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**Pučki pravobranitelj**

REPORT ON THE PERFORMANCE  
OF ACTIVITIES OF  
THE NATIONAL PREVENTIVE MECHANISM  
FOR 2015

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Dear readers,

for four consecutive years we have published the Report on the Performance of Activities of the National Preventive Mechanism, an overview of the situation and the activities in the field of prevention of torture and other cruel, inhuman or degrading treatment or punishment in Croatia. This implies protection of persons deprived of their liberty or those who have been subjected to any kind of detention or placement into a facility under public supervision, which they are not allowed to leave on their own accord.

With that objective in mind, we investigate individual complaints and act preventively, by means of visits of the NPM, which has been our competence since 2012 pursuant to the Act on National Preventive Mechanism for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Assessment of the situation regarding the rights of persons deprived of their liberty in 2015 again revealed an encouraging fact – during the investigative procedures and visits we found no treatment or conditions that could represent torture or inhuman treatment. However, we have found and responded to instances that could represent degrading treatment and violation of constitutional and legal rights. Shortcomings mostly result from failure to comply with the standards, inconsistent treatment caused by flawed normative framework as well as the lack of resources.

The same as last year, the greatest concern is caused by insufficient quality and accessibility of healthcare for persons deprived of their liberty, which is a result of the fact that it is not a part of the public healthcare system, but rather it is organized under the competence of the Ministry of Justice.

When it comes to complaints regarding accommodation conditions, a falling trend continues, most likely as a result of reduced overcrowding. However, there is still need for further improvements, not only in prisons, but also in police stations, psychiatric hospitals and homes for the elderly and people with disabilities.

Last year we received a total of 191 complaints, which is slightly less than the previous year. At the same time, we visited 62 locations in a total of 72 visits, which represents an increase of 227 percent compared to visits made in 2014, and for the first time they included homes for the elderly and people with disabilities. As a result, we issued a total of 279 written recommendations and warnings, 41 more than the year before. According to the data received by the time of writing this Report, 40 percent of the recommendations and warnings have been either implemented or are currently pending implementation.

During the refugee crisis in 2015, for more than 550 thousand refugees Croatia was mostly a transit country, as very few applied for international protection. From the very beginning of the crisis, several of our teams visited locations of refugees' stay or transit and made a series of verbal recommendations, many of which were promptly implemented. Croatia's response to

this demanding situation was adequate, as it implemented a human approach while at the same time successfully providing for the safety of its citizens.

With regard to legislative changes, the provisions of the Act on International and Temporary Protection that were designed to reduce the frequency of the limitations of freedom of movement for applicants for international protection have not fulfilled their intended purpose, which is confirmed by the fact that one in five of them did find him/herself in detention after all. Forced returns have still not been adequately organized, which is why the Ombudsman has been proposed as the institution that could take over the supervision of the process. However, this would be possible only after adequate legislative changes and provided financial resources for the implementation thereof.

The end of the year saw the realization of the possibility of much more extensive cooperation between the NPM and independent experts and representatives of civil society organizations, in accordance with the amendments to the Act on the NPM. A public call for applications was announced, and it resulted in selecting a total of 20 associates.

The Report that you are reading has been prepared with the aim of providing relevant information for anyone who might find them useful in the promotion and stronger protection of the rights of persons deprived of their liberty – primarily for national bodies and institutions, employees in the prison, police, judicial, healthcare and social care systems, civil society organizations, the media, the professional public abroad, but also to the persons deprived of their liberty and members of their families, all the while respecting the right to privacy and protection of personal information. In addition to that, the Report is also intended for anyone who may for any reason be interested in the situation with regard to human rights of persons deprived of their liberty, laws and international standards that regulate them, which is the best path toward fighting prejudice toward this group of citizens. Although having been deprived of their liberty, they are not deprived of their human rights, which is something that is often forgotten. Therefore we believe that if the wider public were better informed about the issue, this would help to achieve a greater level of awareness of the standards of protection that we as a society aspire to.

Lora Vidović,

Ombudswoman



## I. PERSONS DEPRIVED OF THEIR LIBERTY AND THE FUNCTIONING OF THE NATIONAL PREVENTIVE MECHANISM

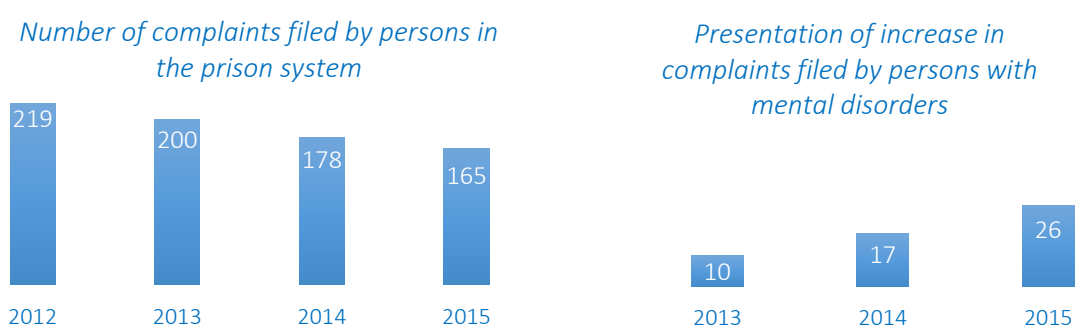
### 1. INTRODUCTION

Persons can be deprived of their liberty or their freedom of movement can be restricted (hereinafter, protection of persons deprived of liberty shall be deemed to include persons whose freedom of movement is restricted) in various systems: prison, police, military, social welfare, healthcare and the system for applicants for international protection and irregular migrants.

The Ombudswoman protects the rights of persons deprived of their liberty in two ways: by handling individual complaints and by preventive action, which involves visits of the National Preventive Mechanism (NPM). In 2015, we received 191 complaints and visited 62 locations in 72 NPM visits.

### 2. PROTECTING THE RIGHTS OF PERSONS DEPRIVED OF THEIR LIBERTY BY ACTING ON COMPLAINTS

The Ombudswoman received complaints from prisoners, persons with mental disorders or members of their families and those deprived of liberty in police stations, asylum seekers reception centres and Foreigners Reception Centre. The number of complaints filed by persons deprived of liberty who were in the prison system in 2015 (165) is 0.7% smaller when compared to the previous year, which means that the trend of reduction of that number continues, whereas on the other hand, the number of complaints filed by persons with mental disorders is increasing.



While accommodation conditions in the prison system were the biggest problem according to the number of complaints in previous years, in 2014 and 2015 most of the complaints were connected with healthcare. In addition to these two problems, prisoners also complained with regard to efficiency of judicial protection, actions of judicial police and violation of their right to contact with the outside world. When it comes to persons with mental disorders, their complaints mostly pertained to involuntary hospitalization and performance of medical procedures without freely given consent.

## 2.1. *Complaints filed by persons deprived of their liberty who are in the prison system*

### *Healthcare*

The quality of healthcare remains one of the most common reasons of complaints by persons deprived of their liberty. According to the records of the Central Office of the Prison System Directorate with the Ministry of Justice (hereinafter: COPSD), 19% of all the complaints filed to penal institutions in 2015 pertained to the provision of healthcare, which confirms the need for systematic and organizational changes in this field. A large share of the complaints still pertains to long waiting periods for physical therapy and to inadequate dental care. There is one complainant who had most of his teeth pulled out more than a year ago, in preparation for a dental prosthesis, which has not been made yet. Considering the fact that at meal time the complainant receives no other cutlery except the spoon, this creates major problems when eating.

The prisoners have filed repeated complaints with regard to the manner of execution of security measures of compulsory psychiatric treatment and compulsory addiction treatment. Those of poorer financial status complain of the obligation of having to pay participation in the costs of treatment and medications, and in some cases even refuse to take medications or they reduce the dosages on their own, in an attempt to reduce the costs of treatment.

*There is one complainant who had most of his teeth pulled out more than a year ago, in preparation for a dental prosthesis, which has not been made yet. Considering the fact that at meal time the complainant receives no other cutlery except the spoon, this creates major problems when eating.*

Non-smokers continue to complain about being put in the same rooms with smokers against their will, constantly exposed to passive smoking. Recently, there have been attempts by penal institutions to separate the smokers from non-smokers where possible, but in case of prisoners on remand and misdemeanour offenders this is often impossible. The situation in the Prison Hospital, the penal institution to which persons deprived of their liberty who require medical treatment are sent to, where smoking is allowed in rooms in which prisoners who are sick spend most of their day, is unacceptable. Therefore, we still insist on protection against passive smoking, for example, by designating special rooms for smokers, which would be available to them for most of the day.

One of constant sources of dissatisfaction among the prisoners as well as the reason for many complaints is the fact that prison physician still cannot issue referral slips and prescriptions for medications, with prisoners' elected physicians doing that instead. Some of them never get to see the prisoners, so primary healthcare is *de facto* provided by the prison physician, and in agreement with him/her, the elected physicians write referral slips and prescriptions, which, as a rule, leads to much dissatisfaction among them, as well. In the beginning of 2015 there was an arrangement between the Ministry of Justice, Ministry of Health and Croatian Health Insurance Fund (CHIF) about finding organizational solutions that would enable prison

physicians to issue referral slips and prescriptions, but this has not been achieved by the time this Report was made. Much of the difficulties that make providing of healthcare more difficult and represent a constant source of dissatisfaction among the prisoners, but also among healthcare providers would have been avoided if prisoners' healthcare were to be organizationally put under the competence of the Ministry of Health. This is discussed in more detail in the chapter on evaluation on the state of the rights of persons deprived of their liberty who are in the prison system.

Some of the prisoners complain about the quality of food, especially vegetarian, and some about the size of the meals in certain penal institutions, which they believe to be smaller than regulations require.

Several prisoners have also complained about lack of seat belts in special vehicles intended for transport of prisoners. Specifically, in the back of the special vehicle one can sit only on the side bench, without hand grips, often with one's hands and sometimes even legs bound, so in the event of sudden braking of the vehicle or changing the direction of driving most prisoners transported that way end up on the vehicle floor by the end of the ride, and sometimes get injured. The Road Traffic Safety Act does not indicate that it is allowed to be without a seat belt in this type of vehicle, and in the Government Regulation on Uniforms of State Officials in State Prison Security Sections, Prisons and Education Centres and in Official State Vehicles, there is no provision pertaining to equipment of the space designated for transport of prisoners, other than the fact that a special protective partition is required to separate the space for prisoners from the space for judicial police officers. Consequently, it is necessary to find an adequate solution with regard to installation of seat belts in all vehicles intended for transport of prisoners, in order to reduce the possibility of the prisoners sustaining injuries.

### *Accommodation conditions*

In 2015, there has been a significant decrease in the number of complaints about accommodation conditions filed by persons deprived of their liberty who are in penal institutions. This can be explained by reduced overcrowding in the entire prison system. According to the records of the COPSD, occupancy rate in the prison system as at 31 December 2015 was 84.77%. However, in some prisons there is still the practice of accommodating more prisoners than the existing capacities allow: 125.86% in Rijeka County Prison, 111.29% in Zadar County Prison, 110.91% in Osijek County Prison, 109.00% in Varaždin County Prison, 106.25% in Požega County Prison and 102.20% in Bjelovar County Prison.

One of the main reasons for filing complaints is the violation of accommodation standards pertaining to space requirements, according to which there has to be 4m<sup>2</sup> and 10m<sup>3</sup> of space provided for each prisoner in the dormitory. This is often the cause for prisoner's complaints to the head of the prison or the executing judge. Following the executing judge's decision on violation of rights, prisoners would be relocated to adequate dormitories. Apart from standards pertaining to space requirements, persons deprived of their liberty also complained about lack of cleaning agents.

## *Filing of complaints and judicial protection*

*“I recommend that the Ombudswoman (...) initiate an investigative procedure, in particular due to the fact that the same violation is recurrent: rather than being an isolated incident, it has become a practice among officials also toward other prisoners who have lost the faith in justice and the rule-of-law state, which is why they do not see the purpose in addressing anyone, not even the Ombudswoman, considering the fact that there is no penalizing of those responsible and that each complaint of the officials' illegal actions results in retribution, further withholding of rights, threatening and bullying by the officials against whom such complaints were filed as well as by their colleagues, who believe themselves to be untouchable and above the law.”*

Even though the number of complaints filed to heads of penal institutions, according to records of the COPSD, increased from 378 to 577 compared to the previous year, the prisoners' trust in this legal remedy is still insufficient. Almost 80% of the complaints were filed in only three penal institutions: Lepoglava and Glina State Prisons and Zagreb County Prison, and there are also penal institutions where no complaints were filed in the previous year, for example Rijeka, Pula and Dubrovnik County Prisons. The trust of prisoners on remand in the efficiency of complaints is reflected in the fact that there were only 23 cases when they exercised this legal remedy in 2015.

*Prisoners do not exercise legal remedies because they do not wish to make the officials angry and because they fear negative consequences, for example being given lower prisoner performance evaluation, not being granted any benefits or losing work engagement.*

Although most of the complaints filed due to inefficiency of legal remedies pertained to failure to act on complaints within the legally prescribed time limit, the prisoners' claims that legal remedies are not used because they do not wish to make the officials angry and because they fear negative consequences, for example being given lower prisoner performance evaluation, not being granted any benefits or losing work engagement, are worrying.

Prisoners have also contacted us due to long duration of executing judges' procedures, and there was even one investigative procedure where we found that the prisoner filed a complaint against the decision on pronounced disciplinary measure and the judge issued the decision after four months, instead of issuing it within the legal deadline of 48 hours. Actions in this case were not only contrary to the provisions of the Execution of Prison Sentence Act (hereinafter: EPSA), but it is also contrary to Art. 18 of the Constitution of the Republic of Croatia, which implies achievement of efficient judicial protection via an appeal. Consequently, this issue needs to be specifically addressed at the annual meeting of executing judges.

### *Treatment by judicial police*

We still continue to receive complaints in which prisoners claim that judicial police officers offend and belittle them and call them by derogatory names, and that they even slap them on the face, which is indicative of possible degrading treatment. As a rule, these are complaints that are very hard to confirm as well-founded, because such actions occur at places without video surveillance or witnesses, but it is precisely the officers' actions that are the most common reason for complaints to heads of penal institutions and to the COPSD, according to data available to us.

### *Correspondence*

During the previous year, prisoners have contacted us claiming that their complaints filed to the Ombudswoman and letters addressed to state bodies and institutions had not been sent from the penal institutions. Due to the method of recording submittal of letters we were unable to confirm or disconfirm their allegations. Given that the sending of petitions and complaints to government bodies and other public bodies and the subsequent obtaining of a response is a constitutional right, penal institutions need to set up and keep records that allow for clear determination of the time when and the person to whom the letter was handed over.

Should it be adopted, the proposed amendment to the Criminal Procedure Act (hereinafter: CPA), pursuant to which prisoners on remand would be able to file a complaint to the Ombudswoman and receive her response without any limitation or supervision, would speed up the process of filing complaints and contribute to strengthening of the protection of their rights.

## *2.2. Complaints filed by citizens with regard to work of the police during the act of deprivation of one's liberty*

Complaints filed by citizens with regard to actions of police officers during deprivation of one's liberty mostly pertained to unprofessional and unethical conduct, overstepping one's authority and biased and selective treatment. In any treatment that involves the use of physical strength and that results in deprivation of one's liberty, police officers are obligated to invest the maximum level of due care to preserve the dignity of the person at whom such treatment is aimed, keeping in mind that, in the event of error, such treatment represents a violation of the citizens' constitutional rights.

For example, when persons are made to lie with their face down on the ground, in front of a group of observing citizens or journalists, and when video recordings of such treatment are posted on the website of the Ministry of the Interior without protecting the identity of the person in the video, this can certainly represent degrading treatment. In the case of *Bouyid vs. Belgium* (2015), the European Court of Human Rights (ECHR) found that for

something to be considered as degrading treatment it is sufficient for the victim to feel humiliated and that any unjustified use of force represents degrading treatment, regardless whether the physical force was of lesser intensity than the force that would have left permanent consequences.

Following a visit to the Republic of Croatia in 2007, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: CPT) recommended that the police officers use force strictly to the extent necessary for persons acting violently or agitatedly to be brought under control. However, the conducted investigative procedures indicate that this recommendation is sometimes not respected.

*When persons are made to lie with their face down on the ground, in front of a group of observing citizens or journalists, and when video recordings of such treatment are posted on the website of the Ministry of the Interior without protecting the identity of the person in the video, this can certainly represent degrading treatment.*

### *2.3. Complaints filed by persons with mental disorders*

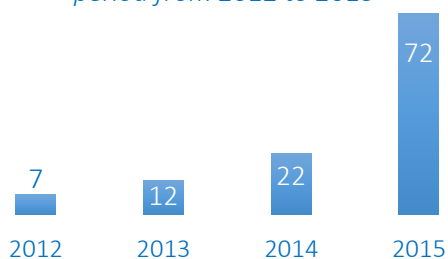
In 2015, persons with mental disorders or members of their families mostly complained about involuntary hospitalization, conducting of certain medical procedures without prior freely given consent and violation of certain rights of persons with mental disorders under the Act on Protection of Persons with Mental Disorders (hereinafter: APPMD). In recent years there has been a noticeable increase in the complaints filed by persons with mental disorders and members of their families, due to their being better informed about our competence and due to our more frequent visits to psychiatric institutions.

Considering that the Ombudswoman is not competent for diagnosing a mental disorder or for evaluation whether it was medically justified to involuntarily detain and place somebody in a psychiatric institution (and the complainants very often have precisely such expectations), we have provided them with information about who to appeal to. In a small number of cases it was found that the complainant's constitutional and legal rights had been violated. One such example is a complaint about a hospital's failure to grant a patient access to medical records in 2014, where the hospital explained that access could only be granted upon request of the court. However, pursuant to Art. 23 of the Act on Protection of Patients' Rights and Art. 23 of the Act on Medical Practice, the hospital was obligated to show the patient her medical records and to have them copied at her expense, considering the fact that the APPMD that was in effect at the time neither prescribed the patient's right to access medical documents nor did it prohibit or limit that right.

## **3. NATIONAL PREVENTIVE MECHANISM**

In the fourth year of operation of the NPM, we had 72 visits, which was 227% more when compared to the previous year. The visits included the prison system, the police system, locations affected by the refugee crisis and homes for the elderly and the disabled.

*Number of visits by NPM in the period from 2012 to 2015*



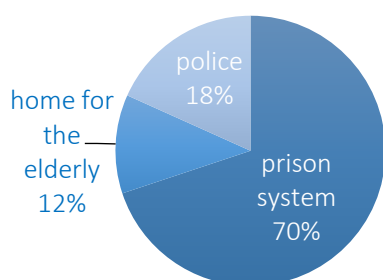
Twelve visits to penal institutions were aimed at checking the accommodation conditions, implementation of coercion measures and method of organizing healthcare. We also dealt with the issue of hunger strike. Apart from that, we intensely monitored the refugee crisis, through 26 visits among other ways. This is reported in more detail in the special chapter on refugee crisis.

In 2015, we also visited five homes for the elderly and the disabled. Our objective was to determine the level of respect for human rights of the elderly in institutional care. Apart from that, we also visited 27 police stations and detention units in four police administrations and performed an inspection visit of a psychiatric institution.

Apart from NPM visits, we educated police officers and employees of the prison system about the authorities of the NPM and the prohibition of torture, inhuman and degrading treatment. Seven workshops for approximately 100 police officers of Police Administration of Split-Dalmatia County were held and we took part in two training sessions for approximately 30 employees of the prison system. This way we tried to provide preventive action in human rights education.

After the visits of the NPM, we gave 279 written recommendations and warnings, which was

*Share of written recommendations and warnings by relevant areas in 2015*

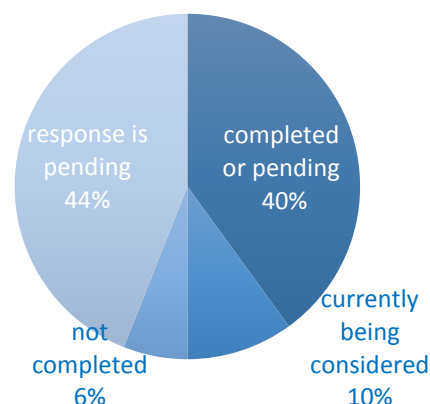


41 more than in the previous year, as well as a series of verbal recommendations during the visits to locations affected by the refugee crisis. The biggest number of recommendations and warnings were given following the visits to the prison system (195). According to received responses, 40% of written recommendations and warnings have been implemented or are pending implementation.

Reports on some visits were sent at the end of 2015, so no responses of competent bodies and institutions had been received by the time this Report was written, while additional explanations were requested about the implementation of certain recommendations and warnings.

Most of the non-implemented recommendations and warnings require significant financial investments, for example renovation or partitioning of rooms, or the implementation requires agreement to be reached between two separate departments, for example, for solving the issue of supplementary health insurance for all prisoners, or the implementation requires change of regulations. Despite that, a high percentage of implemented and completed recommendations will surely have a positive impact on treatment of persons deprived of their liberty.

*Actions of competent bodies and institutions according to written recommendations and warnings in 2015*



### *3.1. Visits to the prison system*

In order to get a better insight into the respect for the rights of persons deprived of their liberty in the field of healthcare, accommodation, special measures for maintenance of order and security, disciplinary measures, implementation of means of coercion and hunger strike, in 2015 we visited county prisons in Zagreb, Osijek, Gospić, Split, Bjelovar, Varaždin, Rijeka, Dubrovnik and Sisak, as well as Šibenik State and County Prison and Lepoglava and Glina State Prisons.

#### *Prisoners' healthcare*

In all penal institutions we visited, a shortage of employees in prisoners' healthcare wards was found, in comparison to the number of systematized job positions. For example, in Osijek County Prison, only two out of five systematized job positions are filled, those of two nurses, while a head of the ward, a physician and another nurse still need to be employed. One nurse is employed under a service contract, and the general practitioner and the psychiatrist have concluded business cooperation agreements with the prison. In Lepoglava State Prison, out of 16 systematized job positions only 11 are filled, and in Split County Prison, out of six systematized job positions only four are filled. A similar situation is present in other penal institutions as well. Physicians are reluctant to come to work there and they sometimes stay for only a few days, so there is great fluctuation. In Zagreb County Prison, the prison physicians perform about fifty examinations a day, and the psychiatrist performs about thirty examinations. Although the total number of prisoners has reduced, the number of physician's examinations has increased, and in general the number of instances when prisoners are taken out of the prison to external medical institutions has also increased.

An additional problem is the fact that prison physicians cannot write referral slips or prescriptions for medications that would be accepted by external medical institutions. They are

*Prison physicians cannot write referral slips or prescriptions that would be accepted by external medical institutions, but rather these have to be written by elected physicians that all persons deprived of their liberty should have.*

written by elected physicians that all persons deprived of liberty should have. Because of that, nurses and physicians spend a lot of their working hours contacting elected physicians and collecting referral slips and prescriptions, and sometimes even visiting those physicians in person, which significantly reduces their ability to perform actual healthcare tasks. According to the COPSD instruction of 2014, penal institutions have to independently contact regional CHIF offices and arrange the implementation of prisoners' healthcare with physicians, according to the area where the penal institution is located.

However, the instruction is really vague in the part pertaining to selection and cooperation with elected physicians, so much of the burden is shifted to those who work in healthcare in each individual penal institution. Specifically, in some areas it is easier to find an elected physician, whereas in others, such as Zagreb for example, it is extremely difficult because the physicians generally have a sufficient number of patients and cannot accept new ones. Furthermore, some may be prepared to come to the penal institution, but most require that the prisoner be brought to them for examination, which represents an additional burden for the judicial police, and also makes provision of healthcare to prisoners more complicated, especially in emergency situations.

Healthcare providers schedule prisoners for specialist examinations via the central referral system, the same way all other patients are scheduled. Taking into consideration the waiting lists for individual specialist examinations and the inability (for security reasons) to reveal the scheduled examination date to the prisoners, it is no surprise that sometimes they are revolted by how long they have to wait to have certain examinations done. Sometimes the penal institutions cannot take the prisoners to the already scheduled specialist examinations to external hospitals because judicial police officers are engaged for court hearings. So, for example, in Zagreb County Prison, in one day but at different times of day, there were 48 instances where prisoners were taken out of the prison to 21 different places, and on another day there were 79 of such instances. For that reason, between 1 and 20 March 2015, six prisoners were not taken to their scheduled specialist examinations. An additional problem is the fact that, based on the number of inmates, Zagreb County Prison lacks about thirty judicial officers, and a similar situation is also present in Lepoglava State Prison. Consequently, the vacant job positions need to be filled so that such organizational problems that result in violation of the prisoners' rights could be reduced to a minimum.

Nurses in most penal institutions work in two shifts, which ensures that medications are dispensed by healthcare providers, for example, in Lepoglava State Prison and in Zagreb County Prison. In some penal institutions, for example in Šibenik County Prison, healthcare providers

work in two shifts only on work days, so on weekends and on holidays, the judicial police officers dispense the medications.

In most penal institutions that we visited in 2015 the judicial police officer is as a rule present at the infirmary during the physical examination (except in Glin State Prison) but during psychiatric examinations this occurs in a small number of cases. The presence of a person other than a healthcare provider during medical examinations, except for security reasons, is a violation of the prisoner's right to privacy, which is something we have already written about in previous reports. Deprivation of liberty does not represent an automatic deprivation of the patient's right to privacy. There is much resistance from judicial police officers to changes of such practice, as well from the physicians who report that they were introduced to such practice upon their arrival and accepted it by inertia. In situations where they insist on the presence of judicial police officers, certain technical adjustments need to be implemented, for example, the arrangement of furniture in the room or installing a Plexiglas opening on the front door. That way the judicial police officer would be allowed visual supervision of the room, while at the same time privacy of the patient would be preserved.

*The presence of a person other than a healthcare provider during medical examinations, except for security reasons, is a violation of the prisoner's right to privacy, and deprivation of liberty does not represent an automatic deprivation of the patient's right to privacy.*

There are different ways of submitting requests for medical examinations, and the need for urgent examination is directly notified to judicial police officers who are on duty. In some penal institutions there are special boxes installed, the keys to which are only in possession of healthcare providers, for example in county prisons in Split, Rijeka, Gospić and Osijek and in Šibenik State and County Prison, while in other penal institutions the requests are directly handed over to nurses during the dispensing of medications, for example in Lepoglava and Glin State Prisons. In Zagreb County Prison the requests for medical examinations are still handed over to judicial police officers, but they no longer indicate the reasons for requesting the examination.

Penal institutions generally do not keep records that would show when the prisoner submitted the request for medical examination or when he/she underwent the examination. Lepoglava State Prison has organized such a system, but the records are not kept regularly and it was not possible to verify when the requested examinations were carried out without looking at the prisoners' medical records. A prisoner was selected at random, and with his consent, his medical records were examined and it was found that he requested an examination on 14 occasions between mid-February to mid-June 2015, but that he never underwent an examination. Although healthcare providers report that his condition is under control, it is not acceptable for a prisoner to unsuccessfully apply for a medical examination for so long. All prisoners who apply for medical examination have to undergo such examination within a reasonable time, with taking due consideration of their conditions, and with regular keeping of records on performed examinations.

Prisoners are often dissatisfied with the obligation to pay participation in the costs of specialist examinations and medications. If they are without regular income, for example pension, and if they are unable to earn any income during their imprisonment, they generally have no money at their disposal. Based on the officials' estimate, about 40% of prisoners in Lepoglava State Prison have no money to pay for participation, while in Glina State Prison a dozen of them refuse to take the medications for which they have to pay participation. Consequently, payment of participation should be adequately regulated for all prisoners during the time they are in prison.

Premises in which dentists work in Zagreb County Prison and in Lepoglava State Prison are in poor condition, and the premises foreseen for a dental clinic in Glina State Prison need to be furnished and equipped. In 2015, in Zagreb County Prison and in Glina State Prison new dental chairs were procured, whereas in Lepoglava State prison no new equipment has been procured and they still work with old machines which are in very poor condition. In order for dental care to continue to be provided in Lepoglava State Prison, which is certainly the best solution taking into consideration the organizational and security reasons, it is necessary to urgently modernize the equipment and medical instruments. Furthermore, the procurement of the dental chair alone in Glina State Prison does not enable the provision of dental care so it is necessary to urgently provide all other required equipment.

In penal institutions the security measure of compulsory treatment of drug addiction is generally carried out in accordance with the Guidelines for Psychosocial Treatment of Drug Addiction in the Healthcare, Social Welfare and Prison System, although the Guidelines do not indicate that they also pertain to implementation of security measures of compulsory treatment. That way, as a rule, these measures are implemented by persons other than healthcare providers and the physicians know very little or nothing about that, which is wrong. The security measure of compulsory treatment for alcohol addiction in certain penal institutions cannot be implemented in accordance with the professional standards, so such measures are not implemented, but rather the prisoners get included in special programs of the department responsible for treatment, which does not constitute actual treatment.

### *Accommodation conditions*

Although the occupancy rate in county and state prisons has dropped compared to previous years and prisons invest significant efforts into improving accommodation conditions, the standards pertaining to space available to accommodate persons deprived of their liberty are not observed in Lepoglava State Prison and in County Prisons in Osijek, Varaždin and Zagreb. Despite numerous warnings, the decision of the Constitutional Court No. U-III-4182/2008 of 2009, instructing the Government to adjust the capacities of Zagreb County Prison to the accommodation requirements of detained persons within a period of maximum five years and stating that persons deprived of their liberty have had their constitutional right to humane treatment and respect of dignity violated, has not yet been implemented. The situation is made more difficult by the excess of beds in some rooms as well as the fact that there is an insufficient

number of chairs, which makes the persons deprived of liberty having to eat on their beds. Some of them do not have cabinets in which they could put their personal belongings. The

*Although the occupancy rate in county and state prisons has dropped compared to previous years and prisons invest significant efforts into improving accommodation conditions, the standards pertaining to space available to accommodate persons deprived of their liberty are still not observed.*

worst conditions are those of misdemeanour offenders and detained persons, so for example, in Osijek County Prison there were 15 persons in a room of 38m<sup>2</sup>. Accommodation of a large number of persons into a shared dormitory is not recommended and combined with other circumstances pertaining to accommodation, such as only one sanitary facility without a door or the lack of chairs and cabinets, it can be considered as degrading treatment.

In county prisons in Zagreb, Dubrovnik and Split, sanitary facilities in dormitories are not fully separated from the rest of the rooms in which persons deprived of their liberty eat and spend up to 22 hours a day, which is something that

certainly has to be changed as soon as possible.

With the aim of introducing a more humane method of execution of prison sentence, the COPSD issued orders to most penal institutions in July and October 2015 to provide complete sets of cutlery to persons deprived of their liberty. For security reasons, their implementation was postponed in Lepoglava and Glina State Prisons and in Zagreb County Prison, as well as in the Prison hospital. As examples of good practice there are Dubrovnik and Gospić County Prisons, which provide complete sets of cutlery, which are collected and counted after the meals.

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In Split and Varaždin County Prisons there is no special room for unsupervised conjugal visits. Considering the fact that this is a benefit prescribed by the EPSA, prisoners who are imprisoned in county or state prisons that do have such a room are in a better position than the others.

In Split and Osijek County Prisons and in Lepoglava State Prison the problem of high temperatures in dormitories during summer months has only been partially remedied by fans and occasional opening of doors. In most penal institutions, prisoners complained of not getting sufficient cleaning agents, of the fact that their blankets are washed extremely rarely and that their mattresses are deteriorated. In Gospić and Varaždin County Prisons there is no separation between smokers and non-smokers, and in Lepoglava State Prison and in Zagreb, Split and Varaždin County Prisons there is no overhang over the walking area and/or no drinking water available, which makes it hard to go for a walk on a rainy or very hot day.

### *Special measures for maintenance of order and security*

According to records of the COPSD, in 2015 there were 1,387 special measures for maintenance of order and security implemented, which was 581 less than in 2014. Considering the fact that

such measures are further limitations of prisoners' rights, this is certainly a positive thing, but nevertheless, the shortcomings and inconsistencies that have been found have to be remedied as soon as possible.

Most inconsistencies were found in the implementation of the measure of isolation from other inmates. While in some penal institutions this measure is implemented by putting inmates in a single room for a period of 30 days as a rule, in others it is implemented in a section of the corridor separated by bars, where the inmate gets a mattress brought in if the measure lasts overnight. This is the case, for example, in Osijek County Prison. Such treatment is contrary to international standards and it can be considered degrading treatment. There are further inconsistencies also in the giving of orders to implement this measure, so in some penal institutions there is no written decision on isolation, in some an order is issued for

*There are great differences in the frequency of ordering the measure of isolation from other inmates, which indicates that there are inconsistent criteria for its implementation. For example, in Osijek County Prison, which has a capacity of 110 persons, in 2014 there were 44 orders for isolation, while in Zagreb County Prison, which has a capacity of 626 persons, this measure was not implemented at all.*

implementation of the measure, while in others a written decision is made, although this is not prescribed by the EPSA. In addition to that, in Lepoglava State Prison and in Šibenik State and County Prison, the written decision also contains an instruction on legal remedy, which is certainly an example of good practice. There are great differences in the frequency of ordering this measure to be implemented, which indicates that there are inconsistent criteria for its implementation. For example, in Osijek County Prison, which has a capacity of 110 persons, in 2014 there were 44 orders for isolation, while in Zagreb

County Prison, which has a capacity of 626 persons, this measure was not implemented at all.

In several cases, prisoners were separated from the group method of execution of prison sentence for security reasons, although they were not formally the subjects of any particular or disciplinary measure. Such regimen of serving of prison sentence, which sometimes lasts for several months, is implemented by county and state prisons pursuant to the instruction of COPSD. It is undisputed that in some cases the prisoner has to be isolated from group execution of prison sentence, but this has to be decided upon in a legally regulated procedure.

Although the measure of accommodation in a specially secured room, free of dangerous objects is ordered very rarely (it was only ordered on 19 occasions in 2015 in the entire prison system), it requires special attention, both due to the empty, sponge-lined room without daylight in which it is implemented and due to the fact that it is often ordered as a result of the prisoner's pronounced mental disorders. The basic problem definitely comes from incomplete and unclear regulations, which is something we have already written about in our previous reports. For example, it is regulated that this measure can last up to 48 hours on a single occasion, but it is not regulated how long the time interval should be between two instances of implementation of this measure, as is the case with execution of disciplinary measure of

solitary confinement. In Split County Prison, a prisoner spent a total of 119 hours and 40 minutes in a specially secured room free of dangerous objects, with only one interruption of 20 minutes and one of 5 minutes, which is unacceptable. Furthermore, no later than six hours after the beginning of execution of this measure a physician's consent for its implementation is required. Given that the measures generally last less than six hours, the physician's consent is often not obtained, especially in penal institutions that do not have a physician among its permanent staff. There was even one case when the physician consented over the telephone, without any examination of or direct contact with the prisoner.

No standards have been prescribed for specially secured rooms free of dangerous objects, so the conditions in them vary. For example, in Lepoglava State Prison, the surface area of this room is 2.6 m<sup>2</sup>, which is below any legal or international standards. Despite the recommendation of CPT to the Republic of Croatia given in its report in 2013 about providing daylight in such rooms, this has not been done in any of the penal institutions except in Sisak County Prison. This situation is usually explained by heads of the prisons by referring to security reasons, but in Sisak the window is placed on a high position so that it poses no security risk whatsoever. There are penal institutions that do not even have such a room, for example Bjelovar and Varaždin County Prisons, where in situations of incidents, the prisoner is brought to the emergency medical ward, and after that to the prison hospital, which is also an example of good practice.

The measure of restraining is not entered into the records regularly, especially after the use of means of coercion, which is something that COPSD pointed out to all penal institutions, based on our recommendation. In some cases, in addition to the measure of restraining being implemented, the prisoner is also isolated in a separate room, which *de facto* represents the implementation of the special measure of isolation, too, which is not entered into the records.

Solitary confinement, the only special measure for maintenance of order and security the implementation of which is decided by the executing judge at the proposal of the head of the prison, was implemented on only two occasions in 2015. Executing judges sometimes make decisions several months after receipt of the proposal, sometimes even a year later, despite the legal time limit of 15 days. Considering the fact that this measure is pronounced in cases of serious threats to security, the large delay between the proposal and the actual implementation of the measure undoubtedly makes the achievement of its original purpose questionable.

### *Means of coercion*

The rights and integrity of the prisoners are most directly violated by use of means of coercion. According to records of the COPSD, in 2015 such means were used on 44 occasions, the mildest of them being the acts of bringing in and defence techniques, and use of mace spray that contains allowed harmless substances. Records are kept regularly and all prisoners subjected to the use of means of coercion were examined by a physician.

Although the prisons system found the use of means of coercion to be legal in the observed cases, the allegations of some prisoners indicating potentially illegal treatment and overstepping of authority are worrying. For example, a prisoner in Gospić County Prison was subjected to the act of bringing in – elbow lock, but he reported that judicial police officers had hit him with their hands and feet. He sustained a back injury that could have been caused by falling down onto a radiator, as the judicial police officer described the incident. But the prisoner also sustained an injury to his left ear, specifically an auricular hematoma and perforated eardrum with consequential diminishing of the sense of hearing, which is typically caused by a direct hit with a hard blunt object in the area of the ear, such as a hit with an open hand. Although the report on use of means of coercion was also submitted to the competent executing judge in this specific case, no additional statements were requested to verify the prisoner's allegations of potentially illegal and even inhuman or degrading treatment.

There was one prisoner who was brought to the Prison hospital from Lepoglava State Prison immediately after the use of means of coercion, for swallowing foreign objects. At the Prison hospital he complained that the judicial police officers had beaten him up. Although he was admitted with visible hematomas on his face, his allegations were not investigated and he was instructed to make a complaint when he returns to the penal institution in which he is kept.

In this context, the United Nations Committee Against Torture (hereinafter: CAT) gave a recommendation in its concluding observations in 2014 to the Republic of Croatia regarding the necessity of investigating all allegations of possible torture and inhuman or degrading treatment, including allegations of verbal abuse and use of excessive force. In that sense, the evaluation of legal justification of the use of means of coercion should not be based solely on statements given by judicial police officers, which is generally the case, but rather it is necessary to also objectively examine in detail the statements of prisoners, especially those who were injured in the process of use of such means of coercion.

*Evaluation of legal justification of the use of means of coercion should not be based solely on statements given by judicial police officers, but rather it is necessary to also objectively examine in detail the statements of prisoners, especially those who were injured in the process of use of such means of coercion.*

### **Disciplinary proceedings**

During interviews with prisoners and officials of penal institutions and based on examination of records on disciplinary proceedings, certain shortcomings have been found that pertain to disciplinary proceedings. For example, in none of the observed cases did the executing judge make a decision on appeal against the decision on pronounced disciplinary measure within the time limit of 48 hours, which is why either the EPSA or the current practice have to be changed. Certain inconsistent treatment has also been found in implementation of disciplinary measures so for example in some penal institutions the measures are implemented even before they become final, while in other cases one waits until the relevant decision becomes final.

Furthermore, contrary to the instruction of the COPSD, in some cases the prisoners were denied the right to use all the benefits they had previously enjoyed as a consequence of mere initiation of a disciplinary proceeding, even though they had not yet been found guilty by that time.

Certain shortcomings in the implementation of disciplinary proceedings, which are held in accordance with the CPA, were caused by the fact that in some penal institutions they are conducted by persons without legal education. The lack of education of persons who hold disciplinary proceedings is certainly a problem, and considering frequent amendments of the CPA and inconsistencies between the EPSA and the CPA, such education is necessary and it would certainly result in a higher level of respect for the rights of persons deprived of their liberty.

A special problem is failure of competent courts to act upon proposals made by heads of prisons with regard to pronouncing of a disciplinary measure. Specifically, out of 58 proposals submitted in 2015, in as many as 37 cases the competent court failed to issue any decision, which in some situations makes the maintenance of order and security difficult.

### *Hunger strike*

Pursuant to the World Medical Association's Declaration of Malta on Hunger Strikers (hereinafter: Declaration of Malta), a hunger striker is a mentally healthy individual who has declared his/her decision to start a hunger strike and who refuses to take food and/or liquid for a significantly long time. In 2015, as many as 226 persons in the prison system went on a hunger strike, mostly for a period of several days.

Although this is a form of expressing one's dissatisfaction that can seriously harm one's health and that poses two basic, mutually contrary conflicts of values – the obligation to respect life and the duty to respect the patient's autonomy, there are no clearly written rules about how to treat hunger strikers in the prison system. The situation is made more difficult by the fact that prison physicians, unlike those who work in public service, are government employees employed with the Ministry of Justice, which can have a negative impact on trust, the basis of doctor-patient relationship.

The right to refuse examination is generally respected, but physicians regularly warn prisoners who are on hunger strike that their actions are a threat to their health and their life. However, medical records of hunger strikers are imprecise and incomplete, and in some cases their health condition is not monitored on daily basis. This is contributed to by an insufficiently precise normative framework and lack of knowledge of relevant international documents, primarily the Declaration of Malta. Namely, according to EPSA, hunger strikers are treated in accordance with general medical rules, i.e. in accordance with the Act on Medical Practice, the Health Care Act and the Patients' Rights Protection Act, all of which contain general provisions about the rights and obligations of patients, but fail to regulate the procedure in the event of a hunger strike. The Criminal Procedure Act and the Ordinance on House Rules in Remand Prisons do not contain any provisions about treatment of prisoners on remand who are on a hunger strike. In

order to guarantee that their basic human rights are respected, it is necessary to provide a normative definition of how to act in these situations.

According to our recommendation, in June 2015 the Ministry of Justice drafted Guidelines for Treatment of Hunger Strikers in Accordance with the Declaration of Malta, which only remedied the shortcomings partially, because these Guidelines prescribe only the principles, but not actual methods of treatment. Hence, there is still the need for the Ministry of Justice, in cooperation with the Ministry of Health, to adopt a protocol in cases of hunger strikes. Although the Guidelines prohibit any form of coercion and specifically indicate that in cases where the prisoner refuses a medical examination the physician has to record the general impression of the patient's condition, there was one case where after the prisoner refused to be weighed after declaring that he was on a hunger strike, he was subjected to a disciplinary procedure for a serious disciplinary offence – refusal to obey a legitimate order by an authorized official, for which the prisoner was pronounced the disciplinary measure of solitary confinement for six days. We have pointed out to the head of the penal institution and to the COPSD that such treatment is unacceptable, and based on the response we have received, they will no longer subject prisoners who announce a hunger strike and refuse to be weighed to any disciplinary measures.

### *3.2. Visits to police stations and prison units*

With the aim of strengthening the protection from torture and other cruel, inhuman or degrading treatment and in order to determine the method of treatment of persons deprived of their liberty and the conditions for their stay in premises where they are detained or placed, the NPM visited the premises of Police Administration of Požega-Slavonia County at three locations, Police Administration of Osijek-Baranja County at nine locations, Police Administration of Brod-Posavina County at six locations and Police Administration of Dubrovnik-Neretva County at nine locations. During the visits we found no persons deprived of their liberty but we did find that conditions of accommodation partly diverge from international standards, which could represent degrading treatment and are contrary to the Standards of Premises Where Persons Deprived of Their Freedom to Move Are Held (hereinafter: Standards).

#### *Accommodation conditions*

One's stay at police stations is generally brief, but despite that the accommodation conditions at those premises have to be compliant with prescribed standards. The detention facilities have to have enough daylight and fresh air and the temperature has to be adjusted to climate conditions. According to CPT standards, the premises have to be adequately sized and equipped with necessary furniture, specifically a chair or a bench, and for night-time detention, there has to be a bed with a clean mattress and bedding. Police stations generally have beds, mattresses and bedding. For example, in the Traffic Police Station Slavonski Brod and in the 2<sup>nd</sup> Police Station Osijek the rooms are adequately sized and in good order, in accordance with international standards, while the detention rooms of Police Administration of Brod-Posavina

County do not comply with the standards, which is something we have pointed out back in 2012.

The walls and floors are usually lined with ceramic tiles, which is contrary to the standards, considering that it is a material that can be broken. In the rooms there is a general lack of tables and chairs, but a positive example is Police Administration of Požega-Slavonia County, where there is a seat, a table and a wall shelf.

Detention facilities in which persons are held have to be clean and in good order. A positive example is the Detention Unit of Police Administration of Dubrovnik-Neretva County. On the other hand, at the time of the visit to the Detention Unit of Brod-Posavina County the rooms were extremely disorderly and hygienically unacceptable. Conditions in the rooms of police stations in Korčula and Beli Manastir are mostly unsatisfactory due to their deteriorated condition, but given that Police Station Beli Manastir is currently undergoing renovations, it is safe to assume that this problem will be resolved to a satisfactory degree.

*In some police stations there is no direct access to drinking water or sanitary facilities in the rooms.*

The rooms in Police Station Našice are without windows so there is no daylight and the inflow of fresh air is attempted via a metal bar door in the corridor, which is contrary to the Standards.

In some police stations, there is no direct access to drinking water or sanitary facilities in the rooms. So, for example in the 1<sup>st</sup> Police Station Osijek drinking water is handed out in plastic bottles, which makes the persons deprived of their liberty dependent on police officers, which is contrary to the Standards of the CPT, which require direct and undisturbed access to drinking water.

In police stations in Nova Gradiška, Dubrovnik and Gruda, video surveillance also covers sanitary facilities, which is a direct violation of privacy and disrespect of dignity of persons deprived of their liberty, while in the holding rooms of Police Administration of Požega-Slavonia County the metal washbasin and toilet bowl are not separated by a partition, so privacy and intimacy is violated when there are several people in the room.

In detention units it is required to enable direct communication between detained persons and the detention supervisor, for example via a call bell, which would reduce the risk of incidents, especially when there are several persons in the rooms. Also, in accordance with the Standards, all rooms where persons deprived of their liberty stay or move about have to be covered by a video and audio system to enable the police officer to have continuous supervisions, and to enable them to call the police officer. Standards also prescribe a room for searching of arrested and detained persons, a room for visits and consultancy with one's attorney and for a medical examination. In the rooms for consultancy with attorney and in those for medical examinations there may not be any audio or video surveillance. Most police stations do not have a special room for communication with attorneys, but a positive example is the Detention Unit of Police Administration of Požega-Slavonia County, which has this kind of room, as well as an interrogation room.

According to CPT standards, persons held at police stations for more than 24 hours have to have the possibility to spend time outdoors, in fresh air, which is not the practice in all police administrations. A positive example is Police Administration of Dubrovnik-Neretva County. Furthermore, in most police stations meals are provided to persons deprived of their liberty, but in some this is not the case, so even police officers sometimes buy them at their own expense. A positive example is the Detention Unit of Police Administration of Požega-Slavonia County, which has a contract on food delivery concluded with two catering facilities.

### *Records of persons deprived of their liberty*

In all detention units, detention supervisors simultaneously perform tasks in the operations and communications centre, which is not good, because the performance of two tasks can result in their becoming overburdened. Consequently, the tasks need to be organized so that detention supervisors perform only their primary duty.

A part of the police stations do not keep written records on total number of detained, brought in and arrested persons and persons placed in the room for persons deprived of their liberty. They keep these records only in electronic form, but such electronic records do not show when or even whether the person was explained the reason for their deprivation of liberty. This information is provided in the case file, but this file can be viewed only during regular working hours of the station, which makes supervision during unannounced visits outside working hours impossible, so this indirectly disables the performance of the tasks of the NPM. Uniform records, made in writing and containing copies of appropriate forms, e.g. arrest reports and certificates confirming that the persons were explained the reason of their arrest and that they have been informed of their rights, would enable fast and efficient verification of this information. A positive example is Police Administration of Požega-Slavonia County, which uses an official records form with extremely detailed information provided.

Finally, it has been found that in some Police Administrations police officers are not familiar with the authorities of the NPM, so they need to be informed and educated in that respect.

### *3.3. Visits to psychiatric institutions*

After we visited five psychiatric institutions in 2014, individual reports with recommendations and warnings were drafted. Following the responses about implementation of those recommendations, in 2015 we performed a follow up visit to Ugljan Psychiatric Hospital and found that it has acted in accordance with all the warnings of the Ombudswoman issued in 2014, except the one pertaining to the beneficiaries of the permanent accommodation service under The Social Welfare Act who are *de facto* permanent residents of certain medical wards. Likewise, all recommendations other than those that require more substantial financial resources have been implemented, but even those have been accepted by the hospital, which is now looking for sources of funding. Recommendations sent to ministries in terms of seeking systematic solutions have been partly implemented. The Ministry of Social Policy and Youth warned back in 2014 all the social welfare centres about the need for a more engaged approach

to finding accommodation for persons with mental disorders who no longer require hospital treatment, but due to their psychophysical condition and their living conditions outside the institution are unable to provide for themselves and have nobody who is obligated and capable of providing for them. However, in some cases there are still problems with finding adequate accommodation outside the hospital.

### *3.4. Visits to homes for the elderly*

Trying to get a better insight into the system of institutional care for the elderly and the disabled, in 2015 we visited five social care homes: Home for the Elderly “Sveti Josip” in Zagreb, Home for the Elderly “Kantrida” in Rijeka, Home for the Elderly and Disabled “Sveti Polikarp” in Pula, Home for the Elderly and Disabled in Slavonski Brod and Home for the Elderly and Disabled “Vita Nova” in Bjelovar. These homes are all registered for the providing of social welfare service of permanent accommodation for the elderly and the disabled users. The homes in Pula and Bjelovar are privately owned, while the others are owned by the respective counties.

The purpose of the visits, within the scope of authority of the NPM, was to determine the conditions in which persons who are in permanent care live, as well as the method of their placement into the relevant institution and the method of their treatment. It was also important to determine whether their specific needs are met, i.e. whether their fundamental rights and liberties are respected, for example the right to information, to respect of one’s private and personal life, protection of dignity, confidentiality of personal information, freedom of religion, prohibition of torture, inhuman or degrading treatment, ensuring adequate professional treatment, filing of complaints and the right to ownership. Special attention was paid to all situations that might represent limitation of the freedom of movement. Following each visit, individual reports with warnings and recommendations were given to the relevant home, its founder and the Ministry of Social Policy and Youth as the competent supervisory body.

During the course of our visits, we found no treatment that could constitute torture or inhuman treatment, but we did find certain treatment that might constitute degrading treatment and violation of certain legal rights. The reasons behind this generally lie in insufficient knowledge of international standards and national regulations that regulate the rights of persons in institutional care, a paternalistic attitude that employees know best what users of their institutions need and consequently treat them as if they were children, or the lack of staff. In order to prevent the violation of rights of users, it is necessary to organize education sessions for all employees of homes for the elderly with regard to the issues of human rights of the elderly.

All homes that we have visited are extremely clean and in good order, and the persons who are accommodated in them generally have positive comments about how the professional staff treats them.

*Open doors, failure to use screens in rooms with several beds and similar treatment during the implementation of care for the users in the rooms and bathrooms violate their privacy and can be degrading, which is something that the employees of the homes need to pay special attention to.*

Users of homes are often not sufficiently informed about their rights or the decisions made by the homes that pertain to them. An example of good practice is the Home for the Elderly and Disabled “Vita Nova”, which lists in detail all the rights of the users in the contract that the home concludes with them.

Open doors, failure to use screens in rooms with several beds and similar treatment during the implementation of care for the users in the rooms and bathrooms violate their privacy and can be degrading, which is something that the employees of the homes need to pay special attention to.

In all five homes, psychotropic medications are prescribed by psychiatrists and we have not had the impression that the users were over-sedated. There have been no complaints of coercion to take medication nor have we found any situations where users were given sedatives by employees who are not healthcare professionals in order to prevent them from being agitated. There is no use of means for physical restraint of persons; one uses only the means for fixation of one arm during administering of intravenous therapy, which is done with increased supervision by healthcare professionals (for example in the Home for the Elderly and Disabled “Kantrida”) and the means that serve to prevent the person falling out of a wheelchair if he/she is unable to sit in the wheelchair unassisted. In agitated persons, the staff usually lifts the sides of the bed at night to prevent them from falling out.

As a rule, all persons are encouraged to spend as little time as possible in bed during the day and they are placed in the wheelchair and taken to the common rooms so that they can participate in organized free-time activities. It is only in the Home in Pula and at one ward of the Home in Rijeka that the users who have difficulty moving or are unable to move independently are not encouraged to get out of bed. In order to ensure the quality of living, it is extremely important for a person not to spend the entire time in bed during the day, but rather to become involved in various activities or social interaction, in accordance with their own interests.

#### 4. ASSESSMENT OF THE STATUS OF RESPECT OF RIGHTS OF PERSONS DEPRIVED OF THEIR LIBERTY

##### 4.1. *Persons deprived of their liberty who are in the prison system*

###### *Healthcare*

Prisoners who fall ill are usually treated at the Prison Hospital, where the security measure of compulsory psychiatric treatment is implemented, if it is pronounced in addition to the prison sentence. The prison hospital is not a medical institution but rather has the status of a high-

security correctional facility. Apart from that, there are wards for healthcare of prisoners within the state and county prisons, where civil servants with completed medical education and licence to practice their profession independently are employed, by the Prison System Directorate with the Ministry of Justice. If there are no prison physicians employed or if there is not enough of them, heads of the prisons conclude service contracts with external healthcare providers.

The Prison Hospital and the so-called “infirmaries”, i.e. prisoners’ healthcare wards, which are established in each penal institution, are not medical institutions and they are not organized in accordance with the Healthcare Act. The Healthcare Act does prescribe the possibility for the Republic of Croatia to establish a medical institution for providing of healthcare to persons deprived of their liberty, but this has not been done yet, although the Ordinance on Minimum Standards of Space, Workers and Medical Equipment for Providing Healthcare to Persons Deprived of Their Liberty was adopted in 2014. Existing wards within penal institutions do not comply with prescribed requirements. Supervision of the providing of healthcare to prisoners is carried out by the Ministry of Health, but this is extremely rare. In this context, despite the Decision of the Constitutional Court U-III/64744/2009 of 2010, efficient supervision over the quality of healthcare in the entire prison system has not yet been established.

*The Prison hospital and the prisoners’ healthcare wards, which are present in each penal institution, are not medical institutions and they are not organized in accordance with the Healthcare Act.*

When the state deprives the citizens of their liberty, it accepts the responsibility for their healthcare, which should be the same as the healthcare provided to any person insured under the compulsory health insurance. This is evident from the case law of the ECHR. Taking into consideration the status of the ward where healthcare is provided to prisoners, as well as the current number of healthcare providers and medical equipment available in those wards, it is evident that systematic changes in prisoners’ healthcare are required.

A major problem is the fact that prison physicians, who are civil servants and employees of penal institutions, cannot issue prescriptions for medications or referral slips that would be accepted by external medical institutions due to not having a contract concluded with CHIF, which results in the obligation of all prisoners to have their own elected physicians. This is a source of constant dissatisfaction because those physicians generally never get to even see the prisoners. In situations where penal institutions do not have their own “in-house” physician, but rather have service contracts concluded with family practitioners, such difficulties are avoided because prisoners can schedule examinations directly with them, and those practitioners can issue prescriptions and referral slips. All this being considered, it is necessary for the Ministry of Justice and CHIF to conclude a contract that would also enable prison physicians to issue referral slips and prescriptions, and for this to be done as soon as possible.

As of 2014, all prisoners with permanent residence and foreign prisoners with approved permanent address have the status of an insured person covered by health insurance, while the costs of healthcare for other prisoners are borne by the penal institutions.

Prisoners who do not have supplementary health insurance have to pay a participation fee when visiting a physician or dentist who is not employed by the penal institution, when receiving hospital treatment (in a hospital other than the Prison Hospital) and also when receiving certain prescription medications. Given that their ability to work is limited during their serving of the prison sentence, most of them do not have enough money for that. On the other hand, CHIF does not grant supplementary insurance at the expense of the state budget for prisoners whose families do not fulfil the required conditions, because it requires that despite

*Despite the Decision of the Constitutional Court U-III/64744/2009 of 2010, efficient supervision over the quality of healthcare in the entire prison system has not yet been established.*

having their temporary or permanent residence registered at the address of the penal institution, the prisoners also have to enclose with their applications other documents proving their marital status or family relationships, as well as the income earned by members of their households. Where all this is not submitted, CHIF does not accept the application as legally valid, despite the fact that the Ordinance on Procedure, Conditions and Method of Determining the Right to Payment of Supplementary Health Insurance Premium from the State Budget prescribes that income of all persons living in the shared household is taken into

consideration for that purpose. However, if a person is serving a prison sentence and has a registered temporary or permanent address at the address of the penal institution, it is clear that he or she does not reside in the shared household with members of their family. Considering the fact that an average of 87% prisoners serve prison sentences longer than one year, these changes in their status are certainly not temporary. If a prisoner lacks enough income, which can be proven by providing a statement of the account kept by the penal institution, and if he/she has nobody to provide for him/her, the prisoner should be deemed to fulfil the requirements for being granted the right to payment of supplementary health insurance policy at the expense of the state budget. Taking into consideration the financial situation of most of the prisoners and the specificities of this population and given that the issue of healthcare in penal institutions also constitutes a public health issue, it is necessary to provide a systematic solution for the problem of supplementary health insurance for all prisoners so that during their serving of the prison sentence they have both the compulsory and supplementary health insurance provided at the expense of the state budget.

The responsibility for providing adequate healthcare for prisoners should be taken over by the Ministry of Health, just as it is responsible for the general population outside the prison system. This would be the most efficient method of ensuring implementation of Article 40 of the Recommendation on European Prison Rules (2006) of the Committee of Ministers of the Council of Europe, i.e. it would be an optimal way of ensuring treatment, measures and activities of healthcare in the same quality and scope as is prescribed in public health under the compulsory health insurance, which is something we

*The responsibility for providing adequate healthcare for prisoners should be taken over by the Ministry of Health, just as it is responsible for the general population outside the prison system.*

also pointed out in last year's report. This type of solution exists in some European countries for years, and experience from Slovenia shows that the transfer of prisoners' healthcare to the public healthcare system resulted in quality improvement, which is evident from a significant reduction in the number of prisoners' complaints to the Slovenian ombudsman. In Slovenia, all prisoners are entitled to both the compulsory and the supplementary health insurance and their healthcare is provided within the framework of the public healthcare system.

### *Accommodation conditions*

Accommodation conditions in which persons deprived of their liberty serve their sentences are not the same in all penal institutions as some of them do not comply with the legal standard of 4m<sup>2</sup> and 10m<sup>3</sup>. So, for example, the occupancy rate in Rijeka County Prison on 31 December 2015 was 125.86%, while in Pula County Prison it was 89.76%. The situation where the minimum legal standards are not respected is unacceptable, especially when taking into consideration the decisions of the ECHR due to frequent violation of Art. 3 of the European Convention on Human Rights. Apart from that, the Council of Europe's Council for Penological Cooperation and the CPT suggested the implementation of an even better standard of four persons per dormitory, where one person would be entitled to 6m<sup>2</sup>, and any subsequent person to an additional 4m<sup>2</sup>. The UN Committee Against Torture expressed its concern in 2014 about the conditions in Zagreb County Prison and recommended that the Republic of Croatia reduce the occupancy rate in all penal institutions, especially in high security ones.

The standards pertaining to serving of meals are still inconsistent, so in some penal institutions the prisoners are only given a spoon, while in others they also get a fork and a knife. Given that there have been no security-related problems in the institutions that gave prisoners a full set of cutlery, this practice should be implemented in all penal institutions.

### *Special measures for maintenance of order and security*

Inconsistency in implementing special measures for maintenance of order and security places prisoners who serve sentences in different penal institutions in an unequal position. For certain behaviour, a prisoner would be isolated from other inmates in one penal institution, but if moved to a different penal institution, for the same behaviour he or she would be sent to the specially secured room, free of dangerous objects. This situation leaves an impression of arbitrariness and subjectivity, which is not acceptable as it is in fact a limitation of rights. Absence of clearly defined, uniform rules and treatment criteria can cause mistakes with tragic consequences, as was the case of the prisoner who set himself on fire in the specially secured room free of dangerous objects in Pula County Prison, at which occasion the judicial police officers committed several mistakes prior to and during the enforcement of the measure.

This inconsistency primarily results from faulty provisions of the EPSA, which are full of ambiguousness and illogicality, as we have already pointed out in previous reports. For example, the EPSA prescribes four types of separation of prisoners from joint serving of prison sentence, of which isolation from other inmates, solitary confinement as a special measure and

solitary confinement as a disciplinary measure are generally performed in the same rooms and in the same way. In that context, the EPSA explicitly regulates that in cases where several disciplinary measures of solitary confinement are pronounced for the same prisoners, for which the longest duration is 21 days, the interval between enforcement of those measures cannot be shorter than eight days. This limitation is not prescribed for the measure of isolation from other inmates, which can last up to 30 days. Similarly, during implementation of disciplinary measure of solitary confinement, medical supervision is obligatory once every 24 hours, while in the case of solitary confinement as a special measure, which can last for up to three months, medical supervision is obligatory twice a week. It is prescribed that the measure of isolation is to be enforced under medical supervision too, but the frequency of such supervision is not prescribed.

The ECHR has not taken the position in its case law with regard to the time after which isolation from joint serving of prison sentence represents a violation of Art. 3 of the European Convention on Human Rights. Contrary to that, the UN Special Rapporteur on Torture suggests that all forms of isolation lasting longer than 15 days be abolished, seeing that numerous studies indicate that it can cause irreversible harmful consequences for one's health. This is further confirmed by The Istanbul Statement on the Use and Effects of Solitary Confinement of 2007. It is without a doubt that in the drafting of the new EPSA, it will be necessary to take into account the international standards in this field.

#### *Treatment by judicial police officers and investigation of allegations of mistreatment*

Most judicial police officers perform their jobs very professionally, which has been confirmed by many prisoners who said that it was precisely the judicial police officers who they would turn to in case of any problem. In that context, it is necessary to keep in mind that they work in very difficult conditions, and due to budget limitations, they have not been sent to their prescribed medical examinations since 2010, although they are obligated to have such examinations done every two years.

Failure to perform these examinations, which include among other things a psychiatric examination aimed at determining the psychological status (impulsiveness, aggressiveness, resourcefulness in unexpected and frustrating situations, with special attention paid to anti-social and latent sadistic characteristics) and general psychological examination (determining general and special cognitive skills, assessment of personality traits with special emphasis on emotional stability), cannot only create difficulties for persons who work in security-related jobs, but can have a negative impact on their treatment of persons deprived of liberty.

*Most judicial police officers perform their jobs very professionally, which has been confirmed by many prisoners who said that it was precisely the judicial police officers who they would turn to in case of any problem.*

Extremely worrying are prisoners' allegations of having been hit by judicial police officers, all the more so because such allegations often go uninvestigated, and the assessment of legality

of treatment is generally based on statements given by judicial police officers themselves. Attention was drawn to such treatment by the ECHR in its decision on *Dolenec vs. Croatia* (2009), in which it found that the procedural aspect of Article 3 of the European Convention on Human Rights was violated. Although all reports on use of means of coercion, including those containing statements of prisoners claiming that judicial police officers had hit them, are delivered also to the competent judge of execution, according to information obtained during the visits there were no cases where the judge requested additional clarifications or sought to investigate the prisoners' allegations of possible inhuman or degrading treatment. The fact that a proactive approach on the part of judges is required has also been pointed out by CPT in its standards, indicating that even without explicit complaints, in cases where there is suspicion that a person has been victim of torture, inhuman or degrading treatment, it is necessary to order an investigation by a medical expert and to determine all the facts. This obligation pertains equally to physicians as well as to other staff members of the prison system. Without adoption of this type of proactive practice the danger will remain that potential violations of fundamental human rights will not be processed and sanctioned, which is unacceptable.

### *Prisoners' complaints*

Prisoners' complaints are still not responded to in the legally prescribed time, and the responses are usually superficial and general. Furthermore, the decision on appeal against the decision on disciplinary measure is also not made in the legally prescribed time, and procedures initiated based on requests for court protection last too long in some cases. Records on filed complaints are not kept in all penal institutions, and according to statements of some prisoners, complaints are not filed for fear of negative consequences. Until this situation changes significantly, legal remedies available to persons deprived of their liberty who are in the prison system will not be effective. Therefore, in order to strengthen the efficacy of legal remedies, it is necessary to introduce changes in the legal framework, educate officials and prisoners and publicly condemn any deterrent or prevention of filing complaints.

### *Elderly persons deprived of their liberty*

In recent times, the number of elderly persons deprived of their liberty has been increasing, which is why methods of their serving of prison sentence, as well as the accommodation conditions, should be adapted to their specific needs in all penal institution.

No country that has ratified the European Convention on Human Rights has a prescribed maximum age limit for one to be deprived of his/her liberty. However, the ECHR finds that when a country deprives a person in a serious health condition of his/her liberty, it has to pay special attention to providing the conditions in which he/she will be held or, in other words, those conditions have to suit this person's specific needs.

*Number of persons deprived of their liberty (PDLs) who are older than 60 years of age, according to the conditions they are kept in and their status (information obtained from COPSD)*

Number of PDLs on 31 Dec 2015		TOTAL	Conditions			Status		
			High security	Medium security	Minimum security	Prisoners	Prisoners on remand	Misdemeanour offenders / Detainees
Older than 60 years of age		238	164	51	23	197	38	3
PDLs according to age groups	60 - 70	198	141	38	19	164	31	3
	70 - 80	36	20	12	4	31	5	0
	over 80	4	3	1	0	2	2	0

Generally speaking, conditions in penal institutions are adapted to younger prisoners, who comprise most of the prison population. Programs in the prison system have also been developed having in mind the needs of generally young persons.

In elderly prisoners there is higher frequency of a series of health issues, for example cardiovascular diseases, dementia, diabetes, Parkinson's disease, loss of hearing and vision, and some prisoners also require special care, which increases the demands imposed on the prison system. Also, chronological age and health condition of the prisoners are not often analogous, with a fifty-year-old prisoner's health condition quite probably being more similar to that of a sixty-year-old who is not imprisoned, which results in greater need of healthcare. Furthermore, when speaking of elderly prisoners, one should keep in mind also the difficulties connected with accommodation conditions, because a large number of stairs, difficulties connected with sanitary facilities, overcrowding, excessive heat or cold or alike can make the fulfilment of their basic needs more difficult.

In the Republic of Croatia, elderly citizens are accommodated with the general population and not in a specially adapted ward, which is something that should be changed in the future. For example, since the end of 2015 in Slovenia there has been a specially adapted ward intended for accommodation of prisoners who require additional healthcare due to age, sickness or disability.

### *Legal framework*

Although the Annual Normative Activities Plan for 2015 prescribed the adoption of a new EPSA, it has not been adopted, and according to available information, not even the drafting has begun. Provisions of the Criminal Procedure Act that regulate the execution of remand imprisonment and treatment of prisoners are dated and flawed and they should be included in the amendments that are currently under way. This situation is surely not good because a great number of shortcomings or limitations of rights of persons deprived of their liberty who are in the prison system result precisely from the shortcomings of the normative framework.

#### 4.2. *Persons deprived of their liberty in police stations and detention units*

The exercise of the rights of persons deprived of their liberty in police stations is especially significant, as indicated also by the recommendations of CAT.

Complaints of excessive use of means of coercion during the time a person is held at a police station and of the circumstance that in individual cases no reports were filed on the use of physical force indicate that there may have been cases of possible violation of human rights. Also, failure to fulfil the requirements prescribed in the Ordinance on Admission and Treatment of Arrested and Detained Persons and on the Records on Persons Detained in a Police Detention Unit, as well as those prescribed by the Standards of Rooms Where Persons Deprived of Liberty Are Held, indicates that there is significant possibility of improving the accommodation conditions without significant financial investments. In addition to that, accommodation conditions are an important fact in determining whether there was a violation of Art. 3 of the European Convention on Human Rights. A violation of privacy and failure to respect the dignity of persons deprived of their liberty occurs by having video surveillance that also covers sanitary facilities, just like in the situation where in rooms intended for accommodation of several persons the sanitary facilities are not separated by a partition. Similarly, direct availability of drinking water and use of sanitary facilities inside the rooms would prevent the prisoners being dependent on police officers and it would prevent the possibility of unprofessional treatment, while removal of ceramic tiles (to prevent their breakage and prisoners' self-injuries inflicted by using the broken tile pieces) and use of adequate materials instead would result in a higher level of security. In most visited police detention units there is no specially designated area for the persons deprived of their liberty to stay in fresh air if they are held there for a longer period of time.

*A violation of privacy and failure to respect the dignity of persons deprived of their liberty occurs by having video surveillance that also covers sanitary facilities, just like in the situation where in rooms intended for accommodation of several persons the sanitary facilities are not separated by a partition.*

During the visits of the NPM, certain inconsistent treatments were found. Specifically, in some police stations records on total number of persons deprived of their liberty are kept only in electronic form, and in such a way that it is not possible to conclude whether the person has been informed of his/her rights. Considering that this information can only be checked by examining the individual case file, which can only be done during regular working hours of the station, this indirectly disables the performance of the tasks of the NPM.

The existence of an impartial investigation in situations when there are justified reasons to suspect that the rights of a person deprived of liberty have been violated is still in question, as well as the possibility of public verification of the investigation and efficient access of the complainant to the investigation procedure. In the case of *Mafalani vs. Croatia* (2015), the ECHR ruled that state authorities were obligated to conduct, at their own initiative, an efficient and independent investigation at all times when the medical records lead to the conclusion that the person had suffered injuries during arrest. In accordance with the ECHR case law, it is not

sufficient to just conduct an investigation, but rather it has to be an efficient, thorough and independent one, which includes the obligation of gathering the required evidence. An investigation is not independent if it has been carried out by the police, because in that case there is a hierarchical and institutional connection. In this specific case, the ECHR found that even the competent state attorney's office failed to undertake independent steps in implementation of an efficient investigation and gathering of required evidence but rather that they limited itself to a police-internal evaluation of legality and justifiability of the use of means of coercion. A violation of the procedural aspect of Article 3 of the Convention on Human Rights was confirmed and it was indicated that whenever there is a credible allegation that an individual suffered serious abuse by the police, it is implicitly required for an efficient official investigation to be conducted and for it to lead to identification and penalizing of the responsible parties. For the purpose of ensuring that the investigation is thorough, the authorities always have to invest serious efforts to determine what actually happened, and in concluding the investigation the authorities should not rely on hasty or unfounded conclusions.

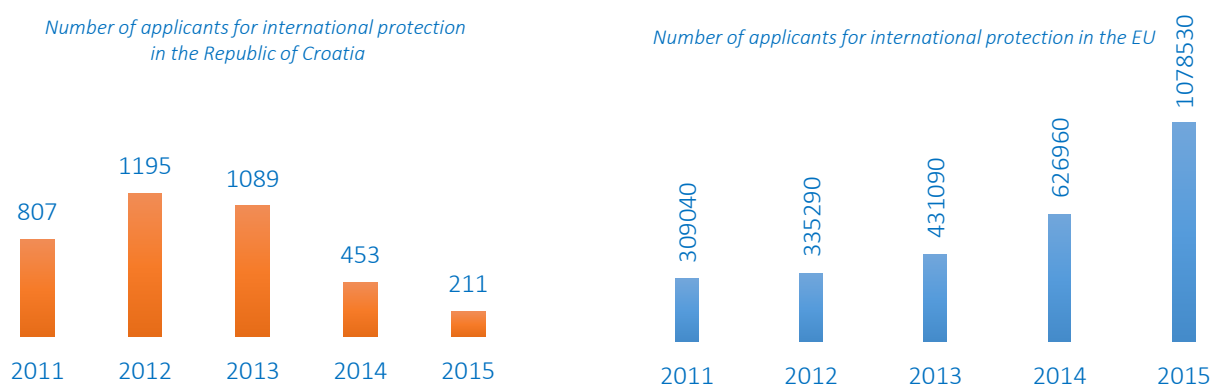
The situation in which citizens do not have the opportunity to make use of the option of filing a complaint to the Committee, as a form of civil supervision over the police, represents an additional indication of the shortcomings of the system, when it is required to conduct independent investigation of a complaint filed due to police treatment.

#### *4.3. Applicants for international protection, irregular migrants and persons who have been granted international protection*

Ensuring the respect for the basic human rights of applicants for international protection, irregular migrants and persons with granted international protection has become an increasingly burning issue, especially since the outbreak of the refugee crisis.

A Common European Asylum System (CEAS) has been forming at the EU level for the last ten years with the aim of establishing a unique and consistent procedure in granting international protection. Such approach has resulted in harmonization of national legislation with directives and regulations of the European Union and in the adoption of the Act on International and Temporary Protection (hereinafter: AITP) in 2015.

Each year, more than 80% of applicants for international protection leave the Republic of Croatia prior to the decision being made on their application, so the majority of procedures still get suspended, which clearly indicates that, for most of them, it is not a destination, but a transit country. This was especially evident during the refugee flow, in which out of 555,700 persons who entered the Republic of Croatia by 31 December 2015, only 21 had requested international protection. The reasons for that are, among others, less successful measures of integration and lesser material rights, both during the procedure and after being granted protection.



Source: Ministry of the Interior and Eurostat

In 2015, international protection was recognized in 43 cases, in which 36 persons were granted asylum and seven received subsidiary protection. Twelve applicants for international protection lost the right to stay in the Republic of Croatia upon filing a new subsequent application following the entering into effect of the AITP after the decision on impermissibility had already been granted under their prior subsequent application. However, during the course of the procedure initiated based on the new application, only two of them were accommodated at the Foreigners Reception Centre, while the whereabouts of the others were unknown, including whether they were still in the Republic of Croatia or if they had left the country.

By virtue of the new AITP, the rights of applicants for international protection have been decreased in comparison to the Asylum Act. Specifically, in order to prevent abuse of the system of national protection, provisions have been prescribed with regard to the subsequent application, which leave the possibility of filing one following an enforceable decision denying the prior application or terminating the procedure due to the applicant's withdrawal. If an applicant does file a new subsequent application, after a decision on impermissibility of the prior subsequent application had already been adopted, such applicant shall not have the right to stay in the Republic of Croatia, despite the fact that the procedure is pending. This solution raises the question of how an applicant can actively participate in the process, and an especially difficult situation occurs in the implementation of the decision on return for persons whose citizenship has not been confirmed during the process of granting international protection or for persons whose whereabouts are unknown.

According to data from the Ministry of the Interior, 41 applicants for international protection were accommodated at the Foreigners Reception Centre Ježevu during the procedure. The AITP was aimed at reducing limitations to the freedom of movement by accommodation in a foreigners' reception centre, i.e. at developing measures that would be an alternative to detention, but a comparison of the total number of applicants (211) and applicants whose freedom of movement was limited at the reception centre shows that this was clearly unsuccessful.

Due to the refugee crisis, the Reception Centre for Asylum Seekers in Zagreb was closed, and all applicants were accommodated in the Reception Centre for Asylum Seekers in Kutina, which

was used only for accommodation of vulnerable groups after June 2014. Consequently, this can be regarded as a setback in terms of accommodation organization, especially in terms of identification of applicants with special reception needs, as legally prescribed. The premises of the Reception Centre for Asylum Seekers in Zagreb were used only during the first days of the refugee crisis, and after that nobody was accommodated there by the end of 2015.

The AITP also prescribes a framework for implementation of the institute of relocation of third-country nationals or stateless persons and for accommodation of a certain number of persons from another member state who have been granted international protection, for the purpose of sharing the load under the intra-EU solidarity principle. So, at the proposal of the EC, the Republic of Croatia adopted a decision on accommodation of 550 persons via so-called Quotas, but later it decided to use a different relocation scheme to accept an additional 568 applicants for international protection and refugees from Greece and Italy. However, as a result of the refugee crisis, the implementation of that Decision has not started.

Regardless of the movements of refugees along the Balkan route, 3,759 persons were found in Croatia, for whom 1,436 decisions on deportation and 2,868 decisions on return (mostly for citizens of Afghanistan, Albania, Bosnia and Herzegovina, Iraq, Pakistan, Syria and Serbia) were made, while 691 persons were subjected to forced return<sup>1</sup>. An efficient system of monitoring forced returns is provided by the Ministry of the Interior, to which effect it concludes contracts with other state bodies and international and non-government organizations. However, this system has not been in place since July 2015. Being aware of the importance of establishing a system of supervision of forced returns in accordance with the Return Directive (2008/115/EC), as well as of the practice of some member states in which this system is performed by the ombudsman (Bulgaria, Denmark, Greece, Estonia, Finland, Latvia), the Ombudsman of the Republic of Croatia as an independent institution can only implement such supervision efficiently if it is done in accordance with UN Principles Relating to the Status of National Institutions (Paris Principles), and with a clearly defined legal framework and availability of adequate funds in the state budget.

In the Republic of Croatia there was one detention centre for irregular migrants in 2015, namely the Foreigners Reception Centre in Ježevo. The construction of two more Transit Reception Centres is currently under way (in Trilj and in Tovarnik) and they are scheduled to open in 2016.

#### 4.4. *Persons with mental disorders*

*“Let those who put me here pay, I have no such intention.”*

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<sup>1</sup> Also referred to as “involuntary returns”

Accommodation conditions at certain wards of psychiatric institutions are still unacceptable. There is an encouraging fact, however, that after several years of delay, in the end of 2015 construction began on a new Department for Forensic Psychiatry of Vrapče Psychiatric Clinic. Unfortunately, the situation remains unchanged at the Psychogeriatric Ward, where elderly patients with mobility issues are accommodated in humiliating conditions, which requires immediate measures to be taken for the purpose of improvement of those conditions.

As of January 2015, a new Act on Protection for Persons with Mental Disorders has been in effect, and it has remedied many shortcomings. For example, except in cases of involuntary hospitalization, now each person who is voluntarily hospitalized in a psychiatric hospital has to give a written consent, where only verbal consent used to suffice, sometimes even without adequate record to that effect. To the best of our knowledge, psychiatric institutions follow the procedure of involuntary hospitalizations and the prescribed time limits.

Just like in previous years, there is still a lack of adequate centres for protection of mental health at a local level, the activities of which would (among other things) reduce the rate of institutionalization of persons with mental disorders and make their stay in their own families easier.

Persons with mental disorders who do not have supplementary health insurance are charged a participation fee during involuntary accommodation in psychiatric institutions, unless their diagnosis is indicated in the decision of CHIF about the list of diagnoses the treatment for which is completely covered by compulsory health insurance. In 2015, at Vrapče Psychiatric Clinic alone there were 70 involuntarily hospitalized persons with such diagnoses, 20 of which did not have supplementary health insurance. Such regulation is unacceptable, as in situations of involuntary hospitalization, any person who has been so hospitalized, regardless of his/her diagnosis, should not be charged participation in the costs of treatment. Considering that the new Act on Protection for Persons with Mental Disorders prescribes that the state budget shall only provide the funds for costs of involuntary placement of mentally incompetent persons in a psychiatric institution, it is necessary for this Act to be amended so that the funds for involuntary placement in psychiatric institutions be provided from the state budgeted for all involuntarily hospitalized persons, regardless of their diagnoses, and that general regulations regulating participation in the costs of treatment be harmonized.

*Accommodation conditions at certain wards of psychiatric institutions are still unacceptable. The situation remains unchanged at the Psychogeriatric Ward of Vrapče Psychiatric Clinic, where elderly patients with mobility issues are accommodated in humiliating conditions.*

## 5. CAPACITIES, INTERNATIONAL COOPERATION AND AMENDMENTS TO THE ACT ON THE NPM

### 5.1. *Amendments to the Act on the National Preventive Mechanism*

Amendments to the Act on the NPM entered into force in April 2015 which remedied the shortcomings of the previous normative framework. The most significant amendments were the ones that enabled cooperation with a greater number of associations and independent experts instead of having two representatives of the academic community and two representatives of associations involved in the performance of tasks of the NPM. The possibility of cooperation with specialized ombuds has also been explicitly prescribed. At the same time, in July 2015, a new Ordinance on Selection Procedure and Work Method of Associations Registered for Performance of Activities in the Field of Human Rights Protection and Independent Experts in the NPM (hereinafter: NPM Ordinance) has been adopted.

Pursuant to the provisions of the Act on the NPM and the NPM Ordinance, the Ombudswoman published a public call for proposals in November 2015 for the selection of independent experts and associations, which was published on the Ombudswoman's website and also delivered to the academic community and to numerous professional associations and scientific institutions. After having conducted the procedure, five associations and 15 independent experts were selected who will be involved in the performance of tasks of the NPM. Having this many associations and independent experts, combined with cooperation with specialized ombuds, will surely contribute to more efficient protection of persons deprived of their liberty.

### 5.2. *International cooperation in performance of tasks of the NPM*

Last year we participated in two meetings of the South-East Europe NPM Network, which were held in Tirana. The first meeting dealt with providing of healthcare to persons deprived of their liberty, while the second was focused on the current refugee crisis in the region, the treatment of applicants for international protection and forced returns. In Strasbourg we participated in a CPT conference about combating impunity in the police and prisons, about juveniles in detention, healthcare in prisons and solitary confinement units and about the standards of CPT for psychiatric institutions. Also, in Vienna we participated in the final convention and presentation of a study on strengthening efficient supervision of implementation of recommendations against torture. Furthermore, we took part in the workshop for NPMs regarding implementation of preventive mandate, which was held in Riga and organized by APT, IOI and the Ombudsman of Latvia. In terms of our work in the field of asylum and migration, we took part in the meeting of the European Network of Ombudsmen in Madrid, which dealt with supervision of forced returns. In November we were hosts to representatives of the Slovenian NPM who came for a study visit with the aim of exchanging experiences and learning about the work methods of the Croatian NPM.

### *5.3. Capacities of the Office of the Ombudswoman for the performance of tasks of the NPM*

In 2015, two new employees were employed in the Department for Persons Deprived of Liberty and the NPM, so in addition to the Deputy Ombudsman who manages the department, there are now seven persons who perform the tasks of the NPM and handle complaints. At the same time, there were two trainees admitted at the department for the purpose of one-year professional training without entering into an employment relationship.

The State Budget for 2015 provided HRK 131,000 for a special activity under the budget of the Office of the Ombudswoman, which was dedicated to the performance of tasks of the NPM. This amount pertains to material costs of performing the activities of the NPM and does not include expenses for employees. The Proposal of the State Budget for 2016 foresees HRK 138,781 for the performance of tasks of the NPM.

Although new employments, amendments to the Act on the NPM and planned increase of funding contribute to the efficiency of performance of tasks of the NPM, according to CAT recommendations it is still required to strengthen human and material resources of the Office for Performance of Tasks of the NPM, especially when taking into consideration potential new mandates, for example supervision of forced returns.

## 6. RECOMMENDATIONS

### *Persons deprived of their liberty who are in the prison system:*

1. To the Ministry of Justice, to investigate in detail all allegations indicating possible torture and inhuman or degrading treatment, including allegations of verbal abuse and use of excessive force;
2. To the Ministry of Justice, to adopt a new Act on Execution of the Prison Sentence and to remedy the shortcomings in the part of the Criminal Procedure Act that pertains to execution of remand imprisonment;
3. To the Ministry of Justice, to adapt accommodation conditions in all penal institutions to comply with legal and international standards;
4. To the Ministry of Justice and the Ministry of Health, to provide supplementary health insurance for all prisoners who are without regular income;
5. To the Ministry of Justice and the Ministry of Health, to adapt the space and equipment in the medical facilities of penal institutions to comply with prescribed minimum requirements;
6. To the Ministry of Justice and the Ministry of Health, to enable prison physicians to issue prescriptions for medications and referral slips that will be accepted by external medical institutions;
7. To the Ministry of Justice and the Ministry of Health, to implement legislation changes so that the healthcare of prisoners be entirely covered by the public healthcare system;
8. To the Ministry of Justice and the Ministry of Health, to adopt a protocol on treatment of hunger strikers;

### *Persons with mental disorders who are in psychiatric institutions:*

9. To the Ministry of Justice and the Ministry of Health, to implement legislation changes to ensure that the costs of involuntary detention and involuntary institutionalization in a psychiatric institution be paid from the state budget;

### *Persons deprived of their liberty in police stations:*

10. To the Ministry of the Interior, to thoroughly investigate all allegations of inhuman and degrading treatment of persons deprived of their liberty, and also in cases when there is suspicion of unjustified or excessive use of means of coercion;
11. To the Ministry of the Interior, to adapt the accommodation conditions in rooms for persons deprived of their liberty to comply with international and legal standards;

### *Applicants for international protection, irregular migrants and persons who have been granted international protection:*

12. To the Ministry of the Interior, to ensure separate accommodation of vulnerable groups of applicants for international protection;
13. To the Ministry of the Interior, to reduce the limiting of the freedom of movement of applicants for international protection by accommodating them at the Foreigners Reception Centre through implementation of measures that are milder than those that usually serve to enable the same purpose.

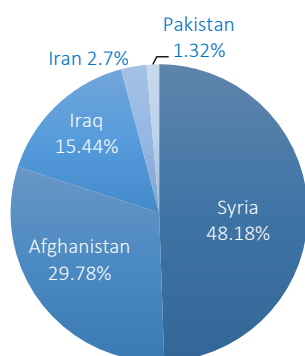
## II. REFUGEE CRISIS OF 2015

### 1. INTRODUCTION

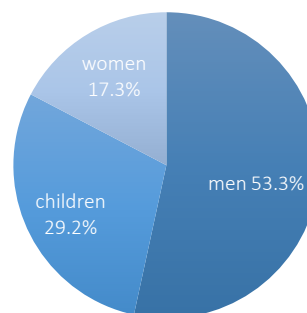
When Hungary completed the construction of a barbed wire fence and closed all border crossings with Serbia in September 2015, the refugee routes that used to follow the so-called Balkan route, going from Greece and Macedonia to the Hungarian border, diverted to the Republic of Croatia. In the period from 16 September to 31 December 2015, a total of 555,700 refugees passed through Croatia. Based on a statistical analysis of the data for 507,215 persons, it is visible that 48.18% of them came from Syria, 29.78% from Afghanistan, 15.44% from Iraq, 2.7% from Iran and 1.32% from Pakistan. There were 53.5% of men, 17.3% of women, and 29.2% of children. During that period, a total of 24 persons filed applications for international protection in the Republic of Croatia, of which three persons were granted asylum, 14 applications were denied due to failure to fulfil the requirements, two were denied due to jurisdiction of another member state and as far as the remaining five are concerned, their procedures are still pending.

On the first day, a total of 1,191 refugees entered the Republic of Croatia, and on the second day that number jumped to as many as 9,812. The system was not sufficiently prepared for such a large number of entries happening practically overnight, and the local communities, especially the competent police administrations, invested great efforts into solving the newly-arisen situation. Although transit of refugees toward the border with Hungary and Slovenia was organized within as little as 24 hours, many difficulties would have been avoided had there been better preparation for the situation that was foreseeable. Three days after the beginning of the crisis, the Camp for Temporary Accommodation of Refugees was opened in Opatovac (hereinafter: Opatovac Camp). Initial organizational problems were solved quickly and on the spot, and the opening of a Winter Transit and Reception Centre in Slavonski Brod (hereinafter: Transit Centre in SB) solved most of the problems identified by that time.

*Data according to the country of origin of 507,215 refugees who passed through the Republic of Croatia in 2015*



*Data according to gender of 507,215 refugees who passed through the Republic of Croatia in 2015*



Ever since the beginning of the crisis, several teams of the Office of the Ombudswoman made 26 unannounced visits to 17 locations where refugees stayed on their way through the Republic of Croatia, especially border crossings, registration centres and facilities where they were accommodated. Apart from that, good cooperation and regular contact was achieved with the crisis headquarters, ministries, international organizations, civil society organizations, volunteers, local communities and other stakeholders, which gave us a more detailed perspective of the overall situation. The purpose of the visits was to determine how human rights and dignity of the refugees were respected, especially with regard to the provision of humanitarian aid, including adequate accommodation and healthcare, the possibility of seeking international protection and the treatment by the police.

## 2. DEFINITIONS OF TERMS AND LEGISLATION

### *International sources*

A refugee is most broadly defined as a person who is forced to leave the place of his/her residence due to events that are beyond this person's control and that can be caused either by natural elements or by human intervention.

However, according to the 1951 Convention Relating to the Status of Refugees (hereinafter: Convention), a refugee is any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is unable or, owing to such fear, is unwilling to avail him/herself of the protection of that country. Under the same conditions, a refugee can also be a person without nationality who is outside the country of his/her habitual residence.

The fundamental right of refugees under the Convention is the right to non-refoulment, i.e. the right not to be returned to their country of origin or to another country where their lives or liberty would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. Apart from the Convention, the following documents also forbid refoulment, whether explicitly or by way of interpretation: Convention Against Torture, International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the EU. These documents, along with the General Declaration on Human Rights, are the sources that prescribe fundamental human rights and the rights of refugees, so international protection of refugees is therefore a part of the system for protection of human rights, seeing as fundamental human rights that a person enjoys do not cease based on the fact that the person has become a refugee.

A person does not become a refugee by recognition of his/her refugee status by any country, but rather by fulfilling the requirements prescribed by the Convention and the above mentioned international documents. On the other hand, the exercise of almost all rights guaranteed to those refugees is left to the country that receives them. In that context, international and European refugee protection mechanisms take into account the sovereignty

of countries, and recognition of refugee status is carried out by exercising the national, mostly constitutional right and through discretionary authorizations of competent bodies, who can only recognize this status to a person after having conducted a relevant procedure. This kind of approach leads to the use of different terms for persons moving along the current Balkan route.

With regard to the procedure of recognizing one's refugee status, which begins with his or her expression of intention to seek international protection, one has to differentiate between applicants for international protection/asylum and an asylee and the person who has been granted subsidiary protection. At arriving at the border or territory of another country, a refugee may seek international protection, which will make him/her an applicant for

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international protection in the eyes of the state bodies of the country where he/she currently is. An applicant for international protection has certain rights, one of the most significant being the right to stay there during the procedure. After recognition of the right to international protection, the status of asylee is recognized to the person who fulfils the criteria listed in the definition of a refugee, and this includes the maximum scope of rights that the receiving country can grant, while subsidiary protection implies a smaller scope of rights, mostly pertaining to stay in the relevant country and to

identification documents. Therefore, asylum includes the complete protection that a country provides to refugees.

In this sense, the modern-day migration movements are complex, with persons moving within mixed migration routes and leaving the countries of their origin for various reasons. One of the common reasons is the desire to improve one's financial status. Economic migrants often move along the same migration routes as the refugees, but unlike them, they enjoy the protection of their country and they can return to it safely if they wish to do so. By crossing the state border without a proper travel document and/or visa, an economic migrant becomes an irregular migrant and is unable to obtain a legal status in the country of entry. All persons involved in migrations can seek international protection and thus change roles along their route, depending on the outcome of the procedure.

In the international and European political context in 2015, only the citizens of Syria, Afghanistan and Iraq were considered to come from war-stricken and unsafe countries. Considering the fact that 93.4% of persons who entered the Republic of Croatia via the Balkan route were citizens of precisely those countries, it is certainly safe to say that Croatia faced a refugee crisis. Regardless of that, even the citizens of other countries who were part of migration movements also had to be provided with access to not only international protection, but also to all other required humanitarian aid and protection of dignity.

*European asylum system and legislation of the Republic of Croatia*

In order to fulfil the basic objectives of the EU – establishing of a common market and an economic and monetary union, it was necessary to open the borders between member states and establish free movement of goods, services and people. This started with the Schengen Agreement of 1985, and today there are 26 European countries that are part of the so-called Schengen Area. This resulted in the problem of migrations and the need to harmonize national asylum policies, which led to the development of CEAS. The foundation of that system is the decision of the EU on full implementation of the Convention complemented by the New York Protocol, which primarily emphasizes the non-refoulment principle, with introduction of mandatory legal instruments that prescribe minimum standards that members states have to comply with when adopting national regulations in the field of asylum i.e. international protection. In this context, directives serve to prescribe common minimum standards, while member states can choose the most appropriate forms and methods for their implementation in national systems, unlike the regulations that are directly applicable and fully binding for member states. The main components of the CEAS have been defined by the Asylum Procedures Directive, the Reception Conditions Directive (ensuring humane material conditions of reception and full respect for their fundamental rights), the Qualification Directive, the Temporary Protection Directive, the Dublin Regulation and the EURODAC Regulation. These have been complemented by the Return Directive and Long-term Residence Directive, which deal with legal and illegal migrations. Apart from that, a framework for implementation of the institute of relocation of citizens of unsafe countries outside the EU or reception of a certain number of persons from another member state who seek or have been granted international protection, for the purpose of sharing the load according to the solidarity principle within the EU, has been adopted.

By accession to the EU, the Republic of Croatia became obligated to harmonize its national legislation with EU directives and regulations. This has been achieved by the adoption of the Act on International and Temporary Protection in July 2015 (hereinafter: AITP), which we have presented in more detail in the chapter about applicants for international protection, irregular migrants and persons who have been granted international protection.

In order to understand the refugee crisis, the Dublin Regulation is very significant as it emphasizes the CEAS based on a comprehensive and all-encompassing implementation of the Convention and New York Protocol, which ensures the respect of the principles of non-refoulment so signatory states are considered to be safe countries for citizens of non-EU countries. The Dublin system clearly assigns responsibility to member states to process the applications for international protection i.e. it prescribes that the primary responsibility for the evaluation of such applications lies with the member state that played the greatest role in the entry and stay of the applicant in the EU. The criteria for determining such responsibility move hierarchically, from family connections to recent holding of a visa or permit to stay in the member state, including the fact whether the applicant entered the EU illegally or legally. In that sense, if he/she crossed the border illegally, the country he/she entered that way is

responsible for evaluating the application for international protection in the biggest number of cases. The Dublin Regulation is complemented by the EURODAC Regulation, by virtue of which member states immediately take fingerprints of each applicant for international protection or irregular migrant and deliver them to the central system no later than within 72 hours. However, member states in the Balkan route have selectively applied these Regulations, because implementation of registration according to the Dublin system would make them the first countries of entry and thus most commonly the countries responsible for implementation of the international protection procedure, or they would be obligated to return those persons to their countries of origin or to a safe country as irregular migrants.

When deciding on how to treat refugees, Hungary placed higher priority on the preservation of its state border than on the issue of protecting their rights and ensuring treatment that would be in accordance with the Convention and the Protocol. Other countries, after initial disagreement, finally came to an agreement on establishing a humanitarian corridor where refugees would be ensured safe passage to the countries of their destination, leaving it to each individual refugee to choose whether he/she wishes to seek international protection in any of the transit countries. Such conduct of transit states can also be regarded as a way of ensuring the rights of refugees in line with the Convention. However, for fear of closing of the borders of reception countries, the transit countries (including Croatia) used profiling at the borders to reduce the number of refugees that were allowed entry into their territory. First attempts at reducing the inflow of refugees were based on the approach which allowed the citizens of Syria, Afghanistan and Iraq to pass through the corridor, while citizens of other countries were denied this right. This meant that a presumption was implied that citizens of all those other countries were irregular migrants, which was completely unacceptable and basically discriminatory, because criteria for profiling were skin colour, excellent knowledge of geography of the country of origin and correct pronunciation of the language, where the determining of these facts was left to subjective assessment of police officers or even interpreters.

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Measures that the EC intends to use to contribute to the solution of the refugee crisis primarily pertained to activation of a permanent mechanism for relocation of refugees, a common list of safe countries of origin and an efficient policy of returning irregular migrants. All those elements should represent a part of the evolution of the Common European Asylum System. However, these measures do not represent an adequate response to the mass inflow of refugees, especially due to the poor interest on the part of member states to work together in

helping the countries of first entry, regardless of them being EU members (relocation) or third countries (resettlement). In these procedures, the distribution of refugees in countries depends primarily on the total number of inhabitants and the GDP, but also on the average number of applicants for international protection in the period from 2010-2014, as well as the unemployment rate. At the proposal of the EC, most EU member states adopted the decision on reception of a certain number of refugees via so-called quotas, but the actual implementation of this plan is slow and inefficient. The Republic of Croatia decided to receive 550 persons, and subsequently it agreed to receive 568 more under a new relocation scheme.

One of the mechanisms that the EU has at its disposal is the activation of the Temporary Protection Directive, which prescribes minimum standards for granting and implementing temporary protection in the event of a mass inflow of displaced persons when it is not possible to conduct regular procedures for granting international protection. Mass inflow implies a large number of persons coming from a specific country or geographic area, regardless whether their arrival is spontaneous or organized. It can be declared by the Council of Europe by a qualified majority vote, at the proposal of the EC, and application can be filed by any member state; however, no state has filed such an application. Activation and implementation of the Directive depends on solidarity, willingness and intention of the countries to accept refugees, which has proven to be insufficient in the case of

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implementation of relocation quotas. Application of the principle of solidarity is made more difficult by the resistance to receiving refugees for fear of terrorism, with neglect to note that it was precisely such reasons that have forced the refugees to leave their homes in the first place.

### *International standards for refugee camps*

When refugees enter the territory of a country, state authorities have to respect their human rights and dignity, and in particular they have to ensure that they are not treated in an inhuman and degrading manner, which means that the refugees have to be provided with minimum conditions for fulfilling the basic necessities of life: adequate accommodation, food, water and sanitary conditions, as well as healthcare. In this context, there is a difference between long-term accommodation and short-term, transit accommodation.

When it comes to limiting the freedom of refugees, the standards for their accommodation and rights that they have are prescribed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and certain standards are also prescribed by the Association for the Prevention of Torture (APT). These rules regulate minimum rights that should be respected in the limiting of one's freedom of movement, and they pertain to: basic accommodation in a clean and safe environment (food, water, place to

rest, toilets, showers), access to healthcare and legal aid, as well as measures for protection of vulnerable groups.

On the other hand, UNHCR prescribed standards for transit centres, such as Opatovac and Slavonski Brod, where refugees stay for a very short time. At such places it is important to provide them with a sheltered area, a safe and healthy environment, with respect of privacy and dignity of persons who stay there for short periods of time (2-5 days). Special attention has to be paid to minimum dietary requirements and availability of drinking water, hygienic conditions and healthcare.

*According to UNHCR standards for transit centres, such as those in Opatovac and Slavonski Brod, special attention has to be paid to minimum dietary requirements and availability of drinking water, hygienic conditions and healthcare.*

Apart from the basic healthcare services, it is required to ensure continuation of receiving medications and assistance provided to persons who are in serious health conditions or who have specific healthcare demands. All refugees in transit centres have to have access to food, in which context special attention should be paid to children, pregnant and breastfeeding women. It is important to enable everyone to have access to water, sanitary facilities and hygiene, to maintain regular cleaning of the toilet facilities and to enable access to information on promotion of hygiene.

### *Activities of the Office of the Ombudswoman*

From the beginning of the refugee crisis in Europe, the Office of the Ombudswoman closely monitored all events related to movements of refugees and respect for their rights. Given that Hungary had announced the closing of the borders and completion of construction of a wire fence in August 2015, it became highly likely that the refugee route would change, so two days prior to entry of the first refugees into the Republic of Croatia, we organized an expert meeting at the Croatian Parliament, which was attended by relevant representatives of state bodies, international and civil society organizations. The aim was to encourage cooperation and exchange information about the differences between the definitions and rights of refugees and migrants and the methods how the state bodies intended to respond to the challenges of a potential crisis in the Republic of Croatia. We also visited the Foreigners Reception Centre in Ježevo and the Reception Centre for Asylum Seekers in Kutina, to gather information about preparations for the arrival of a large number of people.

After the arrival of the first refugees into the Republic of Croatia, several teams of the Office visited key points of their movement and stay, during daytime and at night. In 26 occasions we visited 17 locations: border crossings (Bregana, Botovo, Gola, Harmica, Baranjsko Petrovo Selo, Goričan, Batina and Bapska), the railway station and police station in Tovarnik, temporary registration and reception centres (Ježevo, Porin, Velesajam, Beli Manastir, Čepin), Opatovac Camp and the Transit Centre in SB.

During the field visits we achieved good cooperation with the Ministry of the Interior, but also with other stakeholders, by participating in headquarter and coordination meetings for

organizations during each visit of the Ombudswoman in the field. We also gave many verbal recommendations, many of which were immediately implemented, pertaining to providing of information and accommodation to refugees, treatment of vulnerable groups, availability and quality of healthcare, night-time organization of work and schedule for volunteers, distribution of food, clothes, blankets and other. Some of the problems we pointed out could not be resolved until sufficient capacities were developed or international agreements reached.

As far as the involvement of the Office in international activities is concerned, apart from joint visits to the Transit Centre in SB and the Reception Centre in Šid with the Ombudsman of Serbia and visits to the Transit Centre in SB with the Ombudsmen of Bosnia and Herzegovina and the representative of the European Network of National Human Rights Institutions, the Ombudswoman actively participated in preparation and adoption of the Belgrade Declaration on the Protection and Promotion of the Rights of Refugees and Migrants, reminding the countries of their obligation to comply with international treaties and conventions and inviting them to ensure access to asylum for everyone, to fulfil the obligation of prevention of inhuman and degrading treatment and to strengthen integration measures. With regard to issues that arose after the shifting of the refugee route toward the Slovenian border, cooperation was achieved with the Slovenian Ombudswoman, and there was also regular cooperation with the EU Ombudsman and the EU Fundamental Rights Agency.

### *Accommodation*

On the first day of entry in the Republic of Croatia, refugees were transported, mostly in an organized manner, from the border between Croatia and Serbia to the Foreigners Reception Centre in Ježevo and the Asylum Seekers Reception Centre in Zagreb, where they were provided adequate accommodation. As soon as on the following day, the City of Zagreb furnished one pavilion of Velesajam with 2,600 mattresses for temporary accommodation, and temporary reception centres were open in Čepin and in Beli Manastir as well. Challenges that characterized the first days were caused by the weather conditions, but also capacities – it was crowded, hot, there was a lack of police officers and volunteers, interpreters, portable toilets, baby food and other. During registration, a large number of persons had to wait in the sun and without access to sanitary facilities. In the temporary centre in Beli Manastir there were problems with electricity, water, lack of supplies and blankets. Because transport to borders with neighbouring countries was organized as soon as on the following day, this situation did not last.

*Despite the fact that refugees stayed at Opatovac Camp for no longer than 24 hours, the conditions in the camp were not adequate during cold and rainy weather.*

Only three days after the beginning of the crisis, Opatovac Camp was opened, with the accommodation capacity of approximately 4,000 persons. Accommodation was provided in tents, which were arranged in sectors. Beds and heated facilities were provided only for vulnerable groups. After registration, the Croatian Red Cross (hereinafter: CRC), together with volunteers, civil society organizations and international organizations, handed out water, food,

blankets, sleeping mats, raincoats, clothes and footwear, but at times there was a shortage of blankets, sleeping mats and warm and dry clothes and footwear. Also, during the first few days there was a shortage of volunteers during night shifts. Infrastructural interventions, such as construction of paths, erecting of tents and alike, were the responsibility of the Croatian Army. Although the refugees stayed there for 24 hours at most, Opatovac Camp was not adequately prepared for cold weather and rainy conditions. On the floors of some tents there were pallets, while in others there were only plastic tarps; there were no beds or heating so during rainy weather refugees often sat and slept in the cold and mud. There was a Family Unification Service and Service for Psychosocial Help available at the Camp, but during our visits we did not actually see psychosocial help being provided. In each sector there were many chemical toilets, and in some sectors there were also CRC tents where one could get food and clothes. In one part of the Camp there were separate men's and women's tents with showers.

The opening of the Transit Centre in SB resolved most of the problems identified by that time. Organization of the new camp represented great improvement when compared to the Opatovac Camp, due to the new camp's size, availability of heated facilities, better organization of state bodies and civil society organizations and available organized transport. In each of the sectors there was a special area where there was a container for dispensing of food and clothes, for providing of medical assistance (although there were no employees of the Ministry of Health there at the time of the visits) and for support to families with small children. In each sector there were sanitary containers, toilets and showers marked by labels "Men/Women", tents for prayer, place for charging mobile phones, wireless internet and waste bins. The ground was covered with gravel so there was no mud during bad weather. In the Transit Centre in SB refugees spent six hours on average, so despite the fact that automatic operation and efficiency of transit was commendatory, the prioritization of transport was nevertheless often at the expense of individual needs of those people, especially vulnerable groups.

In both camps, cleaning took place by public works. Chemical toilets and showers were regularly maintained, sectors were thoroughly cleaned after each departure and the quality of their maintenance is evident from the fact that there were no contagious diseases.

### *Registration*

Pursuant to the Dublin Regulation, all applicants for international protection and irregular migrants who have crossed the border without authorization have to get registered, i.e. their fingerprints have to be taken for the EURODAC database. However, countries that were faced with a large number of arriving refugees diverged from those legal frameworks, so in December the EC issued a formal warning to the Republic of Croatia and other member states due to incorrect implementation of the EURODAC Regulation during registration.

Registration in the Republic of Croatia involved the collection of personal information, information about the country of origin, taking of fingerprints on paper and taking of the persons' photographs. It was performed by police officers specialized in illegal migrations. On the first day, registration was done in Tovarnik, but due to extremely intense pressure, this was no longer possible on the following day, so refugees were transported to temporary registration centres in Čepin, Ježevo, Beli Manastir, Luč, Torjanci, Sisak and Hotel Porin in Zagreb. Due to insufficient capacities for carrying out fast and efficient registration, in Ježevo people spent the whole day waiting outdoors, on a sports field, in the heat, without an adequate place to rest and without a sufficient number of showers or drinking water.

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After the opening of Opatovac Camp, persons without travel documents were regularly registered and their photos were taken, while for others photocopies of documents were made. Refugees waited in a sheltered area, with the possibility of resting on benches, and they were given instructions by interpreters. At registration, police officers generally did not give them verbal information about the possibility of seeking international protection, but there was a notice on the registration desks informing the refugees of that possibility. The notice on obligation of having one's

fingerprints taken was given in various languages (Turkish, Arabic, Farsi, Somali, English), but the refugees usually refused to do this and were not forced to. In most cases, decisions on the need to leave the EEA were not issued, and when they were issued, they were in Croatian, although there were some in English and in French.

After the opening of the Transit Centre in SB, the registration procedure was made faster due to use of tablet computers, which digitalized and automated the registration. Fingerprints were taken, together with basic personal information, and the persons were photographed, which was only for internal use of the Republic of Croatia. Fingerprints of children under the age of 14 were not taken. Due to the speed of the process and a large number of arriving refugees, the decisions on leaving the EEA were still rarely issued.

## Healthcare

The right to health is one of the fundamental social rights guaranteed by the International Covenant on Economic, Social and Cultural Rights for everyone, regardless of their status. The Covenant has been ratified by all EU member states. Timely and adequate healthcare provided to refugees represents recognition of their vulnerable position, which among other things, contributes to a sense of security during times of personal hardship. From the first entry of refugees into the Republic of Croatia, healthcare was provided by medical teams of the Ministry of Health, the international organization Magna, and by mid October 2015 also by Doctors Without Borders.

At border crossings there were mostly ambulances of the Ministry of Health, but they were often too far away and not sufficiently visible, and medical teams stayed at the vehicle waiting for the people who need their help to contact them, which is probably the reason why there were fewer interventions than may have been actually required. On the other hand, at Harmica border crossing we witnessed an exceptional, self-organized volunteer involvement of physicians. At Opatovac Camp, as a result of somewhat longer period of refugees' stay (between several and 24 hours), healthcare was organized in an infirmary placed next to the registration tent and inside the camp there was a Magna tent and an ambulance. Transit Centre in SB had an infirmary in each sector of the camp, as well as one next to the registration section, and it also had a medical station, which meant a significant improvement in infrastructure. Initial triage was organized at registration, and it involved refugees with health problems having to contact the police officer, which represented an additional burden for them. Apart from that, teams of physicians of the Ministry of Health were not present at the sectors in both camps, and for security reasons organization was based on the expectation that the refugees would come on their own and request medical assistance, again with the help of the police officer. At the same time, with constant presence of the police, there were also volunteers and employees of UNICEF, UNHCR, Magna, Save the Children and other civil society organizations who were constantly present in the sectors, without any recorded incidents or threats to their safety.

*Unlike the medical teams of the Ministry of Health, whom the refugees had to contact on their own or accompanied by police officers and/or volunteers, the medical teams of Magna and of Doctors Without Borders regularly approached the refugees and performed so-called quick screening of their general condition.*

By 31 December, physicians of the Ministry of Health had examined 21,694 refugees, which included 4,343 examinations by the emergency medical team, 16,130 examinations by family medicine practitioners in the field, 591 occasions of hospital treatments and there were 630 persons who were treated at the medical station of Transit Centre in SB. In addition to that, the number of interventions of Magna was approximately 14,000.

The role of international medical teams of Magna and Doctors Without Borders was a significant complement to the availability of healthcare for everyone who needed it, because it was provided proactively. Unlike the medical teams of the Ministry of Health, whom the refugees had to contact on their own or accompanied by police officers and/or volunteers, the medical teams of Magna and of Doctors Without Borders regularly approached the refugees and performed so-called quick screening of their general condition. They moved about all over the camp, which demonstrated their required adaptability to the people and to the conditions of work.

The importance, but also the economic feasibility of a preventive approach to healthcare of migrants in irregular situations was confirmed by the Report of the European Union Agency for Fundamental Rights (FRA) of September 2015, which presented a model for calculation of costs in the event of hypertension and prenatal care of migrants using the example of three

countries. Their analysis shows that availability of preventive healthcare contributes to better health condition of patients, but also contributes to savings when compared to the provision of emergency medical assistance only.

### *Conduct of police officers*

On average, 400 police officers worked with refugees at points of entry, in the camp and on transfers in 12-hour shifts every day. They had orders not to use force. Despite numerous challenges and pressure, weather conditions, and a large number of people who passed

*The conduct of police officers towards refugees was professional and humane and it was particularly sensitized towards vulnerable groups.*

through the territory of the Republic of Croatia, there were no incidents involving the police. In our visits to all key points of movement, including night-time visits, we did not see any conduct that would count as human rights violations. The conduct of police officers towards refugees was professional and humane and particularly sensitized towards vulnerable groups. Along with the performance of their regular duties, police officers handed out blankets and clothing, helped women and children board and get off buses and trains, and they cooperated with volunteers and civil

society organizations that still reported about harsh and verbally inappropriate conduct of police officers towards refugees on several occasions, but we have not received confirmation of such conduct.

Serious incidents among refugees themselves were not recorded, and the means of coercion were used twice. In one case, pepper spray was used to protect children from pushing and shoving in the crowd, and in the other case, physical force and binding aids to prevent a person from jumping off of a train.

### *Availability of information*

One of the biggest problems at the very beginning of the refugee crisis related to insufficient and delayed information to refugees and the stakeholders involved, including police officers, representatives of associations and international organizations, volunteers, about the place the refugees were located, the expected duration of stay and the care provided. That is why there was dissatisfaction and frustration, but also minor protests, the making of noise, etc.

In the first few days this was particularly visible at the railway station in Tovarnik, because of the lack of interpreters, among other things, and a special problem was that refugees were not informed about the right to request international protection. Although it is impossible to provide all information about all relevant issues, it was still noted that there was significant improvement after the opening of Opatovac Camp. Representatives of civil society organizations and international organizations provided all relevant information in everyday direct contacts with refugees, including how it was possible to submit applications for international protection. However, it was still known to happen that there was no information available about the arrival of a train or bus or about the distribution of clothing.

After the opening of the Transit Centre in SB, the organization improved and so did the provision of information, especially following the placement of a video wall with information concerning the obligation of registration, the possibility of requesting international protection, reception, organization and services in the Centre, in Arabic, Farsi and Urdu. Interpreters also helped with information, especially concerning getting on/off means of transport, and some of these interpreters were even persons whose international protection in the Republic of Croatia had been approved, which demonstrates their positive contribution to the refugee crisis and society as a whole. According to available information, some of them were offered the opportunity to acquire Croatian nationality under preferential criteria on the basis of an evaluation of the Ministry of Interior that this was in the interest of the Republic of Croatia.

### *Separated families*

Considering that refugees often travel in large groups or families, they would become separated along the way due to various circumstances, mostly because they could not board the same train or bus. In the first few days, there were several complaints about the impossibility of finding family members, that is, a lack of information about how to find family members. Family reunification was within the competence of the search service of the National Office of the Tracing Service of CRC, so a special tent was set up in Opatovac Camp.

After the opening of the Transit Centre in SB, the problem of separated families was resolved to a considerable extent, because in the event of separation at the time of arrival at the Centre (for example, for a visit to the doctor), a temporary waiting room for other members of the family was set up in the registration section, as well as special containers for those waiting for someone taken to the doctor. At the time of leaving the section and departure for a day-care facility, each person was registered separately, so that his/her whereabouts were known at all times. In the event of separation during their journey, a special tent in the Transit Centre in SB intended for persons waiting for other family members was set up, so that they could get on a train together and continue their journey, with the assistance of the CRC. Further, a mobile application for finding family members was also introduced.

### *Vulnerable groups*

During the visits, we paid special attention to the treatment of vulnerable groups: families, unaccompanied minors, people with disability, and the elderly. In the first days of the crisis, at the time of boarding a train at the railway station in Tovarnik, there was pushing and shoving of women and children as stronger men pushed their way to the front, while some of them entered the train through the windows. However, the very next day the boarding was much better and vulnerable groups received the attention that was due to them. In Opatovac Camp, a special section was organized for families with children that had heated containers.

However, they could hold only a small number of persons, and families often rejected such accommodation for fear of separation. Further, considering that refugees could not move between sections on their own, and there were not enough volunteers to find mothers with small children in order to take them to heated containers, sometimes they would wait for a bus in the cold and rain in unheated tents. The systematic separation of vulnerable groups was not organized at the time of boarding of buses, so police officers brought vulnerable groups to the front only if they saw them.

*Systematic exclusion of vulnerable groups was not organized at the time of boarding of buses, so police officers brought vulnerable groups to the first row only if they saw them.*

UNICEF organized a play area for children, as well as psychosocial support and counselling for mothers with small children, and provided them with hygiene packages and children's clothes. In the beginning, there were no toilets for people with disability in Opatovac Camp, but that was resolved later. Further, wheelchairs were provided at the border crossing of Bapska, so that people with mobility problems and people with disability could be taken from the border to the bus, in agreement with Croatian and Serbian police officers and with support of UNHCR.

The Transit Centre in SB was completely adapted for the accommodation of vulnerable groups (special containers for mothers and babies, toilets for people with disability, wheelchairs, etc.). At the time of registration, families with small children, pregnant women and people with disability generally had priority.

Cases of children who were separated from their families during the journey were recorded, and so were cases of children who had decided to take the journey on their own, so Ministry of Social Policy and Youth staff were assigned to both camps to ensure the immediate appointment of special guardians and accommodation in an appropriate institution until reunification with parents or relatives.

### *Transport of refugees and the situation at the border crossings*

In the first days of the arrival of refugees, when there was still no agreement on transit with the neighbouring states, transport was not fully organized, so certain groups travelled at their own cost. At the same time, in Tovarnik, several hundred metres from the railway station, several hundred, even thousands people waited throughout the night or for hours in the sun to board buses.

After the opening of Opatovac Camp, free transport by bus and train was organized to the Hungarian border. At the Botovo border crossing, the organization was excellent, and police officers, medical teams, interpreters and volunteers made sure that transport was as humane as possible, without jeopardizing the safety/security of refugees and Croatian citizens. Many people refused medical assistance and hospital treatment, although they needed it, because they wanted to continue their journey as soon as possible.

After the closing of the Hungarian border and re-routing towards Slovenia, the media *At Botovo border crossing, the organization was excellent, and police officers, medical teams, interpreters and volunteers made sure that transport was as humane as possible, without any jeopardy in terms of the safety/security of refugees and Croatian citizens.* broadcasted a video of refugees crossing the border by walking through the cold River Sutla. According to an official report of the Ministry of Interior, in the said period refugees were arriving in an organized manner by train at the railway station in the locality of Sutla, crossing the bridge across the River Sutla and walking towards the state border and onwards to the macadam road, where after 300 metres they would enter the territory of Slovenia. Thus, in the territory of the Republic of Croatia they crossed the Sutla by using a concrete bridge, while the crossing through the river was at the old river bed which is in the territory of Slovenia.

Several days after Hungary closed the border, the situation was still very difficult. At the Bapska crossing, people stood in the rain or lay in the mud the whole night, they were cold and completely exhausted.

After the opening of the Transit Centre in SB and an agreement with the Slovenian and Serbian authorities, transport proceeded quickly and without difficulties. The reception of refugees was organized in Šid, where Croatian police officers examined documents and the boarding of the train, and after registration in Slavonski Brod, the refugees would continue their journey towards Dobova. In December, trains were not heated, although temperatures were low, but the problem was fixed relatively soon; according to certain information, there were situations where toilets were locked during the train ride. As opposed to other countries on the refugee route, the Republic of Croatia covered all expenses of the transport of refugees on its own, which is extremely positive.

*As opposed to other countries on the refugee route, the Republic of Croatia covered all expenses of the transport of refugees on its own, which is extremely positive.*

### *Cooperation with stakeholders*

The refugee crisis was managed by the Ministry of the Interior in cooperation with the National Protection and Rescue Directorate (NPR), Ministry of Health, Ministry of Defence as well as Ministry of Social Policy and Youth. In addition, numerous national and international organizations were active in the field: Croatian Red Cross, Magna, UNHCR, UNICEF, Centre for Peace Studies, Jesuit Refugee Service, Croatian Law Centre, RODA, Save the Children, Doctors Without Borders, Society for Psychosocial Assistance, Remar, Caritas, ADRA, International Organization for Migration, Samaritan's Purse, Alliance of Baptist Churches, Youth Peace Group Danube, Full Gospel Church, Information Legal Centre Slavonski Brod, Volunteer Centre Slavonski Brod and Volunteer Centre Osijek. There were around 70 workers or volunteers from the said organizations and associations working in one shift. Further, each shift had six interpreters for Arabic, Farsi and Urdu. Management and cooperation proceeded through

everyday meetings of all involved state bodies and the CRC, under the leadership of the NPR, and meetings of the coordinating committee with the associations, in the beginning under the leadership of the CRC, later the Ministry of Interior.

More than 60 organizations, volunteers and individuals gathered in the Initiative for Support to Refugees entitled “Welcome” with the aim of providing support in the field, but also creating and applying political pressure on the institutions of the Republic of Croatia and the EU to bring changes to the restrictive migration policies. They provided humanitarian assistance, coordinated local organizations, informed refugees about the procedures of entry to and exit from Croatia on a daily basis, and they acted in co-ordination with the CRC, Coordinating Committee for Asylum and the competent institutions. They published a website [welcome.cms.hr](http://welcome.cms.hr) with updates and useful information for refugees, such as timetables or dictionaries. Numerous volunteers and groups of citizens were engaged deeply in the initiative “Are you Syrious” that collected and provided humanitarian assistance at all locations where refugees were located. The inhabitants of Bapska, Tovarnik, Harmica and other localities showed particular sensitivity and solidarity when they organized themselves to provide necessary humanitarian and medical assistance. The speed, openness and organization shown by the local population in approaching refugees helped to spread the wave of solidarity in the public at large and they represent an excellent example of the activity of members of our society in the protection of human rights as well as in reacting to events without any prejudice.

*The inhabitants of Bapska, Tovarnik, Harmica and other localities showed particular sensitivity and solidarity when they self-organized to provide humanitarian and medical assistance that was needed.*

### III. CONCLUSION

Although 2015 saw a continuation of positive trends when it comes to the respect for the rights of persons deprived of their liberty, primarily in terms of reduction of overcrowding in the prison system, we are still witnessing violations of their constitutional and legal rights. They are primarily caused by failures to comply with the standards and by a flawed normative framework, in which context a lack of human and financial resources also represents an obstacle.

The most common reason for prisoners’ complaints was the quality and availability of healthcare, which, instead of being a part of the public healthcare system, is organized under the competence of the Ministry of Justice. Prisoners also complained about the accommodation conditions, inadequate efficiency of legal protection, as well as of the treatment by judicial police officers, which is often not the subject of prompt, objective and independent investigation by the prison system. Another significant flaw is inconsistent treatment in the implementation of the special measures for the maintenance of order and security, which puts prisoners in unequal position. To a great extent the conditions of their

accommodation do not comply with the Execution of Prison Sentence Act or with international standards, which is also the case with accommodation conditions in police detention units of police administration bodies.

When it comes to the procedures of depriving persons of their liberty, complaints pertain mostly to unprofessional and unethical or biased and selective treatment by police officers, as well as to the overstepping of authority.

Persons with mental disorders have mostly contacted us regarding involuntary hospitalization and implementation of certain medical procedures without their consent. Patients with particular diagnoses have to bear a portion of the costs of involuntary placement in a psychiatric institution themselves, which is not acceptable. Consequently, funds for such costs should be provided in the state budget.

Vulnerable groups of applicants for international protection were put in a more unfavourable position following the accommodation of all groups of migrants at the facility in Kutina. Additionally, the measures that were supposed to represent an alternative to detention were not implemented successfully enough.

In September 2015 Croatia faced the refugee crisis but the passage of more than 550 thousand refugees did not significantly impact the day-to-day lives and security of the citizens. By the end of the year, the refugees travelling along the Balkan route and passing through Croatia were generally provided with the access to application procedures for international protection, as well as to free transport, healthcare, accommodation and the basic necessities of life.

Residents of the homes for the elderly and people with disabilities are often not familiar with their rights or the decisions that pertain to them. Nevertheless, we found that the main reasons for the violations of their rights as well as for potentially degrading treatment lie in the staff's insufficient familiarity with the international standards and national regulations pertaining to the rights of persons in institutional care, but also in the staff shortages in the institutions and their paternalistic attitude toward the users.

Our recommendations, which have been detailed in the previous pages, represent possible ways of mitigating or eliminating systemic shortcomings in securing the respect for the rights of persons deprived of their liberty, which need to be addressed as soon as possible.