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THE NATIONAL PREVENTIVE MECHANISM IN POLAND AND ITS ACTIVITIES RELATED TO DETENTION CENTRES

Abstract

The article presents information on the activities of the National Preventive Mechanism (NPM) in Poland with regard to detention centres. The study covers all NPM's reports, both annual and those from regular and ad hoc visits conducted in detention centres during all years of operation of this preventive institution in Poland (2008-2022). The crisis along Poland's border with Belarus in 2021 and 2022 led to increased involvement of the NPM in conducting preventive visits to places where foreigners can be deprived of liberty. These are places of isolation under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The article presents a summary of the most important recommendations that the NPM made regarding these particular places of isolation, including children in detention, living conditions and the right to privacy.

KEYWORDS

OPCAT, National Preventive Mechanism, detention centres, places of detention, refugees, children in detention

SŁOWA KLUCZOWE

OPCAT, Krajowy Mechanizm Prewencji, ośrodki strzeżone dla cudzoziemców, miejsca detencji, uchodźcy, dzieci w detencji

INTRODUCTION

On 18 December 2002, the United Nations adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT). This was an important step in the development of mechanisms to prevent inhuman treatment and torture in the civilized world. States Parties started to create National Preventive Mechanisms (NPM)¹ in order to conduct preventive visits in all different detention places.

The importance of OPCAT can be evidenced by numbers. In March 2017, 83 countries were parties to the Convention and 65 of them had designated NPMs². Six years later, at the end of March 2023 these were 92 States Parties to the OPCAT, among which 77 had designated their Mechanisms³.

In Poland the OPCAT was ratified in 2005⁴ and the NPM was created in January 2008 within the Office of the Commissioner for Human Rights⁵. Since 2010, it has been a separate department that concentrates on preventive visits in all detention places⁶.

The article focuses on the NPM's activities in detention centres. These are, in fact, types of places of isolation that are visited by the Mechanism within its

¹ SPT, United Nations, *Guidelines on national preventive mechanisms*, CAT/OP/12/5, 9 December 2010, <https://www.ohchr.org/en/treaty-bodies/spt/national-preventive-mechanisms> (accessed 28.08.2022).

² A. Iwanowska, *Report on the Activities of the Commission of Experts of the National Prevention Mechanism in 2016*, p. 2, <https://bip.brpo.gov.pl/sites/default/files/Raport%20Komisji%20Ekspertow%20KMP%20za%20rok%202016.pdf> (accessed 28.08.2022).

³ Database: <https://www.apt.ch/en> (accessed 17.03.2023).

⁴ Dz. U. (Journal of Law) 2005, no. 150, item 1253, <https://isap.sejm.gov.pl/isap.nsf/DocDe-tails.xsp?id=WDU20051501253>.

⁵ The model of NPM designated to operate under the Ombudsperson was also established in such countries as for example: Azerbaijan, Croatia, Luxembourg, Norway, or Sweden. Detailed information is available on the website of the Association for the Prevention of Torture, <http://apt.ch/en>.

⁶ The total number of places of isolation falling within the NPM's mandate as defined in Article 4(1) of the OPCAT has varied over the years from 1,800 (in 2015) to 3,735 (in 2023). This was due to changes in the law (e.g. youth sociotherapy centers were excluded from places of detention in 2012; district educational centers were created in 2022 as a new type of places of detention for juveniles), but also because of expansion of NPM activities to new places, such as social care homes including private ones.

standard preventive visits and, if necessary, covered also by ad hoc visits. The presence of the NPM in these locations at a time of migration crisis, especially in 2021 and 2022, was extremely important. It was also the only institution that systematically reviewed the rapidly changing situation of these facilities.

As access to the detention centres is difficult, and the first broad scientific research was carried out there in 2018-2019⁷, the knowledge the NPM's representatives have is unique. Through its recommendations, the NPM has sought to implement necessary changes at the level of legislation or procedural practice. However, preventive visits to places of deprivation of liberty are only part of a process aimed at improving the treatment of detained persons. It is also necessary to undertake other measures, such as education, including training and awareness-raising activities, and advisory activities, such as recommending amendments to the law and giving opinions on draft legislation. After the initial visit of the Subcommittee for the Prevention of Torture in Poland in 2018, it was suggested to the NPM that prevention activities should be expanded beyond mere visits⁸.

DETENTION CENTRES IN POLAND

The National Preventive Mechanism does not visit open centers for foreigners managed by the Office for Foreigners. It focuses only on detention places under the authority of the Border Guard. According to the data of 10 December 2022 provided on the Border Guard website, there are 6 Border Guard centres in Poland with 1,200 places available. They accommodate 620 foreigners⁹. I decided to concentrate on that because as Klaus points out, these places are treated like prisons by the foreigners and are the most severe form of violence and mental torture for them¹⁰.

I have analyzed all NPM reports (14 annual reports¹¹, 3 thematic reports and all available reports prepared after 34 visits in the detention centres) to the extent that they describe the results of preventive or ad hoc visits to detention centres.

⁷ J. Schmidt, *Przestrzeń idealna – perspektywa władzy. Na przykładzie strzeżonych ośrodków dla cudzoziemców w Polsce*, 'Rozwój Regionalny i Polityka Regionalna' 2021, No. 54, pp. 163–182.

⁸ Report of the SPT, Visits to Poland undertaken from 9 to 18 July 2018: recommendations and observations addressed to the State Party, CAT//OP/POL/ROSP/1, paras 27–28.

⁹ <https://strazgraniczna.pl/>.

¹⁰ W. Klaus, *Cudzoziemcy niemile widziani. Detencja cudzoziemców jako przykład kryminalizacji migracji*, (in:) D. Pudzianowska (ed.), *Status cudzoziemca w Polsce wobec współczesnych wyzwań międzynarodowych*, Warsaw 2016, p. 177.

¹¹ The 2022 report was not yet publicly available at the time of preparing this article. The others can be found at www.rpo.gov.pl.

This made it possible to identify the main problem areas presented by the NPM and to show them in relation to the case law of the ECtHR or the positions of organizations dealing with migration issues.

I have chosen detention centres for my research since this topic is a very hot issue in the NPM's activities and in the social and scientific discourse. Especially from the perspective of human rights, state migration policy, the functioning of detention centres in Poland has become a crucial subject.

There are 6 detention centres in Poland¹² located in Lesznowola, Biała Podlaska, Kętrzyn, Białystok, Przemyśl and Krosno Odrzańskie¹³. Due to the crisis on the borders, three additional so-called temporary centers were established in Biała Podlaska, Czerwony Bór, and Wędrzyn in August 2021. They have since been closed. Foreigners are deprived of their liberty in connection with pending international protection proceedings or return commitment proceedings against them.

The table below shows the frequency of NPM visits over the years, highlighting the number of preventive visits to detention centres. It is important to note that from the very beginning, visits to such places have been conducted by the NPM with the support of Ombudsman's Office employees specializing in this issue – initially from the Public Administration, Health, and Aliens Rights Protection Department, and later from the Equal Treatment Department.

Table 1. The NPM's visits to detention centres from 2008 to 2022

	Number of visits to detention centres	The whole number of preventive visits in all types of detention places	The visited detention centres
2008	3	76	Biała Podlaska, Białystok, Przemyśl
2009	2	106	Lesznowola, Kętrzyn
2010	1	80	Krosno Odrzańskie
2011	-	87	
2012	-	124	
2013	-	125	
2014	-	124	
2015	-	121	
2016	4	85	Biała Podlaska, Krosno Odrzańskie, Lesznowola, Kętrzyn
2017	2	76	Krosno Odrzańskie, Przemyśl
2018	3	82	Biała Podlaska, Białystok, Lesznowola
2019	-	73	
2020	1	75	Lesznowola (checking of CPT's recommendations)
2021	11	92	Biała Podlaska (ad hoc), Białystok (twice - ad hoc visit and checking of CPT's recommendations), Czerwony Bór (twice ad hoc), Kętrzyn (twice), Krosno Odrzańskie (ad hoc), Lesznowola, Wędrzyn (twice, including ad hoc)
2022	6	79	Biała Podlaska, Lesznowola (twice, including ad hoc), Przemyśl (twice), Wędrzyn
Total	33	1405	Number of visits in each place: Biała Podlaska - 5, Białystok - 4, Przemyśl - 4, Lesznowola - 7, Kętrzyn - 4, Krosno Odrzańskie - 4, Wędrzyn - 3, Czerwony Bór - 2

Source: author's own compilation based on data presented in NPM's annual reports.

¹² UNHCR, Map of refugee centres and NGO activities in Poland, <https://www.unhcr.org/publications/brochures/40eebc7d4/poland-refugee-centres-ngo-activities.html> (accessed 2.05.2023)

¹³ Centers in Lesznowola and Białystok are dedicated only for men.

The analysis of the data presented in the table clearly shows that the year 2021 was exceptional as far as NPM activities in detention centres are concerned. In the first years of its functioning in Poland, such places of detention were visited 1 to 4 times a year, and there were also years when the NPM did not cover those places within its activities. Between 2011 and 2015, there was a period of 5 years when the NPM did not visit this kind of places. Therefore, the number of 11 visits in 2021, and even 6 in 2022, represents a definite increase in the Mechanism's interest in detention centres. At the same time, it is an adequate and immediate response to the needs associated with the increase in the number of migrants. It was important as it was estimated that 482 foreigners were admitted to detention centres in the first half of 2021, and 3,570 in the second half. The mass referral of foreigners to these centers by the courts demonstrates a systemic preference for this method over alternative measures¹⁴.

It is noteworthy that none of the NPM visits to detention centres were carried out using Skype. During the Covid-19 pandemic, the NPM used this form of visitation (2020 – 27, 2021 – 16, 2022 – 6 times), but the remote execution of the NPM's mandate is arguably not desired. It might be difficult to identify possible irregularities in a given type of facility when it is inspected remotely. Hence, physical presence during all visits to detention centres, especially that these are always unannounced, deserves credit.

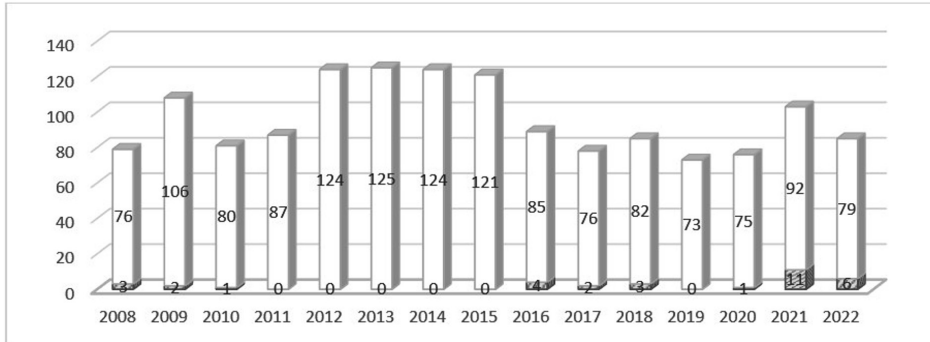
The overall number of NPM visits has also evolved over the years, from the lowest number of visits in 2008 and 2017, when 76 visits were carried out, to a figure of 125 visits in 2013. The number of visits depends on various factors, such as the separation of the NPM in the structure of the Office of the Commissioner for Human Rights from 2010 onwards, the number of staff who carry out visits, other tasks carried out by the NPM such as delivering training on the prevention of torture or giving opinions on legislation. The figure below shows the annual NPM activities over the years.

¹⁴ Preventive measures which do not entail deprivation of liberty are provided for as of 1 January 2014 by Article 88(1) of the Act on granting protection to foreigners in the territory of the Republic of Poland and by Article 398 of the Aliens Act.

Figure 1. Annual number of NPM's preventive visits

White: Total number of preventive visits to all types of places of detention

Greyed out: Number of visits to detention centres



Source: author's own compilation based on data presented in NPM's annual reports.

As the Commissioner for Human Rights highlighted in the annual report, prevention of torture, inhuman and degrading treatment requires a holistic, long-term and interdisciplinary approach. The NPM examines the conditions in places of detention on an ongoing basis, listens to persons deprived of their liberty and staff, uncovers areas of risk, and recommends changes and improvements¹⁵. Therefore, it is essential that different types of places of detention be visited. Since the end of 2022, a total of 1,405 visits have been conducted. During these visits, the NPM has come across various situations where they identified minor irregularities, while in other cases, they uncovered incidents of torture¹⁶ or inhuman and degrading treatment¹⁷.

¹⁵ Report of the Ombudsman on the NPM activities in Poland in 2021, p. 6.

¹⁶ The NPM presented cases of torture by police officers, but also by prison officers. See: H. Machińska, P. Kazimirski, *Przestępstwo tortur w Polsce – Omówienie wyroków w sprawach o przestępstwa z art. 246 oraz 247 k.k., które uprawomocniły się w 2020 r.*, Office of the Commissioner for Human Rights, Warsaw 2022; Report of the NPM in Barczewo Prison (dated 17.01.2023), KMP.571.13.2022.JJ.

¹⁷ For example, this was the conclusion after a visit to a makeshift camp in Usnarz Górny on the Polish-Belarusian border and conversations with 32 foreigners who were staying there. See: Letter of the Ombudsman to the Minister of Internal Affairs and Administration of 21 August 2021, KMP.572.1.2021.MZ.

KEY ISSUES IDENTIFIED BY THE NPM IN DETENTION CENTRES

Detention centres are facilities designed to house foreigners who have been deprived of their liberty on the basis of the Aliens Act¹⁸ or the Act on granting foreigners protection on the territory of the Republic of Poland¹⁹. These centres are also subject to the Regulation of the Minister of the Interior on detention centres and open centres for foreigners²⁰.

The placement of a foreigner in detention²¹ is based on a court's decision which is issued at the request of the Border Guard. However, the mere fact that the applicant is seeking international protection should not be ground for deprivation of liberty. The detention of a foreigner after he/she has declared the intention to submit a request for international protection is permissible in strictly defined cases specified in Article 87 of the Act on granting foreigners protection on the territory of Poland.

Over the 15 years of the NPM operation²², the most difficult challenging situation in detention centres occurred in 2021, as indicated in its annual report and post-visit reports. The main issues identified in centres are listed below as separate points.

LIVING CONDITIONS

Living conditions have changed over the years. However, apart from periods of extreme overcrowding in 2021, they were assessed as consistent with legal standards. The facilities were clean and their technical condition was good. The NPM has observed an improvement in what things were like. As an example, a detention center has installed air conditioning in the living rooms and created modern playgrounds for both adults and children (Przemysł, 2022)²³.

¹⁸ Consolidated text, Dz. U. (Journal of Laws) of 2021, item 2354.

¹⁹ Consolidated text, Dz. U. (Journal of Laws) of 2022, item 1264.

²⁰ Consolidated text, Dz. U. (Journal of Laws) of 2018, item 1576.

²¹ Under amendments to the provisions in 2023, Articles 403(3a), 403(4) and 403(5) of the Aliens Act have significantly extended the permissible period of foreigners' detention in detention centers. Until then, as a rule, foreigners could stay in detention centers for a maximum period of 12 months. Nowadays, such stay may be extended to 18 months but only in specific cases.

²² On 14 June 2023, a conference was held to mark the 15th anniversary of the NPM. It was attended by a representative of the Border Guard Headquarters who pointed out the years of cooperation with the NPM and the gradual implementation of its recommendations, <https://bip.brpo.gov.pl/pl/content/konferencja-15-lat-kmpt-relacja> (accessed 1.07.2023).

²³ The information in brackets shows when the NPM visit took place and to which detention centre.

However, the NPM made several recommendations, including providing more privacy in shower areas (for example, by installing full partitions – Białystok, 2008), organizing leisure time differently, particularly for children (Biała Podlaska, 2009), replacing or upgrading the facilities in bathrooms and the standard of the special room for persons displaying challenging behaviour (Lesznowola, 2009), improving heating and changing the standard of the facility to differentiate it from detention centers used for deportation purposes (Krosno Odrzańskie, 2010), separating toilets (Biała Podlaska, 2016), replacing or repairing beds in residential rooms and making them more welcoming and personal (Biała Podlaska, 2016). The NPM also recommended removing bars on windows to prevent detention centres from being associated with penitentiary units (Przemyśl 2022), and removing concertina wires, which were used in one of the temporary centers.

In October 2021, detention centres were severely overcrowded which resulted in a significant decline in living conditions that were deemed to be extremely poor and an affront to personal dignity. Staffing issues and the need for psychological support for employees were also identified as major concerns²⁴. These conditions led to a revolt in Wędrzyn by the end of November 2021. The living conditions there were assessed as very poor and as violating personal dignity²⁵.

According to the law enacted at that time, if a large number of foreigners need to be placed in a detention or open center simultaneously and there are no vacancies in rooms, a foreigner can be placed in a room whose area is smaller than 4 square meters but not less than 2 square meters per foreigner for a limited period of up to 12 months²⁶. However, the NPM found that some detention centres had even less than 2 square meters per person, which can be considered inhumane treatment and a breach of Article 3 of the ECHR. This provision is absolute, and there are no circumstances that can justify its violation. Therefore, a sudden influx of migrants cannot justify inhuman or degrading living conditions in such places. Moreover, the right to privacy (Article 8 of the ECHR) is not respected in such conditions as foreigners are accommodated in rooms with up to 24 people²⁷.

²⁴ Report of the NPM's activities in 2021, p. 23.

²⁵ See: <https://bip.brpo.gov.pl/pl/kmpt/wizytacja-kmpt-w-strzezonym-osrodku-dla-cudzoziemcow-w-krosnie-odrzańskim-oraz-tymczasowym> (accessed 30.04.2023).

²⁶ Pursuant to Article 11(1a) of the Regulation of the Minister of the Interior and Administration of 13 August 2021 amending the Regulation on detention centres and open centres for foreigners.

²⁷ Report..., 2021, *op.cit.*, p. 44.

VICTIMS OF TORTURE AMONG FOREIGNERS IN DETENTION CENTERS

Article 400 of the Aliens Act stipulates that a decision to place a foreigner in a detention centre cannot be issued if it could endanger the foreigner's life or health, or if the foreigner's psychophysical condition suggests that they may have been subjected to violence.

Foreigners detained in detention centres have reported (to the NPM) information regarding violence they have experienced in their country of origin²⁸ or during their journey to Europe. In that context, locating a temporary center in Wędrzyn on an operational military training ground could potentially lead to re-traumatization and exacerbate their poor mental state²⁹.

The issue of limited psychological assistance is closely related to the shortage of trained psychologists and the challenges they face in communicating with foreigners. This is exacerbated by the lack of internet coverage, which makes it difficult to use translators. Besides, all staff in the centers should receive professional training in identifying vulnerable groups (Biała Podlaska, 2016) and victims of torture using the Istanbul Protocol³⁰ (Kętrzyn, 2017, Przemyśl 2022).

DETENTION OF CHILDREN

The law allows for a minor over the age of 15 to be placed in a detention centre³¹ if they arrive in the territory of Poland without the care of responsible adults in accordance with the Polish law³². Additionally, families with children of different age are also deprived of their liberty and held in these centers.

The NPM emphasizes in its reports that the deprivation of liberty of children in detention centres should be a last resort due to the negative impact it can have on their mental state. Many institutions have rejected this possibility, arguing that

²⁸ During those visits, detainees that stayed in the centres were originally from Russia, Georgia, Vietnam, Chechnya, Dagestan, Mongolia, China, Uzbekistan and Ghana.

²⁹ Report..., 2021, *op. cit.*, p. 41.

³⁰ United Nations, Human Rights Office of the High Commissioner, *Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Geneva 2002, pp. 94–100.

³¹ Article 397(3) of the Aliens Act.

³² More information in the report: H. Machińska, M. Kusy (eds), *Obcokrajowcy w detencji administracyjnej. Wyniki monitoringu Krajowego Mechanizmu Prewencji Tortur, Nieludzkiego, Poniżającego Traktowania lub Karania BRPO w strzeżonych ośrodkach dla cudzoziemców w Polsce*, Office of the Commissioner for Human Rights, Warsaw 2021, pp. 17–18.

it goes against the best interests of the child³³. Despite these arguments, there are still children in detention centres. The table below shows the numbers on the date of the visit.

Table 2. Number of adults and children present at each detention centre on the day of the NPM's visit.

		Przemyśl	Biała Podlaska	Białystok	Lesznowola	Kętrzyn	Krosno Odrzańskie	Total	
2008	adults	66	42	36				144	164
	children	10	10	0				20	
2009	adults				11	19		30	38
	children				1	7		8	
2010	adults						33	33	33
	children						0	0	
2016	adults		11		17	71	53	152	166
	children		10		0	4	0	14	
2017	adults	23					35	58	69
	children	11					0	11	
2018	adults		17	18	68			103	127
	children		24	0	0			24	
2020	adults				49			49	49
	children				0			0	
2021	adults			91	49			140	140
	children			0	0			0	
2022	adults	109			174			283	283
	children	0			0			0	

Source: author's own elaboration based on data presented by the NPM in post-visit reports.

During visits to the Przemyśl centre, the number of children placed there did not exceed 11. Similarly, during the first visit to Biała Podlaska, there were only 10 children, but this number increased to 24 in 2018. In Krosno Odrzańskie, there were several children detained, with 7 in 2008 and 4 in 2016. Although these numbers may not seem excessive, the fact remains that children are still being placed in detention centres, which is acceptable under ECtHR case law only in exceptional cases and for a short period of time.

The *Bistieva and Others against Poland case*³⁴ confirms that detaining families for extended periods in detention centres requires sufficient justification even in the light of the risk that the family might abscond. In this case, the authorities failed to provide such justification for detaining the applicants for five months and twenty days, resulting in a violation of Article 8 of the ECHR. As a result, Poland was ordered to pay the applicants jointly EUR 12,000 for non-pecuniary damages.

³³ Commissioner for Human Rights <https://bip.brpo.gov.pl/sites/default/files/Biuletyn%20Rzecznika%20Praw%20Obywatelskich%202012%2C%20Nr%2011.pdf>, Commissioner for Children – http://brpd.gov.pl/sites/default/files/wystapienie_do_prezesa_rady_ministrow.pdf, Association for Legal Intervention – <https://interwencjaprawna.pl/stanowisko-sip-w-sprawie-detencji-dzieci-cudzoziemskich/>, CPT – <https://rm.coe.int/16806cce8e>, para 97-100.

³⁴ Judgment of 10.04.2018, application no. 75157/14.

In the case of Bilalova and Others against Poland³⁵ and the allegation of a violation of Article 8 ECHR, the Government made a unilateral declaration and paid the applicants EUR 9,300 in relation to their placement in a detention centre, prolonged stay there and failure to apply alternative measures. Moreover, the Court awarded a total sum of EUR 10,700 to the applicant's children in compensation for the non-pecuniary damage suffered as a result of the violation of Article 5(1) ECHR. The Court was not convinced that the national authorities took the necessary steps to limit the period of detention of children to the necessary minimum.

There are also a few new cases before ECtHR that were communicated to the Polish Government and that involve detention of children: A. B. against Poland and T.K. and S.B. against Poland lodged on 4 November 2015 and 4 November 2015, respectively³⁶, Artur Nikoghosyan against Poland lodged on 15 February 2017³⁷, K.G. and S.G. against Poland lodged on 4 December 2019³⁸, V.M. and Others against Poland lodged on 10 August 2022³⁹, or Z.E. and Others against Poland lodged on 17 January 2018⁴⁰. In all cases the applicants stated that the detention was not necessary in respect of children for whom it was a traumatic experience.

The detention of children is one of the major problems associated with the operation of detention centres⁴¹ and international standards⁴² unanimously stress that all steps should be taken to avoid depriving children of their liberty in detention centres because it is against their best interest and cannot be justified solely by the absence of a residence status.

According to NPM recommendations, Polish legislation and practice should be developed to ensure that all children are able to reside in local societies during proceedings related to the regularization of their migration situation⁴³. However, if deprivation of liberty is necessary, these places should be adapted to the needs

³⁵ Judgment of 26.03.2020, application no. 23685/14.

³⁶ Applications nos. 15845/15 and 56300/15.

³⁷ Application no. 14743/17.

³⁸ Application no. 62466/19.

³⁹ Application no. 40002/22.

⁴⁰ Application no. 4457/18.

⁴¹ See more: J. Białas, *Detencja cudzoziemców w Polsce a standard EKPC*, (in:) D. Pudziałowska (ed.), *Status cudzoziemca w Polsce wobec współczesnych wyzwań międzynarodowych*, Warsaw 2016, pp. 191–207.

⁴² Committee on the Rights of the Child, Report of the 2012 day of general discussion on the rights of all children in the context of international migration, pp. 78–79, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>; Amnesty International, <https://www.amnesty.org.pl/osrodki-all-inclusive/>.

⁴³ Inter alia, Report of the Ombudsman on the activities in Poland of the National Torture Prevention Mechanism in 2018, p. 83.

of children and their age. They should be provided with access to education, leisure and play⁴⁴.

MEDICAL CARE

The NPM observed difficulties in accessing specialist doctors in certain centers, including wards where children were present. Language barriers were also identified as a significant challenge, and medical consultations outside of the detention centres were not always organized. However, there were also facilities where these issues were not reported (Przemyśl, 2022).

Medical care is crucial, especially in situations such as detainees' hunger strikes, as was the case in Lesznowola in April 2022. The foreigners reported to the NPM that they were treated well and received daily medical examinations⁴⁵.

In other cases, the NPM recommended that access to medical care should be provided (Krosno Odrzańskie in 2010). The NPM reminded also that a Border Guard officer can only be present during a medical examination at the request of medical staff (Lesznowola, 2016).

RIGHT TO INFORMATION

Providing foreigners with information on their rights and procedures in a language they understand is still an issue. The NPM has identified instances where foreigners are presented documents for signature in a language they do not understand. The visitors have noted that detained persons are not provided with adequate access to brochures or leaflets informing them of their rights and obligations (Biała Podlaska 2008, Przemyśl 2008). The detainees should also be informed of their rights to use interpreters (Kętrzyn 2009).

CONTACT WITH THE OUTSIDE WORLD

Other problems identified by the NPM include a small number of computer workstations for contacting the outside world via instant messaging or for finding

⁴⁴ H. Machińska, M. Kusy, P. Kazimirski (eds), *Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi. Raport z wizytacji Krajowego Mechanizmu Prewencji Tortur*, Office of the Commissioner for Human Rights, Warsaw 2022, pp. 16–17.

⁴⁵ Description of the visit is available on the website: rpo.gov.pl.

information on the internet. Additionally, foreigners found it difficult to contact a lawyer, and in the case of the temporary center in Wędrzyn, lawyers had to obtain additional permission to enter the military area where the detention centre was located. Remote contacts were also hampered by the insufficient number of computer workstations and the quality of the internet connection.

With only one computer available for every 174 detainees in Lesznowola in 2022, the possibility of contacting anyone through the internet was very limited. Moreover, there was a need to change the way meetings between foreigners and representatives of NGOs were organized to ensure that these institutions could carry out their responsibilities effectively. Representatives of these organizations could only meet with detainees whose names they had provided to Border Guard officers (Przemysł 2008).

TREATMENT

The NPM emphasizes that Border Guard officers should treat foreigners in detention with respect for their rights and in accordance with applicable regulations. It is necessary to refrain from addressing foreigners only by their assigned ID numbers. Border Guards must also take all possible measures to ensure the safety of foreigners deprived of liberty in detention centres, particularly to counteract any violence that may be perpetrated by other migrants placed at the facility.

At the same time, the NPM recommends that the staff in detention centres be given support due to the increase in the number of foreigners admitted and provided with appropriate training. The visitor also reminded Border Guard officers that they must treat foreigners in a way that respects their dignity, privacy and customs, including those related to religion (Biała Podlaska, 2016).

CONCLUSION

The NPM's period of operation in Poland includes the migration crisis of 2015-2016⁴⁶, the Covid-19 pandemic of 2020-2021 and the second migration crisis of 2021-2022. The NPM was thus forced to respond to new emerging needs for

⁴⁶ See more: A. Chrzanowska, W. Klaus (eds), *At the Border. Report on Monitoring of Access to the Procedure for Granting International Protection at Border Crossings in Terespol, Medyka, and Warszawa-Okęcie Airport*, Analyses, 'Reports, Evaluations' 2016, No. 2, p. 4; According to the information from the Office for Foreigners, the number of foreigners who applied for asylum in the territory of Poland was: in 2013 – 6, 2014 – 6, 2015 – 118, and 2021 – 27.

activity in the face of overcrowded detention centres and the creation of new temporary detention centers for foreigners – mainly through ad hoc visits. As a result two important thematic reports were prepared by the NPM⁴⁷.

The Mechanism faces a significant challenge in visiting all 3,735 places of detention under OPCAT in Poland, as it has only 10 visiting staff available⁴⁸. This limited staffing makes it difficult to deal with multiple issues simultaneously within the prevention of torture activities. Furthermore, due to the increased risk of coronavirus infections in 2020, the NPM had to implement online visits in adherence to the ‘do not harm’ principle.

The NPM had to react to the crisis situations on both Polish-Belarus and Polish-Ukrainian borders. This was not the only topic requiring NPM’s involvement. A different one concerned the detention units at police stations where people taking part in street demonstrations were held⁴⁹. Therefore, it is important to acknowledge the commitment of the NPM staff who respond to emergencies with ad hoc visits, even at night, to protect people deprived of liberty, especially vulnerable groups. Overall, in my opinion, the period from 2020 to 2022 was the most crucial years in terms of the Mechanism visibility among the public, particularly through its engagement with migrants.

Besides, it plays an important role in improving living conditions in any place of detention and the implementation of the so-called minimum anti-torture guarantees such as the right to information, access to medical and psychological care, access to legal assistance, opportunities to file complaints or contact with the outside world. Moreover, it verifies the effectiveness of the identification of victims of torture or other unacceptable forms of treatment which may be particularly important during the migration crisis in Poland.

The NPM’s dialogue with the authorities, through recommendations, should lead to changes in respect of foreigners’ rights. It must be underlined that the rights provided for in the ECHR apply to every human being and therefore also to asylum-seekers⁵⁰. Thereby, the implementation of ECtHR judgements concerning children in detention, as well as a number of other judgments relating to the protection of the rights of refugees (especially Articles 2, 3, 5, 13 ECHR), will con-

⁴⁷ H. Machińska, M. Kusy (eds), 2021, *op. cit.*; H. Machińska, M. Kusy, P. Kazimirski (eds), 2022, *op. cit.*

⁴⁸ Data valid at the end of February 2023.

⁴⁹ See more: Report of the National Torture Prevention Mechanism on “ad hoc” visits to police stations and rooms for detainees or persons brought for sobering up, located in units managed by the Warsaw Police Headquarters and the Radom Regional Police Headquarters. Regional Police Headquarters with the seat in Radom, KMP.570.11.2020.MZ.

⁵⁰ See more details: J. Chlebny, *Wpływ orzecznictwa sądów europejskich na ochronę praw uchodźców w Polsce*, (in:) *VIII Seminarium Warszawskie, Równość w dostępie do praw gwarantowanych w systemie Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności – aktualny stan i wyzwania*, Minister of Foreign Affairs, Warsaw 2015, pp. 125–133.

tribute to achieving the NPM's objectives. The case law mentioned above should also have an impact on the decisions of administrative courts in refugee cases.

Therefore, NPM's activities in this area should be continued intensively in the near future. It is not only about planned preventive visits but also ad hoc visits to all places of isolation, including detention centres⁵¹. At the same time courts must carefully consider the necessity of depriving irregular migrants of their liberty. Detention should be the last resort after carefully examining each individual case⁵².

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⁵¹ In the past, a lack of financial resources posed a major obstacle to the effective and efficient functioning of the NPM. The SPT highlighted this issue in its report, CAT/OP/POL/ROSP/1, paras 18–19. However, in 2023 the Commissioner for Human Rights Office received significant funding for additional NPM staff positions for the first time. This is expected to increase the number of visits the NPM can conduct and expand its torture prevention activities.

⁵² Council of Europe, CPT, *Safeguards for irregular migrants deprived of their liberty. Extract from the 19th General Report of the CPT*, 2009, CPT/Inf(2009)27-part, para. 80 <https://rm.coe.int/16806cce8e> (accessed 20.03.2023).

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