

# Written response by the National Human Rights Institution of Slovenia to the Committee against Torture for the examination of the fourth periodic report of Slovenia

September 2023

The Ombudsman is a constitutional body with a mandate to protect and promote human rights in Slovenia. It is the only body in Slovenia with the internationally recognised status of a national human rights institution and was granted A status in January 2021 in accordance with the Principles relating to the Status of National Institutions. Its mandate includes monitoring, research, issuing opinions and recommendations to authorities, human rights education, awareness-raising and investigating complaints from anyone who believes that their human rights or fundamental freedoms have been violated by a state authority, local government authority or holder of public authority.<sup>1</sup> The Ombudsman may initiate a procedure to review the constitutionality or legality of regulations and may file a constitutional complaint with the Constitutional Court on an individual case before him.

The Ombudsman regularly examines complaints relating to the protection of the human rights of people, makes recommendations to competent bodies on how to facilitate the enforcement of rights, raises public awareness of the rights of people, and meets regularly with representatives of various institutions and organisations. More information about the Ombudsman's work and findings can be found in the Ombudsman's annual reports.<sup>2</sup>

**The Ombudsman also acts since 2008 as the National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).**<sup>3</sup> Since 2015, a special NPM unit, which does not deal with individual petitions but only visits places of deprivation of liberty and carries out other duties of the NPM, has been operating within the scope of the Ombudsman's function. This has ensured the separation of the two activities of the Ombudsman, i.e. preventive, which is carried out by the NPM, and responsive, which deals with the complaints received. The exercise of the NPM's duties and powers is thus much more organised and therefore more efficient. Better organisation of the work also allows for better preparation, execution and reporting on each individual visit. The operation of a special internal organisational unit of the Ombudsman that only carries out the duties and powers of the NPM was also stipulated in 2017 in Article 50c of the Act Amending the Human Rights Ombudsman Act (ZvarCP-B) Furthermore, it also stipulated that the NPM be headed by a Deputy Ombudsman, who is authorised by the Ombudsman for a specific period of time.

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<sup>1</sup> [When to turn to the Human Rights Ombudsman?](https://www.varuh-rs.si/fileadmin/user_upload/pdf/zlozenke_nase/zlozenka_praviceANG_web.pdf), [https://www.varuh-rs.si/fileadmin/user\\_upload/pdf/zlozenke\\_nase/zlozenka\\_praviceANG\\_web.pdf](https://www.varuh-rs.si/fileadmin/user_upload/pdf/zlozenke_nase/zlozenka_praviceANG_web.pdf).

<sup>2</sup> <https://www.varuh-rs.si/en/publications-events/publications-documents/annual-reports-test/>.

<sup>3</sup> In 2006, the Act on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) entrusted the Ombudsman with additional duties and powers.

Article 5 of the Act on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that the Ombudsman shall exercise the functions and powers of the NPM. In addition, non-governmental organisations (NGOs) registered in Slovenia and organisations that have acquired the status of humanitarian organisations in Slovenia and are engaged in the protection of human rights or fundamental freedoms, in particular in the field of the prevention of torture and other cruel, inhuman or degrading treatment or punishment, may cooperate with the Ombudsman in carrying out controls at places of deprivation of liberty and in verifying the treatment of persons deprived of their liberty. The Ombudsman selects these organisations to carry out visits with them on the basis of an invitation to tender. The cooperation with the selected NGOs is governed in more detail by agreements.

The Ombudsman, in his capacity as NPM, visits (in accordance with the annual programme of visits) all places of deprivation of liberty in Slovenia, thereby checking the treatment of persons deprived of their liberty, with a view to strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment. Taking into account legal standards, the NPM issues recommendations to the competent authorities on how to improve the situation and treatment of persons and prevent torture and other cruel, inhuman, degrading treatment or punishment. In relation to this they also make suggestions and comments on applicable or proposed laws, as stipulated in the OPCAT.

The NPM also reports on his work in annual reports. **All NPM recommendations and their corresponding responses from competent authorities are published in separate tables per visited institution on the Ombudsman's website.**<sup>4</sup> In 2018, we decided to establish separate tables as an overview of issued NPM recommendations, following the example and positive experience with some national preventive mechanisms. Our own experience and needs were taken into account in their preparation. We first determined the keywords that are going to be used to label each particular recommendation. Thirteen labels were established: **(1) General, (2) Housing conditions, (3) Treatment, working arrangements, (4) Healthcare, (5) Activities, (6) Personnel, (7) Outside contact, (8) Nutrition, (9) Handling unwanted behaviour, violation of stay rules, (10) Records, documentation, (11) Legal safeguards, appeals, (12) Transfer, release, (13) Other.** Following that, we created various sections in the table so as to make it immediately clear during which visit we issued which recommendation and in relation to which place of deprivation of liberty, what location, what type of visit was performed, which non-governmental organisation participated in the visit or if an expert also participated in the visit. The table states the full recommendation, its brief explanation, if needed, type of recommendation (**systemic, general, or individual**), above-mentioned keywords, response to the recommendation and its commentary, if needed, findings from the monitoring visit, and the response to the findings. We also record in the table good practices and commendations that we issued while performing our work. Pursuant to received responses (of the visited institution or superior authority) to the recommendations, we ascertain if the visited institution and/or the competent ministry has adopted and implemented the NPM's recommendation or if it has not been adopted. The implementation of the

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<sup>4</sup> See: <http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/drzavni-preventivni-mehanizem>.

recommendations is also regularly inspected during subsequent (regular) visits to particular institutions and by monitoring visits, if needed.<sup>5</sup>

In this submission, the Ombudsman attempts to highlight some of the issues identified through a comprehensive analysis of cases handled by our institution and the complaints we have addressed relevant to the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Slovenia. Our analysis is mostly focused on the findings within the scope of the NPM. Therefore, this submission does not provide an exhaustive list of systemic problems relating to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **The situation of persons in social care institutions and psychiatric hospitals**

### General

Concerning the treatment of persons deprived of their liberty in social care institutions and psychiatric hospitals, the Ombudsman (also as the NPM) deals mainly with **issues relating to the Mental Health Act<sup>6</sup> or unresolved systemic problems, such as the placement of persons in secure wards<sup>7</sup> in social care institutions<sup>8</sup> on the basis of a court order, and staff shortages and space problems in social care institutions.** For example, one of the institutions visited by the NPM was still accommodating residents in a common room and tried to provide them with as much privacy as possible, while the other, when bed capacity was exceeded, placed beds in a room otherwise used for the implementation of special protective measures<sup>9</sup>.

The NPM, based on regular monitoring and thematic visits in the past, has repeatedly drawn attention **to the unacceptable situation caused by overcrowding in the secure wards of (special) social care institutions.** The state authorities, in particular the competent ministry, have made several promises to find solutions, to open new wards and to regulate the issue soon – but the NPM noted during 2022 visits to (special) social care institutions that there had been no significant improvement. Secure wards are still overcrowded. The courts' decision that admissions should be made to the (special) social care institution when the first place becomes available has, to some extent, shifted the pressure to the places where people are waiting to

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<sup>5</sup> The recommendation tables on our website are updated promptly, while the statistics from the tables that are published in this report represent the state on 13th January 2023.

<sup>6</sup> This Act stipulates the system of health and social care in the field of mental health, the providers of these activities and the rights of persons during treatment in a specially supervised ward of a psychiatric hospital, treatment in a secure ward of a social care institution and during supervised treatment.

<sup>7</sup> As per the Mental Health Act, a secure ward is a unit within a social care institution where persons are constantly given special protection and care as a result of their special needs, and they cannot leave the institution of their free will.

<sup>8</sup> Pursuant to the Mental Health Act, a social care institution is a general or a special public social care institution or concessionaire which provides services within the public service network, and is focused on the protection, accommodation and life of persons whose acute hospital treatment related to a mental disorder has been concluded or who do not require hospital treatment.

<sup>9</sup> As per the Mental Health Act, a special protective measure is an emergency measure used in order to enable medical treatment of a person or in order to eliminate or control dangerous behaviour in cases when their life or the life of others is endangered, when their health or the health of others is grossly endangered or when the person's behaviour is causing serious physical damage to themselves or others and the endangerment cannot be prevented by other, milder measures.

be admitted. This is often in psychiatric hospitals, sometimes in the home environment or in other institutions. Some people are waiting to be admitted to special social care institutions in an environment that cannot care for them effectively and safely, given their state of health. Despite a court order, some wait so long for admission that the (one-year) detention periods expire before admission.

Following the thematic visits already in 2020, the NPM recommended the authorities immediately find appropriate solutions to the unsustainable overcrowding situation in the secure wards of social care institutions. It also noted that the situation observed undoubtedly indicates a violation of the rights of individuals placed in secure wards. The NPM stressed that the situation in such wards, which has been going on for such a long time (ten years and more), can undoubtedly be defined as ill-treatment of the residents.

**The NPM also reiterated its recommendation to find an appropriate solution for the placement of minors in secure wards, as their placement in the wards for adults is not acceptable.** The Ombudsman repeatedly points out that placing children and adolescents with children and adolescents with mental health problems and mental and physical disabilities in secure wards of a special social care institution is not appropriate or suitable when those institutions are intended for adults and are not adapted to children in terms of space, staffing or services and programmes.

In 2021, the Ombudsman recommended that the competent ministry, in cooperation with other responsible authorities, take further measures to fully regulate the status of wards in social care training institutions where children and adolescents with severe mental health problems and mental and physical disabilities are placed, so that their placement and treatment are in accordance with the Mental Health Act. The ministry reported that Ombudsman's recommendations had been partially implemented as a secure ward for children was established in CUDV Dornava due to the urgent need to include adolescents who require additional specialised treatment in a secure ward within the institutional care service (based on a court order). During one of the visits in 2022, the NPM was, however, again informed of an attempted placement of a minor in an adult institution.

After the 2022 thematic NPM visits, it can be concluded (as the NPM has warned in the past) that overcapacity means a deterioration of living conditions for all ward residents, not only the newly accommodated ones. It also significantly increases the workload of the staff, who, already working with the most demanding residents, face daily challenges and overload, including the fear of possible new (violent) reactions from individual residents. Overcapacity only exacerbates the unsustainable situation of residents with a wide range of mental health problems. This particular challenge and sometimes intractable problem, which leads to conflict, verbal and physical violence, has been pointed out by both staff and residents themselves. Again, during this visit, the NPM received repeated warnings from staff that situations often escalate because residents with different problems are living in the same ward.

Although some new places have been opened in the secure wards of two social care institutions, in 2022, two years after the thematic visits in 2020, the NPM regrettably noted that the situation of overcrowding remains almost unchanged. In two years, the responsible state authorities have clearly not yet done enough to ensure that the NPM's recommendations are implemented. Moreover, on the basis of visits to two psychiatric hospitals, the NPM has found

that the distress, including in terms of space, is spilling over into environments where individuals are now waiting for months to be admitted to or detained in secure wards of special social care institutions. There are also (renewed) attempts to place minors, even though these institutions are not suitable for this age group, which all point to the need for (additional) secure wards in institutions primarily dedicated to this population.

In view of the above, the **NPM (re)recommended the responsible ministry to start (much more quickly) adopting appropriate solutions for the placement of individuals who need to be placed in a secure ward so that the existing secure wards of special social care institutions would no longer be overcrowded. The NPM also recommended that sufficient places in secure wards in social care institutions for minors should be made available so that the courts can place minors in need of protection in institutions that are dedicated to and suitable for this population and with the appropriate staff training, can provide them with the best possible care and protection.**

Otherwise, the Ombudsman is aware that involuntary placement and detention in a secure ward of a social care institution constitute an interference with the human rights and fundamental freedoms of the detained person and therefore calls for other forms of treatment of persons with mental disabilities that take place in the community or their home environment, and **persistently calls for the strengthening of the activities aimed at strengthening deinstitutionalisation.**<sup>10</sup>

Based on the findings made by the NPM during visits, the living conditions of residents in special social care institutions are generally good, but these will further improve with the investments expected in the future. The care of these residents is still good, but the lack of suitable expert staff is becoming more prominent recently, as they are difficult to acquire in the labour market.

Through its recommendations and the transfer of good practices, the NPM is striving to constantly improve the living conditions and the quality of care. But, above all, with its preventive work the NPM is trying to prevent ill-treatment, punishment or even torture of people deprived of liberty. We wish to continue these endeavours, and the progress attained over the years gives us satisfaction and the will to continue our efforts. In addition to the mentioned overcrowding in secure wards of special social care institutions and while promoting the processes of deinstitutionalisation<sup>11</sup>, we participated constructively in the drafting of necessary amendments to the Mental Health Act, which would prevent overcrowding by opening new secure wards. Based on Ombudsman request, the Constitutional Court eliminated the option provided by the Mental Health Act that only a legal representative, i.e. the guardian of the person declared legally incapable, can provide their consent for the person to be admitted to, or released from, the secure ward, without a court deciding on the matter as well.<sup>12</sup>

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<sup>10</sup> As per the definition of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, deinstitutionalisation is a broader social process, the end objective of which is an established system of community services individually adjusted to users and capable of adapting to changes and new needs.

<sup>11</sup> As per the definition of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, deinstitutionalisation is a broader social process, the end objective of which is an established system of community services individually adjusted to users and capable of adapting to changes and new needs.

<sup>12</sup> It has been eight years since, in a procedure for the review of constitutionality, which was instigated at the Ombudsman's request, the Constitutional Court annulled certain provisions of the Mental Health Act regarding

## **Education, work and care centres/institutions and residential units of care and occupational centres**

With a large number of social care institutions in Slovenia, we found it important that the activities in this field are enhanced and also expanded to visiting education, work and care centres/institutions (CUDVs)<sup>13</sup> and residential units of care and occupational centres (VDCs)<sup>14</sup>, where children and adults with various disabilities are accommodated. The colleague, who has been involved in visiting such institutions since 2021, thus adds an important element to our work and enhances the NPM's preventive role (especially due to her previous experience in social inspection service).

When visiting education, work and care institutions and residential units of care and occupational centres, **we notice that the freedom of movement is restricted for the majority of users or residents in these institutions, i.e. children and adults with intellectual and/or physical disabilities, and they are thus unable to leave these institutions or residential units independently in accordance with their wishes.** According to the applicable legislation, such restriction of personal freedom in social care institutions is only permitted on the basis of a court decision (or a consent if the person is capable of giving it) as per the provisions of the Mental Health Act and can only be implemented in secure wards of social care institutions. Children and adults with intellectual and/or physical disabilities residing in education, work and care institutes and care and occupational centres, who were not placed in these institutions as per the provisions of the Mental Health Act, but on the basis of the decision on placement to a special education programme or the agreement concluded as per the Social Assistance Act, are, in the opinion of the NPM, subject to a systemic issue, which has been pointed out to the Ministry of Labour, Family, Social Affairs and Equal Opportunities. **We recommend that the Ministry actively engage in activities to determine suitable legal bases for restricting personal freedom of users/residents in all education, work and care institutes and care and occupational centres in Slovenia.**

During the visits, CUDV staff highlighted also the inequality and discrimination experienced by its users with severe mental and physical disabilities. Children and young

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the procedure for admitting people who have been deprived of their legal capacity to secure departments of social care institutions. The legislator has been given one year to adequately harmonise the Mental Health Act with the Constitution of the Republic of Slovenia. The Act on Amendments to the Mental Health Act was submitted for inter-ministerial coordination in October 2022; however, it has not yet been adopted. The Ombudsman recommended that the competent ministry when drafting the amendment, take into account all the professionally substantiated comments received during the public hearing of the draft law and the inter-ministerial coordination process and adopt it as soon as possible.

<sup>13</sup> Social care institutions for training or education, work and care centres accept into institutional care all children and adolescents with moderate, severe or profound intellectual disabilities, who are placed therein on the basis of a decision issued by the National Education Institute of Slovenia.

<sup>14</sup> Care and occupational centres accept persons with moderate, severe or profound intellectual and physical disabilities. The centres carry out adjusted forms of work under special conditions that are intended for persons who are incapable of independent life and work and need assistance with their care. The objective is to promote creativity, a sense of purpose, self-affirmation and to enable users to enjoy the greatest degree of independence possible. Care and occupational centres also implement the service of institutional care, which includes all forms of assistance that replace or supplement the functions of a home or their own family for adults with intellectual and physical disabilities, in particular accommodation, care, organised meals and healthcare.

people with disabilities attending primary school have the right to have an accompanying person, but this is not provided for by law to those in social care institutions. The NPM, therefore, recommended that the Ministry of Education, Science and Sport consider the possibility of assigning a permanent or temporary companion to provide physical assistance during the educational programme in CUDV. The ministry did not agree with this recommendation.

During visits to the CUDVs, the NPM also noted that **the current staffing standards make providing quality and individualised treatment to users difficult**. The ageing of the users and the consequent decline in their abilities show that the CUDVs would need more staff for such users. There is one staff member for every 12 to 20 users, but they note that sometimes one staff member for every four users would be needed.

Similarly, during visits to VDCs, the NPM has observed that **VDC users are ageing, and some are no longer able to participate in the activities of counselling, care and employment services under special conditions**. As the NPM has observed during his visits that VDCs sometimes do not receive the desired response from the responsible ministry regarding the resolution of this issue, the NPM has recommended to the ministry that VDCs should provide 24-hour institutional care for those elderly persons with mental and physical disabilities who are no longer able to actively participate in the work process and in the rest of the activities within the framework of the service of counselling, care and employment under special conditions. The ministry replied that the Regulation on Standards and Norms of Social Welfare Services already allows for the placement of users in 24-hour institutional care. However, they note that there are no agreements between VDCs and users for this type of service, as users do not apply for this service (which has to be paid for).

During the visits to the VDCs, the **NPM also learned from discussions with staff and users that work in institutional care units is often very difficult to organise**. This is particularly a problem in smaller units, where in most units, there are only two staff members with the users in the afternoon, which is a problem when users need individual attention (for example, to accompany them to medical appointments). It is also difficult to organise outings, activities and workshops. Holidays and sick leave are an additional problem. The NPM has therefore recommended that the responsible ministry adjusts the staffing norm to the actual needs of institutional care in the residential units.

### **Crisis centres for children and youth**

The crisis centres for children and youth are intended for emergency accommodation and operate under centres for social work. There are nine crisis centres for children and youth of ages from 6 to 18 years old and two crisis centres for children of ages up to 6 years old in the Republic of Slovenia. The first crisis centre was opened in Ljubljana in 1995, followed by crisis centres in other regions shortly thereafter. They provide short-term (crisis) accommodation for children and youth, while the competent authorities search for a permanent solution for the child or youth during their stay. Following the model of similar programmes abroad, the duration of stay was set at 21 days. In 25 years of the crisis centres' activities, this duration has been proven as adequate. In the beginning of the crisis centres' activities, a key element of crisis accommodation was also the voluntary nature of the stay.

The NPM has started visiting the crisis centres for children and youth in 2020, shortly after the Family Act (FA) entered into force and its implementation started, following the confirmation of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MLFSAEO) that Article 2(4) of the Optional Protocol applies to the accommodation of children and youth in crisis centres pursuant to the Family Act.<sup>15</sup> **Immediately after visiting the first crisis centre, we established that the concept of operation of the crisis centres, a key element of which was the short-term and voluntary nature of accommodation has, in recent years and after taking on new responsibilities (e.g., accommodating unaccompanied minor foreigners, or minor victims or perpetrators of domestic violence), evolved considerably, particularly after the FA entered into force and the courts also began passing decisions regarding accommodation.** The duration of stay became longer. Therefore, back in 2020 we recommended to the MLFSAEO and the Ministry of Justice (MJ) to review the arrangements according to the FA and find an appropriate solution that would prevent the **long-term accommodation of children or youth in crisis centres** arising out of court proceedings that would interfere with their concept of operation. The issue of long-term accommodation in crisis centres for children and youth was also specifically drawn attention to in the Report on the Implementation of NPM tasks in 2020.

We also took note of the long-term accommodation in crisis centres while visiting these institutions in 2021, and in 2022, we found that the duration of stay was becoming longer in all six of the visited crisis centres for children and youth. The employees drew our attention to the distress that long-term accommodation causes to children and youth, as well as to employees. In the reports on visits, we warned about the above-mentioned issues, but we also reiterated the recommendation and recommended that the MLFSAEO, in cooperation with other competent authorities, identify the reasons for long-term accommodation in crisis centres, examine whether such accommodation is in accordance with the purpose of the operation of crisis centres, or whether such placements are for the benefit of children or youth and, if necessary, take appropriate measures so that the operation of crisis centres will be in line with their purpose and benefit children or youth.

The MLFSAEO responded to the warnings and recommendation of the NPM, stating that in order to identify the causes of long-term accommodation and prepare appropriate systemic solutions within the competence of the Ministry, they held a meeting with MJ, during which proposals were adopted for each department to prepare measures within its area of competence. Given that the accommodation in the crisis centre does not enable proper upbringing, education, preparation for life, and cannot serve to replace the function of the home (which represents the substance of other forms of placement in institutional care), the MLFSAEO agreed that, given the systemically determined scope of services provided in the crisis centre during the stay, such accommodation can exclusively be short-term. While searching for solutions to this problem, the MLFSAEO obtained the figures regarding the duration of the stay, i.e., duration of the proceedings from social work centres. In October 2022, however, the MLFSAEO sent a notice to all social work centres, reminding them that it is important that social work centres, within their competencies, carry out those activities that can help to shorten the accommodation of a child or youth in a crisis centre, i.e., by immediately seeking further appropriate accommodation for the child and filing a proposal to issue a new

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<sup>15</sup> Between 2020 and 2022, NPM visited all crisis centres for children and youth (that were operational at the time).

temporary order regarding the accommodation or transfer of the child to foster care, an institution, or to another person, taking into account the child's best interests.

While visiting crisis centres for children and youth in 2020 and 2021, the NPM also ascertained problems due to **inadequate personnel standards for crisis centres**, which is why the MLFSAEO has repeatedly recommended the adequacy of the personnel standards to be checked and changed, if necessary. In September 2021, the MLFSAEO supported the proposal to increase the personnel standards, as proposed by the Association of Centres for Social Work of Slovenia, pursuant to the public authority referred to in Article 68(c) of the Social Security Act (ZSV), so that the standard for the number of employees in crisis centres for children and youth increased from five to six employees, while it increased from seven to nine employees in the crisis centre for children.

While visiting crisis centres, the NPM further noted that increasingly more children and youth accommodated in crisis centres have **emotional or behavioural problems or disorders, or mental health problems**, so the MLFSAEO also recommended that it should examine and take into account these issues in the reform of clarifications and professional guidelines for the operation of crisis centres.

In 2022, the NPM visited for the first time (at that moment) the only crisis centre in Slovenia for children up to the age of six. During the visit, we found that the crisis centre was mostly fully occupied or even overcrowded, and the duration of the stay was longer (as observed in crisis centres for children and youth). We learned that working with children who are staying in a crisis centre for children according to their age or developmental needs, given the complexity of caring for an individual child due to their personality traits, emotional and behavioural distress, and health problems, and given the additional tasks related to the accommodation of the employees' children, is very demanding. Therefore, it was our recommendation that the MLFSAEO explores **the need to establish (at least) another crisis centre for children up to six years of age in Slovenia**, followed by realising the establishment of the potential crisis centre for children as soon as possible. In 2023, another crisis centre for the youngest children under the age of six was opened in Slovenia within the Maribor Centre for Social Work.

### **Centres of expertise for children and youth with emotional and behavioural problems and disorders**

Centres of expertise for children and youth with emotional and behavioural problems and disorders are institutions for the upbringing and education of children and youth with these problems. There are nine specialist centres in the Republic of Slovenia, under which numerous educational, residential, or intensive groups are formed. The NPM has been visiting these institutions since the very start of the performance of its activities.<sup>16</sup>

The activities of the centres of expertise and care for children and youth in these institutions are regulated by the Act on the Treatment of Children and Youth with Emotional and Behavioural Problems and Disabilities in Education (ZOOMTVI), which entered into force at the beginning of 2021. In March 2022, on the basis of ZOOMTVI, a new educational

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<sup>16</sup> Between 2020 and 2022, the NPM visited eight centres of expertise (three of them twice) or 50 different educational, residential, and intensive groups operating within the centres of expertise.

programme and implementing recommendations for the implementation of the educational programme were adopted. For a more effective cooperation between centres of expertise and mental health centres for children and youth, the Protocol of Cooperation between the Centre of Expertise for the Education of Children and Youth with Emotional and Behavioural Problems and Disorders and the Centre for Mental Health of Children and Youth was prepared in November 2021. The NPM welcomed the adoption of the above-mentioned documents with satisfaction, while at the same time paying particular attention to the implementation of the new law and other above-mentioned documents, or to the problems in the implementation of the law, which were brought to our attention by employees.

One such problem that we have often been warned about is the **accommodation of children and youth in centres of expertise according to their place of permanent residence**, which was (newly) introduced by ZOOMTVI.<sup>17</sup> Namely, the Act uniformly governs the centres of expertise, but in fact, centres of expertise are quite different, particularly in their organisation, which is consequently also observable in the treatment of children and youth or in the implementation of programmes (e.g., some centres of expertise handle children primarily in educational groups, others are organised only in residential groups, while some centres of expertise have an internal primary school, and in some areas, there are centres of expertise where children do not have the possibility of attending internal primary education). Employees of some centres of expertise were of the opinion that the accommodation of a child or youth in a centre of expertise in accordance with their place of permanent residence may not be in the (best) interest of the child or youth in all cases. The NPM has repeatedly recommended to the competent ministry (now the Ministry of Education – ME) that, in cooperation with the centres of expertise, it should determine whether the accommodation in accordance with Article 8(2) of ZOOMTVI is really always in the best interests of children and youth or to identify possible shortcomings of such accommodation and take appropriate measures to eliminate them.

Recently, during visits to centres of expertise, we have also found that increasingly more children and youth accommodated in these institutions need **more help, i.e., more structured and intensive help or therapy treatment**. In centres of expertise, they are often confronted with various addictions in children and youth, mental health problems, more severe forms of emotional and behavioural problems, and there is frequent violent behaviour among children and youth (both towards other children and youth, as well as towards employees and property) or self-harm behaviour. Such behaviour of children and youth requires special treatment from the employees of centres of expertise, which ensures the safety of both the child and the youth with such behaviour, as well as other children and youth, and employees. In order to improve the treatment conditions of children and youth in centres of expertise, in relation to the above-mentioned issues we recommended to the competent ministry to provide assistance to centres of expertise in establishing programmes for the treatment of children and youth in intensive

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<sup>17</sup> In accordance with Article 8(2) of ZOOMTVI, after an emergency removal of a child, the centre for social work shall place the child in a centre of expertise which coordinates the cooperation of the centres of expertise in a specific area. By bringing the decision on accommodation, the court or the centre for social work, after issuing a decision imposing an educational measure of placement into an educational/correctional institute, shall designate a centre of expertise that shall coordinate the cooperation of centres of expertise in the defined area. In this case, the child or youth shall, as a rule, be assigned to a centre of expertise in the area where the child or youth resides. As an exception, it may designate a centre of expertise outside the area where the child or youth resides, if there are reasonable grounds for doing so.

care groups<sup>18</sup> and to find other possible solutions in cooperation with the centres of expertise to respond to the problems that the centres of expertise are facing due to the ever increasing number of placed children and youth with mental health problems. After familiarising us with the problems in the treatment of children and youth, we also repeatedly recommended to the centres of expertise to consider the need for the possible establishment of an intensive group within the centre of expertise or the transformation of one of the residential groups into an intensive group. Since we believed that even a smaller number of children or youth in educational, residential, or intensive groups would contribute to the treatment for the greater benefit of children and youth, or solving the exposed issue, we recommended that the competent ministry, together with the centres of expertise, explore the need to **change the criteria for the creation of groups for children with emotional and behavioural problems and disorders (standards for the creation of groups)** and change them accordingly.

During visits to centres of expertise, we also learned about the **situation when a child or youth leaves the centre of expertise for a home environment (e.g. parents, relatives, partner) and does not want to return to the centre of expertise**. In such a case, the employees act in accordance with Article 26 of ZOOMTVI<sup>19</sup>, however, they are often unsuccessful in returning the child or youth to the centre of expertise. Given that children and youth are placed in centres of expertise for the protection of their interests, we considered that in cases where children and youth refuse to return (or even stay for accommodation) from their home environment to the centre of expertise, there should be an effective mechanism for their return (or accommodation) or conditions for the effective enforcement of the decision on return or accommodation in the centre. We have recommended that the competent ministry, in cooperation with other competent authorities, determines whether it is possible, on the basis of the applicable law, to effectively enforce the decision on the accommodation of a child or youth in a centre of expertise or what are the reasons for the difficulties in enforcing the decision on accommodation (particularly in cases where the child or youth refuses to return to the centre of expertise). We have also recommended to the ministry that if the effective enforcement of the decision on the accommodation of a child or youth in a centre of expertise is not possible pursuant to the applicable law, in cooperation with other competent authorities, it should act as soon as possible and provide conditions for the effective enforcement of the accommodation of children and youth in centre of expertise.

When talking with children and young people, we usually learned that they can always express their opinion about the stay and treatment in the centre of expertise to employees or that they can complain or make suggestions, as well as praise the employees or the management of the centre of expertise. Given that ZOOMTVI has provided for **the right of children and youth to legal protection in the event of a violation of their rights during their stay or educational activity in a centre of expertise** and the procedure or bodies that decide on the child or youth's request for the protection of rights, i.e. the right to complaint (Article 30 of

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<sup>18</sup> In accordance with the ZOOMTVI, an intensive group is intended for children and youth who, due to their more difficult problems, require more assistance and more structured and intensive help, i.e., therapy treatment.. In this group, the centre may guarantee a higher level of safety for children and youth by means of the permanent presence of experts, to be decided by the headmaster (Article 13(5) of the ZOOMTVI).

<sup>19</sup> According to Article 26(4) of ZOOMTVI, if a child or youth refuses to return to the centre of expertise or is located within premises where the centre of expertise's professional has no right to access, the centre shall inform the court, the centre for social work, and the competent court of this fact.

ZOOMTVI), and that children often did not know about this right, we have repeatedly recommended that the centres of expertise inform children and young people or their parents or guardians about their rights pursuant to Article 30 of ZOOMTVI and to also publish clarifications on the protection of rights on their websites or on notice boards in the centre of expertise.

## **Psychiatric institutions**

The NPM regularly visits psychiatric institutions. For example, in 2021, the NPM carried out three visits to psychiatric institutions and made 60 recommendations during the visits. During the NPM's visit to the Forensic Psychiatric Unit, which is part of the Department of Psychiatry of the University Clinical Centre Maribor (UKC Maribor), the NPM again found that **it was overcrowded. This systemic problem has remained unresolved for many years, even since the unit's opening. Another critical issue that the NPM repeatedly encounters during its visits to psychiatric hospitals is the implementation of the so-called special protective measures**<sup>20</sup>. The facilities used for physical restraint are often inadequate, as they do not provide sufficient privacy for the restrained patient, and staffing constraints mean that constant supervision of the restrained patient is not always guaranteed.

In 2022, the NPM visited "wards under special supervision" in four psychiatric institutions. He noted that at the time of the NPM's visit, there were three patients in the Idrija Psychiatric Hospital with a detention order who had been waiting for several months to be admitted to the secure ward of the social welfare institution. The two wards under special supervision – the intensive care wards (male and female) – are usually fully occupied (as was the case during the NPMs visit) and occasionally even overcrowded (in which case individual patients are placed in temporary beds).

On the basis of these thematic visits to two psychiatric hospitals, the NPM found that distress, including spatial distress, is transferred to the environments (psychiatric hospitals, home environment), where individuals are now waiting for months for admission or detention in secure wards of special social care institutions.

In June 2023, N1 online media published an article with several testimonies of violence at the University Psychiatric Clinic in Ljubljana. The Ombudsman called for an investigation of the allegations by the competent authorities. The Ombudsman also visited the clinic after the reported allegations, and the NPM is now preparing an in-depth visit on this issue.

The NPM checks the application of special protective measures at each institution visit and devotes a specific chapter in each NPM report on the visit to this issue. In this regard, the NPM has made numerous recommendations on using, supervising, duration and administration of special protective measures as a last resort. The Ombudsman also carefully examines all allegations in each case when dealing with received complaints on this subject. In 2021, the Ombudsman received a complaint regarding the treatment and implementation of a special protective measure at the Department of Psychiatry of the University Clinical Centre Maribor

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<sup>20</sup> Special protective measures under the Mental Health Act are physical restraint with belts and restriction of movement within one room.

(UKC Maribor) addressed to the management of UKC Maribor and the representative of the rights of persons in the field of mental health. In his complaint, the applicant alleged that physical restraint with belts was carried out upon admission to the hospital. The staff members were allegedly violent towards the petitioner during the strapping, and implementing the special protective measure was inappropriate. The Ombudsman received an explanation from the Head of the Department of Psychiatry of the UKC Maribor that the petitioner's complaint had been examined and that the complaint procedure had been concluded with an agreement on resolving the dispute. The petitioner received an apology. A special conference was also organised at the Psychiatric Department of the UKC Maribor regarding implementing special protection measures. The Health Inspectorate carried out an inspection which did not reveal any non-compliance with the regulation which was the subject of the inspection. Based on the explanations received, the Ombudsman concluded that the remedy lodged by the petitioner against the alleged inappropriate treatment was dealt with in accordance with the Patients' Rights Act.

### **Position of persons in police procedures**

In procedures related to complaints that otherwise relate to various aspects of the work of police officers, the Ombudsman conducts the necessary inquiries with the Ministry of the Interior (MI) and other bodies. We commend the cooperation and responsiveness of the MI and the Police to our interventions in the framework of various inquiries and interventions with criticism, opinions and suggestions. If necessary, we also cooperate with the Specialised Department of the Specialised State Prosecutor's Office, which is responsible for dealing with criminal offences that are committed by officials of certain national authorities.

Below we present some of the issues addressed by the Ombudsman in the field of police procedures, which we have considered that may be of interest for the consideration of our country's report.

#### **a) Shortcomings in the record of medical documentation regarding facts and circumstances that are necessary and important for the assessment of compliance between the alleged manner of injury to the injured person and actual determined injuries**

In the process of considering the complaints of the detainee, who stated that he was injured by a judicial police officer during the intervention and use of coercive means, several years ago the Ombudsman identified shortcomings in the record of medical documentation regarding facts and circumstances that are necessary and important for assessing the compliance between the alleged manner of injury to the injured person and actual determined injuries<sup>21</sup>. Therefore, the Ombudsman has reminded the Ministry of Health regarding the "Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Government of the Republic of Slovenia during the visit to the Republic of Slovenia between 31 January and 8 February 2006", in which the CPT warned that the medical examination should contain a record of objective medical findings based on a detailed examination (including the type, location, size, and specific characteristics of each individual injury observed); an important component of the physician's accounts should also be the assessment of compliance between the alleged misconduct and the findings of the objective medical examination, as well as the assurance of the Ministry of Health that it will prepare an instruction for physicians regarding the appropriate recording of all data in the medical records of detainees, prisoners, and wardens in social welfare institutions, particularly

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<sup>21</sup> For more details see the Ombudsman's Annual Report for 2009, p. 60.

in the case of injuries, which will take into account all of the CPT's recommendations, so that the identified shortcomings will be gradually eliminated. The Ministry of Health informed the Ombudsman that it had adopted the Instruction on Recording Information in Medical Records for Detainees and Prisoners, number: 160-103/2008-4 of 3 April 2009 (Instruction), which was sent to healthcare centres, hospitals and private physicians in the Republic of Slovenia and at the same time expressed the expectation that this would eliminate the irregularities highlighted by the Ombudsman.

The Ombudsman notes that this Instruction is clearly not enough and that there is a need for the Ministry of Health to also prepare a special form for entering all the circumstances that are important for assessing the compliance between the alleged and actually determined injuries that are alleged to have occurred during the detention, which would be completed by (each) doctor when examining such an injured person. Such a need is indicated by the Ombudsman's findings in the process of addressing the complaint this year, which was submitted by the initiator because he was allegedly injured by police officers using coercive means during a house search. According to the initiator, he was injured by police officers who were using coercive means with blows to the head. In doing so, he referred to medical documentation that allegedly confirmed a severe concussion with visible consequences of blows to the back of the initiator's head. The Ministry of the Interior (MI), i.e., the General Police Directorate, replied to the Ombudsman's inquiry that the examination of the available medical documentation did not show that the physician would provide an opinion on the correlation of the statements and the actual injuries incurred by the initiator. After an unprofessional assessment, the General Police Directorate assessed that the medical documentation showed that the allegedly injured person had been diagnosed, which diagnosis was not confirmed after the CT scan. The MI also replied to the Ombudsman's inquiry that physicians in practice do not usually provide their own assessment of the correlation of the alleged injuries with the determined injuries because this falls within the competence of the expert, and the physician also did not provide this in the case of the initiator.

We assume that the assessment of correlation between the misconduct, as stated by the complainant, and the findings of the objective medical examination in this (and other similar cases) will ultimately (in court proceedings) be given by a court expert, but it is precisely for the preparation of his opinion that a detailed description is important at the first medical examination of the observed injuries on the subject's body. In the case of the initiator, the medical documentation did not specify the allegations of the initiator on how he was injured. Namely, under "status at admission", it is written that in the area of the mastoid to the right, a contusion mark is visible, and another in the area of the mastoid occipitally to the left, but these are not described in more detail (colour, shape, hardness, etc.). After 24 hours of observation of the initiator, the discharge letter includes in the introduction diagnoses that, at the end of the examinations, are neither refuted nor confirmed (so that it would be clear to the layman), and the initiator is advised to take analgesics as needed, rest for a week and avoid strong sun or light, while in the event his condition deteriorates to do a check-up examination, which could allow the possibility that the initiator actually suffered a concussion while coercive means were used on him. In the discharge letter, it is also not stated whether the condition (shape, colour, hardness) may have changed from the moment when he received the observed contusion marks until discharge, as well as the assessment of the physician, whether (if at all – and what it is) there is a likelihood that these occurred in the manner described by the initiator.

After conducting an inquiry with the MI, the Ombudsman found that the medical documentation of this initiator did not specify the manner of injury, nor were the visible traces on the body described in more detail. The description of the status at the time of admission of the initiator to the emergency surgical unit of the University Medical Centre Ljubljana mentions contusion marks, but does not describe their colour, shape and size. Based on this information and the medical documentation in the above-mentioned case, the Ombudsman notes that the CPT's warning (that the medical examination should contain a record of objective medical findings on

the basis of a thorough examination, including the type, location, size and specific characteristics of each individual injury observed; and an important component of the physician's record should also be the assessment of correlation between the alleged misconduct and the findings of the objective medical examination) and the aforementioned Instruction of the Ministry of Health, have obviously yet to be strictly observed (in practice). However, we can conclude that such shortcomings would not occur if the physician, when examining a person who states that he or she was injured during the deprivation of liberty or when using coercive means by officers, had to fill out a pre-prepared form on the type, shape, colour and all other details of the observed (traces of) injuries on the inspected person, as well as to write down as much information as possible about the alleged misconduct as accurately as possible, which would all contribute to a more reliable (at least later) assessment of the degree of correlation between the alleged method of injury and the actual state of injury. This form could be prepared by the Ministry of Health by taking into account the guidelines of the Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>22</sup>, as already proposed by the Ombudsman (Ombudsman's Annual Report for 2009, p. 61).

In our mediation with the Ministry of Health, we asked for information on whether, in addition to informing health centres, hospitals and private physicians about the Instruction of 3 April 2009, the Ministry of Health may also have checked how this Instruction is complied with and implemented in practice and, if so, in what way. We were also interested in whether, in addition to the Instructions, the Ministry of Health may have taken other measures to implement the above-mentioned warning of the CPT regarding the annotation of medical findings that are important for assessing the compliance between the claimed method of injury and the actual injuries found, taking into account also the guidelines from the Istanbul Protocol, and whether it may plan activities in this direction in the future.

The Ministry explained that after informing all stakeholders about the Instruction, it left the implementation of the Instruction to healthcare providers. However, it announced that it would examine the possibilities of preparing a special form in accordance with the CPT's instructions and guidelines from the Istanbul Protocol in cooperation with the medical profession.

#### **b) Training and work of police officers in relation to questioning and obtaining statements from suspects with an emphasis on respect for human rights**

Based on our own decision, we decided to obtain information from the MI on the current situation in the field of police work and training of police officers in relation to questioning and obtaining statements from suspects, with an emphasis on their respect for human rights.

The MI noted that in point 39 of the Report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended the development of a Code, i.e., Rules of Conduct for police interview during their first periodic visit to the Republic of Slovenia CPT/Inf (96) 18. According to the CPT, such a code should specify procedures in several specific areas, including informing the detainee of the identity of those present at the interview, the duration of the interview, the rest periods during the interviews, the locations where the interviews can be conducted, and determining whether the detainee is in a standing position during the interview, interviewing persons under the influence

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<sup>22</sup> United Nations Human Rights Office of the High Commissioner, New York and Geneva, 2022 (© 2001, 2004, 2022 United Nations), [https://www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol\\_Rev2\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf).

of drugs, alcohol, drugs or in shock. Such a code should also regulate the systematic keeping of minutes on the start and end of interviews, persons present during the interview and any requests of the detained person during the interview. Specific safeguards should be in place for particularly vulnerable people, such as youth or people with physical or mental disabilities.

In this regard, we specifically noted that – even though almost 30 years have passed since the CPT's recommendation was highlighted – its topicality can also be traced in the 2016 initiative of the United Nations Special Rapporteur Juan E. Méndez<sup>23</sup>, which was developed internationally under the auspices of the Association for the Prevention of Torture (APT) in 2021 with the "Principles of Effective Interviewing and Information Gathering", also called the "Méndez Principles"<sup>24</sup>. These principles are based on scientific research, legal standards, and professional ethics and seek to ensure respect for human rights and create a framework that would contribute to improving conduct in police procedures.

We were interested in whether the Police have rules in place regarding the conduct of interviews, which include the focus highlighted by the CPT, and if so, to what extent do they follow the more recent positions covered by the Méndez Principles of 2021. We also asked for information on whether Méndez's principles have already been translated into Slovenian and whether they have been included in the training of police officers and criminologists who perform tasks in the field of detection and investigation of criminal offences and conduct interviews with suspects of criminal offences in any form.

The MI estimates that the recommendations of the CPT from 1996 are already incorporated into the foundations of criminal substantive and procedural law and police legislation in the Republic of Slovenia. It was also ensured that the Mendez Principles would be published by the Police on the Police Intranet after translation.

### **c) Determining the proportionality of the use of coercive means against the crowd at a protest**

In 2022, we completed a comprehensive treatment of police procedures in the implementation of public order maintenance tasks in the framework of monitoring an undeclared rally in Ljubljana on 5 October 2021. Encouraged by some complaints and taking into account that the Ombudsman can also address broader issues that are important for the protection of human rights and fundamental freedoms and for legal certainty, the Ombudsman has scrutinised the proportionality of the use of coercive means against the crowd in the implementation of police procedures in the framework of maintaining public order during the monitoring of this undeclared rally. Both the MI and the Police, which fully cooperated with the Ombudsman in the handling of this case, significantly contributed to the preparation of the final report with their explanations and the requested documentation, which has been published in full on the Ombudsman's website ([www.varuh-](http://www.varuh-)

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<sup>23</sup> In his 2016 report to the UN General Assembly, Méndez called for the development of a universal set of standards for interviewing and related procedural safeguards during investigations, with a view to ensuring that no person (including suspects, witnesses, victims and others) is subjected to torture, abuse or coercion during an interview.

<sup>24</sup> <https://www.apr.ch/en/resources/publications/principles-effective-interviewing-investigations-and-information-gathering>

Based on what was perceived, the Ombudsman emphasised in the final report, among other things, that police officers must be aware that their actions can have a significant impact on the behaviour of the crowd and the individuals in it. If the action of the Police is not primarily actively aimed at the most serious offenders (also in such a way that they are removed from the crowd in a timely manner), this, in the opinion of the Ombudsman, cannot contribute to reducing the tension between the protesters and police officers, but can further exacerbate the tension and thus further endanger both police officers and protesters and other persons present in the vicinity. In order for coercive means against the crowd to be used only when it is really necessary, while their use should not be excessive, that is something that police officers should advocate as part of their tasks at all times when circumstances allow them to do so.

In the Ombudsman's opinion, when choosing and using coercive means to establish public order, particular attention should always be paid to the undesirable effects that these means may have on others (uninvolved persons or those who do not actively resist). At the same time, it is also important to weigh on an ongoing basis if police officers have the powers to carry out the police task in a way that will primarily focus on violators.

Based on the explanations received and the reviewed documentation, the Ombudsman has repeatedly failed to observe the gradual use of police powers (and, in this context, coercive means only as a measure of last resort) in the conduct of the Police. In the opinion of the Ombudsman, it would therefore be appropriate to place the use of gas resources higher on the scale of coercive means, which follow from mild to severe, as could have been observed in the specific case and as the Police also explained in their response to the Ombudsman. This would also be expected due to the wider impact of the operation of this coercive tool, which cannot be satisfactorily targeted only at offenders. The latter is also highlighted as a special reason for the requirement to restrict the use of gas resources by international sources, which the Ombudsman pointed out in the final report.

The case in question also showed that the Police do not have established criteria regarding the (appropriate) amount of gas used on a certain area in the open air. In the opinion of the Ombudsman, the absence of at least indicative criteria in the use of coercive means (especially those whose use is ordered by law by a competent person) may allow their excessive use both in terms of their quantity and in possible situations in which these means are used, even though the legal situation could sometimes be satisfactorily established by a milder coercive means or other authorised police measure.

In the opinion of the Ombudsman, the order of the competent person on the use of coercive means against the crowd (water jet, gas means) in this particular case was not narrowly focused on individual events in terms of time and space (and, if necessary, supplemented or reordered), but covered the entire area where the protesters were located at that time, thus also resulting in situations when these coercive means would also be used against a non-violent crowd.

Since, in the opinion of the Ombudsman, police officers must use the most gentle means of coercion which enables the control of resistance, in the light of the gradual use of coercive means in this particular case, the use of a water jet with an admixture of gas means was undoubtedly problematic. The Ombudsman sees such a measure, which should have been ordered during the entire time when the use of the water jet was ordered, as a disproportionate measure and also as a measure that, in the given circumstances, could have meant unnecessary inconvenience, particularly when it was used against the entire crowd, which was largely non-violent throughout the event.

The report was submitted to the MI for consideration and the Ombudsman also received a response from it. The Ministry announced that all police departments and internal organisational units of the General Police Directorate would be informed of the Ombudsman's final report in this case. The Ombudsman's report should also be presented to the participants as part of their training, which was scheduled for the commanders of the Special Police Unit in December 2022

According to the Ministry's assurances on the wide scope of information with the final report of the Ombudsman within the Police, the Ombudsman assumes that his findings were specifically disseminated to police officers in charge of performing specific police tasks, as well as those involved in planning and managing the protection of public gatherings, and all those within the police who are, among other things, in charge of supervising and preparing legal and regulatory regulations in the field of police work.

The Ombudsman welcomed the measures taken by the MI and hopes that its findings and proposals from the final report can further help to avoid disproportion in practice in the possible use of coercive means against the crowd. In his opinion, it is important that any use of coercive means against the crowd is used only when it is really necessary and it should not be excessive. Therefore, the MI recommends that, in cooperation with the Police, it take (additional) measures to ensure proportionality in the use of coercive means against the crowd.

#### **d) Some findings from NPM visits to police stations**

While visiting police stations, **the Ombudsman, in the role of the NPM, notes that some police stations still do not have the appropriate equipment for audio and video recording of interrogations or monitoring police procedures with detained persons.** In this case, this is a shortcoming, as any allegations of improper treatment of officials by detainees or detained persons cannot be verified in this way, which was also pointed out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) during visits to Slovenia, which has already resulted in calls for measures to be taken to ensure that electronic equipment for recording police procedures will be used regularly. It was also found at several police stations that the premises intended for the reception of persons deprived of their liberty were not monitored by video. In both cases, the NPM has repeatedly recommended that possibilities be explored to provide police stations with suitable equipment for audio and video recording of interviews and that possibilities be explored to equip the premises intended for the reception of persons deprived of their liberty with a video surveillance system.

**The NPM pays special attention to the implementation of police detention or deprivation of liberty by the police,** as this is one of the largest interventions in human rights. Any restriction of liberty entailing forcible detention is considered a deprivation of liberty under

Slovenian law (Article 4(3) of the Criminal Procedure Act). At the time of detention, a person has the right to a lawyer, the right to inform their loved ones or a third party about the arrest, and the right to medical assistance. The Ombudsman points out that the effectiveness of the prevention of torture depends on the implementation of these basic guarantees from the very beginning of police detention and, of course, the appropriate acquaintance with these rights, as there are high risks of ill-treatment of the detained person. We also note that information about the rights of a person deprived of liberty does not only serve as procedural guarantees, but also represents fundamental guarantees against illegal, ill-treatment of a detained person. It is precisely for this reason that the enforcement of these fundamental guarantees must be possible (in fact) for detained persons from the very beginning of their deprivation of liberty. Adequate and appropriate recording of information and then the exercise of these rights and police procedures with the detained person can be of great help and also in the interest of the police, as it demonstrates a willingness to demonstrate legitimacy in the treatment of detained persons. The Ombudsman has thus repeatedly recommended that police officers act with special care and strict respect for all the rights of a suspect who is deprived of liberty when depriving him or her of that liberty.

When reviewing randomly selected recent cases of individual detentions, it was found that there are still **errors or shortcomings in filling in the forms necessary for the execution of detentions, but there are slightly fewer of them than in the past**. Most errors or shortcomings were found regarding the uniform citation of an individual task in different forms (for example, in the form "Decision on detention", in the form "Execution of tasks during detention – official note" or in the computer book of detentions) and regarding the correct entry of corrections in the forms necessary for the execution of detentions. In this regard, the NPM recommended that the management of the PD warn the police officers of the need for more precision in filling in the official forms necessary to carry out the detention.

In 2021, the review of two cases from randomly selected cases of individual detentions also found that the provision of the Article 51(7) of the Police Powers and Tasks Act (ZNPPol), which stipulates that the security check of a person who has been deprived of liberty and ordered detention must be performed by a person of the same sex, was not respected. At the same time, in this case, the violation of the provisions of Article 51(7) of the Police Powers and Tasks Act (ZNPPol), the police officer did not state that the security check of a person who was deprived of liberty and ordered detention could not be postponed until the arrival of a person of the same sex as the person who was deprived of liberty and ordered to be detained. The NPM recommended to the MI that the management of the PD warns the police officers to strictly comply with the provisions of the Article 51(7) of the ZNPPol.

Regarding premises for shorter detentions (up to 12 hours), it was found at several police stations (mainly older buildings) that there is **no direct access to running water for detainees in these premises**. In these cases, the NPM recommended to the MI that during the next renovations of the premises for shorter detentions, the possibilities of arranging access to running water should also be considered.

Police officers shall take away persons deprived of their liberty from the place where they are deprived of liberty in an intervention vehicle that has a specially adapted space for such purpose. Regarding the transport of persons deprived of their liberty, during the NPM visit, an inspection of the transport area in the intervention vehicle is carried out. In several cases, it was found that the **space for the transport of persons deprived of their liberty was not cleaned**, that various objects (e.g. a water bottle) remained in the room for the transport of persons, or that they were not ventilated. In these cases, the NPM (again) recommended that the management of the PP ensure that the area for the transport of persons in the intervention vehicle is regularly inspected and, if necessary, adequately cleaned and ventilated.

During the visits, it was further found that some police stations, especially police stations located in older buildings, **do not have adequate space for outdoor movement – footpaths**. In these cases, the NPM recommended exploring the possibility of arranging a suitable enclosure that would allow persons deprived of their liberty to move outdoors without constant physical supervision by two police officers. In doing so, the NPM also emphasised, i.e. drew attention to the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment during their visit to Slovenia (CPT), namely that measures should be taken to ensure that all persons detained by the police for 24 hours or more are allowed to move outdoors. In this regard, the MI announced that they will consider the possibility of arranging premises that will allow detainees to move outdoors. The case will be realised in the case of the ability of technical solutions and the provision of financial resources.

### **Specifics of the treatment of foreigners**

Based on the examination of complaints and visits to police stations, the Ombudsman found in numerous cases **violations of the rights of foreigners who were apprehended by the police for unauthorised entry into the country from mid-2018 to the end of 2021**. In the cases under consideration, foreigners were often removed from the country without individual assessment, which resulted in violations of the prohibition of collective expulsion, the principle of non-refoulement, the right to asylum, improper implementation of deprivation of liberty and violations of the rules on special treatment of minors.

Already in February 2019, the Ombudsman issued a "Final Report on the Activities and Findings of the Ombudsman on the Conduct of Police Officers with Refugees or Foreigners at the Border with Croatia", based on allegations of violations in police procedures with foreigners expressed by the media and non-governmental organisations.<sup>25</sup> In it, he expressed his concern over the established facts, which indicated that the expressed intentions for international protection were not recorded in certain cases and that other irregularities could occur in some police procedures, including the implementation of collective expulsions. Based on the findings, the Ombudsman proposed that the MI and the Police take all necessary measures to ensure consistent respect for human rights, including facilitating access to international protection, and in particular, more consistent documentation of all circumstances of police procedures with foreigners in a way that would not allow for serious doubt as to whether the person in the procedure had the intention to make an application for international protection or whether he or she had made one.

Later, the Ombudsman addressed the complaint of a Moroccan citizen regarding a procedure in April 2019. After visiting the police station and examining the police file, in his conclusion, he defined as probable the initiator's allegations of that his expressed intention to submit an application for international protection was ignored. In addition, he found violations of rights regarding insufficient information provided to the initiator about the detention and regarding access to his mobile phone.

On 20 July 2020, the Ombudsman also issued a "Final Report on the Handling of Police Procedures with Foreigners in the Area of Ilirska Bistrica Police Station on 19 July 2019",<sup>26</sup> which referred to the police procedures carried out with a group of 108 foreigners, and in that

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<sup>25</sup> <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-o-zahtevi-za-oceno-ustavnosti-uredbe-o-hrupu-in-ravnanju-policistov-na-juzni-meji/>

<sup>26</sup> [https://www.varuh-rs.si/fileadmin/user\\_upload/pdf/Staliska\\_in\\_ugotovitve/2020\\_7\\_22\\_-\\_Koncno\\_porocilo\\_o\\_prijetju\\_in\\_vracanju\\_migrantov\\_na\\_Hrvasko.pdf](https://www.varuh-rs.si/fileadmin/user_upload/pdf/Staliska_in_ugotovitve/2020_7_22_-_Koncno_porocilo_o_prijetju_in_vracanju_migrantov_na_Hrvasko.pdf)

case also found an absence of individual assessment and violation of rights in relation to detention.

In accordance with the previous findings, the Ombudsman included two recommendations in his 2020 annual report, which relate to the elimination of systemic irregularities in border police procedures. In the government's response to them, the Ombudsman did not observe the commitment to improve police procedures and the announcement of concrete measures that would lead to this.

A number of recommendations regarding the proper conduct of procedures with foreigners were also made by the Ombudsman on the basis of the implementation of the tasks and powers of the NPM. Upon random examination of the files, he found, among other things, that the police conducted interviews with foreigners in a group rather than individually, that the circumstances of the procedure are insufficiently documented, and that interpreters did not participate in the procedures, even though foreigners could not understand the procedure without them.

The Ombudsman also summarised his findings on the basis of the examined complaints, own-complaint inquiries and NPM visits in the National Report on the Situation of Human Rights of Migrants at Borders<sup>27</sup>, issued in July 2021 in cooperation with the ENNHRI.

In 2022, the Ombudsman completed the examination of two complaints (an Afghan minor and a Kurdish family), in which he also found that the police had removed foreigners from the country without individual assessment and language interpretation, thus violating the prohibition of collective expulsion, the principle of non-refoulement and the right to asylum.

The systemic and repetitive nature of the violations in the stated period is also indicated by the reports of various non-governmental organisations, which record the testimonies of migrants about their experience in Slovenian police procedures.<sup>28</sup> The same violations were also found by the Administrative Court of the Republic of Slovenia in the case of a Cameroonian citizen.<sup>29</sup>

Since the beginning of 2022, the Ombudsman has not received new allegations of violations in border procedures, which is in line with the reporting of other sources on the changed practice of official authorities.

## Findings from visits to the Centre for Foreigners

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<sup>27</sup> [https://www.varuh-rs.si/fileadmin/user\\_upload/CENTER\\_-\\_ENHRI/Slovenian-National-Report\\_SLO.pdf](https://www.varuh-rs.si/fileadmin/user_upload/CENTER_-_ENHRI/Slovenian-National-Report_SLO.pdf)

<sup>28</sup> Amnesty International Slovenia report from June 2018 on border procedures and pushback allegations, based on a field visit to Bosnia and Herzegovina: [www.amnesty.si/media/uploads/files/Slovenia%20-%20Push-backs%20and%20denial%20of%20access%20to%20asylum,%20Amnesty%20International,%20July%202018.pdf](http://www.amnesty.si/media/uploads/files/Slovenia%20-%20Push-backs%20and%20denial%20of%20access%20to%20asylum,%20Amnesty%20International,%20July%202018.pdf);

Legal-information

Centre for NGOs – PIC report from July 2018 on border procedures and pushback allegations, based on a field visit to Bosnia and Herzegovina;

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Kolpa and Border Violence Monitoring: Report on illegal practice of collective expulsion on Slovene-Croatian border (May 2019): <https://push-forward.org/sites/default/files/2019-08/Report%20on%20illegal%20practice%20of%20collective%20expulsion%20on%20slovene-croatian%20border.pdf>;

Border Violence Monitoring Network report »The Black Book of Pushbacks« (December 2020): <https://left.eu/issues/publications/black-book-of-pushbacks-2022/>.

<sup>29</sup> Judgement No. I U 1686/2020 of 7th December 2020, confirmed by the judgement of the Supreme Court of the Republic of Slovenia I Up 23/2021 of 9th April 2021.

While partially monitoring the removal of foreigners from the country in 2020, the NPM recommended that the Centre for Foreigners provide a medical examination for each foreigner immediately before removal in order to actually determine the health condition and ability of the foreigner to travel or identify any possible health problems that could pose obstacles in the removal process or require special treatment, including the necessary therapy (which must be in sufficient quantity for uninterrupted use even in the country of return until the foreigner is under the medical supervision of his or her home health service), as this can avoid possible subsequent complications during the removal process itself. The MI explained that in accordance with the provisions of Article 7(4) of the Rules on Accommodation in the Centre for Foreigners, Deposit of Own Resources and the Form and Content of the Card on Permission to Stay in the territory of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, no. 11/15), as a rule, a medical examination of a foreigner is already performed. A medical examination determines the health and psychophysical condition of the foreigner. The doctor informs the head of the centre or a person authorised by him or her about all findings that are important for the accommodation of the foreigner in the centre and for the removal of the foreigner. In any case, a medical examination shall be provided prior to the removal of foreigners by joint flights coordinated by the Frontex Agency, as set out in the manual for joint air operations coordinated by the Frontex Agency.

Also, while partially monitoring the removal of foreigners from the country in 2020, the NPM recommended that, due to its importance, when conducted with foreigners with whom direct communication is not possible, the MI interview regarding the procedure of forced removal be carried out with the participation of a translator for the language that the foreigner understands or speaks. In this way, the information on the forced removal procedure will be completely understandable to the foreigner or he or she will have the opportunity to obtain any (additional) explanations on the removal him- or herself. The MI explained that for interviews with foreigners with whom direct communication is not possible requires the use of translators to interpret mutual communication and with whom the Police have concluded framework agreements and copyright contracts. In addition, two employees of the Centre for Foreigners have mastered the Albanian language. Also, the Travis technical device is used in the Centre for Foreigners for interpretation, which is primarily intended for the transfer of basic information in the event that personal interpretation cannot be provided immediately.

Based on two visits, the Ombudsman found that migrants in the Centre for Foreigners were detained in containers with little daylight in mid-2020, without the possibility of daily exits and outdoor movement.<sup>30</sup> According to the authorities, such accommodation was a temporary measure to prevent the spread of COVID-19, which should last between 10 and 14 days. However, the Ombudsman noted that detention in containers could last for more than a month, while the duration of such accommodation was not recorded nor were other checks carried out on how long the individuals were in the containers. In addition, he concluded that the measures taken to protect against the spread of the disease among the detainees in the Centre for Foreigners were inappropriate and contrary to the recommendations of the National Institute of Public Health.

During the NPM's visit to the Centre for Foreigners in 2022, the NPM again recommended that **unaccompanied minors be accommodated in the Centre for Foreigners only exceptionally and that a systemic solution be found for the accommodation of unaccompanied minors as soon as possible (the Ombudsman advocates the placement of all minors, including those accompanied by parents, outside the Centre for Foreigners, which is a closed facility).** The MI announced that the arrest of an unaccompanied minor (UM), who is being dealt with by the Police in connection with an illegal

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<sup>30</sup> [https://www.varuh-rs.si/fileadmin/user\\_upload/pdf/Stalisca\\_in\\_ugotovitve/2020\\_11\\_10\\_-\\_Ombudsman\\_s\\_findings\\_and\\_positions\\_regarding\\_the\\_implementation\\_of\\_detention\\_at\\_the\\_Centre\\_for\\_foreigners.pdf](https://www.varuh-rs.si/fileadmin/user_upload/pdf/Stalisca_in_ugotovitve/2020_11_10_-_Ombudsman_s_findings_and_positions_regarding_the_implementation_of_detention_at_the_Centre_for_foreigners.pdf)

stay in the territory of the Republic of Slovenia, in accordance with the protocol on cooperation between Centres for Social Work (CSW) and the Police in the implementation of assistance to the UM under the Foreigners Act, shall be immediately notified to the locally competent CSW. All further procedures with the UM are carried out with the participation of a CSW professional, who decides on all further measures, including the suitability of UM's accommodation in CT. The systemic solution for the accommodation of unaccompanied minors is not within the competence of the Police, but within the competence of the Government Office for the Support and Integration of Migrants.

Also, while visiting the Centre for Foreigners in 2022, the NPM again recommended that an interpreter be involved in conversations with foreigners, despite the fact that they speak or (partially) understand English, if necessary, as this ensures that the foreigner has a better understanding of the meaning of the procedures in which he or she is involved. The MI announced that foreigners, and especially applicants for international protection in the presence of interpreters, are closely acquainted with the procedures and reasons for accommodation in the Centre for Foreigners, which is also evident from certain documents (e.g. Minutes on the oral imposition of the measure of restriction of movement). In addition, foreigners and applicants for international protection regularly receive answers and explanations from the officials of the Centre for Foreigners and the MI. At the same time, an interpreter is also present if necessary. Also, the staff of the Centre for Foreigners immediately respond to the wishes of foreigners if they express the need for the presence of an interpreter.

### **Ombudsman's findings regarding conditions in asylum reception centres**

Unfortunately, the problem of overcrowding of facilities for accommodation of applicants for international protection, especially the Asylum Home in Ljubljana, has been going on for a long time (according to the Ombudsman's information at least since the beginning of 2022), and the authorities have been looking for solutions for too long, which the Ombudsman often warns the government about and requests appropriate measures. Overcrowding is evidently a result of an increase in the number of applicants for international protection at Slovenia's borders and the elimination of obstacles to access the asylum procedure (see the section "Specifics of the treatment of foreigners"). Official police data show an increase in the number of persons who have successfully filed an application for international protection in Slovenia in recent years: 2019 – 4,993, 2020 – 4,008, 2021 – 5,650, 2022 – 31,447 and in the first seven months of 2023 – 25,601).

When visiting the **Asylum Home in Ljubljana** in the spring of this year, the Ombudsman found that the challenge of insufficient accommodation capacities was not adequately solved, as the maximum spatial capacities of the home, estimated at 350 places, **were greatly exceeded**. According to official data from the Government Office for the Support and Integration of Migrants, more than 1,000 people are accommodated in the Asylum Home in individual periods in 2023. The overcrowding of the Asylum Home for accommodated persons means that the facility is filled with beds (bunk beds), so that applicants **do not have personal space and spaces for socialising and spending leisure time**. There is very little privacy for the residents; personal space is practically limited to the individual's bed. For additional accommodation, living containers are also placed in the courtyards of the asylum home. The Ombudsman considers the situation in these to be particularly inadequate, as there are up to six people accommodated in a container of 14.4 m<sup>2</sup>. During periods of maximum congestion, people will also be accommodated on **folding beds in the corridors of the Asylum Home**.

The Ombudsman also established the inadequacy of the situation due to congestion when visiting the **branch of the Asylum Home in Logatec**, where citizens of Ukraine who seek temporary protection are accommodated, as well as families, couples, single women and unaccompanied minors, seeking international protection. The main form of accommodation is

living containers of 14.4 m<sup>2</sup> in which up to six single persons or up to eight family members were accommodated at the time of the Ombudsman's visit in autumn 2022.

According to the Ombudsman's assessment, the situation in the Asylum Home in Ljubljana and its branch in Logatec **does not meet the minimum standards**, as defined, for example, in the **EASO Guidance on Reception Conditions: Operational Standards and Indicators** of September 2016. In the opinion of the Ombudsman, the identified shortcomings are controversial especially in terms of the **right of accommodated persons to personal dignity referred to in Article 34 and the right to privacy referred to in Article 35 of the Constitution of the Republic of Slovenia**. In individual cases, they can also lead to a threat to **their right to security (Article 34 of the Constitution)**. Situations that do not meet the minimum standards of accommodation may discourage individuals from waiting for a decision on international protection, which, in the opinion of the Ombudsman, also entails an interference with the **right to asylum referred to in Article 18 of the Charter of Fundamental Rights of the European Union**.

The institution of the Ombudsman believes that the system of accommodation and care for migrants **must be prepared for increased arrivals of applicants for international protection**. Otherwise, even more demanding and severe situations may arise, both in terms of ensuring human rights and protecting the public interest (e.g., in the field of public health). The Ombudsman further emphasises that a reduction in the number of applicants for international protection and the consequent congestion of available capacities can also be achieved **by providing rapid (but at the same time fair) international protection procedures**. On the other hand, the Ombudsman strongly condemns all attempts by European countries to respond to the arrival of seekers of international protection with **illegal pushbacks and other human rights violations**, including by failing to provide adequate accommodation capacities.

**Already in the spring, the Ombudsman called on the Government of the Republic of Slovenia and its President to do everything necessary to provide additional spatial capacities for the UOIM to accommodate seekers of international protection.** In its response, the government presented its efforts and emphasised that it is aware of the burden of accommodation facilities, especially the Asylum Home in Ljubljana, which is why, as they wrote, it will continue to carry out all the necessary activities to ensure them. The Ombudsman expects rapid and effective measures by the government in the form of adequate accommodation facilities to protect the dignity and safety of asylum seekers.

In addition to the issue of overcrowding, during his visits to the Asylum Home in Ljubljana and on the basis of the received complaints, the Ombudsman found that the authorities **were detaining applicants for international protection there**. Persons were accommodated in locked rooms for several weeks from arrival at the Asylum Home to the lodging of an application for international protection. They were only allowed access to the courtyard of the asylum home for a limited period several times a day, accompanied by a security guard. Such a restriction of personal freedom was implemented by the authorities without a legal basis and without the issuance of a written decision against which an individual could file a legal appeal, thus violating their **right to personal freedom under Article 19 of the Constitution**. The authorities ended the locking of applicants at the end of March 2022, immediately after being warned by the Ombudsman of the inadmissibility of such a practice. The illegality of the practice was later confirmed by the Administrative Court of the Republic of Slovenia in two cases (no. III U 59/2022 and no. III U 62/2022-50), in which the Ombudsman intervened with an *amicus curiae* submission.

Notwithstanding the change in practice, the Ombudsman noted that the detention continued even after March 2022 against those applicants suspected of being infected with COVID-19. Consequently, the Ombudsman warned the authorities that there was no legal basis for such a measure either. Article 18 of the Infectious Diseases Act provides for a measure of isolation, which is more precisely defined by a by-law, but it does not follow from these two regulations that infected persons can be placed in locked premises. In addition, the Ombudsman pointed out that in any case of deprivation of liberty a decision should be issued against which an individual has the possibility of lodging an appeal. At the beginning of 2023, the Ombudsman made a new inquiry with the authorities and, in response, received an explanation that they no longer lock up infected persons and persons with suspected infection, but only explain to them in understandable language what kind of infection they have and recommend that they do not socialise with the rest of the residents.

### **Foreigner's Act provisions breaching principle of non-refoulement**

In early 2017, Slovenia adopted amendments to the Foreigners Act which allowed for a future restriction on the right to asylum. According to the new provisions, the National Assembly (Parliament) could vote on suspending access to asylum procedure in case migration posed “a threat to public order and internal safety in the Republic of Slovenia”. The provisions were later declared unconstitutional and annulled by the Constitutional Court in a procedure initiated by the Ombudsman.<sup>31</sup>

In 2021, further amendments to the Foreigners Act introduced a similar option in case of “a complex migration emergency” (Articles 10.a and 10.b).<sup>32</sup> If a complex emergency is declared under deteriorating migration-related conditions, the National Assembly can suspend the implementation of the International Protection Act and restrict the access to asylum in Slovenia. If this took place, police officers would be able to reject all intentions from migrants to submit applications for international protection, except in specified cases (individual circumstances or systemic shortcomings that could put the individual under risk of torture, inhumane and degrading treatment in the country to which they are being returned, health reasons or being an unaccompanied minor). Possible appeal against such rejection would not suspend the execution of the decision. The passage of the legislation in parliament was marked by warnings and criticism from human rights advocates that the criteria for declaring a “complex crisis” had not been clearly defined, that the police cannot be asked to decide who to allow or reject access to an asylum procedure based on their protection needs, that no restrictions can be put on prohibition of torture and that the amendment is therefore unconstitutional in much same way as the annulled amendment from 2017.

### **Situation regarding persons serving sentences of imprisonment and detention in prisons (ZPKZ) and educational measure of transfer to a reform school at the Radeče Reform School**

The Ombudsman verifies the complaints of detainees and convicted persons (in some cases by direct visits) with the competent authorities, in particular the Prison Administration of the Republic of Slovenia (URSIKS), the ZPKZ or the Ministry of Justice (MJ), as well as the courts. We commend this cooperation, as the authorities we turn to have responded to our requests on a regular basis. Representatives of the Ombudsman have also been involved in the training of the new generation of judicial police officers for several years.

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<sup>31</sup> Decision U-I-59/17 of 18 September 2019, available in Slovenian at: <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-59-17-z-dne-18-9-2019/>.

<sup>32</sup> Amendments available in Slovenian at: [www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2021-01-1153/zakon-o-spremembah-in-dopolnitvah-zakona-o-tujcih-ztuj-2f](http://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2021-01-1153/zakon-o-spremembah-in-dopolnitvah-zakona-o-tujcih-ztuj-2f).

By acting in this field, we check whether, and if yes, to what extent the rules and standards which the country is bound to uphold by the Constitution of the Republic of Slovenia (CRS) and international conventions to respect human rights, in particular the human personality and their dignity, are respected.<sup>o</sup> During the implementation of criminal sanctions, the convicted person is guaranteed all fundamental human rights, except those that he has explicitly been deprived of or had limited by law.<sup>o</sup> This was also pointed out by the European Court of Human Rights (ECtHR) in its convictions of our country for the violations of the rights of imprisoned persons, and is also expressed in lawsuits of imprisoned persons for compensation for inadequate conditions during imprisonment and/or detention.

Unfortunately, we must conclude that the situation in the field of prisons remains similar to in recent years, when we warned about the overcrowding of (at least some) prisons<sup>33</sup>, also due to a significant increase in the number of foreigners<sup>o</sup>(whose treatment brings additional problems<sup>34</sup>). Most convicts have to serve their sentences in multi-bed rooms, and it is understandable that not everyone who wants to be accommodated in a single room or a room with only a few people, can do so. In the opinion of the Ombudsman, it is important that both URSIKS and individual institutions strive to take into account as much as possible the aspects of the European Prison Rules when transferring or accommodating convicted persons between and within institutions (taking into account other legal provisions<sup>35</sup> and given material possibilities), which do not arise only from the required living space<sup>36</sup> per individual, but also from their abundance in terms of living conditions and thus the well-being of imprisoned persons.

The complaints of imprisoned persons further draw attention to the need to improve living conditions, and in the long run, there is an expected solution for some of these problems through the construction of new accommodation facilities in Ljubljana or by renovating the ZPKZ at Ig (which is necessary due to the poor conditions there), although as we constantly emphasise, the problem of congestion cannot be solved only by the construction of new prisons.<sup>o</sup> We also reiterate the position of vulnerable groups in the ZPKZ. For some time, the Ombudsman has been striving for a better position of imprisoned persons who, due to age, illness or disability, need additional assistance in meeting basic living needs in the form of care or social care during their imprisonment, in order to ensure respect for their personality and

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<sup>33</sup> For example, the Dob pri Mirni ZPKZ reported that, in view of the number of convicted prisoners serving their prison sentences and the spatial capacity of the institution, it was not possible to ensure the standard set out in Article 17 of the Rules on the Execution of Prison Sentences in the so-called old wards (wards 2, 3, and 4). The provision of Article 42(2) of the ZIKS-1, according to which dormitories shall have a maximum of eight beds, cannot be met in these wards.

<sup>34</sup> See, for example: [The Ombudsman supports solutions to eliminate communication problems with foreign-speaking patients in prisons \(varuh-rs.si\)](#).

<sup>35</sup> The convicted person shall be assigned to a single room in accordance with the spatial possibilities of the institution. The dormitories of convicted persons shall have a maximum of eight beds (Article 42(2), of the Penal Sanctions Execution Act (ZIKS-1).

<sup>36</sup> Article 17 of the Rules on the Execution of Prison Sentences (the Rules): "(1) The surface area standard in a single room shall be 9 m<sup>2</sup>. (2) The surface area standard in a multi-bed room shall be 7 m<sup>2</sup> per convict. (3) There shall be at least 2 m of space between the walls of the room and the ceiling height shall be at least 2.5 m. The room referred to in paragraphs 1 and 2 of this Article shall also have a sanitary space of at least 1.5 m<sup>2</sup>. (4) The establishment shall comply with the standards referred to in paragraphs 1, 2 and 3, of this Article in new buildings and in the calculation of the establishment's space capacity, and shall endeavour to comply with these standards also in the case of adaptations of existing buildings."

According to the recommended minimum standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) - (Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015) 44)), the living area for a single occupancy room is 6 m<sup>2</sup>. In the case of a room intended for several persons to live in at the same time, 4 m<sup>2</sup> are provided for each additional person (i.e., 10 m<sup>2</sup> for two persons and 14 m<sup>2</sup> for three persons; this does not include the area for toilets).

dignity. When serving a prison sentence, it is necessary to ensure their proper placement and decent imprisonment, otherwise it may be inhuman or degrading treatment and thus a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. A large proportion of those related to health care are also among the complaints of imprisoned persons. This is provided in the ZPKZ by the healthcare centre in the area of which the ZPKZ operates, on the basis of an agreement concluded between the ZPKZ and the healthcare centre.

The problem of understaffing in all areas of work, especially in the areas of professional work with prisoners and security (according to the available data of more than 100 judicial police officers), also remains in our prison system.

We also visit ZPKZ in the role of the NPM. In 2021 and 2022, the NPM carried out visits to 12 ZPKZ and their dislocated departments. During these visits, it was found in most cases that the capacities were exceeded or that more incarcerated persons were accommodated in the visited ZPKZ than the official capacity of an individual ZPKZ or a dislocated department. Regarding the resolution of congestion problems, the URSIKS General Office explained that they are trying to solve such problems by transferring a closed person from a busier ZPKZ or a dislocated department to another less busy ZPKZ or a dislocated department. For some ZPKZs, the URSIKS General Office also determined the maximum number up to which imprisoned persons are still placed in a busy ZPKZ, otherwise they are immediately placed in another less busy ZPKZ or a dislocated department.

Also, during visits to the ZPKZ and dislocated departments, the NPM still finds that some living quarters of imprisoned persons are equipped with old and worn-out metal furniture. Based on this, the NPM recommended exploring the possibilities of replacing old metal furniture with new wooden furniture as soon as possible. The URSIKS General Office explained that the new wooden furniture has been ordered and will be installed when it is delivered. In conjunction with old metal furniture, the NPM recommended considering replacing foam mattresses with higher quality mattresses for incarcerated persons. During visits, prisoners often pointed out that they had back problems due to poor-quality mattresses. In this regard, the URSIKS General Office reported that for all imprisoned persons who expressed a desire to have their mattress or foam mattress replaced, new ones were ordered. At the same time, he explained that in dialogue with JGZ Rinka, they were looking for a solution on how to start the production of quality beds, which were tested and verified in practice (in ZPKZ Dob pri Mirni).

During NPM visits in the summer months, it was found that with the so-called occurrence of heatwaves, the living spaces of incarcerated persons (especially in older buildings) become very hot, especially in ZPKZ Koper, and that there are cooling problems in this regard. On this basis, the URSIKS General Office was recommended to consider the possibility of adequately cooling the living spaces of imprisoned persons, for example, by additional ventilation or by installing fans. On this basis, the URSIKS General Office equipped most of the ZPKZ and the dislocated departments with fans, with which the incarcerated persons manage to cool the living spaces at least somewhat.

Given the increased number of detainees, the NPM recommended that the possibilities be considered or the necessary measures be taken to enable all detainees, in addition to a two-hour walk, to be able to spend time outside the living quarters for at least a part of the day or to organise activities outside the living quarters. At the same time, we also pointed out the recommendation of the CPT that detainees should also be out of their cells for at least eight hours a day and involved in various useful activities, such as work, education, sports, or other appropriate activities.

Regarding work opportunities, during the visits, the NPM recommended that even more effort be made in finding opportunities to improve the situation regarding the provision of work for

imprisoned persons (both convicts and detainees). In doing so, the NPM emphasised that work contributes to social resocialisation and has a positive impact on the individual's mental state and satisfaction that he or she has done something useful. In this regard, the URSIKS General Office explained that the permanent task of all ZPKZs is to look for various employment opportunities for imprisoned persons, which is a difficult task in the current market situation. Some of the prisoners are employed in so-called housework, but unfortunately, the source of these jobs is not large.

During the visits, the NPM also recommended taking into account the repeated warning of the medical expert that the method of distributing treatment to imprisoned persons by judicial police officers is medically disputed and that attempts should be made to ensure that the therapy is actually fully distributed to imprisoned persons by medical staff. In this regard, the URSIKS General Office announced that they are aware that it would be more appropriate for the distribution of treatment to be performed by medical staff, which is unfortunately not possible due to personnel problems and the organisation of work in prison clinics.

While visiting the Radeče Reform School (RS) in 2019, the NPM recommended that a special programme be established to address the harmful use of drugs and/or alcohol, as well as a programme aimed at strengthening the mental health of minors who are placed in RS Radeče for the implementation of the measure of placement in a correctional facility. The URSIKS General Office reported that RS Radeče had explained that the treatment programme for minors with problems with illicit drugs and alcohol use is fully integrated into the educational programme. All minors are treated collectively and individually within the parent educational group and at higher levels of treatment led by individual educators. Treatment is also carried out within the framework of health care within the general outpatient clinic through a contract implemented by the Radeče Health Centre. Also, individuals with such problems are treated by an institution psychiatrist and occasionally by an external expert, a psychologist. The systematisation act does not provide for a special expert who would deal in depth with the mental health of individuals.

NPM 2019 also recommended that the management of RS Radeče, together with the URSIKS General Office, approach the spatial challenge as soon as possible in a way that will take into account the principles of normative architectural design and will strive to create a humane environment that will contribute to the social rehabilitation of minors and enable them to integrate into the community and ordinary life as soon as possible. It is important that the premises do not cause additional stress and trauma to children, but provide an appropriate supportive environment. The URSIKS General Office explained that RS Radeče and the General Office are aware that the castle in which the living quarters for minors are located while undergoing the measure of placing a minor in a correctional facility is not optimal, after all, it was not primarily intended for this type of activity. They are aware that the best solution for the implementation of their activity would be a facility built for the purpose of implementing the measure, including all accompanying facilities and areas. In this regard, he proposes that the Ministry of Justice should also include the new construction of the Reform School in the strategy of execution of criminal sanctions. Since RS Radeče is well accepted in the local environment, he believes that it would be reasonable to keep the activity in Radeče. Since there is land for construction nearby (owned by the Daughters of Charity of Saint Vincent de Paul), they estimate that it would be possible to purchase land on which the construction of a new correctional facility with all auxiliary facilities and areas that would offer a suitable spatial and architectural environment for optimal social rehabilitation of minors, which would to a greater extent contain the premises of normalisation.

In 2019, the NPM again recommended that the possibilities for the integrated arrangement of all living spaces, not only the floor of the special educational group, be considered as soon as possible, as the current situation in the premises of the special educational group, according to the NPM, is completely inappropriate for the placement of minors from hygienic as well as

human-worthy living conditions. The URSIKS General Office explained that preparations for the implementation of bleaching were already underway at RS Radeče. It is true that minors deliberately and persistently destroy the institutional inventory, but the institution will have to find ways to discourage destructive behaviour within the framework of the educational programme of work with minors. RS Radeče also explained that the procedure for the selection of a contractor for soil replacement in all premises of a special educational group will be carried out soon.

When visiting in 2021, the NPM recommended that the management of the RS Radeče ensure that in the future, both group and individual treatment of minors who have problems with the use of psychoactive substances and alcohol will be held regularly.

In this regard, the URSIKS General Office explained that the treatment of minors who have problems in the field of consumption of illicit substances and alcohol is integrated into the integrated treatment at RS Radeče. This means that such treatment begins in the admission period and the parent educational group (first level), continues intensively at the second level and all the way to the open ward, where minors prepare for discharge from RS Radeče. A common feature of most minors is that they experiment with various prohibited substances, so the fact is that an integrated aspect of the treatment, including the mentioned area, is required. In the event that an individual is diagnosed with addiction to prohibited substances or alcohol, the RS Radeče management examines the possibilities of treatment by various experts – treatment by a general practitioner at RS Radeče, a psychiatrist or an external (clinical) psychologist.