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OMBUDSMAN



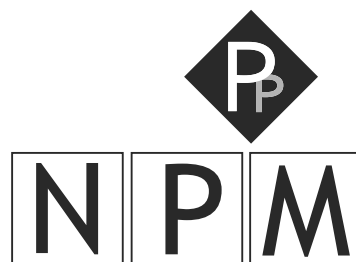
**N P M**

**Annual Report  
on the Performance  
of Activities  
of the National  
Preventive Mechanism  
2012**

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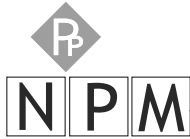


Republic of Croatia  
Ombudsman



# Annual Report on the Performance of Activities of the National Preventive Mechanism

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**NPM**

ANNUAL REPORT ON THE PERFORMANCE OF ACTIVITIES OF THE NPM

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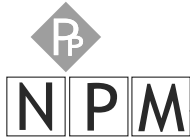
Dear readers,

In front of you is the first report of the Office of the Ombudswoman on the performance of activities of the National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM), which presents our work in 2012.

For us, it is important just because it is the first report of such kind in Croatia. While preparing it, we went through a double process of learning. On one hand, as an institution we are learning how to perform the role of NPM as successfully as possible, since for us this is a new mandate and surely a challenging one. At the same time, we are learning how to convey information on our work to the public by writing such type of report. Our insights and recommendations must reach those decision-makers whose decisions influence the respect for human rights of persons deprived of liberty: Croatian Parliament, ministries, but also civil servants who work with persons deprived of liberty on a daily basis, and, ultimately, the confined individuals.

The Office of the Ombudsman, along with associates from academia and civil society, started carrying out NPM's tasks in July 2012, after obtaining the minimum prerequisites for its work, according to the requirements stipulated in the Act on National Preventive Mechanisms against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM) and Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

In the first year we visited seven institutions where persons deprived of liberty are placed – three in prison system, two police detention and custody units and two homes for adult persons with mental impairments. During our visits we did not find cases of torture, though we noted cases containing elements of inhuman or degrading treatment or punishment. After each visit we prepared reports on our findings with recommendations and delivered them to the competent bodies, as well as to the oversight bodies. In 2013 we continued our visits more intensely, whereby monitoring to which extent our recommendations have been implemented.



We regularly inform the public about our work and visits. In the beginning of July we opened the NPM website (<http://npm.ombudsman.hr>), which will soon become an integral part of the official Office of the Ombudswoman website ([www.ombudsman.hr](http://www.ombudsman.hr)). Hence, we prepared promotional materials with basic information on the rights of persons deprived of liberty, NPM and the Office of the Ombudswoman, and distributed them to the persons deprived of liberty.

This report is primarily designed for local and international expert audience as well as state and public bodies, civil servants in prison, judicial, health, defence and social care systems, legal practitioners and civil society organisations. Of course, this is an informative material for persons deprived of liberty, as well as the citizens who seek information on the level and developments of human rights protection in this field.

We hope to perform better in our work and reporting each year, and at the same time, to encounter fewer problems in the system, which we are obliged to address.

Lora Vidović  
Ombudswoman

# 1. INTRODUCTION

Recognising the importance of the universal fight against torture and other cruel, inhuman or degrading treatment or punishment and taking into consideration Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, the General Assembly of the United Nations adopted in 1984 the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Being of the opinion that it was necessary to take further measures to eradicate such treatment from society, at its 57th session on 18 December 2002, the General Assembly of the UN adopted the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as: OPCAT) which became effective on 22 June 2006. Up to June 2013, OPCAT had been signed by sixty-eight Member States of the United Nations.

The aim of OPCAT is to establish a system of regular visits by independent international and national bodies to places where persons are deprived of their liberty to prevent torture and other cruel, inhuman or degrading treatment or punishment. For that purpose, under OPCAT, a Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was established (hereinafter referred to as: SPT). In its work, SPT is governed by the principles laid down in the UN Charter and the UN rules relating to the treatment of persons deprived of their liberty. All Member States have thus bound themselves, within a year from the entry into force of the ratification of or accession to OPCAT, to organising at the national level one or several bodies for paying regular visits to places where persons are deprived of their liberty, whose target is to prevent torture and other cruel, inhuman or degrading treatment or punishment. These mechanisms are called National Preventive Mechanisms (hereinafter referred to as: NPMs). Although OPCAT does not prescribe the method of establishing NPMs but rather leaves it to the decision of individual Member States, they are required, when establishing this mechanism, to take into consideration the principles governing the status of national institutions for the promotion and protection of human rights, the so-called “Paris Principles”.

The Republic of Croatia ratified OPCAT on 5 April 2005 (“Official Gazette – International Agreements” no. 2/05) and thus bound itself to maintaining the NPM and ensuring the availability of the necessary means for the undisturbed performance of NPM activities (Article 17 of OPCAT).

## **1.1 The Act on National Preventive Mechanisms Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Pursuant to Article 93 of the Constitution of the Republic of Croatia (“Official Gazette” no. 85/2010), the Ombudsman is a commissioner of the Croatian Parliament for the promotion



and protection of human rights and freedoms as laid down in the Constitution, acts and international legal documents providing for human rights and freedoms adopted by the Republic of Croatia. In the course of 2008, the International Coordinating Committee of National Institutions gave the Ombudsman's Office an "A status" as an institution for the promotion and protection of human rights, being the highest status given to an institution for the protection of human rights which meets the criteria of the so-called "Paris Principles". In recognition of the above, and taking into account that the Ombudsman, in conformity with his legal powers, had previously already regularly visited the establishments where persons deprived of their liberty were kept, the Croatian Parliament, on 28 January 2011, adopted the Act on National Preventive Mechanisms for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Official Gazette" no. 18/2011, hereinafter referred to as: ANPM), laying down that NPM activities would be carried out by the Ombudsman. In carrying out NPM activities, in conformity with the ANPM, two representatives of the academic community must also take part, as well as two representatives of non-governmental organisations registered for the performance of activities in the area of the protection of human rights. They are chosen by the Ombudsman on the proposal of higher education institutions or non-governmental organisations on the basis of a public invitation. When necessary, the Ombudsman also includes other independent experts.

The most important activities of the NPM are undoubtedly regular visits to establishments where persons are or may be deprived of their liberty, aimed at strengthening the protection of such persons against torture and other cruel, inhuman or degrading treatment or punishment and giving recommendations to government bodies and institutions that are bound, within the time period specified by the Ombudsman, to implement the recommended measures and inform the Ombudsman, without delay, of such achievement. If a body or an institution fails to act in accordance with the recommendations, the Ombudsman informs accordingly the Croatian Parliament. In addition, the NPM makes proposals and observations concerning draft acts and other regulations with a view to strengthening the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. It also cooperates with the SPT which, in accordance with OPCAT, gives advice, assists and has direct contacts with the NPM.

In order for persons carrying out the work of the NPM to be able to fulfil their tasks, they are authorised to pay unannounced visits to places and institutions and examine the facilities where persons deprived of their liberty are held; they have free access to any information concerning such places and institutions; they have free access to all information on the number of persons deprived of their liberty and held in the visited places or institutions; they have free access to any information concerning the treatment of persons deprived of their liberty in accordance with the law; they are entitled to debrief persons deprived of their liberty by choice and without the presence of any officials working at the place or

institution of detention; they are also entitled to interview other persons who may provide relevant information regarding the suspected violation of human rights in the visited establishment.

Due to the fact that financial independence is one of the criteria of the so-called “Paris Principles”, funding for the performance of the activities specified in the ANPM is allocated in the State Budget as a particular item within the budget of the Ombudsman’s Office.

## **1.2. Commencement of NPM activities in the Republic of Croatia**

After the funds had been allocated in the State Budget for 2012 for the activities of the NPM, the Ombudsman developed the Ordinance on the Procedure of Appointment and Manner of Work of the Representatives of Associations and Representatives of the Academic Community in the National Preventive Mechanism Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment (Official Gazette, No. 22/2012). He also rendered a Decision on the Amount of Remuneration for the Work of the NPM and launched a public invitation to higher education institutions and non-governmental organisations registered for the performance of activities in the area of the protection of human rights to submit their proposals for their representatives in the NPM. The appointment of two representatives from the academic community and two representatives from non-governmental organisations were the necessary conditions for the beginning of work of the NPM. At the first meeting held on 12 July 2012, the method and the working plan for 2012 were agreed upon and the activities of the NPM in the Republic of Croatia began in conformity with OPCAT. The Ombudsman informed the SPT, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as: CPT) and the Association for the Prevention of Torture (hereinafter referred to as: APT) about the commencement of the NPM.

## 2. WORKING METHODS OF THE NPM

As already stated, the basic task of the NPM is regular visits to places where persons deprived of their liberty reside. It is necessary to emphasise that persons deprived of their liberty, pursuant to the ANPM and OPCAT, are persons on whom any form of detention, imprisonment or placement in a public custodial setting which they are not permitted to leave at will has been imposed. In the Republic of Croatia, these places are the following:

- places under the authority of the Ministry of Justice:  
penitentiaries (seven), prisons (fourteen), correctional institutions (two);
- places under the authority of the Ministry of the Interior:  
detention and police custody facilities<sup>1</sup>, the Reception Centre for Aliens;
- places under the authority of the Ministry of Health:  
psychiatric hospitals for the placement of persons with mental impairments (four), other health institutions which have contracted psychiatric services with the Croatian Health Insurance Fund (CHIF) (twenty-seven) and the Special Hospital for Chronic Diseases of Children, Gornja Bistra;
- places under the authority of the Ministry of Social Policy and Youth:  
homes for adult persons with mental disorders, family homes and other types of legal entities offering permanent accommodation for adult persons with mental impairments (fifty-one); homes for persons with physical, intellectual and sensory impairments, family homes and other types of legal entities offering permanent accommodation for persons with physical, intellectual and sensory impairments (sixty-six); homes for children with behaviour disorders (twelve); homes for elderly and frail persons, family homes and other legal entities offering permanent accommodation for elderly and frail persons (four hundred and thirty-seven);
- places under the authority of the Ministry of Defence  
facilities for the temporary custody of members of the Armed Forces of the Republic of Croatia (five).

Every visit takes place in accordance with a previously determined plan which contains basic information about the condition of the body or the institution to be visited. It highlights the main problems and contains data on the last visit and a distribution of areas to be visited by a particular member of the NPM, taking into consideration his or her profession and narrower specialisation. In addition, prior to the visit, a questionnaire on

<sup>1</sup> We have no accurate data on the number of detention and custody facilities because some of them are used both as detention and custody units. We estimate there are about 250 of them.

the basic information regarding the visited body or institution is developed, as are, if necessary, anonymous questionnaires for the persons deprived of their liberty and/or for the staff.

Such a plan is based on data concerning the level of respect of human rights in the possession of the Ombudsman collected during previous visits and the work following complaints from persons deprived of their liberty, decisions of the Constitutional Court of the Republic of Croatia and the European Court of Human Rights and CPT reports. A visit may be a *regular* one during which the overall treatment of persons deprived of their liberty is examined, a *targeted* one aimed at establishing a particular segment of treatment, or a *control* visit aimed at establishing the achievement of recommendations from a report following a visit. Depending on their type, visits may last from one to several days and are always unannounced.

In order to ensure a uniform approach to examination, a questionnaire has been developed to be used when visiting prisons, police custody units and detention facilities. It contains the following data on the accommodation conditions:

- the size, number and capacity of detention units;
- shared or secluded accommodation in detention units;
- sanitary conditions and the cleanliness of the units;
- the existence of adequate light or illumination (natural light - artificial illumination);
- the existence of adequate ventilation and the possibility of maintaining an adequate temperature (heating, air-conditioning, ventilation);
- the existence of a resting place (a bench, a chair) and other necessary equipment;
- accessibility of drinking water;
- accessibility of a sanitary facility;
- provision of food;
- video surveillance of the premises and a call bell system for calling a police officer.

In addition, data are collected on the number of police officers performing particular tasks and on their own training and the treatment of detainees/arrested persons, such as:

- is uninterrupted rest of at least eight hours within 24 hours provided? Is this recorded, and if so, where?
- is a translator/interpreter available (if an arrested person does not speak Croatian or if he/she is deaf, dumb or blind)?
- what treatment is applied if the detainee/the arrested person is deprived of his/her legal capacity?
- type of healthcare provision;

- in which cases a detainee should be secluded from other inmates and where is he/she then placed?

Data are also contained in the questionnaire that must be taken from the Register of Arrested and Detained Persons and from detainees' personal files (with particular emphasis on women, persons under age and aliens).

All premises are examined (dormitories, infirmaries, kitchens, leisure activity premises, workshops) and special equipment is used to measure the surface area, capacity, temperature and illumination of premises. Individual or group debriefings are conducted with the persons deprived of their liberty without the presence of any staff members. Documentation is examined and staff members are also interviewed. At the end of the visit, the NPM members present verbally their preliminary conclusions and, if necessary, make their verbal warnings and recommendations. The minutes of every visit are drawn up on the basis of which the Ombudsman subsequently writes reports with recommendations and sends them to bodies and institutions which are bound, within the time limit specified by the Ombudswoman, to take measures and to inform her accordingly without delay.

## 3. AN OVERVIEW OF ACTIVITIES CARRIED OUT IN 2012

Despite the fact that since the beginning of 2012, when the funds had been allocated, the Ombudsman carried out numerous activities aimed at the establishment of the NPM (development of implementation ordinances, public invitations and the appointment of representatives from non-governmental organisations and the academic community), this report contains only the activities carried out after 12 July 2012 when the activities resulting from the ANPM and OPCAT officially started.

### 3.1 Visits

In 2012, the NPM, in conformity with its powers, visited a total of seven establishments where persons deprived of their liberty are placed:

#### *Prisons (Ministry of Justice)*

- Zagreb Prison – a targeted visit, examining the performance of a special measure of maintaining order and safety - placement in a room without dangerous objects
- Osijek Prison – a targeted visit, accommodation conditions;
- The prison hospital – a targeted visit, extradition of a Turkish citizen V.C.O.

#### *Detention and police custody units (Ministry of the Interior)*

- Police Administration of Osijek and Baranja and I and II PS Osijek – a regular visit, a detention unit;
- Police Administration of Zagreb - Detention and Escort Unit – a regular visit.

#### *Homes for adult persons with mental impairments (Ministry of Social Policy and Youth)*

- Home for Adult Persons with Mental Impairments “Bidružica” – a targeted visit, restraint of movement;
- Home for Adult Persons with Mental Impairments, Zagreb, “Mirkovec” branch—a targeted visit; restraint of movement.

## **a) Visits to establishments under the authority of the Ministry of Justice**

### *Visit to Zagreb Prison*

The NPM visited Zagreb Prison, Osijek Prison and the Prison Hospital. The visits were targeted, and the decisions on the selection of establishments and the purpose of the visits were based on the information collected by the Ombudsman in inspection proceedings conducted upon inmates' complaints, and information presented in the media.

The purpose of visiting Zagreb Prison was to examine the performance of a specific measure of maintaining order and security – pursuant to Article 135, para. 2, point 4 of the Execution of Prison Sentences Act (Official Gazette, nos. 128/99, 55/00, 59/00, 129/00, 59/01, 67/01, 11/02, 190/03 – consolidated text, 76/07, 27/08, 83/09, 18/11, 48/11 – decision of the Constitutional Court of the Republic of Croatia, 125/11 and 56/13, hereinafter referred to as EPSA). Namely, a suspicion arose based on previously collected information on the legality of implementing this measure. In their complaints, the inmates claimed that contrary to Article 136, para. 7 of the EPSA (according to which placement in a room without dangerous objects could last no longer than 48 hours at a single instance), the measure was implemented for a successive period of more than 48 hours.

It was established during the visit that the maximum duration of the measure was 48 hours but that it was possible to repeat the measure after an interruption which, in fact, extended its duration. Pursuant to the EPSA, in the course of the implementation of this measure, stronger surveillance is carried out which consists of frequent checks by an on-duty officer through spy-holes and rarely by way of verbal or direct contact. An insight into the prison's official documentation revealed that in all cases of placement in a room without dangerous objects, stronger surveillance was applied (which is compulsory pursuant to Article 136, para. 7 of the EPSA) with handcuffs and, if necessary, also leg restraints or belts. Furthermore, it was established that in the course of 2011, the measure had been applied two or three times in a row after short interruptions of several minutes or hours) in 10% of the cases. In 2012, in 16% of cases, the measure was applied two or even several times after only short interruptions (of several minutes or hours). In 2011, in as many as 3 cases, the measure was applied 3 times in succession with interruptions shorter than an hour, while in 2012, one such case was established. Although the Register of Special Measures of Maintaining Order and Safety suggested that the most frequent reason for the application of the measure was the danger of attacking others or self-harm, a better insight into the Register showed that the measure had also been applied because of passive resistance.

In Zagreb Prison, three rooms are designated for the application of this measure with a surface area of about 8m<sup>2</sup>, completely covered with mats. Because of the video surveillance of inmates, they permanently stay in the other part of the room which limits their

movement within a very small area. There is no sanitary facility in these premises and no natural light. Artificial light is on throughout the application of the measure, regardless of the time of day or night and this makes orientation in terms of time and sleeping even more difficult and may even have a negative impact on the inmates' mental health. The ventilation is regulated by a judicial police officer and it is satisfactory. However, there have been complaints that the room is sometimes additionally heated or cooled but it was impossible to check such complaints on the spot. The rooms are equipped with bells so that persons deprived of their liberty, if necessary, may call a judicial police officer.

Upon inspection, and taking into consideration the seriousness of the established situation which might have suggested inhuman treatment, the NPM members gave verbal recommendations for urgent changes regarding the application of the measure of placement in a room without dangerous objects and the cumulative application of tying in all situations. In addition, it was not clear if the measure was applied for security or health reasons and whether it had a punitive or preventive character. It was particularly questionable if this measure could be applied to persons who threatened to commit suicide, which was particularly brought to the attention of the prison management.

The established situation clearly pointed to the necessity of prescribing the purpose, the method of application, the reasons, as well as the duration and the time limit in which the measure could be re-imposed.

Having taken into consideration the facts established during the visit, and the allegations from the previously received complaints, the Ombudswoman, in order to be able to develop a report on the visit, asked the Central Office of Prison Administration (hereinafter referred to as: Central Office), to provide additional data. In addition, because of the seriousness of the established situation, inspection supervision of the application of this measure was requested. However, despite three rush notes having been sent to the Ministry of Justice, as of June 2013, the Ombudswoman did not receive the requested data for the development of a report, and, therefore, no report with recommendations on the visit to Zagreb Prison was made.

#### *Visit to Osijek Prison*

Due to the fact that during the summer of 2011 an inmate died in Osijek Prison (according to the media, the reason was his deteriorated health as a result of bad accommodation conditions), the purpose of the visit was to examine these conditions during the summer months. Although in July 2012 the temperature in Osijek rose to about 40° C, on the day of the visit (23 July 2012), it was 24° C, so that it was not possible to determine directly the accommodation conditions on extremely hot days.



During this visit, facilities were examined where persons deprived of their liberty stay or may stay (dormitories, bathrooms, rooms for visitors without surveillance, a room without dangerous objects (the so-called “rubber-room”), exercise areas, walking areas, working spaces, vehicles, etc.).

There is no doubt that such an overcrowded prison (154% on the day of the visit) makes the accommodation situation even more difficult in summer months when the temperature in the dormitories is extremely high. There had been attempts by the prison administration to alleviate the negative effects of overcrowding. For example, for a short period during the day, a part of the hall is used as a living room and two ventilators are provided for each room which partly diminishes the feeling of stuffiness and heat. However, there are some difficulties connected with their use at night and the prison administration has been informed about the problem.

Despite the fact that the shower room equipped with nine showers is in a good condition and has been completely renovated, it does not satisfy the needs of 185 detainees. Since there are no partitions between the showers, a verbal recommendation was made that the showers, for the sake of privacy (taking into account reasons of safety, as well), should be divided in an acceptable way.

In order to make it easier for persons deprived of their liberty to stay outdoors, large parasols were installed along the walking path, access to drinking water was provided and soft drinks machines were installed. In addition, the Head of the Prison received a verbal recommendation to prolong outdoor stays in summer months.

The laundry room, where inmates work, is extremely stuffy, hot and humid and the working conditions are very difficult indeed. It was suggested that the working conditions should be improved accordingly.

During the visit, the vehicles used for the transport of persons deprived of liberty were examined. The old vehicles had no air-conditioning and they were very stuffy and the temperature in them was extremely high. Although, according to the Head of the Prison, they are used for only short distances (e.g. to take the inmates to outside working areas), they are not suitable for the transport of persons deprived of their liberty.

Numerous measures have been taken to increase the accommodation conditions (newly painted walls, a renovated bathroom and a kitchen, a room for the visits of marital and cohabiting partners without any surveillance, parasols along the walking area, running water and a soft drinks machine in the walking area, unlocked rooms during the day, etc.). However, overcrowding in the summer months makes it impossible for conformity to be achieved with Article 14, para. 1, point 1 of the EPSA (under which every inmate is entitled

to accommodation which respects human dignity and health standards), which seriously aggravates the serving of prison sentences.

Because of an insufficient number of healthcare workers, at weekends medicaments prescribed by the doctor are given by judicial policemen. There is also a problem of the lack of confidentiality of data. Persons deprived of their liberty are requested to fill in the form for a medical check-up and specify the reasons for seeking it. Their filled-in forms are given to a judicial police officer. The Head of the Prison was asked to change the way inmates apply for a medical check-up. This can be done with the help of suitable boxes or cases into which inmates could drop their check-up requests and where the key of the box would be kept by healthcare workers who would collect such requests. In any case, an appropriate solution to the problem had to be found in agreement with the doctor.

After the visit, a report was made and submitted to the Central Office along with the recommendations. Despite a rush note, until June 2013, the Central Office had not informed the Ombudswoman of the taken activities regarding his recommendations.

#### *Visit to the Prison Hospital*

Following information sent to the Ombudsman by the Centre for Peace Studies, as well as numerous articles in the media, the members of the NPM visited V.S.Ö, a Turkish national in the prison hospital on whom extradition custody had been imposed. During the interview with the detainee and the collected documentation, the NPM members learned that V.S.Ö. had been arrested in Turkey because of her participation in protests against the government's repression and freedom of speech, and during her imprisonment she had been tortured for several years, which seriously impaired her mental and physical health. Since her possible extradition to the country where she might be tortured again, would constitute a violation of international conventions, the Ombudsman submitted his opinion to the Minister of Justice asking him to make it possible for the detainee to return to the Federal Republic of Germany, where she would enjoy the status of a refugee. After the Supreme Court of the Republic of Croatia had refused extradition, she was granted an unobstructed return to the Federal Republic of Germany.

#### **b) Visits to establishments under the authority of the Ministry of the Interior**

The NPM visited the police detention and custody units in the building of Osijek and Baranja police administration and PS Osijek I and II, as well as the police detention unit within the Detention and Escort Unit of the Zagreb PA.

The aim of the visit was to examine the treatment of the arrested persons and inmates and

the accommodation conditions in detention and custody units. The visit took place on working days, in the morning or early afternoon.

Pursuant to the Criminal Procedure Act detention may last no longer than 48 hours after arrest, and the investigation judge may extend this for an additional 36 hours. Custody is imposed in accordance with the Misdemeanour Act and in practice it mostly lasts for several hours or only overnight.

Since technical and sanitary standards regarding the equipment of police detention units are practically provided for in only a single article of the Ordinance on the Admission and Treatment of Arrested Persons and Detainees and in the Register of Detainees in Detention Units, the purpose of the visit was to establish whether custody units correspond to international standards.

#### *Visit to police detention and custody units in Osijek*

It was established during the visit that in the Osijek and Baranja police administration, there were no facilities exclusively designated for the accommodation of arrested and detained persons and that they were all placed in custody units. Detention mostly takes place in the facilities of the police administration but detainees may also be placed in the facilities of the II Police Station Osijek (hereinafter referred to as II PS Osijek) and seldom in other facilities within the area of this particular police administration. Because of the lack of police officers and the existing conditions, many organisational problems arise in practice, particularly when escorting detainees.

All examined facilities were extremely tidy. There were no chairs or shelves in any of them for the inmates' personal items. In order to protect the privacy of the persons deprived of their liberty, the sanitary part of the facility was in all cases protected from photographing.

Most examined custody units for those arrested and detained in the Osijek and Baranja police administration are placed in the basement which results in climatic problems despite the existing ventilation. As a rule, there is a single mattress on a wooden base in each room with clean linen on it. The rooms have video surveillance, but no audio connection. The rooms in the basement have no windows and thus also no daylight but only artificial light. Most of the rooms have a sanitary facility and drinking water, and only two of them do not, so that the persons temporarily detained there, if they must use the toilet or drink water, must call a police officer. They have a separate room with a shower. However, there is no adequate heating in these facilities. In the day time, the arrested persons and detainees have the possibility of going out in the yard, escorted by two policemen.

When arrested, a person is informed about the possibility of lodging a complaint to the

Division for Lawfulness of Police Conduct of the Ministry of the Interior. In addition, investigation judges regularly ask persons deprived of their liberty whether they have any complaints regarding the treatment of police officers, and their answers are entered in the minutes. According to the received data, so far there have not been any such complaints.

The register of arrested and detained persons is kept in an orderly manner. An insight was made into the personal files of randomly chosen detainees and it was established that not all the obligatory forms had been duly filled in. Although there was a possibility that because of an insufficient number of police officers, there had not been enough time to fill in all the forms prescribed in the Ordinance, the NPM pointed to these irregularities and to the necessity for the proper filling in of forms.

During the examination of II PS Osijek, it was established that natural light reached the rooms through very small openings filled with opaque glass blocks and artificial light was on throughout the night for the sake of video surveillance (electric light also existed in the hall). There were call bell systems in the rooms to be used for calling police officers. The rooms could be heated but there was neither a toilet, nor drinking water, so that detainees had to call police officers because the mentioned facilities were only available in the hall. In PS Osijek II, there was no shower or warm water, so that arrested and detained persons are not able to maintain personal hygiene before going to the investigation judge. There was also no separate room where detainees could confer with their defence lawyers.

*Examination of the Detention and Escort Unit at the Zagreb Police Administration (PU zagrebacka)*

At the Zagreb Police Administration, detention facilities are located within the Detention and Escort Unit (a police detention unit is not a separate structure, or part of a structure). These facilities at the Zagreb Police Administration meet all medical, hygienic and climatic standards and they each have six bunks. There are no chairs and no shelves for the personal items of arrested and detained persons in these rooms. The part of the room used as a sanitary facility is screened from view during video recording.

During their stay in the detention unit in Zagreb, arrested persons and detainees do not have any opportunity of being in the fresh air because the Police Custody and Escort Unit do not have any open space where they can walk.

Conversations with defence lawyers in the Detention and Escort Unit take place in rooms meant to accommodate those kept in custody, arrested or detained because there is no special room for conferring with defence lawyers as it is prescribed in the Ordinance on the Admission and Treatment of Arrested and Detained Persons and the Register of Detainees in Detention Units. According to the superintendent, apart from arrested

persons/detainees and their defence lawyers, there can be no one else in this room.

During the visit to the Unit, an insight in the Register of Arrested and Detained Persons was made and the superintendent was immediately made aware of the detected irregularities (there were corrections in several places, which was not allowed). In addition, it was found that there was no police officer who was a specialist in criminal law protection of children and juveniles designated to work in the police detention unit.

As already stated, during their visit to the police detention unit, members of the NPM debriefed all persons deprived of their liberty who wanted to talk to them, without the presence of any police officers (regardless of whether they had been in police custody or detention). No one complained about the treatment of police officers in the Unit.

After the visit, reports with recommendations were made and sent to the Ministry of the Interior. For a better overview and understanding, they are separately presented below.

### **c) Visits to establishments under the authority of the Ministry of Social Policy and Youth**

In September 2012, the NPM visited two social welfare homes for adult persons with mental impairments: the Home for Adult Persons with Mental Impairments “Bidružica” and the Home for Adult Persons with Mental Impairments Zagreb, “Mirkovec” branch. These are public institutions of social welfare for adult persons with mental impairments founded by the Republic of Croatia.

The visits were aimed at establishing the level of restraint of movement within and outside the homes. During the visits, data were collected about how the residents’ privacy was ensured and how their human dignity was protected. All premises where residents were placed or could be placed were examined. The members of the NPM interviewed a large number of residents and staff who could give them relevant information for the purpose of their visit. In addition, insight into the house rules of both institutions and into the files of several residents was gained.

All installations and facilities in both homes are extremely orderly. The residents’ dormitories, dining rooms and living rooms are completely open and free to be used by residents. They have daily schedules and they alone decide whether they want to stay in their rooms or not.

It was established during both visits that there were insufficient cupboards in the rooms and/or that there were no keys for the cupboards in order to ensure the privacy of the residents. Bathrooms and toilets were in a very orderly condition.

*Visit to the Home for Adult Persons with Mental Impairments “Bidružica”*

When entering the fenced premises of the Home “Bidružica”, the NPM members established that the gate was not locked so there was a free entrance and exit to the premises and to the inner space. They also established that the Home’s facilities were unlocked and that the residents freely went in and out. However, the entrance into the Home was under video surveillance and it was explained that this was for security reasons. The Home is situated near a settlement which the residents may freely visit by obtaining an exit permit beforehand. When all the residents need such permits, regardless of their individual differences (such as their current health condition), this additionally restricts their freedom of movement outside the Home. A recommendation was made to the Head of the Home to change such a policy.

In the “Bidružica” setting, some dormitories are in a bad condition since the walls need repainting and because of the poor state of the furniture. One of the bathrooms has a common shower area without any curtains or partitions to ensure privacy during showering. A recommendation was made to install them. Several residents complained about their things being taken by other residents. They explained how they were unable to prevent this from happening because there were no cupboards, and even if they had them, there were no locks on them. The Head of the Home was informed about this problem and already during the visit, a start was made on constructing new cupboards and supplying and fixing locks on the ones that existed.

The NPM members noticed that a number of residents at “Bidružica” had problems with their teeth although there was an in-house dentist available. Namely, they did not have adequate dentures if their natural teeth were in a bad condition. They did not receive chopped food and they had difficulty with eating because, instead of their teeth, they used their soft gums for chewing. The Head’s attention was drawn to the necessity of making additional efforts to have the residents’ teeth repaired.

All dormitory rooms are open and most of the doors have no keys despite the existing locks. It was recommended for the Head to give a key to the residents who, depending on their capabilities, could have one. When entering the rooms, staff members do not have the habit of knocking which also puts in question the privacy issue of the residents. The Head’s attention was drawn to the need of respecting the residents’ privacy by knocking at their doors.

In rooms of the Home Bidružica, there is no protection from the sunshine (there are no curtains or blinds on the windows). Some rooms are not arranged in accordance with the regulations but it is obvious that an effort has been made to improve the situation to adjust it to what is prescribed in terms of space and equipment in social welfare institutions. There

are no closed departments in the Home, although there are residents who suffer from dementia or Alzheimer's disease. To enable the security of the residents, they are placed close to the rooms of qualified personnel who can closely monitor them and prevent them from straying away.

*Visit to the Home for Adult Persons with Mental Impairments Zagreb – "Mirkovec" branch*

Access to the "Mirkovec" branch is open and there are no fences or gates. There are benches along the pathway where the residents can sit. They can freely walk around and communicate. Both the administrative building and the dormitory are unlocked and the residents can freely go in and out. They are also allowed to go to the nearby settlement and some of them, as they wish and according to their capabilities, work on the neighbouring farms. They are paid for their work and the staff of "Mirkovec" branch keeps a record of this.

Some rooms in the "Mirkovec" branch have quite a few beds (up to ten) and thus do not provide sufficient privacy although efforts have been made to arrange them according to the residents' wishes. The reason for so many beds is the fact that there is no possibility for reconstruction of the object as it is a castle which is according to the Croatian law considered as a protected building. A recommendation was made to the Head of the Home that a suitable solution for reducing the number of beds in the rooms should be found (e.g. by lowering the capacity of the institution). We want to emphasise that at the end of 2010, the Government of the Republic of Croatia adopted a Plan for the deinstitutionalisation and transformation of social welfare homes and other legal entities carrying out social welfare activities in Croatia in the period from 2011 to 2016 (2018). In this Plan, because of the expected longer period for the deinstitutionalisation and transformation of homes for adult persons with mental disorders, the goals for this group of residents are defined for the period until 2018 (for other groups, they are defined for the period until 2016). According to the Plan, by the end of 2018, 20% of residents with mental disorders are scheduled for the deinstitutionalisation.

After the visit, reports with recommendations were drawn up and submitted to the institutions and to the relevant ministries. For the sake of easy reference, we present them separately in the following section.

**d) The activities undertaken following recommendations**

Pursuant to Article 8 of the ANPM, a report has been made on each visit and submitted to the visited facility or institution which is bound, within a particular time limit, to take the necessary measures and inform accordingly the Ombudswoman without delay. If any irregularities were established, the report with recommendations aimed at upgrading the treatment of persons deprived of their liberty was also submitted to the body competent for the supervision of the visited institution.

## Recommendations made to the institutions under the authority of the Ministry of Justice

### Zagreb Prison – Central Office

<b>Recommendations</b>	<b>Steps taken following recommendations</b>
<p>After the visit, the Central Office was asked to submit additional data necessary for the drawing up of a report. Because of the seriousness of the established irregularities, inspection supervision was requested.</p>	<p>Despite the sent rush notes, the data necessary for the drawing up of the report were not submitted and the Central Office did not inform the Ombudswoman whether it had carried out inspection supervision.</p>

### Osijek Prison – Central Office

<b>Recommendations</b>	<b>Steps taken following recommendations</b>
<p>Taking into account overcrowding in the prison and the heat in the summer months, it is necessary to continue (increased) measures to improve accommodation conditions (to extend the period of time spent outdoors or in the hall, to make the locking and unlocking of doors possible, to enable more frequent showering, etc.);</p> <ul style="list-style-type: none"> <li>- to divide the space between showers;</li> <li>- to ensure safe working conditions in the laundry room by not impairing the health of those who work there and by observing the relevant Act and other regulations;</li> <li>- to install a bell (a “push-button”) on the inner side of a room without dangerous objects, the so-called “rubber-room”.</li> <li>- to provide a sufficient number of</li> </ul>	<p>Despite the rush notes, the Central Office did not inform the Ombudswoman about the undertaken activities.</p>



<ul style="list-style-type: none"> <li>- to provide cutlery for detainees in accordance with the Ordinance on Accommodation Standards and the Alimentation of Detainees;</li> <li>- following the model of the practice in Osijek Prison, it is recommended to consider “announced visits” in other prisons and penal institutions, also in order to avoid long waiting times;</li> <li>- it is necessary to ensure conditions where judicial police will not distribute <i>suboxone</i>.</li> </ul>	
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### Recommendations given to the Ministry of the Interior

*Osijek and Baranja PA, PS Osijek I and II*

<b>Recommendations</b>	<b>Steps taken following recommendations</b>
<p>Taking into account the different status and different regulations applied to arrested, detained and those held in custody, it is necessary to provide special rooms to be used exclusively as police detention units.</p>	<p>The facilities in the PA headquarters with sanitation which offer hygienic conditions for the arrested persons (4 accommodation units) will primarily be used to accommodate persons handed over to the prison superintendent. Exceptionally, in cases of a large number of arrests, the facilities of other PS will be used if they meet the necessary standards.</p>
<p>Accommodation conditions in the custody premises of persons in the facilities of the PA and PS Osijek I do not meet the international accommodation standards (CPT standards) and it is therefore necessary to urgently finish the works in the new premises of the police detention unit.</p>	<p>The recommendations were not observed; in response to them, the Police Directorate refers only to the minimum technical standards laid down in Art. 53 of the Ordinance to which these facilities conform.</p>
<p>Detained and arrested persons need to have the possibility of maintaining their personal hygiene (e.g. the PS II does not provide warm water and there are no showers).</p>	<p>All arrested persons will be accommodated in the facilities of the PA where they have the possibility to care for their personal hygiene.</p>

<p>All forms prescribed by the Ordinance on the Admission and Treatment of Arrested and Detained Persons and the Register of Detainees in Detention Units must be completely filled in.</p>	<p>It was ordered that the overall treatment of arrested persons must be in accordance with the Ordinance and in particular with an obligation to fill in all the requested data on any arrested person. In conformity with the order, all taken measures must be registered on the prescribed forms in accordance with the Regulation on Office Administration.</p>
<p>A proposal has been made to examine the possibility of transferring the tasks of the prison superintendent to the judicial police.</p>	<p>The Ministry of the Interior has informed the Ministry of Justice about the recommendation from the report of the NPM. No feedback has been received regarding the position of the Ministry of Justice.</p>

*Zagreb Police Administration – Detention and Escort Unit*

<b>Recommendations</b>	<b>Steps taken following recommendations</b>
<p>To segregate the facilities of the Police Detention Unit from the facilities of the Detention and Escort Unit.</p>	<p>Custody facilities (under the Misdemeanour Act) are marked and detached from detention facilities. At placement, special attention will be paid so that persons are accommodated in accordance with this Act.</p>
<p>To provide a meeting room for detainees and their defence lawyers in accordance with Art. 22, para. 2 of the Ordinance.</p>	<p>A fully equipped room is designated for meetings of detainees and their defence lawyers.</p>
<p>To forbid the subsequent correction of data with correction fluid in the Register of Arrested and Detained Persons.</p>	<p>An order is given that corrections in registers and personal files of arrested, detained or those held in custody are entered only on the basis of the Regulation on Office Administration (corrections must be crossed out, accurate information must be written above or below the correction and the person making the correction must place his or her signature next to it).</p>
<p>To make sure arrested and detained persons spend enough time in the open space.</p>	<p>Arrested and detained persons who remain in detention for a longer period of time will be given an opportunity to stay in the open space (2 hours a day).</p>

Arrested persons must be able to continue their medical therapy.	In accordance with general regulations on healthcare, medical emergency teams will be organised to see to the continuation of medical therapy.
To consider the possibility of publishing or printing out (or otherwise making available or visible) information about the rights of arrested and detained persons and the possibilities of lodging complaints (e.g. posting such instructions on the wall in the hall, handing it out at admission in the detention unit). To consider printing out such information in foreign languages.	Information about the rights of arrested persons, specifying the possibility of lodging a complaint, is displayed in a visible place. Information will also be written in English, German and French.

**Recommendations given to social welfare institutions under the authority of the Ministry of Social Policy and Youth**

*Home for Adult Persons with Mental Impairments “Bidružica”*

<b>Recommendations</b>	<b>Steps taken following recommendations</b>
Better observance of the residents’ privacy.	All staff members’ attention was drawn to the fact that in communication with residents and when entering their rooms, their privacy must be observed.
Consider amendments to Articles 16 to 18 and Article 20 of the House Rules of the Home.	Amendments to the House Rules of the Home have been developed.
In cooperation with the in-house dentist, further efforts should be made to repair the residents’ bad teeth and, before this is done, provide chopped food for them.	An agreement was made with the dentist that the making of the necessary dentures will be expedited. Until then, all residents without proper dentures will receive chopped food.
Consider the justification of accommodating two categories of residents in the institution.	The competent ministry has been informed of the problem of the accommodation of two categories of residents in the Home and it is planning to transfer persons with intellectual impairments to suitable extra-institutional or institutional care.

*Home for Adult Persons with Mental Impairments Zagreb, "Mirkovec" branch*

<b>Recommendations</b>	<b>Steps taken following recommendations</b>
Consider amendments to Article 27 of the House Rules of the Home.	An amendment to Article 27 has been prepared and a meeting of the Professional Council of the Home has been scheduled where amendments to some House Rules will be made.
To reduce the number of beds in some rooms and provide cupboards for personal items of residents.	A reduction in the number of accommodated residents is taking place, surplus beds are being removed and cupboards for personal items of residents and other equipment have been provided.

### **3.2. Informing the public**

In order for the basic information and news about the NPM activities to be accessible to both domestic and the interested international public, at the beginning of July 2012, on the website of the Ombudsman, an NPM page was started (<http://npm.ombudsman.hr>). The page presents, both in Croatian and English, the legislative framework, news on the organisation and the competences of the NPM in the Republic of Croatia, as well as information on the work and the activities of the NPM. With the aim of informing persons deprived of their liberty about the powers and competences of the NPM, the Ombudswoman developed information leaflets (The NPM in the Republic of Croatia, The Rights of Prisoners and Their Protection, and The Ombudsman's Role in the Protection of the Rights of Prisoners) and a promotional poster which is given to persons deprived of their liberty during NPM visits.

### **3.3. International cooperation**

In September 2012, a meeting was held in the Ombudsman's Office with the CPT delegation during their regular visit to the Republic of Croatia. The members of the delegation were interested in the organisation and working methods of the NPM, its current activities, the number of staff carrying out NPM work, the financial means available to the NPM and other relevant information. One of the items on the agenda of the meeting was the cooperation of the NPM with the relevant ministries and an assessment of the level of respect for human rights of persons deprived of their liberty in prisons and in psychiatric and social welfare institutions.

Taking into account that OPCAT, on the basis of which National Preventive Mechanisms are established, was adopted only in 2005, and that these are mechanisms which in many Member States are only in the process of establishment, cooperation has started with the Protector of Human Rights and Freedoms of Montenegro and with the institution of Ombudsperson of Slovenia (within which the National Preventive Mechanisms of these countries operate). Within this cooperation, study visits took place (a visit of the NPM of Montenegro to the NPM of Croatia in September 2012 and a visit of the NPM of Croatia to the NPM of Montenegro in October 2012; a visit to the NPM of Slovenia in November 2012). The goal of the study visits was to exchange present experiences and to become familiar with the method of work of the institutions which operate under the authority of the NPM.

## 4. ASSESSMENT OF THE CURRENT SITUATION

Due to the fact that since 2005 the Ombudsman, on the basis of the powers laid down in the Ombudsman's Act, has regularly visited establishments where persons deprived of their liberty are placed (in the period from January 2012 to July 2012), 5 prisons, 2 penitentiaries, a remand home, detention facilities in 5 police administrations and a psychiatric hospital), Office of the Ombudsman has been well informed about the level of observance of human rights of persons deprived of their liberty. On the basis of our activities upon received complaints, undertaken within the framework of powers under the Ombudsman's Act and the operations of the National Preventive Mechanism, several conclusions were drawn which we seek to emphasise here.

### **1. The conditions of accommodation are largely not in conformity with international standards**

Overcrowding, one of the basic characteristics of the prison system, generates numerous restrictions or violations of human rights of persons deprived of their liberty, such as the right to accommodation which corresponds to human dignity and health standards, the right to medical protection, labour, contact with the outside world, and other rights. However, it must be emphasised that in the past two years, a trend of reduced overcrowding has been recorded as a result of the implementation of the new criminal legislation and the increased capacity of the prison system by an additional 400 places. According to the data given in the Report on the situation and the work of penitentiaries, prisons and other remand homes for 2012, on 31 December 2010, overcrowding amounted to 154%, on 31 December 2011 it amounted to 134% and on 31 December 2012 it was 125%. However, despite these obviously positive shifts, it must be remembered that according to the standards of the European Committee on Crime Problems (CD-PC), when the so-called "concentration calculation" of the total number of inmates in prisons is made, a concentration above 120 is considered as "critical" (Decision of the Constitutional Court U-III/4182/2008, point 17). Therefore, the Recommendation of the Council of Europe R (99) 22 must continue to be acted upon. This Recommendation states, among other things, that countries in whose prison systems overcrowding cannot be avoided have a general and permanent duty to compensate for such situations by raising awareness and attaching importance to the size of accommodation units, the hygienic and sanitary conditions, quality of food, protection of health and the possibilities for exercise and recreation. We must also remind ourselves of the decision of the European Court of Human Rights of 2012 in the case of Longin v. Croatia which found a violation of Article 3 (Prohibition of Torture) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and established degrading treatment, based on the conditions in the Zagreb

Prison. In this concrete case, the Court held that a limited space can be compensated for, among other things, by freedom of movement (§ 59).

Apart from overcrowding, accommodation conditions are largely determined by the lack of financial means due to which the prison system, like all other establishments under the authority of other ministries where persons deprived of their liberty are placed, are not in a position to fully adjust their accommodation conditions with international standards. According to the information from the media, the lack of funds explains why all activities connected with the building of a new penitentiary in Šibenik have been suspended. Despite the Constitutional Court Decision U-III/4182/2008 of 17 March 2009, by which the Government was ordered to adjust the capacities of Zagreb Prison to the needs for accommodation within a reasonable time of no longer than five years (in conformity with the standards of the Council of Europe and the case law of the European Court of Human Rights), the works have not even begun because funds were lacking. In addition, the accommodation conditions in custody units of some police stations are not even suitable for the short-term accommodation of persons deprived of liberty. In such situations, according to the information received from the Ministry of the Interior, efforts are being made to organise detention units within other facilities where better conditions can be offered to persons deprived of their liberty. These are, of course, only temporary solutions which are assessed as positive but not sufficient, particularly if we take into consideration the fact that arrested and apprehended persons who stay longer than those only temporarily detained are often placed in these facilities. However, insufficient funds are not and cannot be a justification for not eliminating the conditions which constitute torture and other cruel, inhuman or degrading treatment or punishment.

## **2. The quality of health protection and shortage of health care workers**

The quality of healthcare provision most frequently depends on organisational problems, the biggest one being the shortage of healthcare workers employed within the system of justice. Because of the insufficient numbers of healthcare workers, persons deprived of their liberty often wait longer for check-ups or operations than is medically indicated. There is no doubt that such a situation is negatively reflected in the quality of healthcare provision. It must be borne in mind that the European Court of Human Rights, in several cases against the Republic of Croatia, found a violation of Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms precisely because of the quality of healthcare offered to persons deprived of their liberty. In addition, it must be emphasised that no systematic medical inspection supervision has been carried out in the prison system, which the Ombudsman pointed to in his annual reports, and he also warned on the Decision of the Constitutional Court (case no. U-III/64744/2009 of 2010) by which the Government of the Republic of Croatia was ordered, among other things, to establish and carry out efficient supervision of the quality of health protection in

the entire prison system. It is encouraging to note that the Ombudswoman was informed by the Government of the Republic of Croatia (in its Report on the Activities Taken upon the Ombudsman's Recommendations and the Report on the Ombudsman's Work for 2011 of April 2013) about the establishment and first activities carried out within this supervision. Furthermore, based on data obtained during the visits of the NPM, we believe that an organisational separation of healthcare provision from the prison system and its integration into the healthcare protection system would significantly contribute to upgrading the quality of healthcare protection.

There are fewer healthcare workers employed in prisons and penitentiaries than is envisaged in the valid systematisation which does not take into account the real overcrowding of prisons and penitentiaries but, as a rule, corresponds to their optimal capacities. Therefore, it is not possible to ensure 24-hour coverage of on-duty healthcare workers, which may also result in the violation of the rights of persons deprived of their liberty. In addition, a lack of the necessary number of physicians of particular specialisations (such as psychiatrists, for example) was detected.

### **3. Normative framework deficiencies**

A possible cause of torture and other cruel, inhuman or degrading treatment or punishment is deficient of regulations. Although the legislative framework, regardless of the category of persons deprived of their liberty, may generally be assessed as a highly qualitative one, some areas are not sufficiently or precisely regulated, such as the application of special measures of maintaining order and security, or areas related to accommodation conditions in detention units and the like. In practice, such legal loopholes or vague wordings lead to different interpretations which result in unequal treatment of persons deprived of their liberty and this consequently leads to arbitrariness. In such situations, the existing practices and patterns of action, which are not always correct and acceptable, are adopted and they become a rule which may constitute torture or other cruel, inhuman or degrading treatment or punishment. It is justified to believe that in the course of the announced development of a new Enforcement of Prison Sentences Act, as well as other regulations concerning persons deprived of their liberty, special attention will be paid to eliminating such legal gaps. A positive example is the actions taken by the Ministry of the Interior which, at the end of 2012, initiated amendments to the Ordinance on the Admission and Treatment of Arrested and Detained Persons and the Register of Detainees in Detention Units. The aim of the Register was to harmonise the technical conditions of the facilities for the accommodation of persons deprived of their liberty with the CPT recommendations and the actions of the Ministry of Health which, taking into consideration the Ombudsman's recommendations, started drawing up an integral regulation on the implementation of security measures of obligatory psychiatric and addiction treatment, regardless of where



the measures are applied (e.g. in the prison hospital, as an outpatient service during imprisonment, in a civil health centre, or the like). The need for detailed standardisation of the application of security measures arises from a decision of the European Court of Human Rights in the case *Tomasic et al. v. Croatia* (Application no. 46598/06 of 15 January 2009). In this concrete case, the Court held that those regulations were of a very general nature and that they did not solve the problem of the measure of obligatory psychiatric treatment in a proper manner. The Court also emphasised the need for further standardisation aimed at realising the purpose of criminal law sanctions (§ 57).

In addition, it must be noted that the process of harmonisation of regulations<sup>2</sup> containing criminal and other provisions relevant for the implementation of the Criminal Code with the Criminal Code itself (which entered into force in January 2013) has still not been completed. For example, because of the lack of harmonisation of the provisions of the Enforcement of Prison Sentences Act with the Criminal Code, the enforcement of a prison sentence shorter than a year is not possible in correctional institutions. In such a way, persons deprived of their liberty are not only prevented from serving their prison sentences in conformity with the Criminal Code, but the overcrowding of prisons is also not relieved. In addition, the adjustment of the provisions of the Criminal Procedure Act with the Constitutional Court decision (Decisions U-I-448/2009, U-I-602/2009, U-I-1710/2009, U-I-18153/2009, U-I-5813/2010 and U-I-2871/2011) is still underway. In its Decision, the Constitutional Court, in July 2012, partly abolished the Criminal Procedure Act because it violated many constitutional provisions and values, as well as the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms relating to the treatment of persons deprived of their liberty. Although the time limit for the adjustment has not yet elapsed, it is necessary, in order to eliminate these deficiencies, to fulfil a series of positive obligations arising from the aforementioned Decision.

#### **4. Treatment of persons deprived of their liberty**

Despite the fact that in the course of the visits, no treatment was discovered that would suggest the most severe form of violation of the rights of persons deprived of their liberty – torture – and that the European Court of Human Rights has not in a single case against the Republic of Croatia established the gravest violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, there is no doubt that it is possible to assess the treatment of persons deprived of their liberty, or their punishment in

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<sup>2</sup> Pursuant to Article 382 of the Criminal Code (CC), the Government of the Republic of Croatia must initiate a procedure of harmonisation with the provisions of the CC, the corresponding provisions of the Criminal Procedure Act, the Act on the Liability of Legal Entities for Criminal Offences, the Juvenile Courts Act, the Act on the Protection of Persons with Mental Disorders, the Enforcement of Prison Sentences Act, the Probation Act, as well as other acts which contain criminal and other provisions relevant for their application.

some cases, as inhuman or degrading, constituting a violation of fundamental human rights guaranteed by the Constitution of the Republic of Croatia and numerous international documents. Therefore, it is necessary, regardless of the previously mentioned organisationally aggravating factors, to make permanent and systematic efforts to eradicate torture and other cruel, inhuman or degrading treatment or punishment and to ensure respect for human rights of persons deprived of their liberty.

We are of the opinion that it is necessary to make further efforts to prevent violations of the rights of persons deprived of their liberty and to upgrade protection against torture and other cruel, inhuman or degrading treatment or punishment. In this regard, we particularly emphasise several measures and activities within the authority of relevant ministries.

## **I. Measures and activities under the authority of the Ministry of Justice**

### *a) Activities following the Ombudswoman's requests and recommendations contained in the reports on visits*

Unfortunately, the current cooperation between the Ombudswoman and the Ministry of Justice and the Central Office of Prison Administration in carrying out NPM work is not satisfactory. As we have already stated, despite the rush notes, we have not been informed about the taken measures upon our recommendations and have not received any data necessary for drawing up our report. In such a way, the Ministry of Justice has not only failed to observe the ANPM and OPCAT but it has also jeopardised the purpose for which the NPM was established. Moreover, in the situation where the Ministry of Justice ignores the Ombudswoman's requests, it is justified to question the appropriateness of visits. Namely, the purpose of the visits is to highlight irregularities and give recommendations to eliminate violations. If the Ministry ignores the report, a visit becomes an end in itself, which is absolutely wrong. Such a lack of cooperation is even more surprising taking into consideration that until 2012 the Ombudsman, as a rule, assessed cooperation with the Central Office as very successful.

### *b) Reduction of overcrowding in the prison system*

It is necessary to continue taking measures and conducting activities directed at reducing overcrowding, by building new establishments and ensuring the conditions for enforcing alternative sanctions, or harmonising the Enforcement of Prison Sentences Act with the Criminal Code.

*c) Upgrading the provision of healthcare to persons deprived of their liberty*

In agreement with the Ministry of Health, it is necessary to consider the possibility of increasing the quality of healthcare offered to persons deprived of their liberty, for example through the organisational separation of healthcare provision from the system of justice to the system of healthcare. In addition, it is necessary to ensure a sufficient number of healthcare workers who offer healthcare to persons deprived of their liberty.

*d) Eliminating normative deficiencies*

It is necessary to harmonise, as soon as possible, the regulations containing criminal and other provisions with the Criminal Code and complete the adjustment of the Criminal Procedure Act with the Decision of the Constitutional Court which has established unconstitutionality and non-conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is also necessary to consider a method of a clearer and more specific standardisation of the implementation of special measures of maintaining order and security.

## **II. Measures and activities under the authority of the Ministry of the Interior**

*a) Providing necessary accommodation conditions in police custody units*

It is necessary, as soon as possible, to provide the necessary accommodation conditions in conformity with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in all police stations and police administrations and their custody and detention units.

*b) Systematic organisation of training on the human rights of persons deprived of their liberty*

Systematic training of police officers must continue on topics such as human rights and prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

## **III. Measures and activities under the authority of the Ministry of Health**

*a) Systematic supervision of the quality of healthcare in the entire prison system*

In the course of 2013, it is necessary to carry out supervision of the quality of healthcare in the entire prison system.

*b) Prescribe the method of application of security measures in terms of compulsory psychiatric and addiction treatment*

Since the application of security measures of compulsory psychiatric and addiction treatment has not been prescribed in an appropriate way, and taking into consideration the importance of such application, it is necessary, in the course of 2013, to draw up an ordinance to eliminate these deficiencies.

#### **IV. Measures and activities under the authority of the Ministry of Social Policy and Youth**

*To speed up the process of the transformation of social welfare institutions and to deinstitutionalise the users of this accommodation because the present reform in this area, particularly when persons with mental impairments are concerned, has taken place more slowly than envisaged for 2012.*

## 5. CONCLUSION

Bearing in mind that the respect of human rights, pursuant to Article 3 of the Constitution of the Republic of Croatia, is one of the highest values of the constitutional order, as well as the fact that the Republic of Croatia had signed and ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Croatian Parliament in January 2011 adopted the Act on National Preventive Mechanisms Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to this Act, the activities of the NPM are carried out by the Ombudsman. In the performance of these activities, two representatives from the academic community and two representatives from non-governmental organisations for the performance of activities in the area of the protection of human rights also participate.

Since July of 2012, when the activities of the NPM began, and until the end of December 2012, the Ombudsman undertook a series of activities aimed at enabling the NPM to successfully perform its activities: a webpage in two languages was launched where news on the activities of the NPM are regularly presented, international cooperation was established, and promotional materials were published aimed at informing persons deprived of their liberty of their rights and the competences of the NPM. In addition, seven visits to places where persons deprived of their liberty are placed were organised (three under the authority of the Ministry of Justice, two under the authority of the Ministry of the Interior and two under the authority of the Ministry of Social Policy and Youth). During these visits, no cases of torture were established. However, cases containing elements of inhuman and degrading treatment or punishment were found. After the visits, reports with recommendations were drawn up and submitted to the institutions and bodies which had been visited, as well as to the bodies which are authorised for their supervision. Cooperation with the Ministry of the Interior and the Ministry of Social Policy and Youth is assessed as being very successful because these ministries took measures based on the received recommendations. In contrast, cooperation with the Ministry of Justice is assessed as very bad because this ministry has not taken any measures based on the recommendations, and the Ombudswoman has not received the requested data. Therefore, the establishment of successful cooperation will be one of our priorities in the following period. In addition, it is necessary to continue taking measures and conducting activities aimed at preventing any form of violation of fundamental human rights of persons deprived of their liberty. We primarily think of improving accommodation conditions, upgrading the quality of health protection of persons deprived of their liberty, but also of legislative activities aimed at clearly defining the position and treatment of such persons.

The mandate of the newly elected Ombudswoman brings new tasks and a larger volume of

work but it also implies the need for additional capacities so that all its activities can be performed regularly and in a high-quality way. Although, upon the entry into force of the ANPM, the Ombudsman's powers expanded and the affairs from within his competences are more comprehensive, no new staff members have been employed for the work of the NPM. In July 2012, the Ombudsman rendered a decision on authorising two Ombudsman's advisers to carry out the activities of the NPM in addition to what had been their previous tasks. Since regular visits are the basis of the work of the NPM, the performance of their previous tasks was thus jeopardised. Therefore, a compromise was made, whereby the tasks from the typical Ombudsman's authority and those belonging to the NPM both "suffer" to some extent. Since the purpose of both these groups of tasks is the protection of fundamental human rights and freedoms, such compromised solutions are not acceptable. Namely, taking into account the activities of the NPM, the number of locations where persons deprived of their liberty are placed, the number of persons who work on their protection and the organisation of the NPM in other countries, we shall certainly need additional staff. The procedure of adopting a new Ordinance on the Ombudswoman's work is in the process of being adopted according to which a special service for persons deprived of their liberty and for the NPM will be organised. This will additionally upgrade the activities of the NPM.

In the State Budget of the Republic of Croatia for 2012, around 62,320 Euro was allocated for the work of the NPM. These funds were designated for business trips, office materials, promotion and information activities, intellectual and personal services, computer services, telecommunication, post and transport services and the purchase of a car. Due to the fact that the NPM started its operation only in July and because, due to the insufficient capacity of the Ombudsman's Office, it was not possible to organise more frequent visits, the allocated funds sufficed. However, if we take into account that a public competition is underway to employ another staff member who will do the NPM work, it is justified to say that there will be more visits in the future. This will require the allocation of additional funding, since pursuant to Article 18 of OPCAT, State Parties are responsible for the provision of funds necessary for the functioning of the NPM. By increasing the capacity and ensuring the necessary financial means, not only will the regularity of visits and the promptness of drawing up reports and recommendations be guaranteed, but so will the possibility of supervision visits and analysing the existing legislative framework. This will contribute to enhanced protection against torture and other cruel, inhuman or degrading treatment or punishment.

Therefore, it is justified to conclude that the Republic of Croatia is undertaking a number of activities aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment. However, further efforts must permanently be made to upgrade the weakest parts of the system. If only a single person in the Republic of Croatia is exposed to what is most certainly the gravest violations of human rights, we cannot say that we are satisfied. We must persist in creating the conditions and the environment in which all rights and

## **CROATIAN PARLIAMENT**

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

### **D E C I S I O N PROMULGATING THE ACT ON NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

I hereby promulgate the Act on National Preventive Mechanism Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment passed by the Croatian Parliament at its session on 28 January 2011.

Class: 011-01/11-01/5  
No.: 71-05-03/1-11-2  
Zagreb, 2 February 2011

The President of the Republic of Croatia  
Prof. Ivo Josipović, D.Sc., m.p.

### **T H E A C T ON NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

#### Article 1

This Act provides for the establishment of a body competent for the activities of national preventive mechanism against torture and other cruel, inhuman or degrading treatment or punishment (hereinafter: National Preventive Mechanism) in accordance with the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette – International Agreements, No. 2/05) (hereinafter: Optional Protocol).

#### Article 2

(1) The activities of the National Preventive Mechanism shall be carried out by the People's Ombudsperson. In the performance of the activities of the National Preventive Mechanism, beside the People's Ombudsperson, two representatives of associations registered for the performance of activities in the area of the protection of human rights and two representatives from the academic community shall also take part.

(2) The representatives referred to in paragraph 1 of this Article are appointed by the People's Ombudsperson on the proposal of associations registered for the performance of activities in the area of human rights and higher education institutions on the basis of a public invitation.

(3) In carrying out the activities of the National Preventive Mechanism, the People's Ombuds-person shall, where necessary, also include other independent experts in compliance with Article 18, paragraph 2 of the Optional Protocol.

#### Article 3

(1) The activities of the National Preventive Mechanism are the following:

- regular visits to places where persons are or may be deprived of their liberty, aimed at strengthening the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment;

- giving recommendations to competent government bodies and institutions aimed at enhancing the treatment of persons deprived of their liberty and upgrading the conditions in which they live, with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment;

- making proposals and observations concerning the existing laws and regulations or their drafts with a view to enhancing the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

- cooperation with the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter: Subcommittee on Prevention of Torture), sending information and meeting with the Subcommittee on Prevention of Torture.

(2) For the purposes of this Act, persons deprived of their liberty are those who have been ordered into any form of detention or imprisonment or placement in a public custodial setting which they are not permitted to leave at will.

#### Article 4

In the performance of the activities referred to in Article 3, paragraph 1, indent 1 of this Act, beside the People's Ombudsperson or an authorised person from the People's Ombudsperson's Office, the participation of at least one representative from associations registered for the performance of activities in the area of the protection of human rights, or a representative of the academic community referred to in Article 2, paragraph 1 of this Act, is required.

#### Article 5

The persons taking part in the performance of the activities of the National Preventive Mechanism shall have the following powers:

- to pay announced visits to places or institutions and

examine the facilities where persons deprived of their liberty are kept;

- to have free access to all information concerning the places and institutions where persons deprived of their liberty are kept;

- to have free access to all information concerning the number of persons deprived of their liberty in the visited places or institutions;

- to have free access to all information concerning the treatment of persons deprived of their liberty in accordance with the law;

- to have private interviews with persons deprived of their liberty by choice and without the presence of the officials of the visited place or institution of detention;

- to talk to other persons who may provide relevant information regarding the suspected violation of human rights by the treatment given in the place or institution visited.

#### Article 6

The People's Ombudsperson shall prescribe the appointment procedure and the work of the representatives of associations registered for the performance of the activities in the field of human rights, the representatives of the academic community, or experts referred to in Article 2, paragraphs 1 and 3 of this Act.

#### Article 7

Persons participating in the activities carried out by the National Preventive Mechanism are bound to keep secret all personal data on the persons deprived of their liberty which they acquire in the performance of their work.

#### Article 8

(1) Minutes shall be taken of the visit referred to in Article 3, paragraph 1, indent 1 of this Act and signed by all the persons who have taken part in the visit.

(2) On the basis of the minutes referred to in paragraph 1 of this Article, the People's Ombudsperson shall write a report on each visit and send it to the visited place or institution, and in the case of any irregularities detected during the visit, the report shall also be sent to the body competent for the supervision of the visited place or institution.

(3) If any forms of torture or other cruel, inhuman or degrading treatment or punishment are discovered during the visit, the People's Ombudsperson shall warn and give recommendations to the visited place or institution where the violations have occurred. Upon such warning or recommendations given by the People's Ombudsperson, the body or the institution where such violation has been established is bound to take measures within the

deadline specified in the report and inform the People's Ombudsperson without delay on such measures. If the body or the institution fails to take measures within the deadline given by the People's Ombudsperson, or does not follow his recommendations, the People's Ombudsperson shall inform the Croatian Parliament accordingly.

(4) Upon the delivery of the report, the persons taking part in the activities of the National Preventive Mechanism are authorised to carry out a control examination of the place or institution where the cases of torture and other cruel, inhuman or degrading treatment or punishment were found.

#### Article 9

The People's Ombudsperson shall write and publicise his or her annual report on the performance of the activities of the National Preventive Mechanism and send it to the Croatian Parliament before 1 July of the current year for the previous year.

#### Article 10

The funds for the activities of the National Preventive Mechanism shall be allocated in the State budget as a special item within the budget assigned to the People's Ombudsperson's Office.

#### Article 11

(1) The representatives of associations registered for the activities in the area of the protection of human rights and the representatives of the academic community referred to in Article 2, paragraph 1, as well as the independent experts referred to in Article 2, paragraph 3 of this Act, are entitled to corresponding remuneration for the work carried out by the National Preventive Mechanism.

(2) The amount of remuneration referred to in paragraph 1 of this Article shall be established by a separate decision issued by the People's Ombudsperson.

#### Article 12

The People's Ombudsperson shall issue the regulation referred to in Article 6 of this Act within two months from the day of the entry into force of this Act.

#### Article 13

This Act shall enter into force on the eighth day following its publication in the Official Gazette of the Republic of Croatia.

Class: 004/01/10-01/04  
Zagreb, 28 January 2011

CROATIAN PARLIAMENT

President  
of the Croatian Parliament  
Luka Bebić, m.p.



Pursuant to Article 6 of the Act on National Preventive Mechanism Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette, No. 18/11), the Ombudsman passes the following

## **ORDINANCE**

### **ON THE PROCEDURE OF APPOINTMENT AND MANNER OF WORK OF THE REPRESENTATIVES OF ASSOCIATIONS AND REPRESENTATIVES OF THE ACADEMIC COMMUNITY IN THE NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE AND OTHER CRUEL AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

#### **I. GENERAL PROVISION**

##### Article 1

(1) This Ordinance provides for the procedure of appointment and dismissal of two representatives from associations registered for the performance of activities in the area of the protection of human rights and two representatives of the academic community (hereinafter: representatives) to and from the National Preventive Mechanism Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment (hereinafter: National Preventive Mechanism).

(2) This Ordinance prescribes the manner of work of the representatives and independent experts in the National Preventive Mechanism.

(3) The terms used in this Ordinance for persons of male gender are used neutrally and refer to both male and female persons.

#### **II. PROCEDURE OF APPOINTMENT**

##### Article 2

(1) Representatives shall be appointed and dismissed by the Ombudsman. The appointment shall be carried out on the basis of a public invitation.

(2) The selection of representatives shall be carried out by means of the Ombudsman's public invitation published in the Official Gazette, in at least one daily newspaper accessible in the entire territory of the Republic of Croatia and on the Ombudsman's

official website at least 90 days before the expiry of the mandate of the representative of the National Preventive Mechanism. Through the public invitation, associations registered for the performance of activities in the area of the protection of human rights and from the academic community are invited to submit their reasoned proposals for representatives in the National Preventive Mechanism. The time limit for the submission of proposals shall not be shorter than 15 days or longer than 30 days counting from the day of the publication of the invitation.

(3) The Ombudsman shall consider all the submitted proposals which meet the conditions of the public invitation.

(4) The Ombudsman shall appoint the representatives within 30 days from the expiry of the time limit for the submission of the proposals referred to in paragraph 2 of this Article.

(5) The representatives shall be appointed for a period of four years and may be reappointed.

##### Article 3

The proposal for the appointment of representatives shall contain:

1. The name, surname and address of the candidate;
2. A photocopy of the citizenship document;
3. A curriculum vitae of the candidate;
4. A photocopy of a document proving the completion of undergraduate and graduate university studies, or of integrated undergraduate or graduate university studies or of a specialist professional study programme;
5. Reasons for the proposal;
6. A written candidate's statement indicating that the candidate seeks to participate in the work of the National Preventive Mechanism in accordance with the provisions of the Act on the National Preventive Mechanism Against the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and this Ordinance;
7. The name and the seat of the legal person or the name of the person authorised for representation and an excerpt from the Register of Associations of the Republic of Croatia not older than 6 months from which it is visible that the association is registered for the performance of activities in the area of the protection of human rights.

The proposal referred to in paragraph 1 of this Article may also contain other attachments.

#### DISMISSAL

##### Article 4

The Ombudsman shall dismiss the appointed representative before the expiry of the term for which he has been appointed:

- At his own request;
- If he does not perform the tasks entrusted to him in a conscientious or orderly manner;
- If the proposer withdraws his proposal for the appointment of the representative;
- If circumstances arise which are incompatible with participation in the work of the National Preventive Mechanism.

#### MANNER OF WORK

##### Article 5

The representatives take part in the performance of tasks within the National Preventive Mechanism in agreement with the Ombudsman.

##### Article 6

Regular visits to places where persons are or may be deprived of their liberty shall take place in accordance with a previously agreed plan and distribution of the areas to be visited.

##### Article 7

(1) The representatives draw up part of the minutes containing data established in the course of visits to places where persons are or may be deprived of their liberty.

(2) The minutes referred to in paragraph 1 of this Article are a constituent part of the minutes referred to in Article 8, paragraph 1 of the Act on the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment of Punishment.

##### Article 8

(1) In carrying out the tasks of the National Preventive Mechanism, the Ombudsman, if appropriate, shall also engage other independent experts.

(2) By way of a decision, the Ombudsman specifies

the tasks for which he seeks the participation of independent experts in the performance of tasks within the National Preventive Mechanism.

##### Article 9

(1) The representatives and independent experts are entitled to appropriate remuneration for participation in the work of the National Preventive Mechanism.

(2) The amount of the remuneration referred to in paragraph 1 of this Article shall be determined in a separate decision by the Ombudsman.

##### Article 10

This Ordinance shall enter into force on the eighth day following its publication in the Official Gazette.

Internal Reg. No. 06-06-25/12-1  
Zagreb, 19 January 2012

Ombudsman,  
Jurica Malčić, m.p.