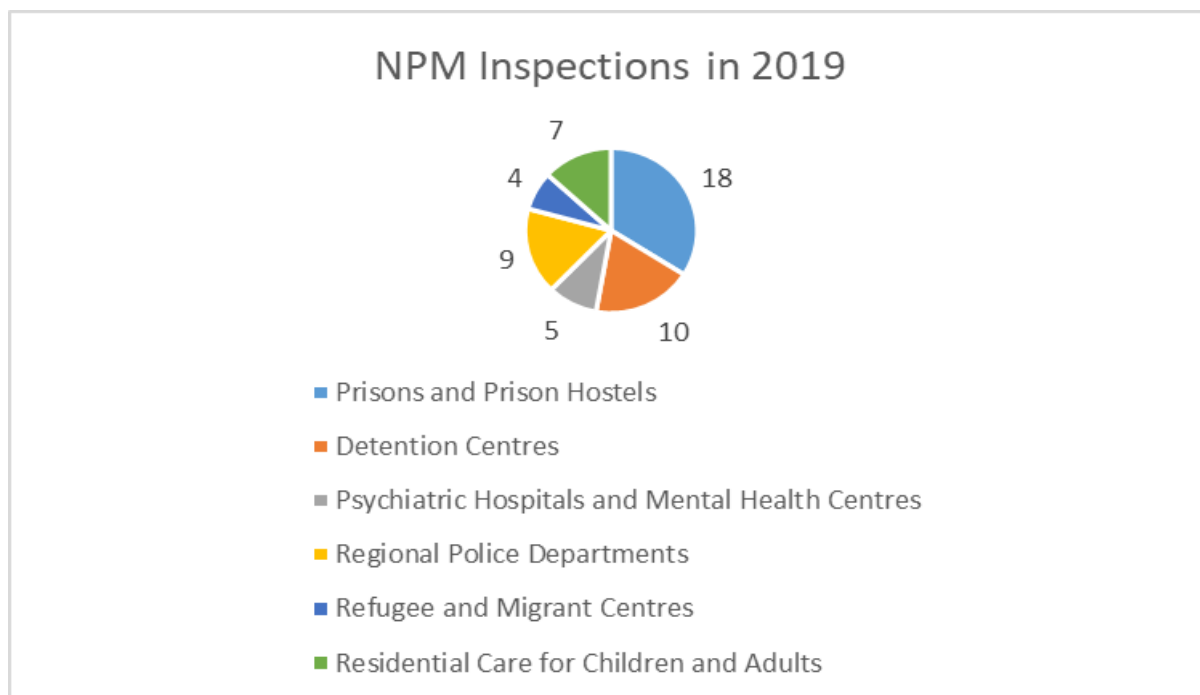




2019 ANNUAL REPORT OF THE OMBUDSMAN ACTING AS NATIONAL PREVENTIVE MECHANISM – SUMMARY

Total number of inspections carried out in 2019, per area of competency:



PLACES VISITED BY THE NPM IN 2019

PRISONS AND PRISON HOSTELS

1. Sofia Prison
2. Kremikovtsi Prison Hostel
3. Kazichene Prison Hostel
4. Vratsa Prison
5. Keramichna fabrika Prison Hostel, Vratsa
6. Vratsa Home for Male Juvenile Delinquents
7. Lovech Prison
8. Atlant Prison Hostel, Troyan
9. Poligona Prison Hostel, Lovech
10. Pleven Prison
11. Vit Prison Hostel, Pleven
12. Pleven Prison Hostel
13. Belene Prison
14. Belene Prison Hostel
15. Sliven Prison
16. Sliven Prison Hostel
17. Smolyan Prison Hostel
18. Kardzhali Court building



DETENTION CENTRES	<ol style="list-style-type: none"> 1. Haskovo Detention Centre 2. G. M. Dimitrov Detention Centre 3. Major Vekilski Str. Detention Centre 4. Vratsa Detention Centre 5. Vidin Detention Centre 6. Kardzhali Detention Centre 7. Smolyan Detention Centre 8. Sliven Detention Centre 9. Pleven Detention Centre 10. Lovech Detention Centre
PSYCHIATRIC HOSPITALS AND MENTAL HEALTH CENTRES	<ol style="list-style-type: none"> 1. Mental Health Centre in Plovdiv 2. University Multi-profile Hospital for Active Treatment in Varna 3. State Psychiatric Hospital in Karlukovo village 4. State Psychiatric Hospital in Kardzhali 5. Mental Health Centre, Sofia region
REGIONAL POLICE DEPARTMENTS	<ol style="list-style-type: none"> 1. Nine centres for 24-hour detention with the Sofia Directorate of Interior
REFUGEE AND MIGRANT CENTRES	<ol style="list-style-type: none"> 1. Special Home for Temporary Accommodation of Foreigners, Busmantsi 2. Registration and Reception Centre in Sofia, three International Protection Proceedings Departments in Voenna rampa, Vrazhdebna and Ovcha kupel
RESIDENTIAL CARE FOR CHILDREN AND ADULTS	<ol style="list-style-type: none"> 1. Two Family Type Placement Centres for Children with Disabilities in Lovech 2. Two Family Type Placement Centres for Children without Disabilities in Lovech 3. Protected Home for Adults with Mental Disorders in Lovech 4. Family Type Placement Centre for Adults with Developmental Disorders in Lovech 5. Family Type Placement Centre for Adults with Dementia in Lovech 6. Protected Home for Adults with Mental Disorders in Lovech Developmental Disorders in Lovech 7. Family Type Placement Centre for Adults with Dementia in Gorsko Kosovo village, Suhindol Municipality



MAIN ACCENTS

RESIDENTIAL SOCIAL CARE FOR ADULTS AND CHILDREN

Children and persons with disabilities who are placed in institutions are the most vulnerable groups in the Bulgarian society. The National Preventive Mechanism (“NPM”) has repeatedly stated its opinion that taking placing children and adults outside their family environment and placing them in institutions should be a last resort and temporary protection measure. Nevertheless, Social Assistance Directorates with the Social Assistance Agency (“SAA”) continue their practice to place children and adults in residential social care, taking them outside of their family environment.

Throughout the years the NPM has recommended to make an expert assessment of the process of deinstitutionalization and the need of providing more social services in the community such as daily centres for children and people with disabilities, public support centres etc. and to provide for more personal assistants. At the same time it is necessary to introduce an efficient procedure for regular supervision by the competent institutions of the social services for children and adults.

According to the NPM, the major factors which will contribute to improving the social care are education, training, and decent remuneration for the specialised staff in the residential social services.

Rights of Persons Placed in Residential Social Services

Pursuant to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 4 of the Charter of Fundamental Rights of the European Union no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

In 2019 the Ombudsman acting as NPM referred to the Prosecutor General signals about violations of the rights of persons placed in the Home for Adults with Dementia in the village of Gorsko Kosovo, Suhindol Municipality, with a view to preventing degrading treatment and ensuring decent living conditions. The NPM is of the opinion that Article 16(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been directly infringed in the case at hand. According to this provision, “[E]ach State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.”

Following the inspections carried out in this Home, the Ombudsman acting as NPM believes that not only the people placed there are treated poorly and in a degrading way, but their fundamental human rights have been violated.



1. Right to private space – there are from three to seven beds in the bedrooms, separated by a narrow aisle between them. There is a bedroom without any cupboard for personal belongings due to lack of space in the room.

2. Possibility to maintain personal hygiene – there is only one shower and two toilettes in a home with the capacity for 60 persons.

3. Right to free movement – the bedrooms are separated from the administrative offices by a corridor and a door, which is locked. Persons who are moving independently go outside in the yard rarely and only accompanied by a staff member. Meals are organized at tables placed in the corridor in front of the bedrooms. There is a canteen, which is one floor below but it is not accessible for people with disabilities and thus it is not used by the people placed in the Home.

4. Right to contacts with relatives – the Home is located in the village of Gorsko Kosovo, which is difficult to access with public transport. In a complaint to the Ombudsman it is pointed out that the relatives of a deceased person were refused information over the telephone (20 July 2019), and the nurse behaved rudely (4 August 2019).

5. Right to professional medical care – there is 24/7 supervision by a medical staff member in the Home but it is not efficient. A neurologist and dermatologist are appointed part-time to fill in the medical doctor F.T.E. One rehabilitation therapist is appointed with a civil contract.

Nevertheless, during the inspection the NPM established that many people were confined to bed, most of them in a state of cachexia and restrained. There was a person placed recently in the Home who had bedsores (decubitus ulcers) that had not been treated for four days due to the nurse's absence. The general practitioner did not visit the people in the Home and had no direct observations about their health condition, while at the same time he was prescribing medication according to data obtained from the nurse.

6. Right to specialized care and social activities – there are two F.T.E.s for social workers in a home with the capacity to accommodate 60 persons, which is extremely insufficient for any professional care to be provided. There is no F.T.E. for a psychologist or labour therapist to assist the placed persons' adaptation to living in a home. There is no space designated for labour therapy or group sessions to add meaning to the patients' daily lives. The patients do not receive any social services in the community and in practice spend the better part of their time in their rooms.

7. Right to safety – there used to be alarm bells above the beds in the past but during the inspection few were working. This undermines the people's safety and prevents timely reaction by the staff.

In this connection the NPM must recall that the European Court of Human Rights established a violation of Article 3 of the Convention in its judgment of 17 January 2012 in the case of *Stanev v. Bulgaria*. Although the victim in that case was placed in a Home for Persons with Mental Disorders, the findings and conclusions of the Court apply also to the homes for people with dementia. Mr Stanev who was placed under partial judicial disability, was placed against his will in a residential social service in the village of Pastra. During a visit to the home by representatives of the Committee for the Prevention of Torture with the Council of Europe, they established that the conditions in the home amounted to inhuman and degrading treatment of the people placed there, namely poor sanitary and material conditions and insufficient food over long periods of time. The Court points out that although the Bulgarian State knew about the poor conditions in that home, no action was taken to close it down. **The Court explicitly states that the lack of financial resources cannot serve as an excuse for placing people in that home.**



Data about degrading and cruel treatment of people with dementia in the Family Type Residential Centre for Adults with Dementia in Plovdiv that was made public further demonstrate the lack of professional staff to render adequate care and the lack of effective control.

In the course of the years the NPM has repeatedly pointed out to the poor material conditions, isolation and lack of communication infrastructure that obstructs specialists' access to the homes for persons with developmental and mental disorders or dementia.

In the view of the NPM, it is essential that the public institutions support the families and relatives of the people who are in risk of abandonment.

It is necessary to adopt clear criteria and medical standards for admitting people in residential social services for adults. Furthermore, a requirement for regular update of the patients' health condition prior to their admission should be introduced. Prevention of dementia through early diagnosis and professional care would further help extend the patients' life expectancy.

The NPM recommends to the Ministry of Health and the Ministry of Labour and Social Policy to apply a strategic approach (e.g. a National Plan for Prevention, Early Diagnosis and Care for People with Dementia) to start a reform in relation to the people suffering from dementia.

Rights of Children Placed in Residential Social Services

Pursuant to Article 7 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention on Human Rights ("ECHR"), every child has the right to respect for his family life.

During the inspections in the institutions for children in 2019 the NPM established that there were children who stayed for 11 years in the institutions, while at the same time their parents enjoyed full custody. The action plans drawn up for all children specify that the long-term objective is the child's reintegration in family environment. According to data provided by the heads of the centres, no reintegration of children has taken place for five years. The Child Protection Departments point out to poor material conditions and lack of parental capacity as the reasons for no reintegration.

In this regards the NPM reiterates that it is high time for the public institutions to establish an individual family approach as a sustainable practice, namely to support families socially, economically and psychologically in the raising of their children rather than place children in social services.

The NPM recalls that the European Court of Human Rights ("ECtHR", "the Court") has repeatedly found violations of Article 8 of the Convention by Member States of the Council of Europe. ECtHR has established that the basic reason for placing children in children's homes has been the lack of adequate housing, thus to improve their situation less drastic measures should have been applied. Reviewing other cases, the Court has further questioned the adequacy of the evidence that substantiated the national authorities' findings. Although the reasons for taking the children outside their families that the public institutions pointed out were relevant, they were insufficient to justify such a serious interference in the applicants' family life. This is why the Court found a violation of Article 8 ECHR.



The NPM recommends to the **Ministry of Health and the Ministry of Labour and Social Policy** to propose an integrated approach for support of the relatives of children and adults at risk of being abandoned, involving further the municipalities, civil associations and other stakeholders.

Other recommendations of the NPM are:

Conduct an expert assessment of the process of deinstitutionalization and the need of additional social services in the community such as daily centres for children and adults with disabilities, public support centres etc. and ensure sufficient numbers of personal assistants;

Ensure a sustainable procedure for regular and effective control by the competent institutions over the social services for children and adults;

The NPM recommends to the Ministry of Health and the Ministry of Labour and Social Policy to apply a strategic approach (e.g. a National Plan for Prevention, Early Diagnosis and Care for People with Dementia) to start a reform in relation to the people suffering from dementia.

Prevention of dementia through early diagnosis and professional care to extend patient's life expectancy;

Improve the material conditions in the residential social services for children and adults, avoid overcrowdedness and ensure adequate premises in easily accessible locations;

It is necessary to adopt clear criteria and medical standards for admitting people in residential social services for adults, as well as a requirement for regular update of the patients' health condition prior to their admission.

Invest in education, training and decent remuneration for specialized staff in residential social services.

PROTECTION OF PERSONS WITH MENTAL ILLNESSES

In 2019 the NPM conducted five inspections in psychiatric medical establishments. The inspections yet again demonstrate the inadequacy of the state psychiatric hospital care and the required reform of the system.

The NPM reiterates that the National Strategy for Mental Health 2020 – 2030 and the Action Plan have not been adopted yet. This impedes the reform of the system for the provision of psychiatric care since the National Strategy envisages improving the material conditions, training of specialists, information campaigns, psychosocial rehabilitation, social assistance etc.

The NPM points out that the health care in the inspected psychiatric medical establishments is unsatisfactory and the patients' safety is not guaranteed.

Another finding concerns the poor and depreciated condition of the inspected medical establishments. During the inspection carried out in the State Psychiatric Hospital in Karlukovo we established that three of the wards were in an old and depreciated three-floor building accessible through unstable stairs with no handrails. The technical equipment in the hospital was not up to the required level.

The average cost for food is below the average for the country for this type of medical establishments (e.g. BGN 1.92 in the State Psychiatric Hospital in Karlukovo and BGN 2.05 in the State Psychiatric Hospital in Kardzhali).

Other problems concern understaffing, social rehabilitation and psychological care, long hospital stay and repeated hospitalization of people with poor social status. There are



patients in the state psychiatric hospitals such as homeless people who live permanently there due to the lack of residential social services for people with mental illnesses. In this sense the hospitals act abnormally as social services.

The main recommendation of the NPM is to carry out a comprehensive in-depth reform of the psychiatric care.

In this connection the NPM recommends to the Minister of Health to specify a reasonable period for the adoption of the National Strategy for Mental Health 2020 – 2030 and the Action Plan to it.

Following the inspections performed in 2019, **the NPM recommends to the Minister of Health** to improve the health care in the psychiatric hospitals (comprehensive medical care and psychosocial rehabilitation), to regularly provide funds to state psychiatric hospitals for repair works and maintenance and good material conditions.

At the same time the NPM points out that it is necessary to expand the funding of the state psychiatric hospitals in order to guarantee decent payment for medical and non-medical specialists and ensure adequate staffing.

The NPM recommends to the Minister of Labour and Social Policy to expand the social services for people with mental illnesses (establish new residential services, protected houses and family-type centres for temporary accommodation) in accordance with the demands in society and terminate the practice of long stays in the state psychiatric hospitals.

PROTECTION OF ASYLUM SEEKERS

Monitoring the rights of unaccompanied minors seeking or granted protection is a major focus of the work of the NPM. In 2019 the NPM notes down an improvement of the care provided by the public institutions for the unaccompanied minors. The main recommendation of the Ombudsman acting as NPM, namely establishing a separate centre for unaccompanied minors with the State Agency for Refugees / Council of Ministers has been partially implemented by setting up “safe zones” in the Reception and Admission Centres in Sofia (in Voenna rampa and Ovcha kupel).

The NPM has established that action has been taken to amend and substitute the Rules on the Conditions for Admission and the Internal Order in the closed type of premises of the State Agency for Refugees with the Council of Ministers in accordance with the recommendations made in 2018. The Ombudsman’s recommendations as regards ensuring minimum living space for every person, statutory regulating the time for stay in open air and meetings with a lawyer outside the preliminary regulated time slots in case of emergencies have been implemented.

In addition, the NPM has established that acting upon its recommendations from 2018, the administration of the Special Home for Temporary Accommodation of Foreigners in Sofia has taken action to repair and improve the material conditions (sanitary and sleeping rooms).

Despite this positive action, a problem persists as regards assigning a legal representative to unaccompanied asylum-seeking minors. In this connection the NPM reiterates this recommendation contained in its 2016 report and calls for a working institute of



legal representation of unaccompanied minors. Furthermore, specific criteria should be in place for the officials acting as legal representatives, and additional training must be ensured for these officials.

A recurrent recommendation of the NPM contained in all annual reports concerns **compliance**, pursuant to Article 44, para 9 of the Foreigners in Bulgaria Act, **with the prohibition of forced placement of minors in the Homes for Temporary Accommodation of Foreigners** with the Migration Directorate. In the course of the inspection of the Home for Temporary Accommodation of Foreigners in Sofia the NPM again established cases of children included in the orders imposing coercive administrative measures on adult foreigners, where the children did not know the adults nor there was any relationship between them.

The NPM did not establish any improvement of the medical care rendered to the foreigners placed there. A major problem as regards medical care for foreigners is the language barrier (and insufficient numbers of interpreters), which leads to difficulties and omissions in establishing the health condition of these persons.

PLACES FOR DEPRIVATION OF LIBERTY WITH THE MINISTRY OF JUSTICE

In 2019 the NPM carried out inspections in six prisons, nine prison hostels, eight detention facilities and one correctional facility for minor boys.

Following the inspections of the living conditions in these 24 places for deprivation of liberty with the Ministry of Justice (“MoJ”), the NPM established a positive trend for improving the material conditions and reducing overcrowdedness in the prisons in Lovech, Pleven and Belene, as well as in the five places for deprivation of liberty in the territory of the Vratsa Prison due to the extensive work on the transfer of the detention facilities in Vratsa, Montana and the Correctional Facility for Minor Boys in Boychinovtsi to the Vratsa Prison.

However, the NPM has further established that the **problem with overcrowdedness persists** in some places for deprivation of liberty, the problem being particularly acute in the Sofia Prison and the detention facilities in G. M. Dimitrov Blvd. and Major Vekilski Str. in Sofia.

The NPM recommends to make a comprehensive expert assessment of the implementation of the Programme for Improving the Conditions of Detention of 8 September 2010 and the Action Plan 2011-2013 to it, and to update the Programme for Improving the Conditions of Detention, with a view to assessing the need to close down detention facilities that do not meet the standards.

At the same time, as regards the places for deprivation of liberty within the system for execution of punishments, **there are no statutory standards for the required quantity of fresh air and day or artificial light.**

In connection with the **medical care** of inmates, it must be pointed out that pursuant to Article 128, para 2 of the Execution of Punishments and Remand in Custody Act, all inmates are health insured as of the moment of their detention and they acquire the status of persons with uninterrupted health insurance rights. The contributions are paid from the State budget by the Ministry of Justice.

The inspections in 2019 show that **the prison health care system remains unreformed and the quality of the health care for inmates does not improve.** The NPM is of the opinion that a **structural reform of the health care in the penitentiary system is**



required, allowing for external referrals, in line with the European Prison Rules. Persons deprived of their liberty are entitled to the type and number of medical services paid by the National Health Insurance Fund under the term and procedure of the National Framework Agreement. At the same time the Ministry of Justice has ensured medical care for the inmates in the medical centres and specialized hospitals set up with the prisons and detention facilities. Thus there is **overlap and double funding for the health care of the persons deprived of their liberty.** Directorate General “Execution of Punishments” (“DGEP”) reports annually understaffing in the medical centres and specialized prison hospitals, which is a bad indicator about the quality of the health care. This fact is largely due to the lack of specialists in the healthcare system in general, on the one hand, and the unwillingness of the Ministry of Justice to improve the working conditions for the specialists in the system, on the other hand.

The NPM is of the opinion that **the success of the reform in the prison health care is intrinsically connected with improving the living conditions and the social inclusion of inmates.** Our recommendations not to allow inmates to act as hospital attendants and to ensure that only medical staff but not guards administer medication to inmates have not been implemented to date.

In 2019 the NPM established further **lack of publicity regarding some rules in the places for deprivation of liberty due to the persisting practice for these rules to be established by an order of the Minister of Justice and not be issued in a legal act.** This concerns the initial distribution of the inmates and the lists with allowed personal belongings. The procedure established in the Administrative Procedure Code to notify the persons concerned about pending issuance of administrative acts (orders) is not followed. The NPM has further established incorrect delegation of powers by the Minister of Justice to the heads of open-type prison hostels, which allows the latter to add items to the list of allowed personal belongings and thus establish unequal conditions for serving time under the same regime.

Unfortunately, the statutory requirement set forth in Article 46 of the Execution of Punishments and Remand in Custody Act for the Minister of Justice to present before the Council of Ministers **the Ombudsman’s recommendations for closing down places for deprivation of liberty which do not meet the requirements** (such as the Sofia Prison, Kremikovtsi Prison Hostel, Keramichna fabrika Prison Hostel in Vratsa) continues not to be met.

Meetings with inmates continue to be contactless, despite the renovated facilities in many detention centres. The requirement has further been set forth in a law, which runs contrary to the recommendation of the Committee for the Prevention of Torture in the opposite sense. **The Sliven Prison is an exception:** meetings there have never been carried out behind bars. Maximum two visits per month are allowed throughout the system for deprivation of liberty. **Meetings with lawyers are as a rule carried out behind bars** (with the exception of the Burgas Prison). Extended meetings allowed as a bonus, which should take place in family environment, are transformed into contact meetings without bars, in the presence of guards and under video surveillance. This does not allow for any possibility of private life for inmates serving under special or strict regimes and increases their isolation.

Wrong use of restraining means (handcuffs) continues within the whole system for execution of punishments when opening external units in medical establishments. Restraining continues for days, without taking into account risk assessment or the health condition of the inmate.



In the course of the inspections the NPM established **wrong calculation of labour performed by inmates** in all places for deprivation of liberty, namely in accordance with the minimum wage and not with the feasible labour standards (unfeasible ones are set). In this connection the **NPM recommended to the Minister of Justice, in his capacity of principal of the State-owned Enterprise Prison Funds to restore the infringed labour rights of the inmates.**

The bad practice to arrange the supply of food stuff in the prison shops through public procurement instead of direct supplies by traders continues. Food stuff is **artificially overpriced** and the monopoly is further strengthened by means of a list of products that may only be purchased from the prison shops but may not be taken inside after visitations.

Another systemic deficit that the NPM has established through the years is the **lack of budget funding for adequate activities carried out by the social workers in their work.** In the newly repaired detention facilities there are no spaces for social activities, and where such exist (e.g. the detention facilities in Plovdiv and Shumen) there are no social workers to conduct these activities.

In addition, due to the large number of inmates placed in every prison group within the whole system for execution of punishments, serving time is organized under a group principle. This leads to excessive workload for the social workers and hence to **formal individual plans.** As a result, **the assessment related to change of the regime for serving time, transfer to an open-type prison hostel or early conditional release is inevitably subjective.** In this connection the judicial review introduced with the latest amendments to the Execution of Punishments and Remand in Custody Act is certainly influenced by the opinion of the administration.

The NPM has established **possibilities for violation of the secrecy of correspondence.** Pursuant to Article 86, para 3 Execution of Punishments Act, “[T]he correspondence of inmates shall not be subject to control of the written content, unless this is required for the detection or prevention of grave crimes”. Thus, the administration in the places for deprivation of liberty has acquired control powers over the inmates’ correspondence, without any sanction of a judicial authority. In this regard **the NPM is of the opinion that clear and precise statutory criteria must be introduced in which cases violation of the secrecy of correspondence is admissible, taking into account Article 34 of the Constitution of the Republic of Bulgaria, which reads as follows:**

- (1) **“The freedom and confidentiality of correspondence and all other communications shall be inviolable.**
- (2) **(2) Exceptions to this provision shall be allowed only with the permission of the judicial authorities for the purpose of discovering or preventing a grave crime.”**

Another problem which the NPM has established again and again through the years is the **excessive isolation of inmates serving life sentences without the right for substitution.**

The NPM recommends to the Ministry of Justice, with a view to continuing the efforts for dealing with the problem of overcrowding:

To make a comprehensive expert assessment of the implementation of the Programme for Improving the Conditions for Deprivation of Liberty of 8 September 2010 and the Action Plan to it (2011-2013);



To propose an update of the Programme for Improving the Conditions for Deprivation of Liberty, together with an assessment of the need to close down certain places for deprivation of liberty which do not meet the standards;

To carry out a structural reform in the prison health care allowing for referrals to external health care services, in line with the European Prison Rules;

To introduce clear statutory standards as regards the required quantity of fresh air and day and artificial light in the places for deprivation of liberty.

In relation to the rights of inmates, the **NPM recommends:**

To repeal the statutory prohibition of barless visitations and meetings with lawyers;

To ensure budget funding for adequate activities in the work of the social workers;

To introduce, through the adoption of an instruction, clear criteria on the basis of the risk assessment for the use of handcuffs in external medical establishments.

The NPM is of the opinion that it is necessary to set forth clear and precise criteria when it is admissible to violate the secrecy of correspondence of the inmates.

Terminate violations of the inmates' labour rights.

Detention Facilities

As regards the system of detention facilities, the NPM established substantial differences in the material conditions in the detention facilities under prison management (e.g. those in Pleven and Lovech) and those under the management of Regional Execution of Punishments Services. The first category have all been repaired, unlike the second category (e.g. the detention facility on G. M. Dimitrov Blvd. or the one in Svilengrad).

The NPM recommends to the Director General of the DG Execution of Punishments to prepare a programme for the development of detention facilities, which to propose to the Minister of Justice for deposition to the Council of Ministers with a view to earmarking the required budgetary funds in the draft state budget for the next years.