences on the methodology of preventive visits and the importance of implementing recommendations regarding the treatment of persons deprived of liberty.

As in previous years, we actively engaged in international cooperation and participated in numerous events organised within the framework of the South-East Europe NPM Network (SEE NPM Network), the Independent Police Complaints Authorities' Network (IPCAN), the Council of Europe, OSCE and other international institutions.

2. Police system

With respect to police activities, the Ombudsman acts under the powers conferred on us by the Ombudsman Act and the Act on the National Preventive Mechanism for Preventing Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The first section presents our handling of complaints and our own initiative investigations, and the second section describes the conditions we observed during our unannounced visits to police stations and detention facilities under the mandate of the National Preventive Mechanism.

2.1. Protection of citizens' rights in police procedures

Under the Criminal Procedure Code, everyone is required to report a criminal offence subject to *ex officio* prosecution that has been brought to their attention or that they have become aware of. Criminal charges are filed to the competent state attorney, and if filed to the police, they are forwarded to the state attorney. Most criminal offences get reported to the police, whose officers have the ability to react to information about a committed criminal offence the fastest. It follows from the provisions of the Criminal Procedure Code that the qualification of criminal offences subject to *ex officio* prosecution falls within the competences of the State Attorney's Office, which can only fulfil its role if it has the information that a potential criminal offence has been committed.

According to the 2021 Protocol on the Cooperation of the Police and the State Attorney's Office in Criminal Cases, the State Attorney's Office gets notified during inquiries into criminal offences subject to *ex officio* prosecution, and when an assessment is made that the State Attorney's opinion is needed on a certain legal matter.

However, police officers sometimes conclude that there is no suspicion of a criminal offence subject to *ex officio* prosecution having been committed, and that there is no need to consult the State Attorney's Office, and hence classify acts having the characteristics of a criminal offence as misdemeanours.

One such example is the attack on a member of the Croatian Mountain Rescue Service in Platak, covered by the media, which resulted in an altercation involving several persons, one of whom sustained serious injuries. In spite of the grievous bodily harm inflicted on this person, the police found that the three participants committed the misdemeanour of particularly impudent and insolent behaviour, as defined in the Act on Offences Against Public Order and Peace. However, the State Attorney's Office requalified the offence, charging one of the participants with the criminal offence of inflicting grievous bodily harm.

If the police fail to consult or inform the State Attorney about a case, the State Attorney has no information that a potential criminal offence was committed, and is unable to order the police to conduct inquiries and other measures to collect the necessary information. The question is how many cases get wrongly classified by the police as a misdemeanour instead of as a potential criminal offence subject to *ex officio* prosecution, and, as a result, the State Attorney does not get notified by the police. In the Platak case, the media reported about the circumstances of the incident for multiple days, and

released a video footage of the altercation, the police communicated contradictory information, and the State Attorney's Office reacted after the police qualified the incident as a misdemeanour.

Even though the police have the right and the duty to take the necessary actions under the Criminal Procedure Code in case of reasonable doubt that a criminal offence subject to *ex officio* prosecution has been committed, and the police are required to promptly notify the State Attorney about conducted inquiries into criminal offences, this example illustrates the weakness of the current organisation of the system. It follows from the notice given by the State Attorney's Office that the police are under no obligation to notify the State Attorney about an event if the police deems that the event is not a criminal offence subject to *ex officio* prosecution. It therefore follows that the police carry out a sort of "preliminary assessment" to establish whether an event is a criminal offence subject to *ex officio* prosecution, and if this assessment is incorrect, it may lead to inadequate prosecution of the perpetrator and to the impingement of the victims' rights.

The media also covered a case in Osijek that had been initially classified by the Police Department as manslaughter under Article 113 of the Criminal Code, but the State Attorney later issued the decision to conduct an investigation against a police officer for the criminal offence of murder under Article 110 of the Criminal Code, which mandates a much more severe sentence. The classification of this offence and the inconsistent public statements made by the Head of the Police Department during the investigation sparked suspicion of bias and cover-up in the public. The State Attorney's Office informed us that the qualification made by the police has no impact on further actions taken by the Office. At the moment of writing this Report, the competent County State Attorney's Office in Osijek had raised an indictment for the criminal offence of murder.

"After receiving the threats, I called the police in ..., but they did not come to investigate my reports. My husband took me to the ER, where I was given injections because my blood pressure was high, and I was under stress, in shock, and in fear for my life. On Monday, I went to the ER again. The police did not resolve anything. On Tuesday, I had an interview at the ... Police Station, where they persuaded me to withdraw my criminal charges. I have still not recovered from the death threats I received."

In our previous reports, we had also drawn attention to cases in which the police dissuaded the citizens from reporting criminal offences that they believed were subject to *ex officio* prosecution, insisting that the criminal offence did not fall into this category, and after the citizens later brought the matter before the State Attorney's Office, their report was accepted rather than dismissed. Police officers sometimes refuse to accept criminal charges, deciding on their own that the charges do not concern criminal offences subject to *ex officio* prosecution. Article 62(1) of the Act on Police Services and Powers, under which a police officer is only required to accept criminal charges for criminal offences subject to *ex officio* prosecution, is used to justify the dismissal of charges. Otherwise the police officer informs the applicant that there is no justification for filing criminal charges, and if the applicant insists, the police officer will nevertheless log the criminal charges. This means that the Act on Police Services and Powers gives police officers the very important role of assessing whether criminal charges involve a criminal offence subject to *ex officio* prosecution or not – a role that they do not have under the Criminal Procedure Code. Under the Criminal Procedure Code, the State Attorney is responsible for

the qualification of criminal offences subject to *ex officio* prosecution, and has the power to issue a reasoned decision dismissing the criminal charges after investigating them. Another problematic practice consists of police officers only accepting criminal charges at the express insistence of the applicant. This also raises the question of responsibility of the police officers who assess that the criminal charges do not involve criminal offences subject to *ex officio* prosecution, or who found the applicants' demands not "express" enough, and decided not to log the criminal charges. To protect citizens' rights, it would be advisable to require police officers to consult the State Attorney and to draw up a note to that effect before deciding whether criminal charges involve a criminal offence subject to *ex officio* prosecution and whether they are justified.

The case of three citizens who filed criminal charges for threat against their neighbour who fired a shot from a firearm into the air also illustrates the problem of acceptance of criminal charges and their forwarding to the State Attorney's Office. They were issued the appropriate notices and confirmations (Notice to the Injured Party to a Criminal Offence, Notice to the Victim of a Criminal Offence and Confirmation that Criminal Charges Were Filed), but the criminal charges and the other specified documentation were not delivered to the State Attorney's Office. The police informed us that they were going to determine if the police officer's oversights had the elements of breach of professional duty. The Complaints Handling Committee also identified this oversight. In this situation, the person against whom criminal charges were filed had fired multiple shots from a firearm into the air after a verbal altercation, and made threats in the presence of several persons, including children, which the police qualified as a misdemeanour.

"I went to the police at the train station, but the police officers there looked at me as if I was drunk... They were completely disinterested. Police officers I have known by name since childhood turned their backs on me and literally fled from the window..."

Concerns are also raised by the case of the citizen who, according to his own account, expressly requested the police officers at the police station to accept his criminal charges and dispatch officers to the scene of the event, but the police officers only exchanged a few words with him in the corridor, mocking him in the process. A police station corridor is definitely not an appropriate place to accept criminal charges, and exchanging a few words with the police officers cannot be construed as compliant with the procedure for receiving criminal charges as provided by the Act on Police Services and Powers and the Code of Practice for Police Officers. The police officers committed an additional oversight by failing to draw up an official note about the citizen's visit even though he spoke to five police officers at the station.

With respect to the treatment of persons deprived of liberty who are placed in a separate room, and the protection of their rights, the case of an arrestee who died while being held in a separate room is of particular concern. The investigation found that the police officers committed a number of oversights. At the moment of arrest, this citizen was intoxicated and had visible pre-existing injuries on his body. During the examination, the police officers found pills in his possession, which they confiscated. A bottle of Ventolin was later found under his body during the on-site investigation. Police

officers are required to assess, based on a direct examination, if an ambulance needs to be called in a given case, especially when the arrestee is intoxicated. Under the Code of Practice for Police Officers, prior to placing a person in a separate room, police officers are required to determine which opiate this person has taken, and which amount of the said opiate the person has been exposed to, and organize medical assistance if necessary. Under the Code, the decision whether a person can be placed in the separate room, or needs to receive medical assistance at a medical facility, is to be made based on a medical opinion. Also, under the UN's Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, medical care and treatment are to be provided to any detained or imprisoned person whenever necessary. In this case, it had evidently been necessary. Even though the Zagreb Police Department's report states that this person's death had not resulted from any kind of punishable offence, given the arrestee's condition, the police officers failed to call an ambulance, which would have eliminated any suspicion regarding the circumstances of this person's death at the police station. Furthermore, even though police officers were required to monitor the arrestee by video surveillance and occasionally check up on him in person while he was in the separate room, the documentation shows that they only monitored him by video surveillance. Given the arrestee's condition, it is unacceptable that the police officers had not entered the room even once to check up on the arrestee, who eventually died, in a period of about eight hours. The training provided after this incident to police officers about the handling of such situations is not a sufficient guarantee that something like this will not happen again. We recommended assessing the need to initiate disciplinary proceedings and use possible sanctions to send a clear message that the regulations and orders have to be strictly complied with.

The ECtHR's (European Court of Human Rights) ruling in the case of Babić vs. Croatia from February 2023, which finds that the right to the prohibition of torture and inhuman treatment under Article 3 of the ECHR (European Convention on Human Rights) was violated under both the substantive and procedural limbs, also attests to the need to efficiently investigate allegations of possible police abuse. The applicant in this case was arrested for having attacked a police officer in a public place while in an intoxicated state. After he was examined by a doctor at the police station, he claimed to have been beaten up in the police van. Conversely, the police claimed that he had jumped of his own accord while exiting the van in handcuffs, and hit his head on the ground. In the criminal proceedings conducted against him, the applicant claimed to have been beaten up by police officers. The ECtHR found that Croatia failed to produce convincing evidence that this man's injuries were caused in a manner different than described in his account of the events, which is also supported by the findings of the court-appointed expert, who concluded that his injuries could not have been caused by jumping out of a police van and hitting the ground. The court-appointed expert also found that no Croatian authority, including the Constitutional Court, established the cause of the injuries sustained by this man. Regarding the allegation that the state authorities failed to efficiently investigate his allegations of abuse, the ECtHR stated that the authorities cannot be deemed to have fulfilled their obligation to conduct an effective investigation, even though an independent expert had examined the man's injuries, in particular because no authority established the cause and the origin of the injuries with certainty. The expert examination in question was conducted in the criminal proceedings against the applicant, and not in an independent investigation.

Complaint Handling Committee

The citizens keep informing us that, after the Complaints Handling Committee decrees their complaint founded, the Ministry of the Interior notifies them that the Ministry's earlier decision, against which the citizens instituted proceedings before the Committee, will remain in force. This gives the citizens the impression of being deprived of their rights, and the allegations declared to be founded by the Committee being discredited. Given that the four-year term of the existing Committee has shown that the opinions about the validity of the citizens' complaints are based on expert arguments, the need to amend the Police Act should be considered. Instead of the current regime, under which the Ministry of the Interior, in the event that the Committee declares a complaint founded or partially founded, merely re-examines its decision and notifies the complainant, the procedure should include communication between the Ministry and the Committee, supported by arguments, before the Ministry makes its decision on the complaint.

It should be taken into account that, in addition to evaluating if the complaints are founded or not, the Committee also presents arguments that can lead to conclusions about inadequacies in procedures and the need for their improvement. The Committee handled 631 complaints in its term, and declared the complaints founded or partially founded in 27.9% of the cases. Keeping in mind that the complaints had already been examined by two instances of internal police control (the police department and the internal control department) before they were brought before the Committee, the need to improve the internal control of the police's actions and to respect the citizens' rights in police procedures is evident.

At the end of its term, the Committee issued an activity report, recommending that the options for filing citizens' complaints about police actions should be improved, along with the handling of these complaints. The Committee said that the citizens need to be given simple and effective options for filing complaints, for example, by making a complaint form publicly available on the website of the Ministry of the Interior, by revising the procedure for handling incomplete complaints as per the principle of providing assistance to any party that requires it, as set forth in Article 7 of the General Administrative Procedure Act, and by providing decision explanations supported by factual evidence, including a clear assessment of all allegations presented in the complaint, and a presentation of options for filing further complaints. The Committee's recommendations that do not require the amendment of law should be applied in practice, and the recommendations that do require it should be taken into account when amending the Police Act. This would make it easier for the citizens to file complaints to the Complaint Handling Committee, and show the Committee that its efforts and expertise are appreciated.

RECOMMENDATION 1
To the Croatian Government and the Ministry of the Interior: Implement the recommendations made by the Complaint Handling Committee in its Annual Activity Report

2.2. Pursuit of National Preventive Mechanism activities: Visits to police stations and detention units

Under its mandate to prevent torture and other cruel, inhuman or degrading treatment or punishment, the National Preventive Mechanism visited ten police stations and two detention units in Istrian and Vukovar-Srijem Police Departments in 2023. The purpose of the visits to the Istrian Police Department was to control the implementation of the warnings and recommendations issued pursuant to previous visits.

Police officers offered satisfactory cooperation during the visits, and placed on limits on the National Preventive Mechanism in the pursuit of its mandate, providing it with unrestricted access to data and records kept in written or electronic form.

Living conditions, transport vehicles, and records relating to persons deprived of liberty were inspected during these visits. As in previous years, most of our recommendations deal with living conditions, which have still not been fully aligned with the Ministry of the Interior's existing Standards for Rooms Housing Persons Deprived of Freedom of Movement ("Standards") and applicable international standards ("CPT Standards"). Four warnings and 24 recommendations were issued after the visits.

Regular visits

Living conditions and records relating to persons deprived of liberty at the Vukovar Police Station, Vinkovci Police Station, and the Detention Unit of the Vukovar-Srijem Police Department were inspected during our regular visits.

Living conditions

The inspections found that the rooms where persons deprived of liberty are accommodated at most police stations are spacious enough, lit by daylight and artificial light, and equipped with ventilation and heating.

All rooms are equipped with a sanitary annex, including a squat toilet, but some of the toilets are flushed from outside of the room. Drinking water is not directly available in some of the rooms, making persons deprived of liberty dependent on police officers for water, which goes against the Standards.

Also, installing video surveillance in all police station rooms where persons deprived of liberty are accommodated or that they pass through would provide an additional protective measure, and is also required by the Standards.

Considering the above, the living conditions in rooms where persons deprived of liberty are accommodated need to be aligned with international and Croatian standards.

The rights of persons deprived of liberty

It was noted during our visits that persons deprived of liberty, even though the Criminal Procedure Code allows them to use temporary free legal aid, still rarely call an attorney, and most waive their right to a defence attorney, which is surprising given that access to procedural guarantees in the first hours of having been deprived of one's liberty by the police ensures a fair trial under ECHR Article 6, and is also an efficient way to prevent torture and other forms of violence. Additional efforts therefore need to be made to inform persons deprived of liberty of the importance of their right to use free legal aid.

Persons deprived of liberty are provided with medical assistance at their own request or when they have visible injuries. We found during our visits that the police stations and detention unit have a good cooperation with emergency medical services, whose teams come when called, and, when necessary, police officers take persons deprived of liberty to public healthcare facilities to be examined.

However, the arrival of emergency medical service teams is subject to charges, which raises concerns, and is not aligned with the UN's Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, under which every person is to be offered an appropriate free medical examination and, where necessary, adequate medical care, as quickly as possible after being admitted to the accommodation facility for persons deprived of liberty. The Ombudsman has drawn attention to this problem on multiple occasions, however, the reply sent by the Ministry of the Interior on 22 January 2024 states that persons in charge at medical facilities were contacted about this problem multiple times, but no other solution was found, and charges will continue to apply as thus far.

We therefore repeat our recommendation that a solution needs to be found at Police Directorate level that will not incur additional financial expenses for police departments, and that will avoid placing police officers in a situation in which they have to be the first to assess if emergency medical services need to be contacted.

Furthermore, case files relating to female arrestees in some police stations were missing the information who performed the examination of the arrestee, making it impossible to determine if it was performed by a person of the same sex as required by Article 76(1) of the Act on Police Services and Powers. We recommend drawing up an official note on the examination of the person deprived of liberty in such cases, specifying the identity of the police officers who performed the examination.

During our visits, it was confirmed that we were justified in repeating, on multiple occasions, our recommendation to organise the work process so that detention officers only perform the tasks falling under their job description, and are not required to perform additional tasks in the operating and communication centre. According to the Police Directorate, past monitoring of police officers' work showed that the number of arrestees and detention cases does not justify having detention officers perform only the tasks falling under their job description, and that it has been established that detention officers can perform these tasks adequately in addition to the tasks of the shift manager or assistant shift manager. Conducting a direct inspection during our visit, we found that detention officers are not monitoring the detainees as required by Article 52 of the Regulation on the Admission and Treatment of Arrestees and Detainees and on Keeping Detainee Records in Police Detention Units, especially when persons deprived of liberty are placed in rooms located on police station premises (outside of detention units). Given that the detention officer is responsible for proper enforcement of

the regulations on the treatment of detainees under the Regulation, supervision of the police detention units needs to be organised and conducted as per Article 52 of the Regulation, or the organisation and performance of effective supervision of police detention units needs to be otherwise adequately regulated by a bylaw.

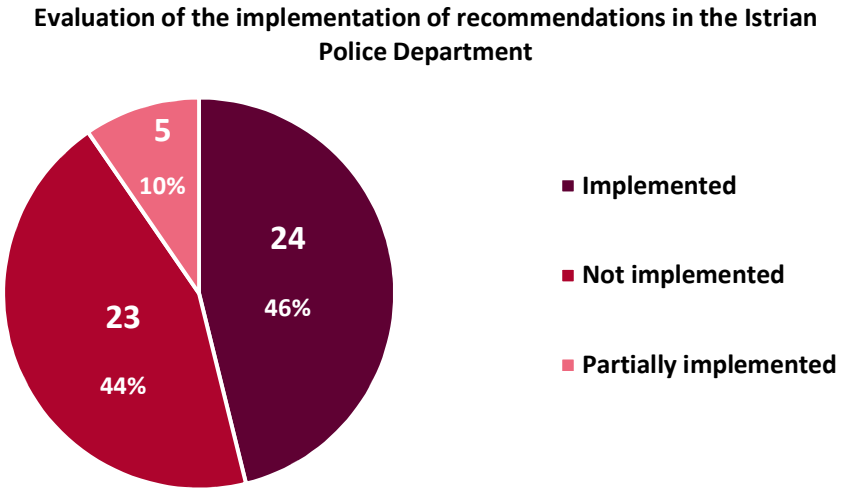
Transport vehicles

Most police stations have transport vehicles that are in proper order. However, we noted that the areas where persons deprived of liberty are seated in transport vehicles are still not equipped with grab handles and safety belts to minimize the risk of injury in transport as per CPT Standards. The vehicles used to transport detainees/arrestees therefore need to be fitted with appropriate safety equipment.

Control visits

The control visit to the Istrian Police Department included the detention unit and eight police stations. The purpose was to control the implementation of the recommendations provided after our regular visits in 2018.

We found during our control visit that 46% recommendations were implemented, 10% were partially implemented, and 44% were not implemented, and were therefore repeated.



The Ministry of the Interior and the Police Directorate still need to find a solution for the rooms in police stations in which the living conditions have not yet been aligned with the Standards. The Standards require that the rooms must have direct access to drinking water and a toilet, that is to say, that the sanitary annex has to be located inside the room, and equipped with a flushable squat toilet, as well as that drinking water must be available in the room. Since it is unacceptable that persons deprived of liberty depend on police officers for access to drinking water and toilets, these inadequacies must be resolved as a priority.

The situation at the Poreč Police Station is particularly alarming. In spite of the warnings issued to the Istrian Police Department to stop placing persons deprived of liberty in inadequately sized rooms devoid of daylight and artificial light, we found during our visit that the rooms that are not compliant with the Standards are still in use. The state of the building where these rooms are located, which leaves the impression of neglect and unsuitable working conditions, raises additional concerns.

3. Applicants for international protection and irregular migrants

With respect to the applicants for international protection and irregular migrants, the Ombudsman acts under the powers conferred on us by the Ombudsman Act and the Act on the National Preventive Mechanism for Preventing Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The first section describes the current state of affairs and the handling of complaints in investigation procedures, followed by a description of the conditions in the reception centre for applicants for international protection that we witnessed during our visit, and the conditions we witnessed during our unannounced visits to border police stations under the mandate of the National Preventive Mechanism.

3.1. Introduction

By joining the Schengen area at the beginning of 2023, Croatia became one of 27 European countries guaranteeing the freedom of movement to more than 400 million EU citizens as well as to third-country citizens living in the EU or visiting the EU for tourism, student exchange, or business purposes. Free movement of persons is primarily reflected in the absence of border controls on the EU's internal borders. However, on 21 October 2023, Slovenia introduced border controls on its border with Croatia, and extended the controls for a further six months on 22 December 2023.

The perception of insecurity and threat with respect to the arrival of migrants was a common topic in the public space in 2023. The trends, policies and reactions regarding irregular migrants were discussed at the meetings of the Croatian Parliament's Domestic Policy and National Security Committee, as well as the plenary session of the Croatian Parliament. The Ministry of the Interior's report on the situation of irregular migration in Croatia, covering the period since Croatia's accession to the Schengen area, served as the basis for the discussions. This report underlines that the security situation is not impaired, as official data indicate that "migrants have a negligible share in the number of offences against public order and peace and criminal offences from the category of property offences", and fears related to the presence of migrants are unfounded. On the other hand, according to the same report by the Ministry of the Interior, trafficking (Article 326 of the Criminal Code) and assisting in illegal crossing of the state border have increased significantly in comparison with 2022.

3.2. EU and national legal framework

The legal regulation of this subject matter in EU law is of particular importance for Croatia as an EU member state. The political agreement on the EU Migration and Asylum Pact ("Pact") was finally reached in December 2023.

In September 2020, the Commission presented its proposal of the Pact, consisting of a set of regulations and public policies, as a new approach to migration aimed at building trust through more efficient procedures, and striking a new balance between collective responsibility and solidarity. EU legislators have presented this agreement as a historical moment and a joint European response that is supposed to reform the EU's legal framework for asylum and migration. The documents in question concern all phases of asylum and migration management, from the screening of irregular migrants upon entry into the EU, collection of biometric data, procedures for the submission and processing of asylum applications, rules defining which member state is responsible for resolving the asylum application, and cooperation and solidarity between member states, to the rules of conduct in crisis situations, including cases of so-called instrumentalization of migrants. They also emphasize that the agreed solutions will make the asylum system more efficient and enhance solidarity between member states by reducing the responsibility borne by the member states that most of the migrants arrive in. The regulations making up the Pact are supposed to be adopted in the first half of 2024, and member states will have to implement them into their national legal systems.

The proposed solutions have, at the same time, been criticised by civil society organisations[i], but also by the UN's Special Rapporteurs[ii], who underlined, among other things, that the agreed solutions intensified the possibility of restricting the freedom of movement of persons discovered in connection with irregular border crossing, who will be considered not to have entered the territory of a member state (so-called "*legal fiction of non-entry*"), and increased the risk of so-called "*refoulement"* due to the broad application of accelerated procedures on the border, which, in their view, goes against the guarantees provided by international human rights law.

Other legal changes are pending in the field of migration in addition to the extremely extensive changes introduced by the Pact. The EU is introducing new information systems that are supposed to become functional in 2024 and 2025: the automated system recording the entries of third country nationals when crossing the Schengen border (EES, Entry Exit System), and the travel authorisation system for third-country nationals who do not require a visa to enter the EU (ETIAS). Since these systems will contain a number of personal and other data on persons that will be used to identify, using algorithms, the security, epidemiological, and irregular migration risks, among other things, it will be important to monitor the use of the data from the said systems in order to prevent human rights violations.

As for the national legal framework, the amendments to the Act on International and Temporary Protection, which entered into force in April 2023, have strengthened the legal safeguards provided to unaccompanied children as regards their reunification with their families; sped up the acquisition of the right to engage in work for applicants for international protection ("applicants"); and provided a new legal route of entry to Croatia for the applicants, defining a humanitarian reception mechanism in addition to the existing resettlement and transfer mechanisms.

At the same time, some of the amendments have worsened the applicants' position, which drove us to issue our opinion in the process of the Act's adoption. For instance, the amendments introduce the possibility of using software and searches, including of electronic and mobile devices, to determine the applicant's identity and country of origin, provided that the applicant has given written consent. The adoption of these amendments was justified by the need for alignment with Directive 2011/95/EU, which, among other things, empowers authorities to search applicants and the objects

they carry on their person, but the Directive does not directly provide for the search of computers and other electronic devices. Even though the Act on International and Temporary Protection guarantees personal data protection, it remains to be seen how this provision will be enforced in practice.

The Act also expands the reasons for restricting the applicants' freedom of movement, including to prevention of the spreading of communicable diseases in accordance with national regulations on necessary epidemiological measures; prevention of endangerment of people's lives and property; and several consecutive attempts to leave Croatia during the international protection procedure. The Reception Conditions Directive 2013/33/EU that the Act on International and Temporary Protection was aligned with does not expressly specify these reasons. According to the Ministry of the Interior, these reasons fall under the protection of national security and public order, which is defined as a reason for restricting applicants' freedom of movement in the Directive. We believe, however, that the newly provided reasons do not necessarily represent the protection of national security and public order, and that an individual assessment needs to be carried out on a case-by-case basis.

RECOMMENDATION 2
To the Ministry of the Interior: Prepare a proposal of amendments to the Act on International and Temporary Protection that would regulate the judicial review of the lawfulness of decisions restricting the freedom of movement of applicants for international protection as it is currently regulated for illegal migrants under the Aliens Act

Furthermore, under the Act, an administrative court is supposed to review the restriction of the freedom of movement *ex officio* within a reasonable timeframe, among other things. To avoid dilemmas as to what would constitute a reasonable timeframe in these situations and to thus avoid legal uncertainty, we recommended to the Ministry of the Interior, both during the process of the Act's adoption and in our 2022 Report, that the judicial review of the lawfulness of the decisions restricting the freedom of movement of applicants for international protection should be regulated as it is currently regulated for illegal migrants under the Aliens Act, but this was not implemented.

The Ordinance on Accommodation in the Reception Centres for Foreigners and the Method for Calculating the Costs of Forced Removal was also amended in 2023. Among other things, the amendments require to check if the foreigner is informed about the right to free legal aid at the moment of accommodation at the foreigners' reception centre, and to give this information if the foreigner does not have it. The amendments also allow family members to meet each other and spend time together daily if they are not accommodated in the same rooms, and facilitates access to attorneys. As welcome as these amendments are, we believe that it would be desirable to ensure wider access to free legal aid, including by allowing all interested civil society organisations that provide free legal aid to provide it at the centres.

3.3. Migration movements in Croatia

The regulation of post-entry status changed substantially after Croatia joined the Schengen area in 2023, as indicated by the Ministry of Interior's data. In previous years, most procedures concerning persons who entered Croatia irregularly ended by issuing a decision on return, with a period for voluntary departure, which was usually seven days. 50,624 persons entered Croatia irregularly in 2022. Decisions with a period for voluntary departure were issued for 30,595 persons, and decisions on expulsion, ordering removal, were issued for 3,643 persons. At the same time, 586 departures from Croatia were registered under decisions defining a period for voluntary departure. We may assume that most of the remaining persons continued their journey to other countries, and some may have stayed in Croatia. Also in 2022, 12,827 persons expressed the intent to apply for international protection in Croatia, of whom 2,787 persons applied for international protection.

The number of persons who entered Croatia irregularly in 2023 was 69,726. 6,059 decisions defining a period for voluntary departure were issued, of which 1,192 persons were registered as having left Croatia voluntarily, and 7,554 decisions on expulsion were issued, ordering removal. At the same time, as many as 68,114 persons expressed the intent to apply for international protection, of which 1,783 persons applied for international protection, the highest number of applicants since the adoption of the first Asylum Act in 2004. Regarding the number of persons who continued their journey to other countries, the Ministry of the Interior's report on the situation of illegal migration in Croatia covering the period after Croatia's accession to the Schengen area, dated November 2023, states that "almost everyone (97%) who expresses intent to or even applies for international protection does not remain on Croatian territory".

To ensure compliance with all reception and procedural guarantees as per the national and EU regulations, the increase in the number of applicants should be accompanied by an increase in the number of officers handling applications for international protection and the number of applicant reception officers. An increased number of officers, among other things, would allow for better recognition of vulnerable applicants. According to the Ministry of the Interior's data, the number of children applicants, who are an extremely vulnerable group, increased in 2023, when 9,069 children up to 13 years of age and 3,082 children aged 14-17 were registered, and 3,288 children were unaccompanied.

In addition to fast daily fluctuation, the identification of vulnerable applicants was made even more difficult by the inability of civil society organisations to enter the reception facilities for applicants for international protection ("reception facilities"), which has been in force since the introduction of COVID-19 mandates. Prior to the introduction of the mandates, several organisations providing psychosocial assistance and support to persons who requested it, thus also helping to identify vulnerability indicators, had access to the reception centres under agreements signed with the Ministry of the Interior. Given the increasing number of applicants and all resulting circumstances in the reception system, in

RECOMMENDATION 3
To the Ministry of the Interior: Provide civil society organisations with access to reception centres for applicants for international protection

order to fully ensure the safeguards set forth in Directive 2013/33/EU, we recommend allowing access to reception centre premises to civil society organisations, experienced in working with applicants, which provide appropriate services, including psychosocial support and legal aid.

Regarding the said increase in the number of persons who expressed intent to apply for international protection ("intent"), we would like to draw attention to civil society organisations' reports stating that certificates of expressed intent were also issued to persons who were not aware of their nature, and who instead believed that they were issued decisions on voluntary return, giving them seven days to leave Croatia/EEA. For instance, within its "Better system, better respect for human rights" project, the association Borders:none conducted a survey on the respect of human rights of persons staying in Croatia irregularly, and persons undergoing return procedure. When they were asked if they had been issued decisions on voluntary return, they said yes, but when the interviewers asked them to show them this document, they discovered that they had been issued certificates of expressed intent. On the other hand, 92.6% respondents said that they were not informed about their rights. In our 2022 Report, we stated that our investigations into the restrictions of the applicants' freedom of movement found that the applicants were not provided with adequate translation during police procedures. In October 2023, the Ministry of the Interior reported that 47% persons who expressed intent did not show up at the reception centres within the set timeframe, which could partly be explained by their lack of understanding of their current status and related obligations.

Most persons expressed intent to apply for international protection when they were discovered by police officers in Croatian territory. 13% persons expressed it while crossing the state border at a border crossing, and fewer than 0.4% expressed it at a foreigner reception centre. We requested the information on the number of applicants accepted by Croatia under Regulation (EU) no. 604/2013 (so-called "Dublin III Regulation") and their structure by EU member states that requested their reception, but we did not receive this information, as the Ministry of the Interior explained in January 2024, because the "Dublin database" was corrupt. According to the Ministry of the Interior's website, there were a total of 897 entry transfers in 2023 in which the Dublin procedure was applied. Most came from Austria, France, Germany, and Switzerland.

In 2023, 52 applications for international protection were approved (50 asylum applications and two subsidiary protection applications), 90 applications were rejected, and 6,396 procedures of application for international protection were terminated irrespective of the year when the application was submitted. Given the data on the duration of the applicants' stay at the reception centres and the lack of their registration at the reception centres after they expressed intent, many procedures are still being terminated, both relating to 2023 and to 2022.

It is important to note that the number of complaints about pushbacks, i.e. the practice of refusing entry, that were filed to the Ombudsman declined substantially in 2023, as did the practice of removal of persons who irregularly crossed the border without addressing their needs for protection individually. At the same time, we would like to point out that civil society organisations still report testimonies of pushbacks that they collected from individuals, and that their number has increased again in the last months of 2023. Since returning people without an individualised assessment can lead to violations of human rights guaranteed under European, international, and national regulations, all reports about these violations need to be investigated efficiently.

Also, our 2022 Report contained a recommendation to the Ministry of the Interior to keep a record of pushbacks and other actions taken by police officers on borders. Police officers deter persons from avoiding controls at border crossings (Schengen Borders Code). This refers to the activity of police officers on the so-called green border, when the presence of officials causes persons who had intended to cross the border to change their minds.

RECOMMENDATION 4
To the Ministry of the Interior: Keep records of deterrence and other actions at borders

During our investigation at a border police station in 2023, we examined a case file and found that records on the deterrence of foreign nationals were kept on a designated form. The police officers told us that the table containing the data on the instances of deterrence, including the number of persons, data, place, and time, is delivered to the competent Police Department and to the Police Directorate's National Coordination Centre. Given our earlier recommendation to keep a record of the instances of deterrence, we welcomed the practice of keeping a record of deterrence actions, and we asked the Police Directorate if the same practice was implemented in all border police stations. However, we were informed that an extraordinary inspection was conducted at the border police station upon receiving our letter, and that the inspection found no deterrence form being kept at the station, or any kind of records about the use of deterrence measures.

3.4. Reception centres for applicants for international protection

Since the highest number of persons who expressed intent to apply for international protection was registered during the three summer months, the reception capacities were insufficient in this period. As a result, applicants complained of inadequate living conditions at the reception centre in Zagreb. Acting on these complaints, we conducted three inspections of reception centres for applicants for international protection under Article 28 of the Ombudsman Act. We visited the reception centre in Zagreb in June and in September, and the reception centre in Kutina in October of 2023.

We found the reception centre in Zagreb overcrowded on both our visits. For instance, on the day of our visit in September, more than 892 persons were staying at the centre, including 36 families with children. The total accommodation capacity of this facility is up to 600 persons, depending on family relationships or the criterion of vulnerability of the accommodated persons. All accommodation rooms are equipped with four beds and a private bathroom with a shower. On the day of our visit, all extra rooms had been converted into accommodations for the applicants, and there were mattresses on the ground in the corridors. Some of the mattresses and beds were equipped with bedding, while others were bare, and the mattresses themselves and the area around them were dirty. The applicants who were placed in ancillary rooms or corridors had a total of five toilets and two showers available for their use. Considering that almost 300 persons were using the toilets and showers on the day of our visit, it was impossible to keep them adequately clean. Also, due to overcrowding, the lack of maintenance, cleaning and laundry staff, and the short stays of the applicants at the reception centre (the applicants stayed there for less than 24 hours, and sometimes up to 600 persons would arrive and leave in one day), the common areas were dirty, and bags containing trash or food were scattered

all over the interior of the facility, as well as in the yard and the area around the building. In this period, the applicants who stayed at the centre therefore faced inadequate conditions and exposure to hygienic, health and other risks, particularly communicable diseases due to frequent outbreaks of scabies and bedbugs. All of this also significantly impacted the working conditions of everyone caring for the applicants.

In such living conditions, the applicants were exposed to safety risks as well. Directive 2013/33/EU and the Act on International and Temporary Protection require the gender and the age of the applicants, as well as their vulnerability, to be taken into account when assigning them accommodations in reception centres, and measures to be taken to prevent attacks and gender-based violence and harassment, which is difficult to ensure in overcrowded conditions. Impassable escape routes were an additional safety risk in case of a fire.

Croatian Red Cross and Médecins du Mond (MdM) are the only organisations present at the reception centre in Zagreb. They are offering services to applicants through projects financed by the EU Asylum and Migration Fund (AMIF) and the Croatian Government. For example, under an AMIF-funded project, the Red Cross provides services of reception and accommodation, informs applicants about the reception centre's rules, gives out hygiene supplies, and organises Croatian language courses and individual and group psychosocial support sessions. The MdM ran the "5P" project, which covered disease prevention, health promotion and protection, psychological support, and healthcare access and aid for applicants for international protection, providing multidisciplinary and integrated care to the applicants mainly through the daily presence of medical teams, psychologists and translators. However, there was an interruption in their services from May to end of August 2023 due to delays in the publication of an invitation to tender, and the resulting interruption in the financing of their activities. The organisation continued providing its services in August after a Memorandum of Understanding was signed between the Ministry of the Interior, the Ministry of Health, and the Belgium-based organisation MdM. The new decision to publish a public invitation to tender for the financing of the project supporting healthcare services for applicants was only issued in December 2023, and we hope that provisions will be made to continue these services.

The Kutina reception centre, which we visited in October, and which is primarily designed for accommodating vulnerable groups such as children, unaccompanied children, the elderly and the infirm, persons with disabilities, pregnant women, single parents, persons deprived of their legal capacity, persons with mental or intellectual disabilities, and victims of trafficking, torture, rape, or other forms of psychological, physical, or sexual violence, also faced overcrowding the in the summer months. The facility can accommodate up to 140 persons, depending on family relationships and the criterion of vulnerability. The ground floor and the first floor have 10 rooms each, and the attic has one room with 40 beds. All persons staying at the facility share eight toilets and eight showers. In October, 27 containers and 12 chemical toilets were set up in the reception centre's yard, at the children's playground, due to the increased number of applicants. Considering the number of the accommodated persons and their vulnerability, we recommend to urgently ensure more toilets and showers at the reception centre in Kutina, taking care to ensure privacy and safety.

Since both reception centres combined can accommodate a maximum of 900 applicants, we recommend to the Ministry of the Interior to find locations to build new reception centres or convert existing buildings in cooperation with local communities, having in mind that the reception facilities have to guarantee the safety and humane treatment of the applicants, and that special attention needs to be paid to the needs of vulnerable groups.

RECOMMENDATION 5
To the Ministry of the Interior: Urgently provide more toilets and bathrooms at the Reception Centre for Applicants for International Protection in Kutina

RECOMMENDATION 6
To the Ministry of the Interior: Increase the number of accommodation facilities for applicants for international protection

Facing an increase in the number of applicants, the Ministry of the Interior opened a Centre for the Registration of Applicants for International Protection ("Centre") in Dugi Dol. The Centre was opened within the area of jurisdiction of the Karlovac Police Department, which is the most exposed to migration flows due to its geographical position, and the police stations in this area did not have the capacities needed for the registration of the increased number of applicants. All persons found by police officers in the area of the Karlovac Police Department who expressed intent to apply for international protection when found are supposed to be brought to the Centre in order to register. In the registration process, the police officers are required to fingerprint the applicants and take their photo immediately after they have expressed intent to apply, determine their identity and how they came to Croatia, the route they took from their country of origin to Croatia, and personal circumstances relevant for the assessment of reception and procedural guarantees. Following that, they are required to issue a certificate of the applicant's registration and, if necessary, determine the timeframe in which the applicant needs to report to a reception centre in order to continue the procedure there.

The Centre has the capacity to register up to maximally 500 applicants per day, and is equipped with around 65 containers to accommodate the applicants during the procedure. After the registration process, the applicants are supposed to be transported by bus to reception centres in Kutina and Zagreb. The Centre became operational on 19 November 2023, and 211 applicants were registered there until 5 January 2024.

3.5. Visits under the National Preventive Mechanism

We conducted three announced visits to border police stations (Gruda, Tovarnik and Cetingrad) in 2023 under the powers conferred on us by the Act on the National Preventive Mechanism.

SPT's representatives joined us on our visit to the Tovarnik Border Police Station under the National Preventive Mechanism, acting on the powers defined in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). We had previously visited the Tovarnik Border Police Station under our National Preventive Mechanism mandate in June 2019, when we inspected the detention rooms that were not being used due to the

lack of video surveillance. At the time, we were not given access to the records of procedures involving foreigners or to the register of administrative cases that would allow us to indirectly monitor the number of ordered return measures because, as the police officers informed us, these records were kept in electronic form only in the Ministry of Interior's Information System ("IS MUP"). They explained that they had to deny access to the representatives of the National Preventive Mechanism because they could not give them the password, as this would constitute gross breach of professional duty by the police officers. We were denied access to individual case files as well during our visit.

However, when we visited the station together with the SPT in July 2023, we found out that the data was also kept in written form in the Records of Enforced Measures, in addition to the IS MUP. We inspected two record books, one of which contained data covering the period 2012-2021, and the other contained data covering the period between 2021 and the day of our visit. Additionally, there were separate books where records were kept of procedures involving irregular migrants found deep in the Croatian territory, in the areas of jurisdiction of other police stations, who were brought to the Tovarnik Border Police Station as the competent station after having been processed at the other stations so that the circumstances of their crossing of the state border could be established, and the measures to ensure their return could be taken. Such a procedure was established by an order issued by the Police Director on 15 February 2017. The Illegal Migration Officer told us that this order was no longer followed as of 1 January 2023, and migrants from other police stations were no longer brought to Tovarnik for this purpose. During the NPM's joint visit with the SPT, the representatives of the National Preventive Mechanism were also given access to the IS MUP to check how long the irregular migrants stayed at the station, that is, to check the time when they were found to be staying in Croatia irregularly, when they were brought to the station, and when they were released.

RECOMMENDATION 7

To the Ministry of the Interior: Allow the institution of Ombudsman access to all data about the procedures involving irregular migrants, including data maintained in the Ministry of the Interior's Information System

However, representatives of the National Preventive Mechanism were not given access to the IS MUP during their visits to the border police stations in Grude and Cetingrad. This means that they were not given access to data on procedures involving irregular migrants, since this data and the records of identified foreigners are only kept in the IS MUP. The explanation given for denying access to the representatives of the National Preventive Mechanism was that they do not have the necessary powers and the password to access the system, and they were denied printouts of the requested records as well. Cetingrad Border Police Station explained that they were unable to give them the printouts of the requested records because the information in the records of identified foreigners was not accurate due to duplication upon entry, and was being updated. During their visit to the Grude Border Police Station, the officials of the Ministry of the Interior told the representatives of the National Preventive Mechanism that they need to submit a written request for a printout of the data from IS MUP, and that this data will then be delivered to them as soon as possible. After this written request was submitted, some of the requested data arrived more than a month after our visit, and some were not delivered at all. The received data were, however, insufficient to establish the details of individual procedures. The National Preventive

Mechanism needs to be given access to this data during its visits so that the data would be relevant for its work. After both visits, we issued a warning to the Ministry of the Interior that access to all requested data needs to be given to persons performing National Preventive Mechanism tasks under Article 5 of the Act on the National Preventive Mechanism and Article 20 of OPCAT.

RECOMMENDATION 8
To the Ministry of the Interior: Urgently put in use the detention rooms in all border police stations, and align the conditions in these rooms with international and national standards

Also, the conditions in detention rooms in all three border police stations do not meet the standards defined in the Standards of the Ministry of the Interior and the Ordinance on the Treatment of Third County Nationals, or these rooms are officially not in use. The Cetingrad Police Station, as the Karlovac Police Department's organisational unit that conducts the higher number of procedures involving irregular migrants and applicants, does not have adequate material conditions to detain persons, and the rooms intended for this purpose have not been in use since 2017. Persons are therefore taken to the Slunj Police Station and/or to the Vojnić Office of the Karlovac Police Station when necessary.

Photo 9

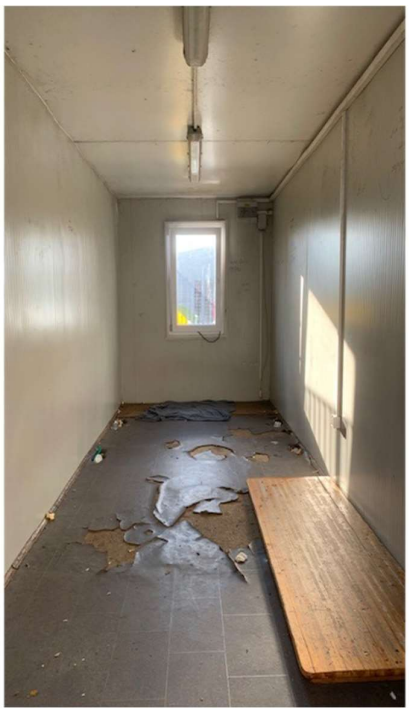


Photo 10

Three containers, sized 6m x 2.4m x 2.6m, are set up in the yard of the Cetingrad Border Police Station, two of which are used to temporarily accommodate migrants during the procedure, whether they are applying for international protection or subject to measures to ensure their return. The containers are not equipped with furniture, and only one has a heating/cooling device. Its occupants are not provided with access to drinking water or toilet. Restricting a persons' freedom of movement by keeping them in such conditions can constitute a violation of ECHR Article 3, particularly if it applies to children and other vulnerable groups. We examined the cases relating to the treatment of applicants and irregular migrants, but we were unable to determine when and for how long the persons are placed in these containers, and when they are transported to other police stations.

One of the cases we examined concerned a group of irregular migrants who expressed intent to apply for international protection. This group was found on 22 November 2023 at 10:00 pm, and escorted to the reception centre in Zagreb on 24 November at 00:00. The group included juveniles (both accompanied by parents and unaccompanied), and the police officers confirmed that the juveniles were placed in the containers. Having examined the cases and the issued decrees of expulsion in the arrest reports, we found that they lacked data on the time when the persons were released, as well as data on where they were kept during and after the proceedings at the Cetingrad Border Police Station. Since this was a bigger group, and having in mind the capacities of the Slunj Police Station and the Vojnić Office of the Karlovac Police Station, it can be assumed that accommodations in this case should have been organised differently than they usually are.

Representatives of the National Preventive Mechanism were not given access to the records on arrested and detained persons, and the police officers present had no knowledge of where the persons were kept during the arrest, and whether any records were kept of this. Under the CPT Standards, the existence of uniform and comprehensive custody records, covering all aspects of custody and all actions taken in this regard, is the basic mechanism for the protection of person deprived of liberty. We would therefore like to draw attention once again to the importance of providing the representatives of the National Preventive Mechanism with access to all data, regardless of how they are being kept, and of including the information on the place and time where/when a person was deprived of liberty in individual case files dealing with the treatment of persons while depriving them of liberty.

During our visits, we found that procedures, whether they concern applicants or irregular migrants, are often conducted in English or using Google's translation services even though some of these persons do not know enough English to be able to clearly present the facts and circumstances relevant for the procedures.

We would like to note that the Administrative Court in Zagreb, while controlling the lawfulness of restriction of freedom of movement, stated in its ruling, as one of the reasons why the Ministry of the Interior's order was set aside, that the Court noticed that the border police station issuing the order

RECOMMENDATION 9

To the Ministry of the Interior: Ensure adequate translation while depriving irregular migrants and applicants for international protection of liberty

restricting the freedom of movement always conducted interviews with foreigners in English, and was never able to find a translator for any other language, not even to provide telephone translation, which may constitute a violation of Article 196(1) of the Aliens Act, under which a third country national staying in Croatia illegally who does not understand Croatian shall be provided with translation to a language he understands.

3.6. Execution of ECtHR's judgment in the case of M.H. and Others v. Croatia

We have covered the ECtHR's judgment in the case of M.H. and Others v. Croatia in our 2021 and 2022 Reports. This verdict became final on 4 April 2022 and is now in execution phase. The judgment concerns the circumstances that led to the death of a six-year-old girl from Afghanistan, who was hit by a train in November 2017 near the Croatian-Serbian border, and the subsequent investigation of these circumstances, as well as the treatment of her family members in the context of asylum procedure, including the circumstances of their deprivation of liberty. In its judgment, the ECtHR found Croatia responsible for the violation of several ECHR articles, and since the judgment refers to complex problems, it was identified as "landmark", and its execution is "under heightened scrutiny" by the Council of Europe's Committee of Ministers. Croatia was required to prepare an Action Plan for its execution. This was also an opportunity to rectify system oversights that could lead to such or similar outcomes in the future.

The deficiencies in the handling of this case that we had pointed out to the national authorities were identified in the investigation conducted by this institution. We remain involved in this case in the phase of execution of the judgment as well. Within the national procedure, as a member of the Expert Council for the execution of judgments and decisions issued by the ECtHR, we suggested improvements to Croatia's Action Plan, being of the opinion that the proposed measures are insufficient and fail to address all conclusions and recommendations given by the international authorities and organisations that the judgment refers to. Given that our suggestions were not implemented to a satisfactory extent, as the national human rights protection institution, we exercised the possibility of communicating our objections and proposals directly to the Council of Europe's Committee of Ministers under Rule 9 of the Rules for the supervision of the execution of judgments and of the terms of friendly settlements of the ECtHR, which we did in September 2023.

To ensure efficient investigations of police officers' conduct in situations of violation of the right to life, we proposed establishing a specialised department within state attorney's offices to handle criminal charges filed against police officers, or appointing designated persons responsible for these matters in the State Attorney's Office, as well as preparing special protocols for such cases. Having in mind the numerous negative impacts of the deprivation of liberty on children's physical and mental health and development, we recommended drafting a plan banning the placement of children in reception centres for foreign nationals, in particular in case of long-term deprivation of liberty that occurred in the case of the brothers and sisters of the girl who was killed. We proposed ensuring unobstructed access to reception centres for foreign nationals to lawyers, and efficient access to these centres to civil society organisations; establishing a system of responsibility that would allow efficient investigation of pushbacks and collective expulsion of migrants; ensuring systematic and continuous access to information to the Ombudsman institution; and a number of measures to ensure that migrants are informed of their rights.

3.7. Independent Monitoring Mechanism

In 2023, the Independent Monitoring Mechanism for police officers' conduct relating to illegal migration and international protection did not present a single report about its activities even though the act establishing the Mechanism (Cooperation Agreement signed in November 2022 between the associations Croatian Academy of Medical Sciences, Croatian Academy of Legal Sciences, Croatian Red Cross, Centre for Cultural Dialogue, and an independent legal expert on one hand and the Ministry of the Interior on the other) provides the obligation of publishing semi-annual and annual reports on the Mechanism's website (which has not been set up yet). To ensure the efficiency of the Independent Supervisory Mechanism as an extra mechanism for monitoring police officers' conduct relating to illegal migration and international protection, in addition to the authorities and institutions defined by the Constitution and law, such as the State Attorney's Office, the Ministry of the Interior's Internal Control Department, and the Ombudsman, the prerequisites for this need to be met, which we covered in more detail in our 2022 Report. We suggest following the FRA's Guidance on establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders in this process.

3.8. Experiences of civil society organisations and free legal aid providers

In the course of the year, we worked with international organisations, civil society organisations, and attorneys working with applicants for international protection and irregular migrants, and we organised a meeting focusing on providing free legal aid and translation during the procedures in November 2023.

Civil society organisations and attorneys drew attention to translation difficulties in the procedures of applying for international protection at police stations, but also in situations not related to administrative procedures, for example, contacts between unaccompanied children and guardians ad litem. They pointed out the shortage of translators for some languages, in which cases procedures are conducted in a language that the applicants have insufficient command of (such as English), which prevents the applicants from clearly presenting their application for international protection. They also pointed out that all statements made by applicants are not registered in the minutes drawn up during the proceedings. On the contrary, their statements are often summarized, causing important details to be lost (application-taking sometimes lasts for hours, and the minutes are summarized on a handful of pages). Conducting procedures in such a way can result in improper establishment of facts or improper assessment of the applicant's statement as incoherent, inconsistent, or inaccurate. The availability of translation is also important at the very beginning of the procedures at police stations, because the absence of adequate translation affects the exercise of rights. Suggestions were made to professionalize translation, introduce translator trainings, and, where needed to improve the understanding of the culturological context, to provide cultural mediation during translation.

In course of the year, civil society organisations also pointed out that psychological trauma was not given enough consideration while conducting international protection procedures, and that there were problems relating to access to reception centres. Attorneys pointed out that the interviews with their clients at the Zagreb reception centre take place in inadequate rooms due to ongoing reconstruction work on the centre.

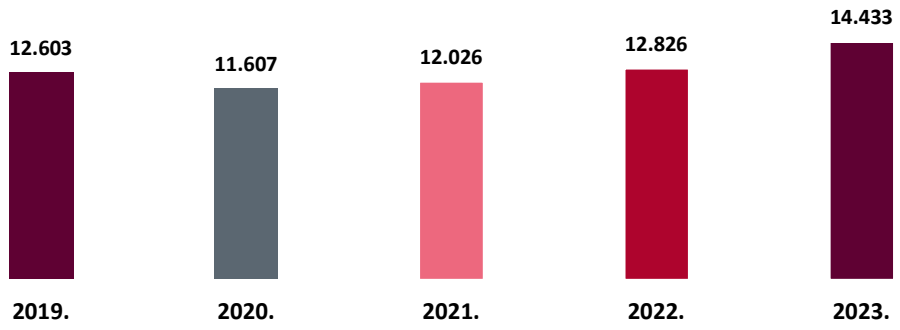
4. Prison system

With respect to persons deprived of liberty who are in the prison system, the Ombudsman acts under the powers conferred on us by the Ombudsman Act and the Act on the National Preventive Mechanism for Preventing Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The first section of this chapter presents the actions we have taken in connection with complaints and our own initiative investigations, while the second section describes the conditions we discovered during our announced visits to correctional facilities under the mandate of the National Preventive Mechanism.

The situation in the prison system remains largely unchanged and has unfortunately even worsened compared to the previous years. Although efforts have been made to improve material accommodation conditions, primarily through the adaptation of accommodation areas for female prisoners in the Požega Penitentiary, overcrowding remains a major issue. According to the Croatian Government's 2022 Report on the State and Activities of Penitentiaries, Prisons, Correctional Facilities and Centres (from January 2024) and the data of the Ministry of Justice and Administration, the number of persons in the prison system in 2023 increased by 1,607 compared to 2022.

Total number of persons in the prison system in course of the year



Croatian Constitutional Court found violations of constitutional rights of persons deprived of liberty resulting from inadequate living conditions in several instances in 2023. The Constitutional Court found that these conditions represent degrading treatment, or treatment not aligned with the legal standard requiring the dignity of convicted persons to be respected, as laid down in Article 25(1) of the Croatian Constitution. Some decisions underlined the state's duty to ensure conditions respecting human dignity and not subjecting persons to discomfort or suffering at an intensity exceeding the unavoidable level inherent to deprivation of liberty and imprisonment.

The ECtHR also found violations of the prohibition of torture or inhuman or degrading treatment or punishment, as laid down in ECHR Article 3, arising from inadequate living conditions in several cases against Croatia. Special attention was drawn by two judgments in which inhuman treatment of persons in the prison system was identified, in addition to degrading treatment (Vukušić v. Croatia,

no. 37522/16, and Miljak v. Croatia, no. 15681/18). Also, violation of ECHR Article 3 under its procedural limb was established in the Miljak case because the incident in which prison officers inflicted severe injuries on a detainee held on remand were not efficiently investigated.

RECOMMENDATION 10
To the Ministry of Justice and Administration and the Ministry of Health: Ensure the prerequisites for the provision of healthcare services within the prison system as laid down by the Healthcare Act

The quality and insufficient accessibility of healthcare to prisoners remains a major problem. Provision of healthcare service under the Healthcare Act has still not been regulated, and long-term systemic problems have not been resolved. For instance, physicians employed in the prison system are not linked to the CEZIH (Central Health Information System), and are therefore unable to issue referrals or prescriptions. This means that all persons deprived of liberty need to have a parallel family practitioner to issue them referrals and prescriptions, which poses an additional problems in terms of organisation. Issuing prescriptions for substitution therapy is an even greater problem, which we covered in more detail in our 2022 Report. Also, not being linked to the CEZIH system, prison physicians are unable to refer persons deprived of liberty to specialist examinations, as a family practitioners are able to do. We therefore repeat our recommendation to the Ministry of Justice and Administration and to the Ministry of Health to ensure the prerequisites for the provision of healthcare services within the prison system as laid down by the Healthcare Act.

Prisons are still understaffed (lacking prison officers, healthcare workers, prisoner rehabilitation officers). Low interest in seeking employment in the prison system aggravates the problem. The increase in the number of persons deprived of liberty in the prison system is not accompanied by an increase in the number of staff. For example, one prison officer was employed per 2.7 persons deprived of liberty in 2022, and in 2023 this number increased to 2.9. The lack of officials inevitably affects the level of compliance with the rights of persons deprived of liberty.

During their first visit to Croatia in July 2023, the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) visited accommodation locations for persons deprived of liberty, including facilities in the prison system. The report on their visit has not been released yet, but their preliminary conclusions indicate that Croatia has made progress in its efforts to improve the conditions in its correctional facilities, but more needs to be done, especially in terms of reducing overcrowding and the negative effects it has on persons deprived of liberty. The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) about its visit to Croatia in 2022 was released in November 2023. The report contains a number of recommendations aimed at improving the treatment of persons deprived of liberty and their living conditions, which largely address the problems we have drawn attention to in recent years, as well as our recommendations and warnings. This indicates that, by intensifying its implementation of the recommendations and warnings issued by the Ombudsman as the institution responsible for the prevention of torture, inhuman or degrading treatment or punishment on national level, Croatia could avoid receiving the same recommendations from the CPT and other similar international mechanisms.

The regulatory deficiencies, relating mainly to the Enforcement of the Prison Sentence Act, but also the Criminal Procedure Code and the Criminal Code, which negatively reflect on the rights of persons deprived of liberty, and which we have continually drawn attention to, have not been eliminated yet. We have continually pointed out the deficiencies of the Enforcement of the Prison Sentence Act with respect to the use of special measures to maintain order and security, among other occasions, in our reports on our visits to correctional facilities in 2023. We also participated in the e-consultations about the amendments to the Criminal Code and Criminal Procedure Code, which is discussed in more detail in the chapter about the National Preventive Mechanism.

4.1. Protection of persons deprived of liberty in the prison system

We examined possible violations of the rights of persons deprived of liberty in 156 cases that we opened after receiving complaints or on our own initiative. As in previous years, the majority of individual complaints dealt with healthcare, living conditions, and officers' conduct.

We have noted an increased number of complaints about insufficient availability of physicians. Complaints about unsuccessful requests for psychiatric examinations, such as consultations with a psychiatrist with a view to reducing or changing the prescribed treatment, are becoming increasingly common. Some prisoners complained that their requests to have their sentence suspended in order to undergo a surgery in an external healthcare facility have been denied. In such situations, we informed the complainants about the possibility of being referred to an adequate healthcare institution for treatment with prison officer escort.

"...My physical health is undermined in the prison system in addition to my mental health. For five years, the prison system has been refusing to allow me to undergo surgery on the left side of my hip, due to which, as it was confirmed, the right side of my hip and my lumbar spine sustained damage as well. A specialist medical report from the Dubrava Clinical Hospital, dated ... 2017, referred me to surgery on the left side of my hip for the first time. The penitentiary then asked the Dubrava Clinical Hospital for a second opinion on ... 2018, whose orthopaedist referred me to the Zagreb Clinical Hospital Centre, where another specialist medical report dated ... 2018 referred me to surgery in my left hip for the second time. After that, a specialist medical report dated .... 2020 from the Zagreb Clinical Hospital Centre referred me to an MR of my spine and right hip. The MR was performed on ... 2021, and it proved that the right side of my hip and my lower back sustained damage too due to the failure to treat the left side of my hip. It is unquestionably evident that I have not been provided with any kind of healthcare in the prison system..."

The prisoner was not taken to surgery before the writing of this report.

Prisoners also complained of having been transported in inadequate vehicles, which we had drawn attention to in previous years as well. For instance, one prisoner reported having been referred from the Varaždin day hospital to the Zagreb Prison Hospital for further treatment in March 2023. He was transported to the Zagreb Prison Hospital in the back of a police van, in the space used for the transport of prisoners, which has benches affixed to the side of the vehicle, with no safety belts. The complainant stated that he was in so much pain that he was barely able to enter the back of the vehicle, crawling on his hands and knees. He stated that he did not put on a seatbelt, because none

were available in the back of the van, and that his hands and feet were restrained by a tie to his belt because it was required by the transport order. Even though it was not possible to confirm all of the complainant's statements, we believe that this kind of transport of a person deprived of liberty, whose health was seriously impaired, was unacceptable in this specific situation. The transport of prisoners needs to be organised in vehicles equipped with safety belts and aligned with the Road Safety Act and the CPT Standards (CPT/Inf(2018)24).

RECOMMENDATION 11
To the Ministry of Justice and Administration: Equip all prisoner transport vehicles with safety belts in line with applicable regulations and international standards

We therefore recommend to the Ministry of Justice and Administration to equip the existing prisoner transport vehicles with safety belts, and to ensure that the newly purchased prisoner transport vehicles are safe for the transport of persons in line with applicable regulations and international standards.

Understaffing has affected compliance with prisoners' rights as well. The organisation of transport to outside healthcare facilities, for instance, to physical rehabilitation, is sometimes impeded by the lack of prison officers. The Glina Penitentiary is a good practice example, having fitted one room with the necessary equipment, and concluded service contracts with two senior-level physical therapists, who have been providing physical therapy services to the prisoners since October 2023. The number of transports and transport in inadequate vehicles has thus been reduced without violating the prisoners' right to adequate healthcare.

"... they have violated the foundations of our human rights and dignity one time too many. They want to add an eighth man to a room with a surface area of 18.7 m2... The toilet wall has an opening in it, so you can see people while they are using the toilet... The windows are letting the cold and the damp in. Our windows leak when it rains. The window bars are covered by an aluminium frame that blocks our view of the outside (as uninteresting as it is). The windows are missing skirting boards, and one window is missing a handle, and we cannot shut it at all. We have improvised a solution with a piece of cardboard to keep the window from opening by itself. We have only six closets although they are seven of us in the room. The closets are missing doors and are rusted and decrepit... Our room is full of dampness... The wall in the toilet is leaking, a pipe has burst somewhere. The ceiling is leaking as well, right under the light fixture... Our heating and electricity had been cut off for almost full 24 hours, and after the boiler was fixed, the heating did not function for a couple of more days, with minus temperatures outside... We are not asking for much. All we want is for the seven of us to remain in this room, which is also not acceptable, but since we have established some kind of a rapport, let's keep it that way."

Photo 11

Overcrowding in correctional facilities, especially in closed regimes, often goes hand-in-hand with inadequate material conditions, making the already difficult situation even worse. Seven detainees held on remand at the Zagreb Prison complained to us because they were informed that another person was going to be placed in their room. During our inspection of the prison, we found that eight detainees held on remand were kept in rooms with a surface area of 21,10 m^2 and 19,12 m^2, respectively, without a sanitary annex. Each of them had only 2,39 m^2 of personal space available, and movement in the room was greatly restricted. No other activities were organised for them except two hours of outdoor exercise, and they spent 22 hours a day in their room. According to the position taken by the ECtHR in the case of Muršić v. Croatia, when a person deprived of liberty has less than 3 m^2 of personal space available, there is a very strong assumption of violation of ECHR Article 3.

Photo 12

In addition to the lack of personal space, the room was also very cold on account of malfunctions of the heating system, which were not repaired due to a lack of spare parts. One window in the room was partially open (the temperature in Zagreb at 7:00 am on this day was -4°C), because, as the complainant told us, one detainee's inadequate personal hygiene habits made the room smell unbearably. The sanitary annex was not fully separated from the rest of the room, making the conditions even worse. The lack of seats at the table forces the detainees to eat while sitting on their beds. We noted visible floor damage, decrepit condition of the sanitary annex, cracked tiles, and damage to the squat toilet, which makes it difficult to keep it clean.

"... Even though I have been deprived of my liberty, I believe that I deserve to serve my prison sentence in more humane conditions, worthy of human dignity..."

Photo 13

We noted similar inadequate conditions in the Rijeka Prison as well, where we conducted an investigation following up on a complaint received from a prisoner. The rooms in the prison are poorly maintained, and the walls show signs of water damage. The sanitary annexes are decrepit, the floors damaged, and the lockers for personal effects are broken, scratched and rusty. Prisoners who have been staying there for some time told us that the room is unbearably hot in the summer, stuffy and stinky. Non-smokers, who are often placed in the same room with smokers due to overcrowding, are finding it particularly difficult to endure such conditions.

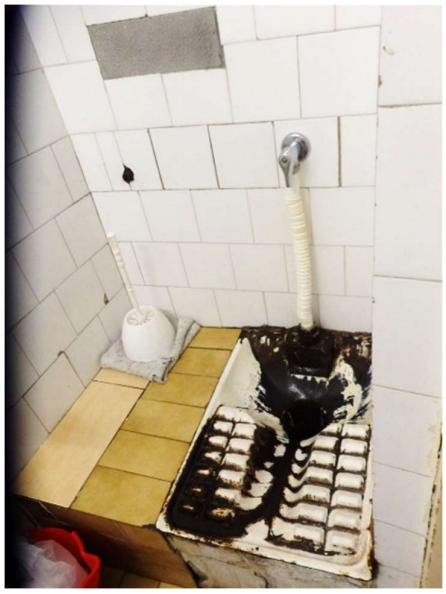


Photo 14

Photo 15

We investigated the complaint of a prisoner who tried to commit suicide by hanging at the Bjelovar Prison, but was saved by the prison officers' quick reaction. After the incident, he was taken to an outside hospital, which recommended referring him to the Prison Hospital in Zagreb for further

treatment. However, since the said prison hospital was filled to capacity, the patient was merely scheduled for a consultant examination at the psychiatric facility in two days.

Security officers brought a bed to the shared bathroom in the prison ward, and tied the prisoners' hand and feet to it. The prisoner spent 12 hours tied to the bed, which had no mattress or bedding. To make matters worse, the prisoner has asthma and has suffered epileptic seizures in the past.

Our findings so far clearly indicate that the treatment of this prisoner was inhuman and degrading, which is alarming due to several reasons. The first question we have justifiably raised is why the outside hospital did not admit a person who attempted suicide, which they would have done if he was not a person deprived of liberty. It is also alarming that the Zagreb Prison Hospital did not admit a prisoner who attempted suicide that morning because they were filled to capacity, and left him in the care of the Bjelovar Prison, knowing that the prison does not have a physician on staff.

In addition to the actions of the Bjelovar Prison, concerns are also raised by the statement that confirmed and underlined several times that the prisoner had been restrained for 12 hours, which is compliant with the Enforcement of the Prison Sentence Act, and that the restraining devices that were used were compliant with the Regulation on Security Operations in the Prison System. In other words, they saw no problem in the described actions. The statement also refers to Article 2 of the Regulation on the Types and Use of Coercive Measures against Persons with Severe Mental or Intellectual Disabilities, which provides for the use of coercive measures against such persons, particularly in emergencies involving serious and direct endangerment of their own or other persons' lives, health or safety, when such measures are the only way to prevent the patient from endangering their own or someone else's life, health and safety with their actions. The statement neglected Article 1 of the same Regulation, which states expressly that the Regulation provides for the type and use of coercive measures against persons with severe mental or intellectual disabilities who are placed in a psychiatric institution. This means that the Regulation applies to the actions of healthcare professionals using constraint and seclusion measures at a psychiatric institution, not to the actions of prison officers.

We found out from the documentation we received during our investigation that the Bjelovar Prison had treated another prisoner in the same way. We therefore concluded that this was not an isolated case. Such absolutely unacceptable actions are the result of a number of systemic problems, among which attention definitely needs to be drawn to the deficiencies of the Enforcement of the Prison Sentence Act insofar as it regulates the use of special measures for maintaining order and security, including restraints.

"I have problems: I'm unable to go out into the hallway or for a walk, because they want to beat me up, and I'm sometimes afraid to go get my breakfast and dinner because I might get beaten up. I have problems with the officers too. I had a toothache once and asked one of them for help, and he ended up insulting my Gypsy mother, and putting me in solitary..."

Violence in the prison system is unacceptable, whether it involves the prison officers overstepping their jurisdictions, or violence between persons deprived of liberty. Even though most prison officers conduct themselves professionally, we have received complaints from persons deprived of liberty, who

complained of prison officers insulting them, mostly on a national basis, but also complaints of violent treatment. This was also pointed out in the anonymous surveys we carry out during our visits under the National Preventive Mechanism, which is covered in more detail in the relevant chapter. We have regularly been pointing out that any complaints of violence need to be investigated with particular care, always taking into account the statements given by the prisoners who were the victims of violence, and any prisoners that might have witnessed such an incident. The UN's Subcommittee on Prevention of Torture has made the same point, issuing a recommendation to Croatia in its final considerations from 2014 about the necessity to investigate all allegations of possible torture or inhuman or degrading treatment, including verbal abuse and use of excessive force. In such investigations, the conclusions about the lawfulness of using coercive measures must not be based on the statements of the prison officers alone, as they usually are. The prisoners' statements must also be investigated objectively and in detail, especially the statements given by prisoners who sustained injuries during the use of coercive measures.

ECHR Article 1, read in conjunction with Article 3, imposes on states positive obligations to ensure that individuals under their jurisdiction are protected against all forms of abuse banned under Article 3 (M. and M. v. Croatia, no. 10161/13). In other words, when the state authorities knew or should have known that the physical integrity of one prisoner was at genuine and immediate risk from another prisoner, the same state authorities were under obligation to take all steps which may be reasonably expected in order to prevent such risk (U-III-4281/2017). In spite of this, inter-prisoner violence is still present in the prison system, and the extents of this problem are not fully known, given the large dark number.

We investigated a complaint filed by a prisoner of Roma ethnicity who is suffering from intellectual disabilities. This prisoner stated that he had been subjected to discriminatory behaviour by the prison officers and other prisoners, which resulted in inter-prisoner violence. Having examined his individual prison sentence serving programme, we found that no action plan was made to protect this vulnerable prisoner from violence and abuse. From what we heard from the officials, we got the impression that this was not because the warden's decision on compliance with the instructions issued by the Health and Security Management System on the protection of prisoners with mental or intellectual disabilities was disregarded. Rather, it was because these instructions were interpreted as not applicable to prisoners who themselves exhibit violent behaviour toward other prisoners. We therefore recommended to the Ministry of Justice and Administration to add more detailed information to the said instructions on the protection of prisoners with mental or intellectual disabilities, and to send them to all correctional facilities, which the Ministry has done. We warned that no preventive action was taken to ensure that the complainant's fundamental human rights and safety were respected in spite of knowing that he was a person with reduced intellectual capacity and lower capacity to understand social situations, who had difficulty communicating with his environment, and was prone to altercations with other prisoners. We recommended continual trainings for the officials of correctional facilities in order to raise awareness of the need to take adequate preventive action to protect the physical and mental integrity and the well-being of all persons deprived of liberty, and this recommendation has been implemented. The Ombudsman's Office, as the central anti-discrimination authority, will be involved in the preparation and delivery of trainings designed to prevent discrimination and raise awareness among the prison system staff about working with persons deprived of liberty who have mental or intellectual disabilities.

The CPT also drew attention to the problem of inter-prisoner violence in the report about its visit to Croatia in 2022, stating that inter-prisoner violence decreased in relation to their previous visit in 2017, but that cases of grave inter-prisoner violence are still possible. The CPT therefore repeated their recommendation to draw up a strategy to efficiently address inter-prisoner violence on national level.

The launch of the project "Violence in the Prison System", implemented jointly by the Health and Security Management System and the Faculty of Education and Rehabilitation in Zagreb, is a positive development in this regard.

Respecting the confidentiality of communication between suspects or accused persons and their attorneys as required by Article 4 of Directive 2013/48/EU is the key to efficient exercise of the right to defence, and an essential element of the right to a fair trial. One detainee held on remand complained to us that the contents of the letters he was sending to his attorney were being monitored by the competent court. The media reported about the same issue, stating that the attorney filed a motion to have disciplinary proceedings initiated against a judge of the County Court in Split for opening and reading the letters sent to the attorney by the accused person. Respecting the independence of the judiciary authorities, but also the importance of respecting the right to free, unobstructed and confidential communication with one's defence attorney, we asked the Croatian Supreme Court to look into the actions taken by the competent courts.

Even though the digitalisation of judiciary has many advantages, we noticed that detainees held on remand face difficulties because they are usually not given access to a computer, and as a result do not have access to digital data records. This restricts them in preparing their defence, which is one of the fundamental rights of accused persons. Given that the preparation of the draft proposal of the act on the amendments to the Criminal Procedure Code is currently in progress, it would be useful if the task force (formed in November 2022) paid attention to this problem, and considered the possible need to provide additional guarantees for exercising the right of access to the file, which is laid down by Article 64 of the Criminal Procedure Code.

Several prisoners also complained to us about the shortage of work opportunities and opportunities to attend elementary education programmes for adults and/or vocational training programmes, which makes it very difficult for them to find employment after they have served their prison sentence. It is especially alarming that public open universities are no longer able to facilitate elementary education programmes for adults, and that such programmes were mostly not delivered in 2023. Correctional facilities were told to contact elementary schools whose statutes include the delivery of elementary education to adults. The Glina Penitentiary is a good practice example in this regard. In the autumn of 2023, the Penitentiary contacted the Glina Elementary School, which expressed willingness for cooperation, and added elementary education of adults to its statute. The latest information indicates that the School is currently waiting for the Ministry of Science and Education to approve the amendment of its Statute. Elementary education programmes for adults are an essential part of the preparations for postpenal rehabilitation, because prisoners can join vocational training programmes after completing them.

During our visits to correctional facilities, several prisoners complained to us of the lack of organised postpenal rehabilitation, especially housing for persons who finished serving their prison sentence. Some said that rehabilitation officials, whose work includes resocialisation programmes designed to help them develop the skills they will need to live outside of the penitentiary in compliance with the law and the rules of the society, were unable to help them, not even in cooperation with civil society associations and social welfare centres. Rehabilitation officials stated that it would be helpful to assign one department to be in charge of organising housing for former prisoners in postpenal rehabilitation. Housing is usually available only in parts of Croatia where civil society organisations working with persons who finished serving their sentences have a stronger presence, or where temporary social welfare housing is available.

Persons deprived of liberty were also affected by the strike of civil and public servants at courts and state attorney's offices. We received a complaint stating that a detainee held on remand was not issued a visitation permission. Under the Criminal Procedure Code, relatives and other persons are only allowed to visit a detainee held on remand with the approval of the competent judge. As stated by the County Court in Zagreb, visitation permissions had not been issued since the beginning of the strike on 5 June 2023. Considering the duration of the strike, and having exchanged information with other courts, the Court started issuing visitation permissions to detainees held on demand again in accordance with new instructions as of 5 July 2023. Having in mind the importance of family support and the living conditions in the Zagreb Prison, it could not have been easy for the detainees held on remand to endure this temporary restriction of their rights. Even more so having in mind that some other courts regularly issued visitation permissions in the same period, which suggests unequal treatment of detainees held on remand, depending on the court in charge of their proceedings.

4.2. Performance of National Preventive Mechanism's activities in the prison system

Acting in accordance with the powers conferred on us by the Act on the National Preventive Mechanism for Preventing Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, we made unannounced visits to the Lipovica-Popovača Penitentiary and the Osijek Prison in 2023, and visited the Karlovac Prison with the representatives of the SPT during their visit to Croatia.

Considering the continual increase in the occupancy of the prison system's accommodation capacities, the primary focus of our visits was on living conditions, but we also considered other actions and conditions that may result in violation of ECHR Article 3. We issued a total of 14 warnings and 22 recommendations in the detailed reports of our visits, which we send to the Ministry of Justice and Administration and to other competent ministries, as well as to the correctional facilities we visit.

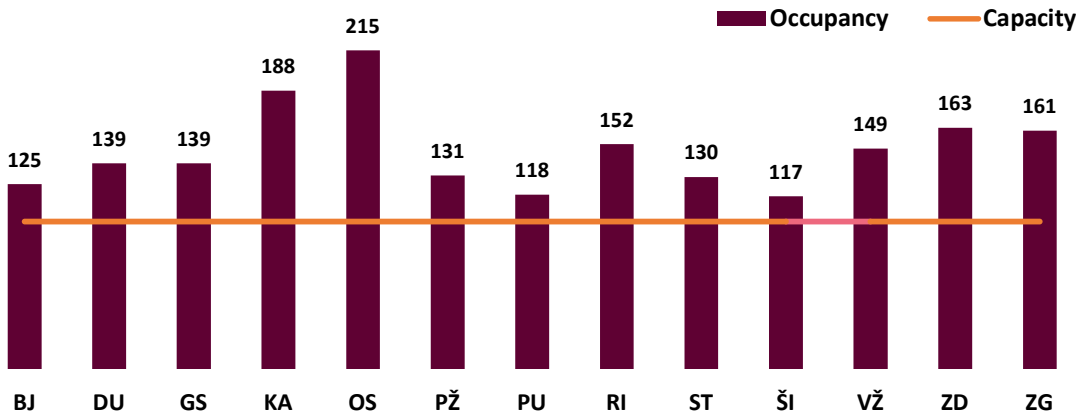
Living conditions

Overcrowding and poor material conditions are a persistent major problem in the prison system. We therefore find the information we received from the Ministry of Justice and Administration about plans to build three new correctional facilities (Gospić, Sisak and Osijek), which would increase the prison system's capacities by 1,200 persons, to be good news. The media later reported that the realisation of the correctional facility construction project in Gospić was uncertain. Hopefully, some

of the Ministry's announcements will come to life notwithstanding. The lack of capacities is a long-standing problem in the prison system that has not been sufficiently addressed for a long time. According to the CPT's 2021 Annual Report, overcrowding is mainly the result of stricter penal policies with increased criminalisation, more frequent and longer use of remand detention, lengthier prison sentences and still limited recourse to non-custodial alternatives to deprivation of liberty. In addition to plans to build new correctional facilities, it would therefore be useful to adopt a strategy to reduce overcrowding that would address all factors pointed out by the CPT.

Even though some positive breakthroughs have been made, such as the adoption of the Regulation on Conditional Release under Electronic Monitoring in 2022, and the adoption of the Regulation on the Enforcement of Home Remand Detention in early 2024, the breakthroughs are still insufficient and too slow. Meanwhile the prison system faces ever-increasing overcrowding, especially in closed regimes, and the situation in some of the prisons has become alarming.

Closed regime prison occupancy (29 December 2023)



Abbreviations denote the following cities: BJ = Bjelovar, DU = Dubrovnik, GS = Gospić, KA = Karlovac, OS = Osijek, PŽ = Požega, PU = Pula, RI = Rijeka, ST = Split, ŠI = Šibenik, VŽ = Varaždin, ZD = Zadar, ZG = Zagreb

While visiting the Osijek Prison, which has the biggest overcrowding problem, we found that 12 detainees held on remand were accommodated in one room with a surface area of 25 m^2, which means that they had 2 m^2 of personal space. A similar situation was noted in other rooms. For example, eight detainees held on remand were accommodated in a room with a surface area of 17 m^2, giving them each 2.1 m^2 of personal space. As per the ECtHR's standards, we concluded that there is a strong presumption of violation of ECHR Article 3.

Osijek prison on 31 December (29 December 2023)

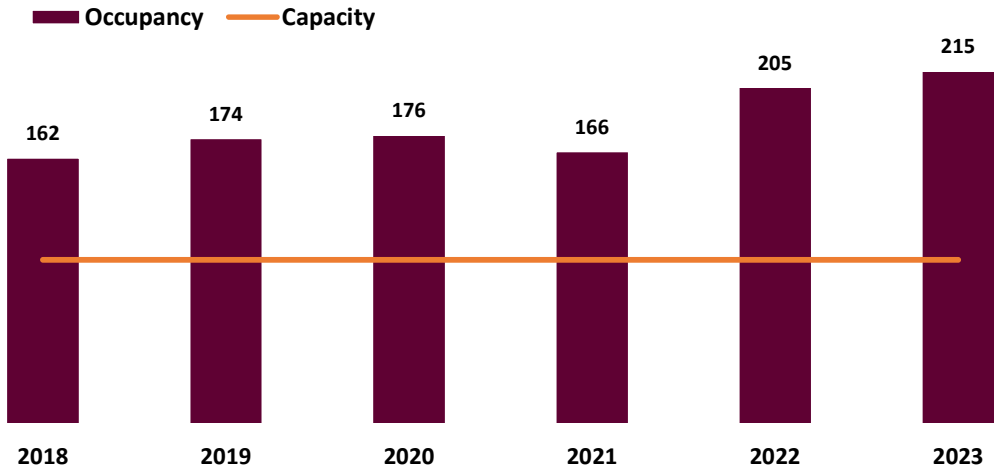


Photo 16

Due to the lack of beds in rooms and to SARS-CoV-2 testing, persons deprived of liberty are often placed in a barred space at the end of a hallway (there are two such spaces at the prison) until their test results come in. At the time of our visit, two detainees held on remand, who had been admitted that night, were staying in one of these spaces, and a female detainee held on remand was staying in the other. They told us that they were given mattresses that were placed on the floor, a pillow, and bedding. As short as they may be, such accommodation arrangements are unacceptable.

However, we noted that efforts have been made to improve the living conditions to a certain extent at the Osijek Prison. For instance, all rooms are equipped with refrigerators and electric kettles, and the windows have been replaced with new window frames and unbreakable glass. The sanitary annexes, which were remodelled in 2020, are fully separated from the rest of the room. The bathroom was also remodelled and equipped with nine walled-off showers, giving the prisoners privacy while taking showers.

The overcrowding situation was no better in the Karlovac Prison, which was filled to 180% of its capacity at the time of our visit. The extent of overcrowding is illustrated by the fact that two persons deprived of liberty had no beds at the time of our visit, and were sleeping on mattresses on the floor.

Ten detainees held on remand were placed in a room with a surface area of 26,33 m^2, giving them 2.6 m^2 of personal space, which is also indicative of a strong presumption of violation of ECHR Article 3.

The Karlovac Prison had also taken action to improve the material living conditions, having installed new hardwood floors and windows, and improved the energy efficiency of the building, which we welcome as a positive development. However, this can still not compensate for the lack of personal space.

The closed unit of the Lipovica-Popovača penitentiary, opened on 15 December 2022, has the capacity to hold 100 persons deprived of liberty. The furnishings in the rooms are new, the sanitary annexes are fully separated from the rest of the room, each room has a TV, and the number of lockers for personal effects corresponds to the number of persons in the rooms. Even though this unit was not overcrowded at the time of our visit, some rooms held more persons deprived of liberty than their capacity allowed. For examples, four prisoners were accommodated in a room with a surface area of 11.67 m^2, giving them each 2.9 m^2 of personal space. Different categories of persons deprived of liberty are accommodated in this unit, including women, men, juveniles, prisoners, detainees held on remand, convicts, and detained persons. The rooms are filled unevenly because the different categories of prisoners need to be placed in separate rooms.

Photo 17

Two walkways are available for outdoor exercise. At the time of our visit, these walkways lacked facilities of any kind. Plans to add exercise equipment, a tennis table, and a basketball hoop have been announced. They also plan to add awnings to partially cover the walkways.

Taking into consideration the living conditions we observed at the correctional facilities, we recommend to the Ministry of Justice to set aside funding for the adaptation of existing and construction of new correctional facilities in order to align the living conditions with legal and international standards.

Spoon is the only cutlery item provided to prisoners in Karlovac and Osijek Prisons, which goes against Article 12 of the Regulation on Accommodations and Food Standards for Prisoners. The prisoners told us that they have to use their teeth or their hands to break up larger pieces of meat. Since some prisoners lack several teeth, and some lack more than that, having a spoon as the only cutlery item is making it difficult for them to eat larger pieces of meat. We therefore recommended the prisoners to

RECOMMENDATION 12

To the Ministry of Justice and Administration: Set aside funding for the adaptation of existing and construction of new correctional facilities to align the living conditions with legal and international standards

be provided with a full set of cutlery (standard-sized tablespoon, fork, knife, and teaspoon), depending on the dish served, as the regulations require. If individual persons deprived of liberty cannot use a full set of cutlery due to safety reasons, the warden should issue a written decision to this effect.

Analysis of anonymous surveys

During our visits, we conducted anonymous surveys that included 134 persons deprived of liberty, ranging between 17 and 71 years of age (the average age was 39). The questions dealt with activities and the time they spend outside of their rooms during the day.

Almost all persons participating in the survey said that they were allowed two hours of outdoor exercise per day, and that they spent the rest of their time in their rooms. Survey participants in the Lipovica-Popovača and Karlovac correctional facilities are very unhappy because they have no opportunities for recreation or sports ("no organised activity except lying in our rooms and having our bodies waste away"). The situation in the Osijek Prison is different: a large outdoor area is available to prisoners for outdoor exercise, where they can play basketball or football, and they also have the use of a gym.

There is no structure to their time other than outdoor exercise and sleeping ("I lie down because there is no room to move around", "I watch TV during the day, and when they shut the power off, I stare at the wall", "I'm confined to the room for 24 hours a day, it's so painful that my soul, body and heart are rotting away, these four walls cause so much pain"). Most of the prisoners who participated in the survey at the Lipovica-Popovača Penitentiary are dissatisfied with serving their sentences in remand detention conditions. They feel that the conditions should be improved by giving them the opportunity to engage in various activities ("give us a common room to spend time together or unlock our rooms, give us a job, give us sports, give us personal improvement programmes, courses or training").

Survey participants in the Karlovac Prison underlined overcrowding as one of the biggest problems ("It bothers me that there is ten of us in the room and we don't have enough space, it's hot, especially in the summer"). They believe that the number of persons in the rooms should be reduced ("reduce the number of prisoners in the room because the rooms are too small"). We also received complaints of sanitary annexes not being fully separated from the rest of the rooms, and of filthy mattresses.

In terms of personal hygiene supplies, most of the persons deprived of liberty who participated in our survey in the Karlovac and Lipovica-Popovača correctional facilities were given a bar of soap, a toothbrush, toothpaste, and toilet paper. One detainee held in remand said that he was only given the personal hygiene supplies four days after he was admitted. At the Osijek Prison, not all persons deprived of liberty were given the personal hygiene supplies during their admission. Half of survey participants said that they were given nothing, four said that they were given soap, and several of them said that they were given a toothbrush and toothpaste, and a bar of soap. Also, they said that personal hygiene supplies were not given to them unless they wrote a request and unless they had a money deposit, which is unacceptable.

To prevent unequal treatment, we recommended to the correctional facilities to prepare sets containing all required personal hygiene supplies and to give them to all prisoners upon their admission.

Survey participants in the Karlovac Prison for the most part said that the prison officers treat them fairly ("they treat you like you treat them"), but some prisoners complained of the prison officers both in the surveys and in interviews ("they insult and threaten us, and I have to keep quiet or I'll get beaten up like other prisoners", "they have treated me brutally, both physically and mentally", "I wish the guards would not treat the prisoners like animals"), which we immediately brought to the warden's attention. Even though these allegations were made anonymously, in line with Articles 23 and 25 of the Croatian Constitution, which prohibit abuse of prisoners, and establish the arrestees' and convicts' right to humane treatment and respect of their dignity, we warned that the treatment of all persons deprived of liberty has to be aligned with the Enforcement of the Prison Sentence Act and the Criminal Procedure Code, and that all allegations of possible torture and inhuman or degrading treatment, whether or not a formal complaint was filed, need to be investigated promptly and thoroughly, because a message is otherwise sent that such conduct is permitted and will not be subject to punishment.

The participants of the survey in the Osijek Prison feel that reducing the number of persons in the rooms is the primary requirement for better living conditions. Prisoners also agree that being allowed to spend more time outside of their rooms would improve their living conditions (for example, "outdoor exercise should be split at least in two, and prisoners should be allowed to spend time in the corridors, that is to say, the prisoners' rooms should be opened"), as would being allowed more contact with the outside world ("allow conjugal visits and longer visits by children; improve visits – they are the only thing we have to live for; allow us to make phone calls anytime"). They said that allowing the prisoners to spend more time together outside of their rooms, more organised activities, a wider offer of resocialisation programmes, and work assignments for more persons deprived of liberty would help improve the poor living conditions ("getting work is very hard, people who work are privileged").

Understaffing

Understaffing, in addition to overcrowding, certainly has a negative effect on respecting the rights of persons deprived of liberty. In 2023, there was an average of one correctional facility employee per 1.8 persons deprived of liberty, which is on par with the 2021 European average (Eurostat, April 2023), but there was one prison officer per 2.9 persons deprived of liberty, which is lower. These statistics are, however, not an accurate illustration of the actual situation, because we have to take into account the staff's days off, vacations and sick leaves, shifts, the facts that not everyone is working on internal security, and, given the high number of detainees held on remand, the high number of staff members escorting them to courts. One prison officer often covers the unit

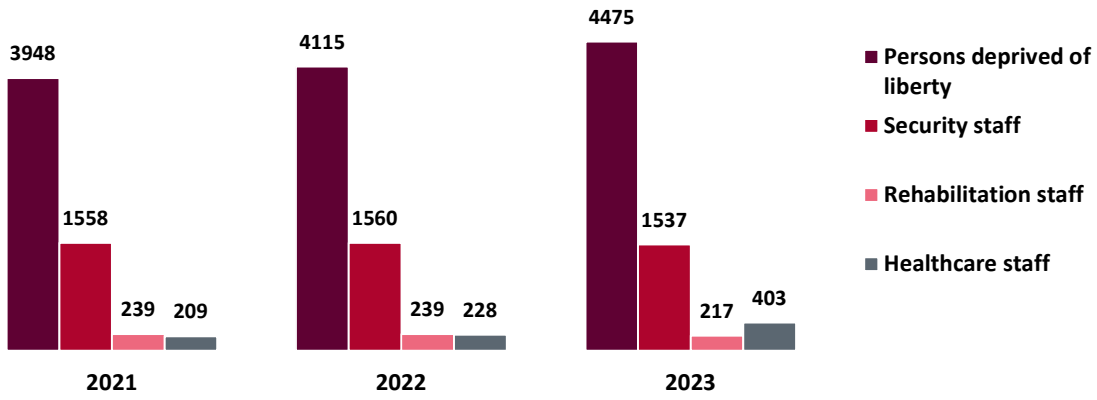
RECOMMENDATION 13

To the Ministry of Justice and Administration: Increase the number of correctional facility employees, especially security, rehabilitation, and healthcare staff

assigned to him as well as the prisoners in another unit who have not gone out for outdoor exercise, while the prison officer from the other unit monitors the prisoners who have gone out. The situation is not any better when it comes to rehabilitation officers and healthcare workers. The number of persons deprived of liberty is increasing, but this trend is not accompanied by an increase in the number of prison staff. In fact, the situation is the opposite. In spite of this situation, our recommendation to the Ministry of Justice and Administration about the need to hire more staff at the correctional facilities from our 2022 Report was not implemented. We therefore repeat our recommendation to the said ministry to increase the number of employees in correctional facilities, especially security, rehabilitation, and healthcare staff.

Employment at correctional facilities should be exempt from the Croatian Government's Decree prohibiting new employment of public and civil servants at state administration bodies, offices, and other professional services of the Croatian Government until 1 July 2024. Also, the exemption from the requirement to post an internal vacancy announcement, which applies to the employment of prison officers, should be extended to other authorised officials at correctional facilities as well.

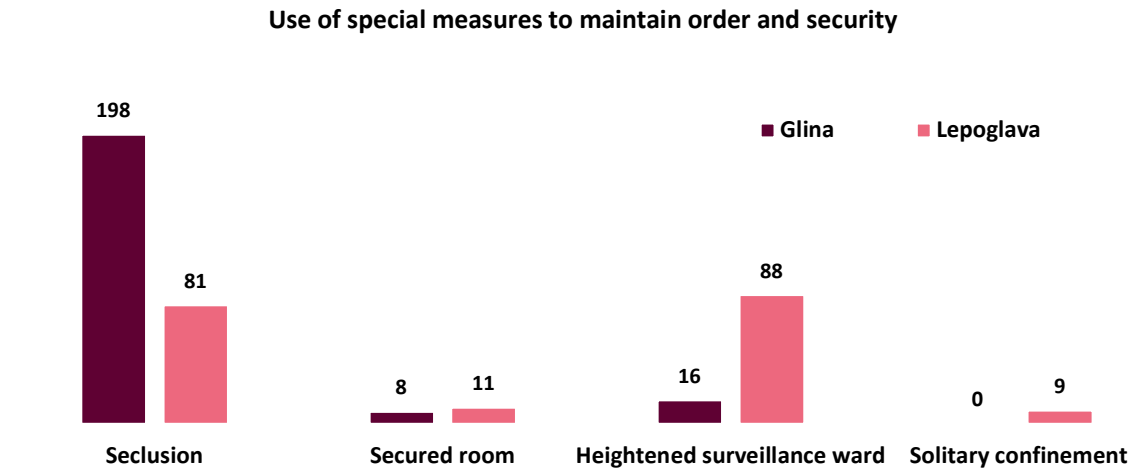
Trends relating to the numbers of persons deprived of liberty and correctional facility employees
Source: Ministry of Justice and Administration



Maintaining order and security

For years, we have been drawing attention to inadequate provisions of the Enforcement of the Prison Sentence Act as regards order and security, particularly the enforcement of special measures to maintain order and security (Title XIX). Their ambiguity and imprecision allow for different interpretations and applications, which leads to unequal treatment that the prisoners often perceive as injustice.

For instance, by comparing the 2023 data of the Ministry of Justice and Administration, we found major discrepancies in the frequency of application of some special measures in two of the largest closed-regime penitentiaries in Croatia, the Glina Penitentiary (whose closed-regime capacity is 505), and the Lepoglava Penitentiary (whose closed-regime capacity is 382). A total of 1,064 special measures were applied at the Glina Penitentiary in 2023, compared to 324 special measures at the Lepoglava Penitentiary. Even though this discrepancy does not mean that the unlawful conduct was involved, it is indicative of unequal enforcement of special measures.



"Secured room" stands for "specially secured room not containing any dangerous items"

To avoid unequal treatment, and even more importantly, to avoid inhuman and degrading treatment, we recommended to the Ministry of Justice and Administration in our 2022 Report to prepare a proposal of amendments to Title XIX of the Enforcement of the Prison Sentence Act, but this was not done.

According to the Croatian Government's statement about the Ombudsman's 2022 Report, this recommendation was not implemented due to ongoing work on improving the legislative framework. Among other things, the statement mentions the adoption of the Regulation on Security Operations in the Prison System, even though this regulation does not govern the use of special measures. It also mentions the adoption of measures and instructions designed to harmonise and improve actions, and continuous organisation of trainings for prison officers. However, these activities cannot address the inadequate provisions of the Enforcement of the Prison Sentence Act, which do not fulfil the requirements of predictability, precision and unambiguity that are fundamental in the treatment of persons deprived of liberty.

Photo 18

One such example is the enforcement of the special measure for maintaining order and security that involves placement in a specially secured room not containing dangerous items ("specially secured room"). The room in question is small and empty, and has padded walls. Some of these rooms have no windows, which means that its occupant is either held in complete darkness or under artificial light all the time. Under the Enforcement of the Prison Sentence Act, this measure can be used for a maximum of 48 hours at a time.

Since the Enforcement of the Prison Sentence Act contains only one paragraph defining the measure of placement in specially secured rooms, the Health and Security Management System issued a detailed instruction for its enforcement in 2010. An instruction about the enforcement of special measures for maintaining order and security, including placement in specially secured rooms, was issued three years later, and an instruction about the furnishing of specially secured rooms was issued in 2017. However, none of these instructions ensured that this measure is enforced under conditions aligned with the international standards for the treatment of persons deprived of liberty, nor did they prevent its occasional enforcement in a way contrary to ECHR Article 3.

One such case at the Split Prison was brought before the ECtHR, which found elements of inhuman and degrading treatment in its judgment in the case of Vukušić v. Croatia in November 2023. Among other reasons, the ECtHR found that Article 3 had been violated because the measure of placement in a specially secured room was used 20-31 January (12 days) and 17-21 February 2012 (five days). In addition, the prisoner's hands and ankles were also restrained in the period 17-20 February. The complainant's allegations that he was held naked in the specially secured room, that he was cold because the ventilation was running, and that he could not sleep because the light was on all the time were also considered. Even though the ECtHR felt that there were initially justified reasons to use this measure in order to prevent the prisoner from inflicting self-harm, its duration (12 and 5 days, respectively) indicates that the prisoner was placed in the room as a means of extra punishment. The ECtHR also states that restraining the applicant's hands and ankles was not necessary, since he had already been placed in a specially secured room not containing dangerous items.

As far back as in our report on the performance of the National Preventive Mechanism's activities for 2012, we had drawn attention to some prisoners' allegations that they were sent to the specially secured room "to cool off", that they wore no clothes while staying in the room, that they were cold because ventilation was running the entire time, and that they were restrained. At the time, we requested an inspection into the use of this measure, but we never heard back about our request. The ECtHR quoted parts of the 2013 Ombudsman's Report discussing the measure of placement in the specially secured room in the said judgment in 2023, which also supports our argument that more

intensive implementation of the Ombudsman's recommendations would result in fewer violations of ECHR Article 3 that were identified by the ECtHR in cases against Croatia.

After the task force for the analysis of the Enforcement of the Prison Sentence Act was set up in 2017, and we participated in its activities, we believed that the inadequacies we had pointed out earlier would be eliminated. However, the provisions relating to the use of the special measures for maintaining order and security remained practically unchanged in the new Enforcement of the Prison Sentence Act.

The records of special measures for maintaining order and security show that the measure of restraining is usually still applied on top of the measure of placement in a specially secured room. The CPT also stated in its report about its visit to Croatia in 2022, points 35 and 72, that such treatment can be considered as inhuman and degrading.

Such and similar actions, which are in contravention of ECHR Article 3, are a result of deficient regulations and numerous inadequate instructions issued by the Health and Security Management System, which are not aligned with international standards, along with the fact that persons who are in the prison system should often be placed in an adequate outside healthcare facility rather than in prison (such as suicidal persons, persons who have exhibited auto destructive behaviours, etc) for as long as their own or other people's safety is in danger.

Photo 19

The conditions in specially secured rooms not containing dangerous items are not the same at all correctional facilities. For example, at the Lipovica-Popovača Penitentiary, this room is not much different from the other rooms where persons deprived of liberty are placed. The difference is that there is no sanitary annex or furniture in this room, and it is under video surveillance. Since its walls are not padded, this room is not specially secured, and is therefore not adequate to be used for this measure. Such an argument is supported by the incident that occurred in March 2023, when a detainee held on remand who was placed in this room suffered a head injury after banging his head against the wall. After we issued a warning, we were informed that an upgrade of the room was planned. It remains unclear why the room in a new space that was built specifically for this purpose in 2022 was not equipped as per the instructions issued by the Health and Security Management System in 2017.

Normative shortcomings affect the use of other special measures as well. According to the data we collected during our visit to the Karlovac Prison, not a single measure for maintaining order and security was ordered in 2023. However, many situations require enhanced precautions even though they are not provided by the law, and their scope is not defined. We again drew the attention of the Ministry of Justice and Administration to this problem in our report about our visit to the Karlovac Prison. The Ministry's reply, however, merely repeated a part of the reply from the Croatian Government's statement that we mentioned earlier (work on improving the legislative framework, adoption of the Regulation on Security Operations in the Prison System, adoption of measures and instructions, and organisation of trainings).

RECOMMENDATION 14
To the Ministry of Justice and Administration: Prepare a proposal of amendments to Title XIX of the Enforcement of the Prison Sentence Act

The way the Ministry of Justice and Administration responded to our warnings, and their downplaying of the fact that inadequacies of the Enforcement of the Prison Sentence Act can result in degrading or even inhuman treatment, are difficult to understand and alarming. We therefore repeat our recommendation to the Ministry of Justice and Administration to prepare a proposal of amendments to Title XIX of the Enforcement of the Prison Sentence Act.

Activities focusing on the improvement of the legislative framework

Acting in accordance with Article 19 of the Facultative Protocol to the UN's Convention against Torture, Article 18(2) of the Ombudsman Act, and Article 3 of the Act on the National Preventive Mechanism for Preventing Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in course of 2023, we participated in public consultations about the draft proposals of the acts on the amendments to the Criminal Code and the Criminal Procedure Code, as well as about proposals for ordinances (the Ordinance on Informing the Victim about the Release of a Prisoner or Convict from Prison, and the Ordinance on Enforcing Remand Detention at Home under Electronic Monitoring). Also, we delivered our opinion to the Health and Social Policy Committee about the final proposal of the Act on the Amendments of the Mandatory Health Insurance Act.

For a number of years, we have been drawing attention to the fact that Article 44(4) of the Criminal Code, under which prison sentences of up to one year can be served at home, has never been enforced in practice due to the insufficient normative framework. In January 2022, we were informed by the Ministry of Justice and Administration that the prerequisites for the enforcement of prison sentences at home were going to be considered by the Task Force for the Amendment of Criminal Law. Accordingly, we again drew attention to the need to amend Article 44 of the Criminal Code during the public consultations, but our proposal was merely taken note of.

In its 2009 judgment in the case of Tomašić and Others v. Croatia, the ECtHR ascribed the violations of the law for the most part to inadequate and insufficiently precise provisions in the Croatian legislation relating to the use of the security measure of mandatory psychiatric treatment. The Court underlined that such measures have to be precise enough to ensure adequate fulfilment of the purpose of the criminal penalty. Having in mind the said judgment, we would like to point out that we

had recommended regulating the manner of enforcement of this security measure when ordered in combination with a prison sentence in our 2011 Activity Report. Even though our recommendation was initially accepted, provisions were not made to implement it. The explanation was that the adoption of the said implementing regulation was not required by the Criminal Code. For this reason, we again proposed the abovementioned amendment of Article 68 of the Criminal Code during the public consultations. This proposal was also taken note of.

We have been drawing attention to the deficiencies of Article 140 of the Criminal Procedure Code for years, and we recommended to the Ministry of Justice and Administration to prepare a proposal of its amendments in our 2022 Report. We repeated the same recommendation during the public consultations. Restriction of visits and correspondence is the only disciplinary measure available against detainees held in remand, irrespective of the infraction they have committed. Also, no minimum or maximum is defined for this disciplinary measure, which is unacceptable given the requirement that legal norms must be specific and precise. In addition, we proposed aligning Article 140 of the Criminal Procedure Code with the provisions of the Enforcement of the Prison Sentence Act laying down disciplinary infraction and disciplinary measures. Our proposal was forwarded to the task force.

A detainee held on remand at home must not be in a disadvantageous position in comparison to detainees held on remand at correctional facilities. Therefore, we pointed out during the public consultations about the Proposal for an Ordinance on Enforcing Remand Detention at Home under Electronic Monitoring, among other things, that their rights should be regulated adequately, i.e. aligned with the rights of the detainees held on remand at correctional facilities (such as the right to healthcare services). The proposal was taken note of.

Since the final proposal of the Act on the Amendments to the Mandatory Health Insurance Act was undergoing parliamentary procedure, we proposed that the detainees held on remand at home, if they have no health insurance, should also be provided with mandatory insurance and be insured by the Croatian Health Insurance Fund following their registration by the competent ministry for justice. The text of the act adopted by the Croatian Parliament shows that our proposal was not accepted.

During the public consultations about the Proposal for an Ordinance on Informing the Victim about the Release of a Prisoner or Convict from Prison, to ensure clarity and prevent different interpretations of some of its provisions, we proposed defining the term “victim’s family member”, just as the term of prisoner’s and convict’s family member was defined in the Enforcement of the Prison Sentence Act, as well as to define this term in the Criminal Code and the Criminal Procedure Code, to avoid the possibility of wrong interpretation of the proposed regulations. We also proposed clearer provisions that would define if the victim’s family has the right to request to be informed about the release or escape of the prisoner or convict during criminal or misdemeanour proceedings, or the victim’s family members only have this right if the victim is deceased, which would follow from the forms attached to the Proposal for an Ordinance. We also proposed aligning the text of the Proposal for an Ordinance with the forms. These proposals were accepted.

Cooperation with the Ministry of Justice and Administration (Directorate for the Prison System and Probation)

As in previous years, we delivered lectures in the basic training courses for prison officers, using individual cases from the Ombudsman's practice to explain our role in the protection of persons deprived of liberty and the prevention of torture. To raise awareness among prison officers about the need to respect the human rights of persons deprived of liberty, as well as about the importance of treating them humanely and respecting their dignity, in our lectures, we provided an overview of the Croatian Constitutional Court's and the ECtHR's judgments in cases against Croatia relating to the prohibition of torture.

5. Persons with mental or intellectual disabilities whose freedom of movement has been restricted

With respect to the protection of the rights of persons with mental or intellectual disabilities whose freedom of movement has been restricted, the Ombudsman acts under powers conferred on us by the Ombudsman Act and the Act on the National Preventive Mechanism for Preventing Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The first section presents our actions following up on complaints and our own initiative investigations, and the second section describes the conditions discovered during our announced visits to psychiatric institutions within the mandate of the National Preventive Mechanism.

5.1. Protecting the rights of persons with mental or intellectual disabilities

Most complaints filed by persons with mental or intellectual disabilities concerned the hospitalisation procedure: admission to the psychiatric institution, use of means of coercion, voluntary agreement and placement in a closed unit in spite of the patients' claims of voluntariness and cooperativeness; as well as the denial of rights provided in the Act on the Protection of Persons with Mental or Intellectual Disabilities.

For years, we have been drawing attention to the problem of voluntary patients being placed in closed units, which constitutes *de facto* deprivation of liberty. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also drew attention to this in its report about its regular visit to Croatia in 2022 ("CPT Report").

"Regarding the closed unit at the clinic, where she was placed immediately, the complainant underlines that she had not been informed during the conversation about her admission to the hospital that she would be placed in the closed unit, and she had likewise not been informed that every patient first gets admitted to the closed unit, and only then to other units, which she only found out later. In this case, if the complainant had had this information, which she, as a patient, had the right to receive, she would not have agreed to be hospitalized from the beginning"

A complainant who was hospitalised at the Sveti Ivan Psychiatric Clinic in Zagreb-Jankomir was not informed that she would be placed in a closed unit while she was signing the informed agreement, and she did not consent to be placed in a closed unit, due to which she revoked her voluntary agreement. She stated that she was kept at the closed unit for three more days, and that she received no information about the medical procedure and the introduction of a new treatment. According to the Clinic, the patient stayed there for two days while she was under observation, and she was informed about her treatment and the medications she was supposed to take. However, having in mind that she had signed the agreement to be hospitalised, she should have been fully informed how her treatment was going to be conducted and where she would be placed, so that she would be able to make a valid decision about her hospitalisation. Under the Psychiatrists' Guidelines of the Vrapče Psychiatric Clinic, the Croatian Medical Association, the Croatian Clinical Psychiatry Society and the Croatian Psychiatric Society, patients need to be provided with sufficient information to be able to make the decision about their treatment and their admission to an institution. In psychiatry, voluntary hospitalisation requires valid informed consent and mandatory fulfilment of the following conditions: adequacy of information required for decision-making, communication of information in a way that the patient is able to understand, voluntary agreement, and capacity to make the decision on treatment. According to the CPT, persons admitted to psychiatric institutions need to be provided with full, clear and accurate information about their right to agree to hospitalisation or to refuse it, which would mean that they need to be fully informed about their treatment and methods that will be used during their stay at the hospital.

The patients need to be granted the autonomy to decide about their treatment, and have an active rather than passive role in the treatment process. Prior to making the decision about their treatment, they have to be informed by the medical staff about their condition in a way that they will understand, without any pressure, threat, persuasion, and untrue information that lead to *de facto* deprivation of liberty. It is therefore necessary to inform persons with mental or intellectual disabilities about their rights, the reasons for and the objectives of their placement in the institution, and the purpose, nature, and consequences of carrying out the proposed medical procedure, to give them information about their condition, and to involve them in the planning and execution of their treatment, as well as their rehabilitation and socialisation.

"Also, since I was unlawfully deprived of liberty, all "physicians" and the ward psychologist continued to cover each other in an effort to pin a suitable diagnosis on me that would justify my hospitalisation (as the orderlies said, "we all have a diagnosis of some kind", meaning that none of us are healthy)... and she banned me from going outside within the perimeter of the hospital as 'a disciplinary action'. I was not "aware" of this, since I was FORCEFULLY DETAINED, and when I afterwards asked them to release me, the door of the ward was locked. After they refused to release me and increased the dose of my medications, I even called the police and asked to be examined by a court appointed expert, whom they refused to call, telling me that they would release me soon... Which they did, giving me a combination of medicines that would have probably induced manic depression or something along those lines, in addition to the cognitive issues and other side-effects I had already experienced (including infertility)..."

A citizen who had been hospitalised for about a month at the closed unit of the Sveti Ivan Psychiatric Clinic in Zagreb-Jankomir filed a complaint to us, stating that he had given the consent for treatment under threat, in other words, that the required element of voluntariness had been absent when he had signed the informed consent, as a result of which he was deprived of freedom of movement. According to his account, IVs and medications were administered to him by force, and he perceived some of the actions he was subjected to as "a disciplinary action".

The Clinic stated in its letter that the patient had been informed about the reasons and the objectives of the treatment, and had signed the consent, but was in a poor mental condition that required the treatment to be carried out in controlled conditions in order to improve his health. Having in mind the provisions of the Act on the Protection of Persons with Mental or Intellectual Disabilities and the fact that restricting the freedom of movement of patients who have been admitted voluntarily is not allowed, we drew attention to the meaning of informed consent. Under the Act on the Protection of Persons with Mental or Intellectual Disabilities, voluntary hospitalisation ceases when a patient endangers his own or other people's lives, health or safety, which requires the process of forced hospitalisation to be initiated.

RECOMMENDATION 15
To psychiatric institutions: Do not restrict the freedom of movement of voluntary patients, and allow them to withdraw their informed consent during their hospitalisation

While acknowledging the professional opinion that a longer treatment was needed to stabilise the patient's mental condition, we pointed out that, under the Act on the Protection of Persons with Mental or Intellectual Disabilities, the freedoms and the rights of these persons can only be restricted under the conditions and in accordance with the procedure provided by law, and only to the extent necessary to protect the person with mental or intellectual disabilities or other persons. Furthermore, we recommended that the patients should be informed, upon their admission to the hospital, about the possibility of withdrawing their consent, and particular attention should be drawn to their voluntary status, which is important for the future course of their treatment.

In our 2022 Report, we voiced deep concern about the indications of excessive, very common, and unjustifiably long use of coercive measures on persons with mental or intellectual disabilities, often in the presence of other patients, which can constitute inhuman or degrading treatment, as also pointed out by the CPT. Having in mind the importance of preventing the use of coercive measures, including de-escalation techniques, we underlined at a training organised by the Vrapče Psychiatric Clinic that coercive measures should only be used by way of exception, and we underlined the importance of further training of medical staff. Under the CPT Standards, coercive measures should always be used in accordance with the principles of lawfulness, necessity, proportionality and responsibility, and they should never be used as punishment, as a way to make the medical staff's work processes easier, to compensate for understaffing, or as a replacement for proper care or treatment. The use of coercive measures without a justified cause can be considered as patient abuse.

In its ruling U-III-4484/2013, the Constitutional Court found in 2023 that the constitutional rights guaranteed under Articles 22, 23(1) and 29(1) of the Croatian Constitution had been violated in the

case of the person who filed the constitutional complaint. The Constitutional Court said that the complainant had obviously been kept for treatment without her consent even though she had acted calmly during the admission to the hospital and showed no signs of violence. Her current (acute) mental condition, which the doctors concluded required hospital treatment, but she never agreed to it, was given as the reason for hospitalisation. Since the healthcare facility she was admitted to does not have a closed unit, she was physically restrained for 8 hours and 30 minutes, during the night, after having been given medication. Having examined the opinion issued by the Expert Committee of the Ministry of Health, the Constitutional Court found that the reasons for the use of coercive measures were not explicitly stated in the physical restraint monitoring protocol, and that the medical documentation shows that the patient was cooperative, which makes the justifiability of the use of restraints during the entire night questionable. Also, the complainant stated in her complaint that there was no need to use means of coercion and disrespect her as a person, and that she felt humiliated at the hospital. The Constitutional Court found that the complainant was a victim of violation of ECHR Article 3 and Article 23 of the Croatian Constitution, which prohibit subjecting anyone to any form of ill treatment or medical or scientific experiments without their consent.

In addition to complaints about the conduct of the staff in psychiatric institutions, we also received one complaint dealing with the police's treatment of a person with mental or intellectual disabilities.

"My partner has been suffering from schizophrenia for 25 years. His condition has gotten worse. He is not fit to work and has no legal capacity, and has been assigned a guardian. He had a crisis on Thursday. We engaged in a verbal altercation, we shouted at each other, and he slapped me. The neighbours called the police, who broke down a wall and the door with the help of the fire department, beat him up, and used teargas like he was a drug dealer. He had a plastic gun, because his condition and his regression of personality have caused him to collect toys."

We launched an investigation following up on the complaint about a police intervention in which the police used means of coercion against a person with mental or intellectual disabilities. Cases when police officers receive a report about domestic violence and have to intervene urgently, with a person with mental or intellectual disabilities as the possible perpetrator, are particularly challenging. When the police were not called by the victim, but a third party, usually a neighbour, the situation is even more complicated. The complainant stated that the police officers used teargas unnecessarily after they entered the apartment, and hit her partner, who was not armed and who was not resisting, several times. On the other hand, the police's statement justifies the use of means of coercion, which served the purpose of preventing the perpetrator from using a knife or similar weapon. These contradictory accounts made it difficult for us to evaluate the proportionality of the use of police powers and coercive measures in this case.

We found during our investigation that the police officers used a baton, which is considered a severe form of use of physical force, that the suspect was also hit with a shield, inflicting visible injuries on him, and that teargas was deployed. Due to these circumstances, the Code of Practice of Police Officers required this person to be urgently taken to a hospital emergency ward to be examined by a doctor and have the degree of his injuries established. However, the police officers did not take him to the hospital. The suspect later received medical attention at the police station.

We also found that the police officers were aware that the suspect was a person with mental or physical disabilities, because the complainant contacted the social welfare centre on multiple occasions, asking for help with her partners' serious mental difficulties, and the police officers from the same station had been called out to interventions before. On one occasion, this suspect had been transported by an ambulance to the Vrapče Psychiatric Hospital. We concluded that the police officers failed to comply with the Instructions on Police Conduct When Transporting a Person with Mental or Intellectual Disabilities to a Psychiatric Institution. Under these Instructions, police officers are required to have medical professionals present and assisting in restraining a person who needs to be brought to a psychiatric institution, and who is physically resisting, if there is a risk of this person putting their own or another person's life, health or safety in serious and immediate danger. We would therefore like to point out that all provisions of the regulations governing the treatment of persons with mental or intellectual disabilities by police officers during police interventions need to be applied consistently.

Institutions where persons with mental or intellectual disabilities are placed, including social welfare institutions, are required to guarantee safe living conditions. Sadly, two incidents occurred in 2023: a female resident of the Bidružica Adult Care Facility set herself on fire, and a fire broke out at the Osijek Psychiatric Clinic. We instituted proceedings and requested explanations in both cases.

The resident of the Bidružica Adult Care Facility sustained burns on her upper body. The police opened an investigation after being informed about the incident by her daughter. According to the police report, they found that the resident set herself on fire as a result of careless cigarette use. The Adult Care Facility's report states that the resident was immediately taken to the Traumatology Clinic of the Sisters of Mercy Clinical Hospital Centre, and the police was not notified because there had been no indications of the fire having been caused by other residents or staff. Following a criminal investigation, and having in mind the severity of the resident's injuries, the police department submitted a special report to the County State Attorney's Office, requesting an inspection of the facility's organisation, systematisation, and internal operations, as well as the requirements and regulations that its staff is required to comply with, by the Ministry of Labour, Pension System, Family and Social Policy.

RECOMMENDATION 16

To residential institutions for persons with mental or intellectual disabilities, including social welfare institutions: Put persons with mental or intellectual disabilities under increased surveillance based on an individual risks assessment to protect their health and/or life

The Ministry's statement explains that an emergency inspection was carried out at the request of the resident's family member, and upon its conclusion, a decree was issued, requiring a fire alarm system to be installed at all of the facility's buildings as per Article 6(6) of the Ordinance on the Standards for the Provision of Social Welfare Services. Even though the inspection found no oversights in the provision of social welfare services, the fact that the facility took no other action is a cause for concern, because its staff had been aware that the resident had set her clothes or bedding on fire several times before. Therefore, persons with mental or intellectual disabilities need to be put under increased surveillance, in accordance with an individualised assessment, to prevent unwanted occurrences, and sometimes even adverse effects on their health

and/or life. The police also must be notified about such serious incidents, and the police must investigate and assess if it is an accident, or if there are elements of misdemeanour or criminal offence.

The medical staff notified the police about the fire at the Psychiatric Clinic of the Osijek Clinical Hospital Centre. The fire was put out, and extensive property damage was found to have occurred, but no patients were injured. The patient who was present in the room where the fire broke out was examined at the hospital emergency ward and found to require no further medical attention. Osijek Clinical Hospital Centre has Fire Safety Regulations, and all its staff is educated on how to act in case of a fire, and to take preventive measures. According to the Police Department's report, the fire occurred when a bed mattress came in contact with an open flame. A lighter was discovered in the room. It was impossible to determine how the patient came to be in possession of a lighter. Under the Patient Admission Protocol, all patients are examined to make sure they are carrying no hazardous objects on their person, and patients staying in closed unit rooms are strictly controlled when going out of their room to make sure that they do not bring back unpermitted objects when they return to their room. In spite of the preventive measures taken in this case and the quick reaction of the staff, we are of the opinion that high-risk patients who could be a threat to themselves or to others need to be under increased surveillance.

The shortage of medical staff is especially apparent in psychiatric institutions, which we had pointed out in our previous reports about the National Preventive Mechanism. The CPT Report also mentions the shortage of nurses and care workers on duty, which is particularly problematic on night shifts.

To address the shortage of medical staff, the Ministry of Health prepared the Draft Implementing Programme for the Development of Children's and Adolescent Psychiatry within the Framework of Hospital Healthcare Services in Croatia, which also aims to secure a sufficient number of children's and adolescent psychiatry specialists. According to the Draft Implementing Programme, the implementation of its measures will lead to the protection and advancement of the mental health of the specific vulnerable population such as children and adolescents, promote further development of children's and adolescent psychiatry, and ensure a balanced hospital healthcare network. During the public consultations, we underlined that the Draft Implementing Programme defines no specific activities that would achieve these objectives, and that it is not obvious how motivation will be increased, and how doctors will be encouraged to pursue a specialisation in this field. For instance, although a children's and adolescent psychiatry ward has been furnished at the Split Clinical Hospital Centre, the ward still does not provide inpatient treatment due to a shortage of children's psychiatrists. The shortage of psychiatrists is evident in other counties too, especially in inpatient treatment and the treatment of juvenile forensic patients. Having in mind the low interest in specialisations and subspecialisations in children's psychiatry and children's forensic psychiatry so far, we suggested considering and adding incentives to increase the doctors' interest in these specialisations.

During the public consultations about the Draft Implementing Programme, we pointed out that improving the material conditions in the existing capacities for the treatment of children and adolescents with mental disabilities is not enough, and that regional hospital treatment centres need to be developed as well. Hospitalisation capacities need to be expanded in institutions that fulfil the conditions for the admission and treatment of children in a facility separated from adults, such as the Zagreb, Osijek and Rijeka Clinical Hospital Centres, and emergency psychiatric outpatient facilities

need to be set up for children. Around 60% of the children admitted for treatment to the Psychiatric Hospital for Children and Adolescents in Zagreb come from other counties, even though three other clinical hospital centres fulfil the conditions for the admission and treatment of children in a facility separated from adults.

The reconstruction project of the Psychiatric Hospital for Children and Adolescents in Zagreb and the funds secured for the realisation of the adaptation and furnishment project at the Dr. Ivan Barbot Neuropsychiatric Hospital in Popovača, which will become the national hospital institution for forced confinement and treatment of incalculable juveniles, are positive developments.

It should also be noted that a new Psychogeriatric Ward was opened at the Vrapče Psychiatric Hospital, the first psychiatric institution in Croatia accredited according to international standards.

5.2. Performance of National Preventive Mechanism activities: Visits to psychiatric institutions

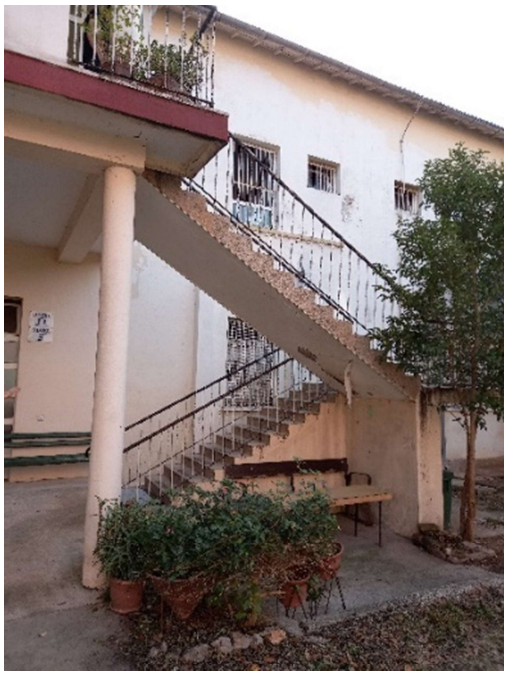
In 2023, we conducted unannounced regular visits of the Psychiatric Ward at the Karlovac General Hospital, the Psychiatric Ward of the Varaždin General Hospital, and the Ugljan Psychiatric Hospital.

The directors and the medical staff offered adequate cooperation during our visits, and did not restrict the enforcement of the National Preventive Mechanism's mandate, since we were allowed access to data and records kept both in written and in electronic form.

Living conditions

During our visits, we noticed substantial differences in the implementation of the mandatory standards regulating living conditions, the level of hygienic and sanitary conditions, availability of required supplies and equipment, and other conditions. The deficiencies we observed in the alignment with international and national standards were mostly explained by the lack of funding, which is presented as a temporary situation, even though these problems have persisted for many years, which is indicative of an insufficient level of concern for persons with mental and intellectual disabilities in the healthcare system and in general.

Photo 20



Representatives of the National Protective Mechanism observed some common deficiencies, such as the accessibility of the facilities, especially for persons with disabilities and persons with limited mobility who use orthopaedic appliances. The concrete structures of rugged and uneven outlines outside of these institutions do not provide adequate access for wheelchairs or gurneys, which is against the Regulation on Ensuring the Accessibility of Buildings to Persons with Disabilities and Limited Mobility, as well as against the Anti-Discrimination Act. Most buildings are not equipped with elevators, and their upper floors are only accessible by stairs. This considerably impacts the treatment status and physical condition of the patients who do not have the option to leave the building to fulfil their right to outdoor exercise in daylight. Instead, they are practically "confined" to their rooms or communal spaces, which can contribute to further deterioration of their health, having in mind that the CPT Standards require patients to be allowed outdoor exercise. Adequate technical solutions therefore need to be implemented to allow persons with disabilities and limited mobility unhindered access to psychiatric institutions.

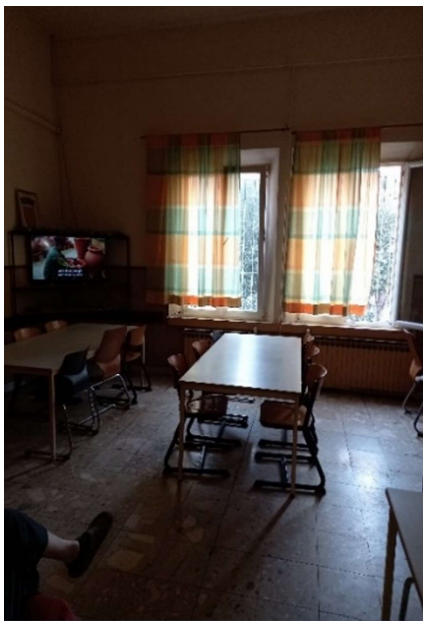


Photo 21

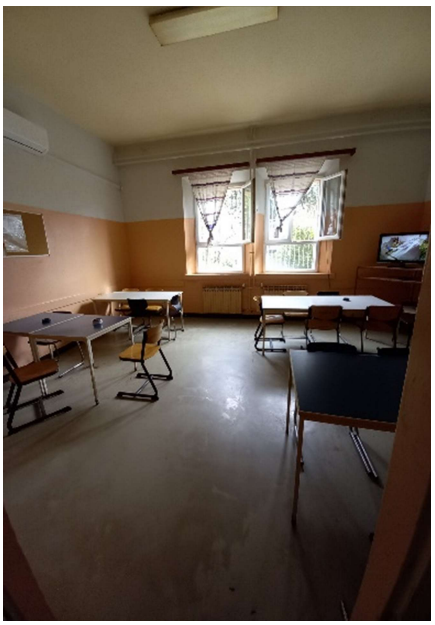


Photo 22

Having in mind that patients spend most of their time in communal living rooms, where meals are also distributed, we noticed that these rooms are usually repurposed corridor sections, which all patients are allowed to use freely, but they usually seem dark and neglected, have outdated wooden furniture, and lack adequate equipment. The scope of treatment programmes and activities is also reduced due to the lack of space. We would like to point out that none of these psychiatric institutions have a separate room with a minimum surface area of 20 m² for working with small groups, nor a separate room with a minimum surface area of 40 m² for working with large groups, which are both required by the Regulations on Norms and Standards. This is one of the factors contributing to the persistent domination of the biosocial, i.e. dominantly pharmacological treatment methods in the psychiatric institutions instead of multidisciplinary therapy and care.

In spite of the deficiencies of accommodation capacities we noted in the Psychiatric Wards of Karlovac and Varaždin General Hospitals, the small size of some of the rooms, the lack of equipment and signs in the rooms, insufficient amount of hygiene supplies, and the need to reorganise the hospital rooms in order to meet the mandatory patient accommodation standards, we noticed that these psychiatric wards were very clean, and the entire living space functionally maintained.

Photo 23

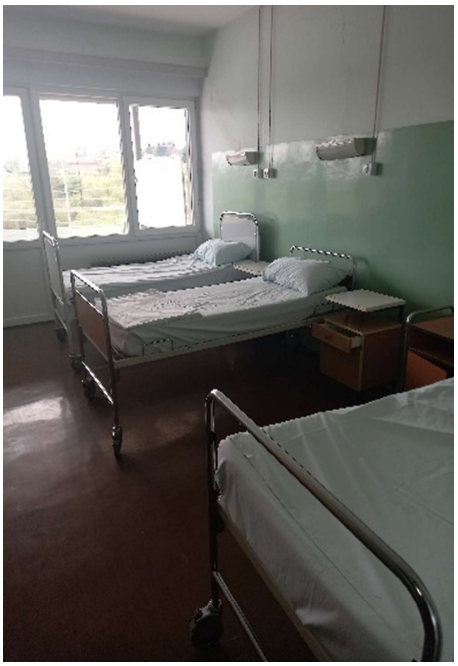


Photo 24

In contrast, during our visits to three acute care units of the Ugljan Psychiatric Hospital (Admission and Intermediary Treatment Unit, Forensic Psychiatry Unit and Psychogeriatric Unit), we noted numerous flaws in the living conditions and very poor hygiene, especially in the rooms and toilets.

Photo 25

Photo 26

In the closed sections of the said units of the Ugljan Psychiatric Hospital, several patient isolation rooms had no equipment or furniture other than hospital beds due to their small size, which prevents patients from relaxing, as they need more space to move around when in an agitated state to relieve their tension. The walls and the floors are covered in ceramic tiles and therefore dangerous for isolated patients, who may resort to self-harm when in an aggressive or delusional state or when having violent hallucinations. This is not aligned with the standards that require isolation rooms to be well-insulated and ventilated, and that they must have a device allowing the temperature in the room to be controlled from the outside, as well as access to a toilet and personal hygiene facilities, and furniture, windows and doors that are resistant to damage and cannot be used to inflict self-harm.

Photo 27

Photo 28

The staff only has view of the rooms when the metal entry door is open, and if the door needs to be closed, the medical staff has no way of monitoring the patient. The installed video surveillance is not working because the IT system is not hooked up. The hospital therefore needs to provide adequate isolation rooms with functioning video surveillance, and arrange for continual monitoring of the patients' state while they are in these rooms. Also, the furnishings in these rooms must not provide patients with the means of inflicting self-harm, and the rooms must be equipped with a video system allowing 24/7 surveillance of isolated patients.

The extremely decrepit condition of the sanitary facilities is a particular problem in these units of the Ugljan Psychiatric Hospital.

Photo 29

Photo 30

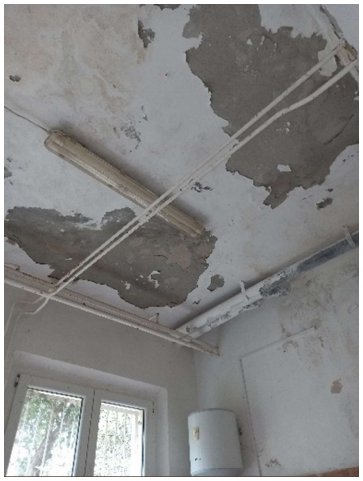


Photo 31

The paint fell off from the walls as a result of heavy water leakage and dampness, and mould and fungus developed. The unhealthy and unhygienic conditions in these rooms are completely inadequate for hospitalised patients who are suffering from mental conditions, but also many chronic physical conditions.

The state of these rooms is an example of a negative treatment environment that does not fulfil hospital hygiene standards or the mandatory sanitary, technical and hygienic standards. These rooms are also unsafe, because water is in direct contact with the electrical installations, which could cause electrical shock. The sanitary facilities need to be adapted and refurbished.

We also noticed that overcrowding was a problem during our visits to the said units of the Ugljan Psychiatric Hospital. Some rooms are holding up to eight patients, whose movement is restricted by the lack of space, and any form of privacy is non-existent. Some of the hospital beds are practically pushed against one another so that the patients are almost touching.

Photo 32

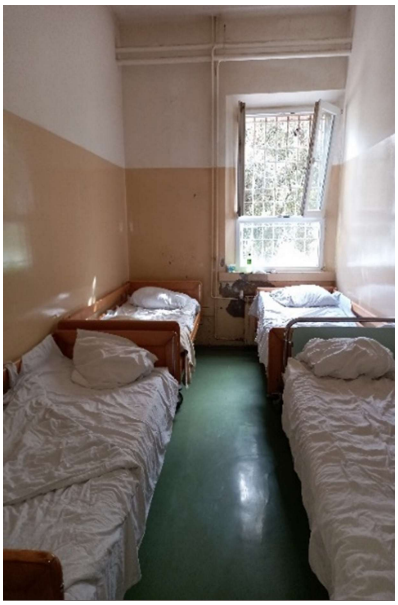


Photo 33

Such conditions fail to provide patients with even a minimal sense of security and autonomy, which hinders their treatment and rehabilitation. We also drew attention to inadequate maintenance of the heating and air conditioning systems, the lack of sheets on beds, patients wearing shoes while lying in beds, visible pieces of leftover food on beds, and clothes and other personal effects stored in bags, suitcases or boxes. We recommended urgent and full adaptation of such rooms, including furnishing them with adequate furniture and medical equipment. The mandatory standards requiring a maximum of four beds per hospital room and laying down the required surface area of rooms, distance between hospitalised patients and the distance between walls and beds in the rooms need to be implemented in all psychiatric institutions to ensure that the patients' right to privacy is respected.

The poor living conditions in damaged buildings resulted in a non-affirmative culture of living, practically reducing some hospital units to social welfare institutions and dormitories offering no quality activity and patient recovery programmes.

The current living conditions in acute care psychiatric units, the forensic unit, and the psychogeriatric unit of the Ugljan Psychiatric Hospital show characteristics of degrading treatment of patients, as pointed out by the CPT as well.

During our visit to the Ugljan Psychiatric Hospital, we also noticed some good practice examples in the Treatment Unit for Alcohol Addiction and Reactions to Stress Situations, the Extended Treatment Unit, and the Dementia Unit, which are situated in remodelled buildings. These units have carefully landscaped gardens that the patients actively help take care of. Their treatment approach encourages tidiness and self-discipline in patients, who voiced their satisfaction with the living conditions, the behaviour of the medical and other staff, the therapy approach, food, daily activities, and other opportunities available to them. Better living conditions, combined with the support provided by the medical staff, encouraged the patients to take an affirmative approach to their recovery, and to get actively involved in the community they are currently a part of.

Photo 34

Photo 35

Other amenities are available to the patients in the remodelled units, such as tidy and functional living rooms, and a new kitchenette. We saw patients exercise in the open under the guidance of the hospital's physical therapist in these units, which is a good practice example aligned with the CPT Standards requiring outdoor exercise for patients.

Photo 36

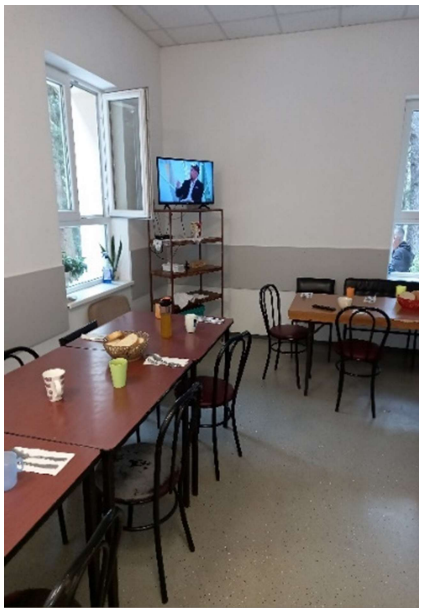


Photo 37

There are decorations in the corridors of these units, and the patients have letterboxes where they can deposit their complaints. They also have closets, which gives them a feeling of security and autonomy.

Having in mind the important effects of living conditions and the treatment environment on the treatment approach, it is important that the Ministry of Health provides investments in infrastructure to adapt the living conditions to the current standards in place.

The drastic differences in the condition of buildings within the same hospital complex are a result of the reconstruction projects carried out in 2019 and 2020, when the Ugljan Psychiatric Hospital used the funds of the Ministry of Regional Development and EU Funds and the Ministry of Environmental Protection and Energy to improve the energy efficiency of five hospital buildings. Future reconstruction of the entire hospital infrastructure, including the decrepit and dilapidated buildings housing some of the psychiatric units, is supposed to begin in 2024, and be financed by the Zadar County's funds.

Informed consent and patients' rights while staying in a psychiatric institution

Under Article 25 of the Act on the Protection of Persons with Mental or Intellectual Disabilities, such persons can be admitted to a psychiatric institution, provided that they have given their written consent, only if treatment is not possible outside of such an institution, and the persons can withdraw their consent at any time.

During our visit to the Psychiatric Ward of the Karlovac General Hospital, we found that most patients are not aware of the nature of the document they signed, and are insufficiently aware of their rights. Information about the rights set forth in Article 14 of the Act on the Protection of Persons with Mental or Intellectual Disabilities and an extract from the House Rules are displayed on notice boards, but no fliers or brochures are available about the patients' rights, obligations and responsibilities.

The Psychiatric Ward of the Varaždin General Hospital did not have a notice board, and its patients had not been informed about the reasons for their treatment, or their right to withdraw their consent to voluntary hospitalisation. Patients were not allowed to spend time outdoors in spite of their voluntary status, and saw their visitors in the communal living room in the presence of other patients, which is an invasion of their privacy.

During our visit to the Ugljan Psychiatric Hospital, we found that posters outlining the patients' rights and notice boards containing the most important information were put up in some units, but some patients told us that they were not given written information about their treatment, their rights, and the channels for filing complaints during their admissions.

RECOMMENDATION 17
To the Ministry of Health: Continually educate the medical staff about their obligation to inform patients of their rights during their stay at a psychiatric institution, and the ways to communicate this information to patients

In spite of the Ministry of Health having accepted our recommendation from our 2022 Report that the patients should be informed about their rights applicable during their stay at psychiatric institutions, and that they should be informed that voluntariness applies to the entire period of their treatment in the hospital, we noticed that this recommendation is not implemented consistently. Continual education of the medical staff about their obligation to inform patients of the rights applicable to them during their stay at a psychiatric institution, and the ways to communicate this information to patients, is therefore needed.

Voluntary and involuntary admission

There are few involuntary hospitalizations at psychiatric institutions. Only one patient was admitted involuntarily to the Psychiatric Ward of the Varaždin General Hospital, the Psychiatric Ward of the Karlovac General Hospital had no such patients, and the Ugljan Psychiatric Hospital had 15% such patients.

Even though most patients were admitted on the basis of voluntary consent, some of them were staying in closed units. For instance, patients at the Psychiatric Ward of the Varaždin General Hospital are locked up when so required by their clinical picture, and are only allowed to spend time outdoors if they do not suffer from acute psychosis or auto- or hetero-aggression. Patients who are staying at the closed unit are not allowed to leave it, not even in the company of their family members. The patients of the Psychiatric Ward at the Karlovac General Hospital are hospitalised in a closed unit and can only go out with a physician's permission, and some of the patients at the Ugljan Psychiatric Hospital who were admitted voluntarily are staying in closed units. The medical staff confirmed that, in practice, voluntary patients are usually first placed in closed units after admission. Speaking with the patients, we learned that most of them did not know that they could withdraw their voluntary consent to be hospitalised.

The CPT also drew attention to such situations, stating that, if patients who were admitted voluntarily (based on their own consent) express the desire to withdraw this consent at any time, and their physicians feel that they need to stay at the hospital and continue their treatment, the involuntary hospitalisation procedure needs to be initiated immediately. The CPT also underlined the need to differentiate between the patient's consent to hospitalisation and consent to treatment.

Treatment of persons with mental or intellectual disabilities and the right to file complaints

We received no complaints about the conduct of the medical staff during our visits, with the exception of several patients who were unsatisfied with the communication with them. Medical staff therefore needs to be trained in appropriate communication, taking into account the vulnerability of this patient category.

The complaint box at the Psychiatric Ward of the Varaždin General Hospital is located at the entrance to the building, which the patients are unable to reach because they are locked, and are thus prevented from exercising their right to file complaints. There are likewise no forms at the Ward that would make it easier for patients to file complaints. At the Psychiatric Ward of the Karlovac General Hospital, the officer at the entrance to the hospital keeps the register of complaints, which means the patients at the Ward are unable to access it, and there is no box for the patients to put their complaints in either. Complaint boxes are installed at all units of the Ugljan Psychiatric Hospital, but some patients told the representatives of the National Preventive Mechanism that they were unaware of the possibility to file complaints, and that there were no complaint forms available in the closed units.

RECOMMENDATION 18
To psychiatric institutions: Draw up complaint filing forms and make them available to patients, and install complaint boxes

Having in mind the CPT Standards, which highlight efficient complaint filing procedures as a basic guarantee against ill treatment of persons in psychiatric institutions, and underline that the patients need to have access to internal and external complaint filing mechanisms, it is necessary to draw up complaint filing forms, make them available, and install complaint boxes.

Individual treatment plan and work therapy

The approach to the treatment of persons with mental or intellectual disabilities includes an individual plan, treatment, and work therapy, which are important for the recovery process. Accordingly, patients in psychiatric institutions need to be accepted just like all other patients. Their treatment should be based on the acceptance of their recovery and the faith in their healing. Action needs to be taken to reduce the stigmatisation and discrimination of persons with mental or intellectual disabilities, as pointed out by the World Health Organisation.

During our visits to the psychiatric institutions, we found that the patients' medical documentation contained no individual treatment plans, even though all professional guidelines, CPT guidelines, and the UN's Convention on the Rights of Persons with Disabilities requires treatment to be conducted in accordance with an individual treatment plan, including bio-, psycho-, and social treatment methods.

Patients told us that rarely speak to doctors individually, that they are mostly given medications that they are uninformed about, and that they spend most of their day in bed. The pharmacological treatment approach is prevalent at the Ugljan Psychiatric Hospital, especially some of its units. The CPT also drew attention to the lack of multidisciplinary treatment approach, stating, among other things, that healthcare is mostly based on pharmacotherapy.

RECOMMENDATION 19
To psychiatric institutions: Draw up individual treatment plans, inform every patient about their plan, and keep track of the plans' implementation

An individual treatment plan therefore needs to be drawn up for each patient, including other treatment methods that would be the best suited for the patient and their potentials in addition to pharmacotherapy, which will aid and speed up their treatment, allow the patient to function better, speed up their recovery or remission, and shorten their hospital stay. Patients also need to be informed about their individual treatment plans, having in mind Article 14 of the Act on the Protection of Persons with Mental or Intellectual Disabilities, under which patients need to participate in planning and conducting their treatment, as well as in rehabilitation and resocialisation.

With regard to work therapy, patients at the Psychiatric Ward of the Varaždin General Hospital said that they play board games, while patients at the Psychiatric Ward of the Karlovac General Hospital

said that they usually had to organise their leisure activities by themselves, and that they sometimes participated in programmes facilitated by a work therapist.

At the Ugljan Psychiatric Hospital, some of the patients participate in therapies including creative, music and sports workshops, and also have access to a gym, kitchen, and art studio during their treatment. Participation in these activities depends on patients' wishes. Some of the participants are from the forensic unit, the acute care units, and the extended hospitalisation unit. However, other patients spend all their time in their rooms. The scope of work therapy activities needs to be expanded to aid the patients' recovery, and to motivate as many patients as possible to participate in multidisciplinary treatment.

Also, during our visit to the Ugljan Psychiatric Hospital, we found out that some patients do not require hospitalisation, but they stay at the hospital anyway due to the lack of treatment support outside of the institution. The lack of non-institutional support slows down the deinstitutionalisation process, which the CPT pointed out as well, stating that some patients stayed at psychiatric institutions for longer than 25 years even though they did not require hospitalisation, and recommending additional action to reorganise the care system for persons with mental or intellectual disabilities, and provide them with more support in the deinstitutionalisation process.

The use of means of coercion

Means of coercion are applied only in exceptional circumstances at the Ugljan Psychiatric Hospital. De-escalation techniques are used in an effort to calm patients down. The average time patients spent in restraints in 2022 was 12.5 hours, and 24 patients were subjected to this treatment.

However, restraints were also used on voluntary patients. Several patients at the Ugljan Psychiatric Hospital and the Psychiatric Ward of the Varaždin General Hospital said that they did not know why they were restrained, and that they did not consent to be subjected to coercive measures. The use of coercive measures on patients who were admitted voluntarily goes against the CPT Standards, and the legal status of these patients needs to be re-examined in such situations.

During our visits, we noticed flaws in record-keeping about the coercive measures used. At the Ugljan Psychiatric Hospital, some patients' medical records contain no detailed explanations of why the patients were restrained, or which de-escalation techniques were used prior to restraining. At the Psychiatric Ward of the Varaždin General Hospital, no explanation was provided as to why coercive measures were used for an uninterrupted period of 22 hours. In our 2022 Report, we recommended, due to similar oversights, that appropriate records need to be kept of the use of means of coercion, but these records are still not maintained properly and fully.

Our examination of the documentation relating to the use of coercive measures at the Ugljan Psychiatric Hospital showed that there was no justified reason for the use of restraints in some situations. We also examined the medical records of a patient who was restrained at the Psychiatric Ward of the Karlovac General Hospital, which stated that the restraints were applied at 10:20 pm, and removed at 7:00 am the next morning. According to the records, the patient was calm and cooperative, making it unclear why the means of coercion were applied for the whole night. The medical records of one patient at the Psychiatric Ward of the Varaždin General Hospital included no

explanation of the reasons why coercive measures were used. Having examined the nurses' documentation, we learned that the patient was sedated and fell asleep, which would require the restraints to be removed, or possibly used as a safeguard to prevent him from falling off the bed. Also, one patient at the Psychiatric Ward of the Varaždin General Hospital told us that he was put in diapers while in restraints. We warned that using diapers on patients who do not suffer from incontinence constitutes degrading treatment.

RECOMMENDATION 20
To the Ministry of Health: Train medical staff in the use of coercive measures, taking into account their necessity and proportionality for the duration of the immediate danger to the patient or staff

The use of coercive measures is justified in case of immediate danger to the patient or other persons, and these measures need to be used in compliance with the provisions of the Act on the Protection of Persons with Mental or Intellectual Disabilities. In our 2022 Report, we recommended that coercive measures should only be used for as long as necessary to address the immediate danger arising from the patient's behaviour that poses a serious and direct threat to the patient's own or someone else's life or health. The Ministry of Health contacted all hospitals, drawing their attention to the principle of necessity, and the CPT drew attention to it as well. Given that the problem persists, and having in mind that the Ministry's responsibility and influence over the hospitals was increased by the transfer of founding rights, we recommend training the medical staff in the use of coercive measures, taking into account their necessity and proportionality for the duration of the immediate danger to the patient or staff.

RECOMMENDATION 21
To psychiatric institutions: Use coercive measures in separate rooms where patients will not be in view of other patients, and continually monitor their condition

With regard to the conditions in the rooms where coercive measures are applied, we found that the Psychiatric Ward of the Varaždin General Hospital uses two rooms for this purpose. The rooms are equipped with video surveillance, and several patients are placed there at the same time. Conversely, there are no cameras in the rooms where restrained persons are placed at the Ugljan Psychiatric Hospital, or if cameras are installed, they are out of order. Some units do not have a separate room for restrained patients, which is against CPT Standards. The Psychiatric Ward of the Karlovac General Hospital is a positive example: two rooms equipped with video surveillance are used there for restrained patients, who are restrained for brief periods of time, and only one person is allowed to be in the room at the same time. Having in mind the situation we encountered at the Psychiatric Ward of the Varaždin General Hospital and the Ugljan Psychiatric Hospital, patients should be subjected to restraining in separate rooms and not in view of other patients, and their condition needs to be monitored continually, as the CPT stated. The CPT also recommended that the medical staff should talk to the patient after the use of coercive measures ends, and explain the reasons why the patient was placed in restraints in order to reduce psychological trauma and build a good doctor-patient relationship.

Under CPT standards, coercive measures need to regulated by law only, which we recommended in our 2022 Report. The competent Ministry of Justice and Administration forwarded our recommendation to the Committee for the Protection of Persons with Mental or Intellectual Disabilities, which is preparing the draft of the new Act on the Protection of Persons with Mental or Intellectual Disabilities. When the draft is complete, we will participate in the public consultations.

6. Visits to residential care homes

We conducted two regular visits in 2023 to determine the level of respect of senior citizens' human rights in institutional care, having visited the Pešćenica Residential Care Home in Zagreb ("Pešćenica Home") and the Vinkovci Residential Care Home ("Vinkovci Home"). We considered the segments relevant for the life at institutions caring for senior citizens and persons with disabilities, including the occupants' living conditions, healthcare, and enhanced care provided to immobile persons/persons with limited mobility and persons suffering from dementia, issuing recommendations for the improvement of senior citizens' rights to each home.

Understaffing is one of the crucial problems. It was especially apparent at the Pešćenica Home, whose job systematization provides for the employment of 23 nurses, but only eight persons were employed in these positions at the time of our visit. This situation raises the question of the quality and efficiency of the healthcare services provided in this institution. Also, the job systematization provides for the employment of 35 carers, but only 17 persons were employed in these positions at the Home at the time of our visit, making the daily assistance to and care for the Home's occupants questionable given the type and level of the services provided. Efforts were made to address this problem by hiring pensioners part-time, establishing cooperation with the Healthcare Polytechnic, whose students complete their traineeships at the Home, and hiring foreign workers.

The Vinkovci Home lacks five nurses and 11 carers required by its existing job systematisation. Understaffing is especially problematic when employees go on sick leave or on vacation, which reflects on the quality and the efficiency of the services provided to the occupants. The positions defined in the systematisation therefore need to be filled to ensure the conditions are met to provide adequate care and healthcare.

Living conditions

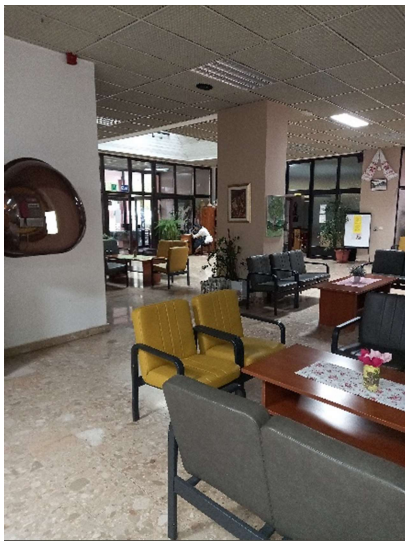
During our visits, we found that the homes share certain features relating to the mandatory living conditions for occupants, but we also found discrepancies from the international and national standards in place. The important thing to point out here is that living conditions are very important, because people change their living environment and habits when they are placed in a home, and any change in a person's living environment can cause certain distress, which has a special dimension in case of senior citizens and/or persons with disabilities.

Both homes are positioned on accessible terrain, providing unobstructed vehicle as well as pedestrian access, and therefore providing adequate access for occupants with limited mobility and occupants using mobility aids. The locations of the two institutions allow for the organisation and use of healthcare, cultural and other services, since they are well-connected with the other city districts, and

have access to organised public transport, which makes it easier to maintain existing social connections, in particular for occupants who suffer from no mobility issues.

Photo 1 – Pešćenica Home

Photo 2 – Vinkovci Home



The occupants of both residential homes have the use of large lobbies furnished like spacious lounges and equipped with enough tables, chairs, lockers and couches, which are used for leisure and entertainment purposes. These areas are personalised in the sense that the occupants are allowed to display their pictures, photos and souvenirs, and they are free to spend time together in these areas, watch TV, and play board games. The homes have installed elevators for their occupants' use, which are also adapted for use by persons with limited mobility.

All rooms at the homes are airy and have plenty of natural and artificial light, the joinery is fairly new and in good working order, and the rooms are protected from direct sunlight by curtains or blinds. The rooms are heated in winter through a central heating system and radiators, but air conditioners are only installed in the corridors or some of the rooms, leading to high temperatures in the summer that can negatively affect the occupants' mood and health.

The rooms in the residential areas of both institutions have a maximum of up to two beds, which is a high standard and a good practice example, as high-capacity bedrooms can have a negative therapeutic and depersonalising effect on the occupants, lead to privacy violations, and impede the creation of a stimulating environment. In addition to the above, the rooms in the residential areas offer a home-like, individualised atmosphere and a certain degree of privacy. Occupants are able to personalise their rooms by freely displaying their photos, pictures and other artwork, religious objects and other personal effects on shelves, chests of drawers and walls, and are free to use any devices that they may have.

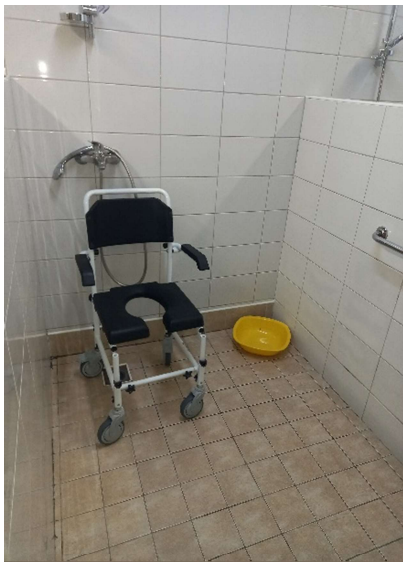
RECOMMENDATION 22

To counties and the City of Zagreb: Align the living conditions in the residential units of all decentralised homes with the Ordinance on the Standards for the Provision of Social Welfare Services

Having in mind the above, we recommend to counties and the City of Zagreb to align the living conditions in the residential units of all decentralised homes with the Ordinance on the Standards for the Provision of Social Welfare Services.

Photo 3 – Pešćenica Home

Photo 4 – Vinkovci Home



During our visits, we noted a difference in hygiene standards between the two homes, as well as a difference in the ability of the residential units' occupants to tend to their personal hygiene in their own rooms. Each room in the residential unit of the Pešćenica Home is equipped with its own bathroom and toilet, but they are not functional because they are not adapted for use by immobile persons or persons with limited mobility. Given this situation, these bathrooms are used for storage, and the rooms' occupants are transported once a week to existing disabled bathrooms in several locations at the home using commode chairs, or to the remodelled bathrooms in other occupants' rooms, which we feel constitutes a possible violation of their privacy.

Photo 5

This situation makes it more difficult to tend to the occupants' personal hygiene needs and directly influences the reduced regularity and frequency of baths given to occupants. CPT Standards underline the importance of tending to personal hygiene needs in terms of the availability of a hot water source that will allow occupants to have showers at least twice a week or more frequently if necessary. Bathrooms at the Vinkovci Home are adapted for use by persons with limited mobility, and allow them to regularly tend to their personal hygiene. Fully immobile persons have the use of a specially adjusted wheeled bathtub that can be brought into any room to allow occupants to take regular baths, which we consider to be a good practice example.

Individual or group physical therapy rooms are available to the occupants of both homes. The sessions are facilitated by physical therapists in order to strengthen the patients' muscles, improve their blood flow, and ease their rheumatic and other symptoms. However, during our visits, we noted that the two homes differ greatly in their level of availability of the necessary equipment and adequate devices. The physical therapy room at the Pešćenica Home is only equipped with a Swedish ladder, mats, and Pilates balls, while the room at the Vinkovci Home also has specialised magnetotherapy devices, electrical muscle stimulators, ultrasound therapy machines, and other equipment. In addition, we observed that the room at the Vinkovci Home was much better equipped with mobility and exercise equipment used for medicinal gymnastics and load relief exercises for persons with reduced mobility or suffering from painful movements.

As a special benefit and an example of high-quality care provided to the occupants, we would like to underline that the Vinkovci Home offers to its occupants the use of a magnetotherapy device, which helps heal injuries more quickly, and helps with chronic conditions. This devices operates on the principle of low-frequency magnetic fields stimulating cellular activity. This method has high rehabilitation effects in practice.

Care provided to immobile persons and dementia patients (residential unit)

On the day of our visit, around 40% of Pešćenica Home's occupants required Level 3 care (the assistance of another person to fully meet all their needs), who were staying on the third and fourth floor of the building. Most of the occupants stayed in their beds after having been given a bath or other form of care. The Home's staff confirmed that these occupants only go out when their family members come to visit, because the Home does not have enough staff to help the occupants go out and stay outdoors for a period of time. The medical staff also informed us that the Home has occupants requiring Level 4 care, who developed dementia during their stay at the Home, and who share rooms with immobile occupants or occupants with limited mobility. Having in mind the needs of dementia patients and the standards laid down in Article 75 of the Ordinance on the Standards for the Provision of Social Welfare Services (Official Gazette no 110/22, "Ordinance on Standards"), the Home needs to go through the process of obtaining a licence to provide Level 4 services, and furbish a special accommodation unit, with a maximum capacity of 20 occupants, in such a way as to promote orientation.

During our visit to the Vinkovci Home, more than 50% of the occupants required Level 3 or Level 4 care, most of whom were suffering from dementia (out of 120 occupants in the residential unit, 95 have been diagnosed with dementia). Occupants requiring Level 3 and Level 4 care are staying in the residential unit, and there is no separate unit for occupants suffering from dementia. The Home therefore needs to expand its capacities, furbish a separate unit to accommodate persons with dementia, and increase the number of medical staff caring for them. At the Vinkovci Home, persons with dementia are not locked up. Instead, they are under increased surveillance, and are allowed to move around freely and go outside of the building, with the medical staff escorting them, which is a positive practice as regards the treatment of the Home's occupants.

Both residential care homes need to ensure sufficient staff to provide quality healthcare services and regular care to the occupants of the residential units, and they need to set up separate residential units to provide care to persons suffering from Alzheimer's and other types of dementia.

The occupants of the Pešćenica Home who are staying in the residential unit did not complain of inhuman or degrading treatment when we spoke to them, but some did complain about the care provided to them, and complained that the staff had treated them roughly while giving them baths. Most occupants confirmed that baths are organised once a week, and diapers get changed when necessary. However, we noted that the occupants are not provided with full personal care. The care provided to the occupants needs to be thorough and include regular trimming of nails and hair, and the use of running water to wash their faces. The Home's management informed us that foreign workers who have not received the necessary training are participating in caring for the occupants. In spite of their lack of training, they are needed at this moment due to understaffing, and the increase in the number of occupants requiring Level 3 care is making the situation even more difficult. Also, the foreign workers have insufficient command of the Croatian language, and need to be provided with courses to make it easier for them to communicate with the Home's occupants.

The occupants of the Vinkovci Home had no complaints about the conduct of the staff and said that they were happy with the care they received, even though they are aware of the shortage of care staff. Occupants are given baths once a week, and diapers are changed regularly, at least four times a day. Some occupants complained about the food not being cut up into small pieces, having in mind that most occupants are suffering from severe dental issues.

During our visit to the Pešćenica Home, we noticed that the staff does not close room doors or use privacy screens while tending to the occupants' care. The occupants told us that they do not mind the absence of privacy screens, but the principles of respect of senior persons' dignity require privacy screens to be used and doors to be closed during care to respect the occupants' right to their dignity and privacy. We noticed the same practice at the Vinkovci Home, and we would like to again point out that the occupants' right to privacy needs to be respected while giving them care.

The Pešćenica Home is not using restraints on its occupants. In situations when they are unable to ensure an occupant's safety and the safety of the persons around them, they call an ambulance, and the occupants is hospitalised when necessary in a healthcare facility. The Home does not use restraints to prevent their occupants from falling off their beds. Instead, they use bed rails, which is a good practice example. The Vinkovci Home also uses bed rails to protect occupants from possible falls, but they also use so-called humane restraints as an exception. We would like to point out that the Act on the Protection of Persons with Mental or Intellectual Disabilities needs to be followed in such situations, which states that social welfare institutions can use coercive measures on persons with severe mental or intellectual disabilities who have been placed in these institutions under the conditions and in the manner laid down by the provisions of the said act.

The Pešćenica Home has a number of notice boards on each floor of the building to inform the occupants about the events in the Home and other important matters. The occupants of this Home are able to file complaints in written by putting them in the designated letterbox or giving them to the staff, and are also able to file complaints by e-mail, but the complaints are not regularly entered in the complaints register. Having in mind this situation, we warned that, under CPT Standards, residential homes are required to have efficient internal complaints mechanisms, and the complaints addressed at the management of the institution need to be registered in a special register. Occupants of the Vinkovci Home are able to hand over their complaints directly to the director, or put them in the

designated letterbox. Their complaints are registered, and the problems are usually resolved by speaking to the occupants.

Healthcare and medical care

There is a family practitioner's office on the premises of the Pešćenica Home. The resident physician and nurse tend to the occupants medical needs, and when the physician is not present, the ambulance is called when necessary. A medical record is maintained for each occupant, but there is sometimes a delay in forwarding the referrals to examinations to the physician in charge due to understaffing. Gynaecological examinations are performed on the facility's premises, and when psychiatric diagnostics is needed, occupants are referred to specialist examinations. Provisions need to be made to have a psychiatrist come in when necessary and perform examinations at the Home, having in mind the development of dementia and other conditions.

Medical care and visits are provided to the occupants of the Pešćenica Home when needed, according to the staff, since there is no healthcare plan. This plan has not been made because the head nurse in this institution has an excessive workload. For instance, on the day of our visit to the institution, the head nurse performed the tasks assigned to the unit shift nurse, because no nurse was present in the morning shift. The Pešćenica Home also does not keep a register of the administered medications and interventions that were carried out. A healthcare plan therefore needs to be drawn up for all occupants, and the interventions, including administered medications, have to be registered on a daily basis, and mandatorily verified by a physician. Due to the shortage of nurses, sometimes only carers are present at the facility during night shifts. We would like to point out that, under CPT Standards, a sufficient number of staff needs to be present at the units during night shifts to provide adequate care and a safe environment to all occupants, and at least one nurse needs to be present at all times, including at night.

The occupants of the Vinkovci Home receive healthcare services at a family practitioner's office, and a physician visits the Home once a week, which the staff of the Home feels is insufficient given the occupants' numerous health problems. With regard to healthcare and the occupants' mental health, the Home has also hired a psychiatrist who comes in when necessary to perform interventions. The head nurse keeps a proper record of the healthcare provided to occupants, and the performed interventions and administered medications are recorded on group lists.

7. International cooperation

The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) visited Croatia for the first time in 2023, inspecting prisons, penitentiaries, police stations, migration centres and social care homes to see how the persons deprived of liberty are treated, and which measures are in place to protect them from torture and ill treatment. During its visit, the SPT delegation visited a prison and a border police station together with NPM representatives, sharing experiences on the methodology of preventive visits and the importance of implementing recommendations regarding the treatment of persons deprived of liberty.

In 2023, we attended the meetings of the South-East Europe NPM Network (SEE NPM Network), and we organised a study visit for the Latvian National Preventive Mechanism through bilateral cooperation, during which we informed our colleagues about the methodology for visiting psychiatric institutions, and we together visited the Vrapče Psychiatric Clinic in Zagreb. We also held an online meeting with Kirgizstan's National Preventive Mechanism, to whom we presented our work and our methodology for preventive visits to places of deprivation of liberty.

8. Recommendations

Police system:

1. To the Croatian Government and the Ministry of the Interior: Implement the recommendations made by the Complaint Handling Committee in its Annual Activity Report;

Applicants for international protection and irregular migrants:

2. To the Ministry of the Interior: Prepare a proposal of amendments to the Act on International and Temporary Protection that would regulate the judicial review of the lawfulness of the decisions restricting freedom of movement for applicants for international protection as it is currently regulated for illegal migrants under the Aliens Act;
3. To the Ministry of the Interior: Provide civil society organisations with access to reception centres for applicants for international protection;
4. To the Ministry of the Interior: Keep records of deterrence and other actions at borders;
5. To the Ministry of the Interior: Urgently provide more toilets and showers at the Reception Centre for Applicants for International Protection in Kutina;
6. To the Ministry of the Interior: Increase the number of accommodation facilities for applicants for international protection;
7. To the Ministry of the Interior: Allow the institution of Ombudsman access to all data about the procedures involving irregular migrants, including data maintained in the Ministry of the Interior's Information System;
8. To the Ministry of the Interior: Urgently put in use the detention rooms in all border police stations, and align the conditions in these rooms with international and national standards;
9. To the Ministry of the Interior: Ensure adequate translation while depriving irregular migrants and applicants for international protection of liberty;

Prison system:

10. To the Ministry of Justice and Administration and the Ministry of Health: Ensure the prerequisites for the provision of healthcare services within the prison system as per the Healthcare Act;
11. To the Ministry of Justice and Administration: Equip all prisoner transport vehicles with safety belts in line with applicable regulations and international standards;
12. To the Ministry of Justice and Administration: Set aside funding for the adaptation of existing and construction of new correctional facilities to align the living conditions with legal and international standards;
13. To the Ministry of Justice and Administration: Increase the number of correctional facility employees, especially security, rehabilitation, and healthcare staff;
14. To the Ministry of Justice and Administration: Prepare a proposal of amendments to Title XIX of the Enforcement of the Prison Sentence Act;

Persons with mental or intellectual disabilities whose freedom of movement has been restricted:

15. To psychiatric institutions: Do not restrict the freedom of movement of voluntary patients, and allow them to withdraw their informed consent during their stay in the hospital;
16. To residential institutions for persons with mental or intellectual disabilities, including social welfare institutions: Exercise increased surveillance of persons with mental or intellectual disabilities based on an individual risks assessment to protect their health and/or life;
17. To the Ministry of Health: Continually educate the medical staff about their obligation to inform patients about their rights during their stay at a psychiatric institution, and the ways to communicate this information to patients;
18. To psychiatric institutions: Draw up complaint filing forms and make them available to patients, and install complaint boxes;
19. To psychiatric institutions: Draw up individual treatment plans, inform every patient about their plan, and keep track of the plans' implementation;
20. To the Ministry of Health: Train medical staff in the use of coercive measures, taking into account their necessity and proportionality for the duration of the immediate danger to the patient or staff;
21. To psychiatric institutions: Use coercive measures in separate rooms where patients will not be in the view of other patients, and continually monitor their condition;

Residential care homes:

22. To counties and the City of Zagreb: Align the living conditions in the residential units of all decentralised homes with the Ordinance on the Standards for the Provision of Social Welfare Services.

9. Conclusion

In 2023, we drew attention to problems and inadequacies that may lead to the violation of the rights of persons deprived of liberty, and possibly also to inhuman and degrading treatment. We repeated some of the recommendations presented in previous years because the lack of material resources and understaffing directly impact the treatment of persons deprived of liberty or persons whose freedom of movement has been restricted. In order for the prevention system to function efficiently, it is essential that the relevant institutions work on implementing the recommendations presented by the National Preventive Mechanism, and take into account the conclusions and recommendations we issue after conducting preventive visits at places of deprivation of liberty.

Our annual report provides 22 recommendations addressing systemic issues observed at institutions and facilities where persons deprived of liberty reside or may reside. After each visit, we submitted a special report containing our recommendations and warnings to the competent authorities.

We again identified oversights in the exercising of police powers, and inadequacies in the treatment and supervision of arrested persons this year. Cases of potential overstepping of police powers need to be investigated efficiently. Video surveillance needs to be installed in all areas in police stations where persons deprived of liberty are accommodated or pass through. Detention officers still work on operating and communication centre tasks. To protect the legal rights of persons deprived of liberty, detention officers need to be able to work only on tasks falling within their job description.

Living conditions at reception centres for applicants for international protection are still inadequate. They need to be aligned with the international standards, and the number of accommodation facilities needs to be increased. As in previous years, the Ministry of the Interior again did not give us access to all data about the procedures involving irregular migrants in 2023, including data maintained in the Ministry of the Interior's Information System. We therefore need to be provided with access to this data in order to be able to efficiency enforce the mandate of the National Preventive Mechanism. Having in mind that representatives of civil society organisations were not able to enter the buildings of reception centres for applicants for international protection, we recommended allowing them entry in order to improve the care and protection provided to applicants for international protection.

The availability of healthcare services in the prison system remains inadequate. We repeated our recommendation to ensure the prerequisites for the delivery of healthcare services within the prison system as per the Healthcare Act. Overcrowding of correctional facilities generates restrictions or violations of a number of rights of persons deprived of liberty in the prison system. In addition to taking comprehensive measures to reduce overcrowding in the prison system, such as increase the use of alternative sanctions and speed up court proceedings, it is also necessary to secure the funds for the adaptation of existing and construction of new accommodation capacities. Since understaffing largely affects the level of respect of the rights of persons deprived of liberty in the prison system, we also repeated our request to intensify the hiring of officers at correctional facilities.

Inadequate conditions in prison institutions can lead to the violation of the rights of persons with mental or intellectual disabilities. Coercive measures are still not enforced in a separate room to avoid exposing patients to the view of other persons, and to protect the right of persons with mental or intellectual disabilities to privacy. Living conditions therefore need to be aligned with international standards, and restraints need to be applied in separate rooms. With the identified inadequacies in mind, we pointed out that persons admitted to psychiatric institutions should receive information about informed consent and voluntary hospitalisation in a clear and easily understandable way, that

they need to be informed about their rights during their treatment, and that coercive measures may only be used on them exceptionally and when strictly necessary.

Understaffing at residential care facilities affects the quality of the care and healthcare services provided to their occupants. Also, the living conditions are not aligned with the Ordinance on the Standards for Providing Social Welfare Services. Positions therefore need to be filled, and living conditions need to be aligned with the regulations in order to ensure adequate care to the occupants of social welfare institutions.

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[i] ECRE, https://ecre.org/editorial-migration-pact-agreement-point-by-point/; https://ecre.org/joint-statement-ngos-call-on-member-states-and-european-parliament-go-no-lower-reject-the-use-of-legal-loopholes-in-eu-asylum-law-reforms/; Amnesty International, https://www.amnesty.org/en/latest/news/2023/12/eu-migration-pact-agreement-will-lead-to-a-surge-in-suffering/; Human Rights Watch, https://www.hrw.org/news/2023/12/21/eus-migration-pact-disaster-migrants-and-asylum-seekers.

[ii] Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on violence against women and girls, its causes and consequences, OL GBR 9/2023, 4 May2023, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=28674.