

## - NATIONAL PREVENTIVE MECHANISM -

report  
on implemented visit  
at the location

### SPECIAL EDUCATION, WORK AND CARE CENTRE ČRNA NA KOROŠKEM

*Explanatory note: within the implementation of tasks and authorisations according to the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette of the Republic of Slovenia, No. 114/2006), the Human Rights Ombudsman of the Republic of Slovenia (hereinafter referred to as the Ombudsman) as the implementing body of the National Preventive Mechanism (hereinafter referred to as NPM) visits places of deprivation of liberty. In addition to the representatives of the Ombudsman, the group implementing the visit also regularly includes representative(s) of contractual non-governmental organisations and occasionally independent experts of medicine and other disciplines and interpreters. The legal basis for the implementation of NPM monitoring is presented at [Ombudsman as a NPM](#).*

*This report includes only the most important findings of the visit, with proposals for improving conditions or eliminating irregularities. The report was drafted on the basis of the report on NPM visit and the response report of the competent authorities. It is intended for publication at the Ombudsman's website.*

#### **Basic data on the location:**

► **Type of location:** care and work centre, and institutional care of adults with intellectual disabilities.

► **Categories of persons deprived of liberty:** adolescents on whom the educational measure of committal to a special education institution has been imposed.<sup>1</sup>

► **Official capacity and actual occupancy of the location on the day of the visit:** the capacity of the Home for Children and Adolescents organisational unit is 65; during our visit, 61 adolescents were included in the programme, 41 of whom resided at the Home (see note 9).

<sup>1</sup> The Special Education, Work and Care Centre (SEWCC) Črna performs the following activities: education within a special education programme for children and adolescents with a moderate, severe and profound intellectual disability and with additional disabilities for adolescents, and a programme of social protection and health care for adults with intellectual disabilities. This is a care and work centre, and a centre for the institutional care of adults. The training of adolescents lasts until the age of 26. Adolescents are included in this programme on the basis of a decision on placement and in agreement with the competent social work centre. A peculiarity of SEWCC Črna is that it was selected by a decision of the Ministry of Labour, Family and Social Affairs (hereinafter the MLFSA) No. 149-118/2010-6 as of 29 February 2010 for accepting adolescents on whom the educational measure of committal to a training centre is imposed by a court. In our opinion, SEWCC Črna should in this case be considered a place of deprivation of liberty (as defined in Article 4 of the Optional Protocol to the Convention against Torture – OPCAT). Thus we paid special attention to this part of SEWCC Črna activities on our visit. SEWCC Črna also implements programmes of care, guidance and employment under special conditions for adults with moderate, severe and profound intellectual disabilities, and programmes for their social protection and health care. Thus SEWCC Črna provides nursing home care for adults, and also employment, care and guidance under special conditions in its care and work centre. In order to perform the activities, working units have been established at various locations.

### **Course of the visit and preparation of the report:**

► The visit was **announced** and **implemented** on 17 April 2012, **between** 10.45 and 14.00 hours.

► **Visiting group:** two representatives of the Ombudsman, a representative of contractual non-governmental organisations (Legal Information Centre of NGOs – PIC) and a contractual expert on pedagogical sciences and psychology.

► **Content of the visit:** introductory discussion with the Acting Director of SEWCC Črna, inspection of spaces with the Head of Education, interviews with some adolescents, inspection of documentation.

► **Reporting:** a report on the visit, and a proposal to examine the report and notify us on their position and possible measures regarding the report were submitted to the Ministry of Labour, Family and Social Affairs (hereinafter the MLFSA) on 6 September 2012 (and a courtesy copy to SEWCC Črna); the reply was received on 9 October 2012, i.e. 33 days after the report was sent. Having considered some of the explanations received, we sent another letter to the MLFSA on 16 October 2012 (as well as to the Ministry of Justice and Public Administration (hereinafter the MJPA) and a courtesy copy to SEWCC Črna) with a request to reply within 20 days; the reply from the MLFSA was received on 15 November 2012, i.e. 30 days after the letter was sent, i.e. after the expiry of the deadline, and from the MJPA on 7 November 2012, i.e. 22 days after the letter was sent, i.e. after the expiry of the deadline. We replied to the letter from the MJPA with a letter sent on 26 November 2012 (a courtesy copy was sent to the MLFSA), which included a request to reply within 20 days; the reply from the MJPA was received on 18 December 2012, i.e. 22 days after the letter was sent, i.e. after the expiry of the deadline.

On the basis of all the aforementioned replies, the Ombudsman invited the MJPA, the MLFSA, the Ministry of Education, Science, Culture and Sport (hereinafter the MESCS) and SEWCC Črna to a working meeting on the topic of problems regarding the implementation of the educational measure of committal to a special education institution. This working meeting attended by representatives of all invited parties was held on 9 January 2013. More information on the meeting is contained in the final section of this report.

## IMPORTANT FINDINGS AND PROPOSALS OF NPM AND RESPONSE FROM THE COMPETENT AUTHORITIES

### ► NPM particularly commended

- wide-ranging and suitable forms of work of the special education programme<sup>2</sup>, and thereby efforts of the staff to motivate adolescents to realise the goals set,
- approach of SEWCC Črna regarding rule violations<sup>3</sup>,
- the staff takes good care of its wards<sup>4</sup> (although it is difficult to assess the actual state of affairs on a short visit) and
- efforts for better availability and openness of the centre<sup>5</sup>.

On the basis of the information acquired on the visit and after reviewing the available documentation, NPM assessed that the centre was performing its activity (except for the established shortcomings) in compliance with its mission.

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<sup>2</sup> At SEWCC Črna, adolescents are provided with individual and group forms of work within a special education programme. Their treatment is based on team cooperation. The paramount purpose is to train adolescents to be able to live and work. They are offered the opportunity to be involved in speech therapy, corrective gymnastics treatment, physical therapy treatment, occupational therapy treatment, psychological and social treatment, general and specialist medical treatment, as well as other special forms and methods of work (EBL, gestalt psychology, Brain Gym, fine art therapy, etc.).

<sup>3</sup> Possible conflicts among adolescents are treated regularly within the centre, and reports to other competent institutions are not necessary. Non-compliance with the house rules is treated by an expert group of SEWCC Črna. For violations such as the smuggling of alcohol and drugs or theft from inmates discussion and reprimand are used first. In cases of repeated violations, privileges such as attending games and other forms of socialising are suspended.

<sup>4</sup> Wards are provided with numerous special and enriched support programmes adapted to different intellectual disabilities (exercise and sport, swimming, sacramental preparation and spiritual growth, reading badge, drama group, flower club, folklore, book club, puppet group, fine art therapy, etc.). The extraordinary tidiness and orderliness of the centre and its surroundings also influence their well-being.

<sup>5</sup> Special attention is paid to cooperation with relatives, which takes place in various manners: providing regular information to parents, custodians or close relatives on the condition, development, progress and peculiarities of children, adolescents and adults; implementation of counselling discussions for parents; attending evaluations of wards' individual programmes. SEWCC Črna also arranges parent-teacher meetings, picnics with parents, visits of parents on holidays and out-of-school classes, visits of adolescents to their homes if necessary, and similar. The cooperation of relatives with the centre is generally good.

## ► NPM proposal

NPM: our recommendation to the acting director would be to supplement and update the information on the website.<sup>6</sup> We also recommend that each annual work plan be published on the website.

NPM: we agree with the manner of admitting adolescents to the centre<sup>7</sup>; however, it is our proposal that an individual plan also be signed by those adolescents who, considering their deficiencies, disorders or handicaps, are able to comprehend its meaning.

NPM: it is our opinion that the current manner of managing personal documentation on adolescents might not be transparent<sup>8</sup>. We propose that SEWCC Črna introduce a comprehensive inventory of each protégé's personal file on the first page, combining both parts into a whole.

NPM: we encourage the centre to continue to pay suitable attention to the extra-curricular activities in which adolescents are involved, as these are essential for a successful introduction of adolescents to fields that they enjoy.<sup>9</sup>

NPM: in a discussion with the acting director, we detected a problem with placement in SEWCC Črna for those adolescents who were

## ► response from competent authorities

MLFSA: in 2012, the entire website was transformed and changed in terms of content by SEWCC Črna, and the information on the website is regularly updated. The annual work plan was also published under the tab 'Information of public character'.

MLFSA: with consideration of the recommendation of NMP, those adolescents who, considering their deficiencies, disorders or handicaps, are able to comprehend the meaning of an individual plan, sign it.

MLFSA: regarding the opinion of NPM that the existing manner of managing personal documentation on adolescents is not transparent, the centre commenced the introduction of an inventory of a file on the first page of each individual's personal file, and plans to organise the personal files of all individuals within two months.

MLFSA: according to the regulations in force, SEWCC Črna has been implementing a special education programme for children and

<sup>6</sup> A leaflet with basic information on the centre is available to all applicants for acceptance to the centre. Information is also available on the centre's website, but a few flaws were noticed upon the revision of the contents.

<sup>7</sup> We established that an individual plan of life with the emphasis on specific objectives is drafted after the first month of each adolescent's stay in the centre. In addition to the staff and the competent social work centre, parents or custodians and the adolescent as the subject of the programme are included in the drafting of the plan and subsequent evaluations. We also established that the centre's practice had been that all the participants and those responsible for the implementation of an individualised programme sign it, except for those adolescents who do not.

<sup>8</sup> We verified that the personal documentation of each individual is handled in a personal file. The expert part of the documentation referring to the acceptance (decision on placement) and other of the adolescent's peculiarities was separate from other parts, such as individualised programme.

<sup>9</sup> In SEWCC Črna, adolescents are educated according to a special education programme. The programme includes 61 adolescents, 41 of whom reside at the centre, while 20 attend on a daily basis. Life in the centre is organised into smaller groups. A great deal of attention is paid to the active use of free time and the opportunities to be included in enriched forms of work, primarily in organised forms of cultural, recreational and sport activities in the centre, town and beyond. Adolescents may be included in activities according to their own desires and interests. They also assert the possibility of self-advocacy.

issued a decision on placement due to the imposition of an educational measure by the court. Only two adolescents were provided with a court decision on placement in SEWCC Črna on the day of our visit. On that day, only one adolescent, with whom we had a discussion, was placed on the basis of a court decision and a decision on placement. The other adolescent had not yet been admitted, despite the court decision being final. The acting director explained that the centre did not possess adequate accommodation space for these adolescents and also required additional staff in order to perform suitable activities for adolescents. The adolescent who had not yet been admitted is subject to a decision on placement as a child with behavioural and emotional disorders and not as a child with a moderate, severe or profound intellectual disability. The aforementioned is worrying, as it reflects disrespect for the decision of the court which imposed on the adolescent the educational measure of committal to a special education institution. According to the provisions of the Enforcement of Criminal Sanctions Act (ZIKS-1), the educational measure of committal to a special education institution is implemented in centres for the special education of children and adolescents with physical and intellectual disabilities.<sup>10</sup> We request that the MLFSA or SEWCC Črna provide information on all measures taken, so that SEWCC Črna is able, in terms of staff and organisation, to admit all adolescents on whom

adolescents with intellectual and physical disabilities. Pursuant to the Placement of Children with Special Needs Act (ZUOPP), such children and adolescents are placed in SEWCC Črna by committees for placement at the National Education Institute of the Republic of Slovenia. Due to the aforementioned, SEWCC Črna was appointed with the Decision of the MLFSA of 29 September 2010 as a centre implementing the educational measure of committal to a special education institution only for children, adolescents and persons up to the age of 26 who had been referred to a special education programme with a moderate, severe or profound intellectual disability, which is implemented by the Centre, and to which staff and technical norms refer. Due to the specific characteristics and needs of individuals, referrals with court decisions in other instances exceed the capabilities facilitated by the objectives of the special education programme, staff availability and technical conditions of the Centre. Thus SEWCC Črna cannot provide successful re-education and adequate development for all adolescents on whom the educational measure is imposed; however, it can provide them for the population of children and adolescents with intellectual and physical disabilities in whose care the Centre specialises. These were also the reasons for the numerous complications regarding X. Y. He had completed five grades of the elementary school. Thus the National Education Institute of the Republic of Slovenia

<sup>10</sup> The educational measure of committal to a special education institution must be implemented by facilitating adolescent education and training for work, and sport, creative and cultural participation. Thus it is presumed that only those centres are appointed to implement educational measures which are qualified in terms of staff and experts. The court selects the centre in which the adolescent should be placed on the basis of the opinion of the consulting committee at the MJPA. According to the provision of Article 200 of the ZIKS-1, the ministry responsible for social affairs was responsible for selecting centres for the special education of children and adolescents with physical and intellectual disabilities where the educational measure of committal to a special education institution may be implemented. In this regard, the MLFSA notified us that SEWCC Črna had been selected with a Decision of 29 September 2010 as one of the centres for the implementation of the educational measure of committal to a special education institution. Obviously, the Ministry did not determine the centre for the implementation of this educational measure until September 2010, which we marked as unacceptable, as the ZIKS-1 came into force on 9 April 2000. We also established that SEWCC Črna had not been prepared to implement this educational measure in terms of staff and organisation. Due to the complications regarding the acceptance of adolescent, X. Y. (decisions on the actions of the Social Affairs Inspection Service and decisions of the MLFSA in this regard), a question arose as to whether there was a centre in this country which could implement the educational measure of committal to a special education institution for all adolescents, as anticipated by the Criminal Code. We added that the Decision of the MLFSA no. 149-11872010-6 of 29 September 2010 obliged SEWCC Črna to implement this measure only for children, adolescents and persons up to the age of 26 who had been referred to a special education programme with moderate, severe or profound intellectual and physical disabilities, which, however, was not the condition determined by the Criminal Code to implement this measure. More information on the aforementioned is provided in the continuation of this report.



the educational measure of committal to a special education institution has been imposed. At the same time, we request an explanation of the complications regarding the admission of X. Y., and information as to whether, and when, this adolescent was eventually admitted to SEWCC Črna.

NPM<sup>11</sup>: we have already emphasised that, according to the provisions of the ZIKS-1, the educational measure of committal to a special education institution is implemented in special education institutions for children and adults with physical and intellectual disabilities. The educational measure of committal to a special education institution must be implemented by facilitating adolescent education and training for work, and sport, creative and cultural participation. Thus it is presumed that only those centres are appointed to implement educational measures which are qualified in terms of staff and experts. The court selects the centre in which the adolescent should be placed on the basis of the opinion of the consulting committee at the MJPA. According to the provision of Article 200 of the ZIKS-1, the ministry responsible for social affairs was responsible for selecting centres for the special education of children and adolescents with physical and intellectual disabilities at which the educational measure of committal to a special education institution may be implemented. According to your explanation, SEWCC Črna was selected with a Decision of 29 September 2010 to implement the educational measure of committal to a special education institution, but only for certain adolescents (those placed in a special education programme with a moderate, severe and profound intellectual disability with the decision on placement), while others “exceed the capabilities facilitated by the objectives of the special education programme, staff availability and technical conditions of the Centre”. Thus we may conclude that Slovenia still lacks an appropriate institution at which the educational measure of committal to a special education institution can be implemented for all adolescents (including those not subject to a

had no legal basis on which to issue a decision on placement in the special education programme in SEWCC Črna, while the latter had no legal basis for the admission of a ward without a suitable decision on placement, which is the basis for financing the service. Despite the aforementioned facts, X. Y. was admitted to SEWCC Črna on 1 October 2012.

MLFSA: our explanation is that the MLFSA selected SEWCC Črna to implement the educational measure of committal to a special education institution with Decision no. 149-118/2010-6 of 29 September 2010. Regarding your request for the MLFSA to inform you on all measures taken in accordance with the provision of Article 200 of the ZIKS-1, we attach the above-mentioned Decision, which shows that the Ministry appointed SEWCC Črna to implement the educational measure of committal to a special education institution for children, adolescents and persons up to the age of 26 who had been referred to a special education programme with a moderate, severe or profound intellectual disability. The fact that the MLFSA is responsible only for social welfare institutions for special education in the Republic of Slovenia which implement a special education programme was also considered. Taking into account the fact that the Ministry is responsible only for social welfare institutions for special education, the competent institutions were notified by letter (“Educational measure of committal to a special education institution” no. 070-20/2010-3 of 29 September 2010) that the procedure for placing a child in a social welfare institution is defined in the ZUOPP. Pursuant to Article 23 of the ZUOPP, the National Education Institute of the Republic of Slovenia issues a decision on the placement of a child in an education programme on the basis of the expert opinion of the committee for placement. The decision on placement determines the education programme in which a child is placed, kindergarten, school or institution in which a child is placed, and the date of placement (Article 24 of the ZUOPP). If a child has not been placed and the court rules that the child needs special placement in a social

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<sup>11</sup> These are statements from NPM’s response (sent on 16 October 2012) to the first reply of the MLFSA to the report on the visit.

decision on placement), in spite of the statutory commitment of the ministry responsible for social affairs to select centres to implement this measure. We believe that this situation is worrying and requires the urgent adoption of all necessary measures for each educational measure of committal to a special education institution to be implemented; otherwise, the question of the rationality of imposing such an education measure arises. The educational measure of committal to a special education institution does not have an effect if it is merely imposed, but not implemented, as a (certain) institution which could implement this measure does not even exist. Thus we call upon the MLFSA again to notify us on all adopted actions regarding this issue.

welfare institution for special education, the National Education Institute should make a transitional decision, pursuant to the ZUOPP, on the basis of the result and opinion of the committee for placement. In addition, the MLFSA submitted an opinion stating that Article 200 of the ZIKS-1 should be amended so that the Ministry of Education, Science, Culture and Sport would also be able to decide which special education institutions for children and adolescents with physical and intellectual disabilities may implement the measure of committal to a special education institution. The attachments show that on several occasions the MLFSA has alerted the MESCS to the problems regarding placing children and adolescents in juvenile institutions.

MJPA: according to the data of the MJPA and its consulting committee from recent years (since 2008), two educational measures of committal to a special education institutions have been imposed. The first one, in 2009 (the Ombudsman was also informed of the case; the letter is attached), was implemented partly at Planina Juvenile Institution and partly at the Special education, Work and Care Centre Dobrna, and the second one was supposed to be implemented at SEWCC Črna. In recent years, the MJPA has already dealt with these problems and made agreements with the ministries responsible (MLFSA and MESCS) regarding the selection of a suitable centre. Thus the MLFSA appointed SEWCC Črna to implement the educational measure of committal to a special education institution.

NPM<sup>12</sup>: we hereby inform you with the reply of the MLFSA of 5 November 2012 no. 070-25/2012, which confirms our finding that Slovenia still does not have an appropriate institution where the educational measure of committal to a special education institution can be implemented for all adolescents (including those not subject to a decision on placement). As we have already emphasised, this situation is worrying and requires the urgent adoption of all necessary measures for each educational

MJPA: Article 199 of the ZIKS-1 stipulates that the educational measure of committal to a special education institution is implemented in special education institutions for children and adolescents with physical and intellectual disabilities. Article 200 stipulates that the ministry responsible for social affairs shall determine which special education institutions for children and adolescents with physical and intellectual disabilities may implement the educational measure referred to in Article 199.

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<sup>12</sup> These are statements from NPM's response (sent on 16 October 2012) to the MJPA's reply to NPM's response to the first MLFSA's reply.

measure of committal to a special education institution to be implemented; otherwise, the question of the rationality of imposing such an education measure arises. Thus we request information on when to expect (obviously urgent) changes in the legal regulation of the implementation of the educational measure of committal to a special education institution. At the same time, we propose that the MJPA notify the courts imposing this measure that, for the time being, the only social welfare institution where this measure is actually being implemented is SEWCC Črna, but only in cases when the National Education Institute of the Republic of Slovenia issues a decision on the placement of a child in a special education programme.

With Decision no. 149-11812010-6 of 29 September 2010, the MLFSA determined that the educational measure of committal to a special education institution be implemented by SEWCC Črna, whereby it determined an additional condition without legal foundation that an adolescent must also be placed in a special education programme. Article 81 of the Criminal Code stipulates that the court may subject an adolescent with intellectual or physical disability to placement in a special education institution instead of a juvenile institution or youth detention centre. This measure may also be imposed by the court instead of the safety measure of obligatory psychiatric treatment and care in a health institution if it is possible to attend to treatment and security at the special education institution, thus achieving the purpose of this educational measure. The adolescent shall remain in a special education institution as long as necessary for his or her training, treatment or care, but not longer than three years. If the court imposes this measure on an adolescent instead of the safety measure referred to in the second paragraph of this article, each year after one year of treatment and care, it should be decided whether they are still necessary. When the adolescent comes of age, the court verifies whether it is necessary for him or her to remain in that institution or be relocated to a suitable institution for adults. Article 15 of the Rules on the implementation of educational measures stipulates that an institution admits an adolescent on the basis of a notice on the referral to implement the educational measure which is sent by the court to the centre together with the decision imposing the educational measure on an adolescent, and does not anticipate preliminary negotiations between the social work centre and the institution. The MJPA has studied the problem again and established that a special education institute is appointed in accordance with legal provisions. We do not oppose the fact that an adolescent must be placed in a special education programme at the same time, but it is our assessment that this may not be an additional condition for placement in a special education centre on the basis of a court decision on the



placement of an adolescent in a special education institution.<sup>13</sup>

NPM<sup>14</sup>: further on, we request an explanation as to the basis on which the adolescent, X. Y. was admitted to SEWCC Črna on 1 October 2012, if the message that “SEWCC Črna had no legal basis for the admission of a protégé without a suitable decision on placement, which is the basis for the service to be financed” is correct.

MLFSA: all legal bases stipulate the admission of a child or adolescent up to the age of 26 on the basis of a decision on placement made by the National Education Institute of the Republic of Slovenia. But the adolescent, X. Y., referred to SEWCC Črna by the court on the basis of the educational measure imposed on him did not obtain that decision, which was evident from the Decision no. 977-361-388/2009-28 of 12 July 2010 (attached). Pursuant to the third paragraph of Article 16 of the Social Security Act (ZSV), SEWCC Črna implements the institutional care of children and adolescents with a moderate, severe or profound intellectual disability. The procedure of placing a child in an institution is defined in the ZUOPP, and includes placement by the committee for the placement of children with special needs and special education according to a special education programme, which is verified for this group of children and adolescents. The service is implemented on the basis of a contract concluded between SEWCC Črna and the MLFSA, Article 1 of which states: “The contracting parties hereby establish that the subject of this contract is the financing of the implementation of a social security programme and education programme for children and adolescents with physical and intellectual disabilities, and the implementation of a social security programme and education programme for wards with physical and intellectual disabilities from the age of 21 to 26 who are placed in a special education programme on the basis of the expert opinion of the committee.”

NPM: we would also like to note that the implementation of committal to a special education institution must be performed according to the Rules on the implementation of educational measures (Official Gazette of the Republic of Slovenia, No. 85/2009). Thus we propose that SEWCC Črna promptly prepare

MLFSA: the centre appoints a team of experts for all adolescents subject to a court decision, which prepares an individual plan within 30 days, which is then pursued during special education and evaluated at certain intervals.

<sup>13</sup> See the second paragraph of the ‘Reporting’ section of this report.

<sup>14</sup> These are statements from NPM’s response (sent on 16 October 2012) to the first reply of the MLFSA to the report on the visit.

individual plans in accordance with the provisions of the Rules upon the admission of all adolescents on whom the measure is imposed, and monitor the implementation of the Rules as determined by them.

NPM<sup>15</sup>: in the report, we also noted that the implementation of committal to a special education institution must be performed according to the Rules on the implementation of educational measures (Official Gazette of the Republic of Slovenia, No. 85/2009). Thus we proposed that SEWCC Črna promptly prepare individual plans in accordance with the provisions of the Rules upon the admission of all adolescents on whom the measure has been imposed, and monitor the implementation of the Rules as determined by them. In this respect, you explained that the centre appoints a team of experts for all adolescents subject to a court decision, which prepares an individual plan within 30 days, which is then pursued during special education and evaluated at certain intervals. Article 17 of the Rules requires that during the admission period, which lasts up to 20 days, the institution introduce an adolescent to the new environment and prepare an individual plan for him or her. Thus we must draw attention to the fact that the institution's commitment is to prepare an individual plan for an adolescent within 20 days, not 30 days.

NPM: our proposal is for SEWCC Črna to withdraw the act emphasised, i.e. THE DECREE ON THE IMPLEMENTATION OF SPECIAL SECURITY MEASURES IN SEWCC ČRNA IN ČRNA NA KOROŠKEM, and seek suitable solutions in this field together with the Ministry of Labour, Family and Social Affairs.<sup>16</sup>

MLFSA: regarding the warning that the commitment of the institution is to prepare an individual plan for an adolescent within 20 days, we hereby inform you of the incorrect record, as the individual plan (attached) was prepared in 19 days.

MLFSA: the Decree on the implementation of special security measures adopted on 17 June 2010 was revoked with the Decree of 12 September 2012.

<sup>15</sup> These are statements from NPM's response (sent on 16 October 2012) to the first reply of the MLFSA to the report on the visit.

<sup>16</sup> To manage the threatening and dangerous behaviour of an individual, the then director of the centre issued THE DECREE ON THE IMPLEMENTATION OF SPECIAL SECURITY MEASURES IN SEWCC ČRNA IN ČRNA NA KOROŠKEM on 17 June 2010 by reference to Article 29 of the Mental Health Act (ZDZdr). The records 'KEEPING RECORDS ON THE USE OF SPECIAL SECURITY MEASURES' show that a special security measure, i.e. restraint with belts, was last used at SEWCC Črna on 28 August 2010. Without paying special attention to the records on the use of special security measures (as a shortcoming, we emphasised upon the visit that the records had not always shown the actual time of use of a special security measure), we warned that special security measures according to the ZDZdr may be used only in departments under the special supervision of psychiatric hospitals and secure departments of social welfare institutions. SEWCC Črna is not a psychiatric hospital, nor does it include a secure department. For this reason alone, the issue of an internal act on the use of special security measures by reference to the ZDZdr is incorrect, as it has no legal basis. Security measures are

NPM: we recommend that the principal insert a chapter on values to which all people at the institution are bound into part of the annual work plan.<sup>17</sup>

MLFSA: SEWCC added the chapter 'Vision, mission and values' (Chapter 1.3) to the Introduction to the annual programme for 2012.

NPM: we recommend that the rights and obligations of adolescents be published in the centre's presentation publication and on the website.<sup>18</sup>

MLFSA: within the 45<sup>th</sup> anniversary in 2013, SEWCC Črna is planning a new publication that will include the rights and obligations of adolescents, which will be published on the website on 31 October 2012.

NPM: we propose the systematic and permanent education of adolescents and parents on the unacceptability and harmfulness of all types of addiction.<sup>19</sup>

MLFSA: regular education of adolescents and parents on the harmfulness of all types of addiction is implemented at SEWCC Črna. In the first half of the year, two internal lectures on this topic were implemented. By the end of 2012, a lecture on addiction by a psychiatrist is anticipated.

At the working meeting of the Ombudsman, MJPA, MLFSA, MESCS and SEWCC Črna,<sup>20</sup> the participants agreed: (1) that Slovenia does not have a suitable institution to adequately implement the educational measure of committal to a special education institution for adolescents with behavioural and personality disorders, and learning difficulties, which could be the result of physical and intellectual disabilities, but who have not been (timely) recognised as children with special needs and are not subject to a decision on placement by the committee for placement, and who are perpetrators of criminal offences for which the court has imposed on them the educational measure of committal to an institution; (2) that a

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not medical measures, but merely a way of guaranteeing a person's safety by using physical restraint. In the Ombudsman's opinion, such measures are not appropriately regulated by law. They are anticipated by law (as mentioned) only in the field of mental health. However, no act defines the use of security measures in other institutions. The Ombudsman's opinion with regard to this matter is clear: any measure that encroaches on the rights or freedom of an individual, regardless of their personal circumstances, should be determined by law, and the same applies to the method of implementing such measure, its duration and supervision of the measure. The Ombudsman thus stressed that the issue in question should be resolved by amending the ZDZdr or other legislation, which should clearly define all measures permitted to providers of healthcare or social welfare services in order to protect the life or property of an individual, and to limit human rights and freedoms (with or without a person's consent). From the aspect of protecting human rights and fundamental freedoms, the use of (special) security measures is an infringement on a person's personal freedom, his or her integrity and dignity. Thus a legal basis is essential for the use of these measures. Since such a basis does not exist, except for institutions determined by the ZDZdr, any use of special security measures at SEWCC Črna is unacceptable.

<sup>17</sup> Regarding institutionalised forms of adolescent accommodation, NPM pays special attention to the rules related to residence there, house rules and any sanctions arising from a failure to observe the rules. At SEWCC Črna, the house rules and rules of life are integral parts of the publication presenting the centre.

<sup>18</sup> The rights and obligations of adolescents, provisions regarding the behaviour of children, adolescents and adults, and the house rules at the centre have been written and published on information boards, but we did find them in neither the presentation publication nor on the website. According to the acting director, all adolescents and parents receive them upon admission.

<sup>19</sup> According to the acting director, drugs and alcohol do not present a major problem. Problems were only noticed in individuals. These forms of undesirable behaviour were addressed in discussions with the adolescents and their parents.

<sup>20</sup> See the second paragraph of the 'Reporting' section of this report.

question arises in these instances as to why the expert institutions have not recognised the need to place a child; (3) that a problem also lies in the fact that there is no rehabilitation programme for adolescents who belong neither in a juvenile institution nor a special education institution, but are placed in an institution merely to 'put them away' somewhere; (4) that the MLFSA is obliged, according to existing legislation, to provide a list of institutions for the implementation of the educational measure of committal to a special education institution, which includes only SEWCC Črna na Koroškem, but which may only admit an adolescent who is subject to a decision on placement; (5) that appropriate amendments to the Criminal Code and the ZIKS-1 are necessary, since the highlighted problems exist, although there are not many cases, such as the case of the adolescent, X. Y.

The following additional measures are proposed:

- 1.) the MJPA inform courts in Slovenia that impose the educational measure of committal to a special education institution without a decision on placement that the only social welfare institution where this measure may actually be implemented is SEWCC Črna, but only in cases when the National Education Institute of the Republic of Slovenia has issued a decision on the placement of a child in a special education programme,
- 2.) the MJPA must draft urgent amendments to the legal regulations on the implementation of the educational measure of committal to a special education institution (legislation in this field must be synchronised; although such instances are rare, the Criminal Code and the remaining legislation should foresee them),
- 3.) it would be sensible to combine both measures, i.e. the educational measure of committal to a juvenile institution or to a special education institution, in one act,
- 4.) the representative of the MJPA verify what has been done regarding the Ombudsman's proposal in the letter of 26 November 2012,
- 5.) regarding the adolescent, X. Y., SEWCC inform the court on progress or send a report, propose possible changes or propose that the court should decide again on his placement or measures (Articles 389 and 490 of the Criminal Procedure Act; if the court does not decide, SEWCC Črna should duly inform the Ombudsman), and
- 6.) the Ombudsman will highlight the problem in the annual report.

On 15 January 2013, the Ombudsman received a letter from the MJPA addressed to the Supreme Court of the Republic of Slovenia, in which it informed the Ombudsman that the district courts competent to impose the educational measure of committal of adolescents to a special education institution also impose the aforementioned measure on adolescents without a decision on the placement of a child in a special education programme. Furthermore, the aforementioned ministry highlighted that the procedure for placement in social welfare institutions is defined in the ZUOPP and included a guideline issued by the committee of the National Education Institute of the Republic of Slovenia for the placement of children with special needs that SEWCC Črna was the only social welfare institution which may implement the measure of committal to a special education institution, but only if the National Education Institute also issues a decision on placement of the child in a special education programme, and that the Ombudsman emphasised the question of the rationality of imposing the educational measure of committal to a special education institute if an adolescent was not subject to a decision on placement if Slovenia does not have a institution

suitable for adequately implementing this measure, since such a measure has remained unimplemented.

On the next day, i.e. on 16 January 2013, the MJPA informed the Ombudsman that the Supreme Court of the Republic of Slovenia had indicated that a warning regarding the imposition of the educational measure of committal to a special education institution also for adolescents not subject to a decision on placement from the National Education Institute of the Republic of Slovenia would be published in the judges' information bulletin.