HELSINKI FOUNDATION for HUMAN RIGHTS

REPORT

ON THE HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY

POLAND

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I. INTRODUCTION

The Helsinki Foundation for Human Rights (hereinafter, the "HFHR" or "Foundation") is a non-governmental organisation whose statutory object is to protect human rights, including the rights of persons deprived of liberty.

In consideration of the above, the Helsinki Foundation for Human Rights decided to present its observations on the current situation of persons deprived of liberty in Poland. We hope that this submission will constitute a reliable source of information. At the same time, we would like to emphasise that we do not attempt to present a comprehensive analysis of the situation of persons deprived of liberty, but only to give examples of the issues and areas in which the Foundation has intervened or presented its position in the period following the previous visit of the CPT.

II. NATIONAL PREVENTION MECHANISM

In its last Report, the Committee noted the need for a systematic increase in the human and financial resources of the National Prevention Mechanism (hereinafter: NPM)[1]. Also the Polish Commissioner for Human Rights (hereinafter: the "CHR" or the "Commissioner") have noted on many occasions that the current Team's staffing levels make it impossible to effectively perform the Team's obligations under the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[2].

According to information collected by the CHR, there are approx. 1800 detention facilities in Poland which are covered by the monitoring mandate of the NPM[3]. In 2015, visits were carried out in approx. 120 facilities[4].

According to latest media reports and a discussion in Parliament, despite the increasing needs, the Commissioner's budget did not increase in 2016[5]. The annual report on the implementation of expenditure of the State Budget and the European Funds Budget (based on a task performance model) in 2015 informs that a sum of PLN 3,049,507.05 was allocated for the execution of the National Prevention Mechanism's activities, which included capital expenditures of PLN 233,425.42 and remaining expenditures of PLN 2,816,081.63. Even though in a 2016 forecast the CHR Office anticipated an increase in its expenditures exceeding PLN 7 million as compared to 2015, this institution was given a smaller budget than in the previous year[6].

1 CPT Report on the visit to Poland carried on in 2013, p. 8.

2 CHR report on NPM operations in Poland in 2015, available at https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20KMP%202015.pdf (accessed 16.08.2016).

3 Response of the CHR dated 23 May 2016, available at http://www.hfhrpol.waw.pl/precedens/images/stories/Pdfy/skan%20%20rpo%20prywatne%20domy%20opieki.pdf (accessed 16.08.2016).

4 CHR report on NPM operations in Poland in 2015, available at https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20KMP%202015.pdf (accessed 16.08.2016).

5 Statement of the CHR dated 28 January 2016, available at https://www.rpo.gov.pl/pl/content/oswiadczenie-rpo-zmniejszenie-budzetu-rzecznika-praw-obywatelskich-dotknie-obywateli (accessed 16.08.2016).

6 *Ibid*.

The tasks of the National Prevention Mechanism in 2015 were performed by 12 professional employees, out of whom two persons were on a long-term medical leave. In consequence of the above, the actual number of visiting staff in 2015 was 8-9 persons[7]. In May 2016, the Commissioner informed the HFHR[8] that due to the limited financial and staffing capacities it was impossible to organise NPM visits at private full-time care facilities for persons with disabilities, persons with chronic conditions or elderly persons. In the Foundation's opinion, the visit programme should be extended to cover these facilities because of latest interventions and media reports on abuses of the facilities' inmates.

According to the HFHR's assessment, an accurate and comprehensive performance of the National Prevention Mechanism's mandate requires an increase in staffing levels, and in consequence – additional financial resources.

III. THE POLICE

1. Police violence

a. Overview

The monitoring of cases involving abuses of police officers' official powers is an integral part of the activities of the Helsinki Foundation for Human Rights. Based on cases submitted to the Foundation, we have identified the following key problems: abuses of police officers' official powers, extensively lengthy proceedings and their dismissals, and the improper and illegal use of coercive measures. According to a recommendation formulated during the CPT visit in 2013, Polish authorities should reinforce their efforts aimed at combating maltreatment by police officers. According to the Committee's recommendations, all police officers in Poland should be reminded that all forms of maltreatment of detained persons (including verbal abuse) are illegal and subject to appropriate sanctions. However, the aforementioned issues still appear in the Foundation's practice.

The key case of police abuse recorded in recent years (on 12 February 2013) was the case of K.J. and K.W., who were beaten by police officers during an interview at the District Police Headquarters in Lidzbark Warmiński. The beating was an attempt to pressure the men to provide testimony. The officers made the detainees kneel on a chair, face to the wall and hit the bare soles of their feet with batons. K.J. also argued that an officer repeatedly slapped his face with an open palm. The District Prosecutor's Office in Bartoszyce was certain that K.J. and K.W. had been victims of a beating and that officers of the DPH in Lidzbark Warmiński failed to provide medical assistance to the men. However, the Prosecutor's Office was unable to determine the identities of the officers responsible for the abuse. For this reason, the proceedings were discontinued. Later, the HFHR drafted an application and represented the applicants before the European Court of Human Rights in Strasbourg (*Wołkowski and Jacyno v. Poland*, application 2037/14). On 1 August

7 *Ibid.*

8 Response of the CHR dated 23 May 2016, available at http://www.hfhrpol.waw.pl/precedens/images/stories/Pdfy/skan%20%20rpo%20prywatne%20domy%20opieki.pdf (accessed 16.08.2016).

Intervention statement of the HFHR dated 29 April 2016, available at http://www.hfhr.pl/wp-content/uploads/2016/05/HFPC_RPO_KMP_29042016.pdf (accessed 16.08.2016).

2014, the ECtHR approved the Government's unilateral declaration in which Poland admitted that the applicants had been subjected to torture within the meaning of Article 3 of the European Convention on Human Rights.

b. Examples of the HFHR's interventions

Although the described situation occurred several years ago, the Foundation still handles similar cases. Below, two examples of interventions taken over the last two-year period are given.

In 2015, the HFHR issued several intervention statements in cases involving abuses of police officers' authority. These were the following:

The use of police riot shotguns during a football match on 2 May 2015 in Knurów.

According to media accounts, during a Saturday football match between the teams of Concordia Knurów and Ruch Radzionków about 50 Concordia fans invaded the pitch and moved in the direction of the sector occupied by Radzionków supporters. In an attempt the contain the situation, the police officers securing the scene used shotguns. A fan was hit by a rubber bullet in the neck and died after having been rushed to a hospital by emergency services. The HFHR made a submission to the Chief Commissioner of the Silesia Province Police Department, referring to a judgment of the European Court of Human Rights made in a case against Poland. In this judgment, the ECtHR held that while planning a large-scale operation involving a substantial number of officers and suspects, the police should ensure the presence of an ambulance at the scene. The Chief Commissioner responded that "the explanation of the tragic incident of 2 May 2015, which happened during the football match between the teams of Concordia Knurów and Ruch Radzionków, has been given priority and treated with proper attention". At the same time, the Chief Commissioner noted that the ECtHR judgment *Wasilewska and Kałucka v. Poland*, which was referred to by the HFHR, "concerns a situation completely different from that existing on 2 May 2015 in Knurów, which means that no analogy may be drawn between the two incidents and the Police duty to ensure the presence of qualified medical personnel during a preventive security operation taking place at a football match".

The death of M.S., a person with mental disorders, during a police arrest.

District Prosecutor's Office in Krasnystaw discontinued an inquiry into the alleged abuse of police powers by officers of the City of Zamość Police Department. A prosecutor decided that the conduct of the arresting officers had not involved an unreasonable use of violence resulting in involuntary manslaughter of the detained man. In the context of this case, which might have involved a manslaughter committed by police officers, the HFHR presented the guarantees under Convention Article 2 in a submission filed with the District Court in Zamość. The Court considered the discontinuation premature and ordered the Prosecutor's Office to re-open the case.

Torture in the City of Olsztyn Police Department.

We sent a letter to the Regional Prosecutor in Olsztyn regarding police officers who, according to media reports, tortured detained persons in order to force them to give specific testimonies.

Observation of the extensively lengthy proceedings in the case of a beating at a police station in Jarosław.

The HFHR has been monitoring the case from the date of the incident (12 September 2010). Since that time, the Regional Court in Przemyśl on three separate occasions has remanded the criminal case against the female police officer charged with physically assaulting M.P. and ordered the reopening of the proceedings. Accordingly, the case will be heard before the District Court in Jarosław already for the fourth time. So far, the trial court ordered conditional discontinuation of the proceedings, convicted the defendant and acquitted her.
In 2016, we intervened in the following cases that involved abuses of police powers:

The death of I.S. during a police action in Wrocław.

The most serious case involving an abuse of authority by police officers was the HFHR's intervention related to the death of I.S. at a police station in Wrocław. I.S. was taken to the station on 15 May 2016, after he was incapacitated by officers with the use of a stun device. After the man was brought to the station, he lost consciousness and died despite resuscitation attempts. The Foundation sent a letter to the Provincial Police Headquarters in Wrocław and the Regional Prosecutor's Office in Legnica, which investigated the case of the abuse of police powers and involuntary manslaughter. The Chief Commissioner of the Provincial Police Department in Wrocław described in detail the officers' behaviour. The letter described the actions taken in connection with I.S.'s death at the police station. It was admitted that a stun device was used twice and that the device was used for the second time already at the station, against the cuffed detainee. When I.S. started losing consciousness, the officers gave the man first aid and called an ambulance but were unable to save his life. A fatality report completed by an emergency services doctor reads that the death was caused by "other specific consequences of the operation of external factors – an acute respiratory and cardiac failure". Moreover, the investigation in the case of the involuntary manslaughter of a detained person and abuse of official powers imputed to officers from the Wrocław-Stare Miasto Police Station was transferred to the National Prosecutor's Office, as it was indicated in a response from the Regional Prosecutor's Office in Poznań (the prosecuting body to which the investigation had previously been transferred). It was noted that the causal link between the use of the stun device and death of the detainee had been investigated. A medical forensic opinion drafted after the repeated autopsy stated that the fatality was likely caused by a number of simultaneously operating factors: the ingestion of high doses of amphetamine and tramadol, electric shocks caused by the stun device, and – potentially – the repeated use of a chokehold by police officers attempting to restrain the detainee. The Foundation still monitors the proceedings brought against the police officers.

The beating of M.K. by police officers in Łódź.

The Foundation intervened in the case of M.K., a university student beaten by police officers responding to an incident during the Student Days Festival in Łódź. M.K. was in a group of persons allegedly taunting a passing police car. He claimed that he had not directed any abusive words or gestures at the police. However, he was stopped by police officers and brought to a police vehicle where, after a body search, he was reportedly hit by one of the officers. Subsequently, according to the student's allegations, he was forced to sit on the floor, and was verbally and physically abused by the officers. We sent a letter to the Łódź Provincial Police Department in which we requested an explanation of this case and the notification of measures taken to explain the case.

The case of a police raid targeting a wrong apartment.

We sent a letter to a Provincial Police Department in which we addressed the case of unprofessionally performed police raid at B.K.'s apartment. The raid targeted M.M., B.K.'s neighbour and wanted fugitive. M.M. used to live in an apartment next door but moved away long before the raid, which should have been a known fact for the police officers executing the raid. During the police intervention, innocent victims felt uncomfortable or even, as their attorney puts it, "were violently deprived of dignity". The above results from the officers' behaviour and the early hour of the raid (6:03 in the morning). As the officers were leaving the apartment, the victim noted that a lock was ripped out of the entrance door. An officer reportedly commented on this fact saying that "the lock is going to repair itself". Only after the victim phoned the police, officers arrived at the apartment to repair the displaced lock. According to the victim's account, the officers did not want to talk to her or her partner, and the repair was "a real botch-up". In its letter, the Foundation noted that under § 7 (1)-(2) of Guidelines No. 2 of the Chief Commissioner of the Police of 28 July 2011 on the procedure of remedying property losses caused by police officers forcibly overcoming obstacles that hinder or prevent the performance of official acts, a loss to property is remedied by the payment of compensation in an amount determined in a settlement unless the aggrieved person requests that the loss is remedied by the reinstatement of the property to its previous condition or by the purchase of property of the same kind – provided that for various reasons the reinstatement of damaged property to its previous condition is impossible or difficult.

In connection with the above-mentioned cases and the Strasbourg standard that reverses the burden of proof, which, in such cases, lies with public bodies, the HFHR wishes to point the attention of the Committee to the draft legislative guidelines for an amendment to the Polish Police Act prepared by the Chief Commissioner of the Police and presented to the HFHR in March 2014. The draft provided for the creation of a legal framework which would enable to document officer's interventions with the use of technical measures that enable audio and video recording. The drafter correctly assumed that the recording of interventions may contribute to the curbing of aggressive behaviour of both civilians and police officers. Without a doubt, it would also facilitate the unequivocal resolution of different allegations made by persons targeted by police operations.

One year later, the Chief Commissioner's proposals were embedded into the "Strategy of Actions Aiming at Combating Human Rights Abuses by Police Officers", a policy document

of the Ministry of the Interior. The Strategy proposals include "the development of legal and technical solutions for the recording of police administrative and organisational acts in certain non-public locations, including interrogation rooms"[9]. The above proposal results from the conclusion that "In the context of the judgments of the European Court of Human Rights entered in police cases, an issue of crucial importance is the ability to exercise rights by persons who objected to the manner in which a police intervention was conducted and in particular those persons who complained about the extensive use of physical force. Such incidents take place most frequently in police means of transport and at police establishments, whose key locations are interrogation rooms used for the purposes of interviewing victims and witnesses of crimes as well as detained persons and potential or actual suspects. Under the law in force, no audio or video recordings can be made in those locations unless procedural acts are performed."[10]Unfortunately, the strategy of the Ministry of Interior, adopted already during the previous parliamentary term, remains silent on the issue of recording Police interventions.

Moreover, we intervened in the following cases:

Hearings of children with an intellectual disability

In December 2016, the HFHR intervened in the case of K.W., a juvenile with an intellectual disability arrested by the police, and his subsequent, 90-minute-long interview concerning a false bomb alarm. The only adult present during the interview (apart from police officers) was a school psychology specialist. It was only next day that the boy's parents were informed of the event. According to the spokesperson for the Police Department in Jelenia Góra, the interview was carried out properly despite a failure to notify the boy's legal guardians.

In our opinion, the interview was conducted in violation of Article 32f of the Juvenile Justice Act, which provides that a juvenile should be interviewed only in the presence of the juvenile's parents or legal guardians. Only where the notification of parents or legal guardians is impossible, other persons listed in the Article may take part in an interview. According to the HFHR, a failure to comply with the notification obligation might have amounted to a violation of Article 6 of the European Convention on Human Rights. In response to our intervention, in January 2017 the Provincial Police Department in Wrocław conducted an inquiry into the case and provided explanations with vague references to the imputed irregularities. We were informed that the Disciplinary Proceedings Representative of the Commissioner of the Police Department in Jelenia Góra had requested that a guidance interview be conducted with a police officer who interviewed the juvenile. He also decided that a series of training courses be introduced in order to educate police officers about the role of a juvenile witness and juvenile perpetrator of a punishable act in the proceedings handled by the Department.

9 *Strategia*..., para. 2. Introduction of new evidence measures, p. 13.

10 *Ibid.*

The death of an arrestee at a police station

In December 2016, the HFHR intervened in the case of death of a 44-year-old man at the police station in Skarżysko-Kamienna. The man was reportedly apprehended on a staircase of a block of flats. Having performed a breathalyser test, the police took him to an emergency department where it was decided he did not need to be hospitalised. The man was then transported to a remand centre at the headquarters of a district Police Department, where he stayed in a monitored cell. In the evening, a police officer discovered that the arrestee showed no signs of life. The man died despite resuscitation attempted by ambulance personnel. The District Prosecutor's Office Kielce-Zachód conducts an inquiry into the case.

2. The rights of detained persons

a. Providing detained persons with access to a defence lawyer

On 18 April 2017, the Commissioner for Human Rights ("CHR") sent an intervention letter to the Minister of Justice ("MJ") on detained persons' access to a defence lawyer[11]. The CHR's intervention was preceded by an exchange of correspondence with the MJ. The CHR asked the Minister to re-evaluate the problem and initiate legislative works that would guarantee that every person arrested by the police or another authorised law enforcement service has access to a defence lawyer from the very outset of the duration of their arrest. In support of his position, the CHR referred to a necessity to ensure that all arrested persons are able to exercise their right to a defence and provided the guarantees of protection against torture and inhuman or degrading treatment. In particular, the Commissioner emphasised the relevance of the latter guarantee, indicating its constitutional and international footing. The CHR based his intervention on a detailed review of jurisprudence, which covered the criminal cases decided in 2008-2015 that involved the use of violence by police officers and other law enforcement officials against arrested persons.

In the CHR's opinion, the presence of a defence lawyer from the beginning of the arrest period would guarantee, in particular, that a medical assessment of an arrested person can be requested and that the quality of such an assessment can be evaluated from the procedural perspective. A defence lawyer would also be able to notify law enforcement authorities that their client was subjected to violence, which would create an actual and sufficient barrier against torture.

The issue raised by the CHR is also related to the domestic implementation of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013[12], which was scheduled for completion on 27 November 2016. The Helsinki Foundation for Human Rights is currently studying the transposition of the Directive's provisions. On 13 February 2017, Deputy Minister of Justice Łukasz Piebiak informed the HFHR that "as Polish

11 The General Statement of the Commissioner for Human Rights addressed to the Minister of Justice of 18 April 2017 regarding the provision of access to a defence lawyer to detained persons from the very outset of the arrest period.

12 Directive on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

laws currently in force accurately reflect proposals of the Directive, there is no need to undertake any transposition measures ... the works on the Directive's implementation have been completed without taking any legislative actions". MS refused to hold a meeting with Foundation lawyers. However, the preliminary results of our studies already suggest that the Directive has not been fully implemented. This is because law enforcement authorities are not interested in providing access to a defence lawyer to arrested persons before the first interview, even if an arrested person wants to instruct a privately retained counsel. Moreover, the Code of Criminal Procedure sets out no "remedy" for a limitation of the right to access to a defence lawyer, which is required by the Directive.

b. Implementation of the Committee's recommendation on the availability of notices of rights for detained persons

During the last periodic visit, the Committee's Delegation recommended that Polish authorities take steps to ensure that all persons detained by the police are fully informed of their rights as from the outset of their deprivation of liberty. The Committee further recommended that this should be done by the provision of clear verbal information at the time of apprehension, which should be supplemented at the earliest opportunity by the provision of written information. At the same time, the Committee stated that Polish authorities should draw up a written list of detained persons' rights, which must be comprehensible and available in a sufficient number of foreign language versions. The Committee noted that a particular emphasis should be made that detained persons are actually able to understand the content of information on their rights. According to the Committee, the obligation to make sure this is the case is incumbent on police officers.

A model written notice of rights, which was referred to in the above-mentioned recommendation was presented in the Regulation of the Minister of Justice of 27 May 2014 on the determination of the model notice of rights of a detained person in criminal proceedings (J.L. 2014 item 737), which entered into force on 4 July 2014. This Regulation was one of the laws enacted to implement the Directive 2012/13/EU of the European Parliament and the Council of 22 May 2012 on the right of access to information in criminal proceedings (OJ L 142, 1.6.2012).

The wording of the model notice of rights of a detained person in criminal proceedings was later updated by the Regulation of the Minister of Justice of 3 June 2015 on the determination of the model notice of rights of a detained person in criminal proceedings (J.L. 2015 item 835), which entered into force on 1 July 2015. The issuance of the new Regulation was a consequence of the necessity of adjusting the notice's wording to a systemic reform of the Polish criminal process that became effective in July 2015.

It is worth noting that the model written notices of rights for selected categories of detainees are also presented in the Regulation of the Ministry of Justice of 11 June 2015 on the determination of the model notice of rights of a person detained under the European Arrest Warrant (J.L. 2015 item 874) and the Regulation of the Ministry of Justice of 20 May 2015 on the determination of the model notice of rights of a detained person in a misdemeanour case (J.L. 2015 item 762).

The model notices of rights for detained persons in criminal proceedings and for persons detained under the European Arrest Warrant are available in 26 language versions on the website of the Ministry of Justice[13].

In the part of the report of the Helsinki Foundation for Human Rights devoted to the implementation of Directive 2012/13/EU, we indicated that the Ministry of Justice should immediately provide access to all notices of rights in criminal proceedings in a format adjusted to special needs due to age or a disability. We also recommended that the Ministry of Justice quickly commenced editing works on the notices in order to make them more comprehensible for persons without a legal background[14].

c. Material conditions

Provision of meals for persons detained by the police

In June 2016, the Commissioner for Human Rights appealed to the Minister of the Interior and Administration and Minister of Justice (Prosecutor General) for initiating the enactment of a proper legislative framework of rules of providing sustenance to detained persons subject to procedural acts preceding their placement in holding cells located at a police establishment. In this way the CHR responded to reports according to which some detainees participating in procedural acts of an extended duration (several hours) were deprived of an opportunity to satisfy their hunger and thirst. In the opinion of the CHR, the above-mentioned practices lead to a violation of the requirement of humanitarian treatment of persons deprived of liberty. The CHR argued that issues related to the absence of food or beverages may magnify in difficult weather conditions[15].

Right to rest as an element of the humanitarian treatment of detained persons

According to the 2015 report of the National Prevention Mechanism[16], not all holding cells at the Police, Border Guard and Military Police establishments are equipped with night light fixtures, i.e. lighting sufficient for the effective supervision of detainees but enabling an appropriate night sleep environment. The absence of such lighting may violate the right of persons detained in those establishments to sleep in night-time and cause medical problems.

The problem of detainees' inability to exercise their right to rest appears in a case handled by the Strategic Litigation Programme operated by the Helsinki Foundation for Human Rights. The Foundation's client in this case is an inmate who was on multiple occasions transferred from penitentiary facilities to criminal courts. During such pris-

13 Translated specimens of notices of rights in criminal proceedings are available at https://ms.gov.pl/pl/dzialalnosc/wzory-pouczen/ (accessed 16.08.2016).

14 Helsińska Fundacja Praw Człowieka, *Jak informować w postępowaniu karnym? Polskie prawo i praktyka a standardy europejskie* [*How to inform in criminal proceedings? Polish law and practice vs. European standrads*], p. 85. The report is available at http://www.hfhr.pl/wp-content/uploads/2016/04/dyrektywa_ca%C5%82o%C5%9B%C4%871.pdf (accessed 16.08.2016).

15 Statements of the CHR from June 2016 on the legal measures regarding meals for persons in police detention https://www.rpo.gov.pl/pl/content/wystapienie-w-sprawie-rozwiazan-prawnych-dotycz%C4%85cych-zapewnienia-posi%C5%82kow-osobom-zatrzymanym-przez (accessed 16.08.2016).

16 CHR report on National Prevention Mechanism's operations in Poland in 2015, available at https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20KMP%202015.pdf (accessed 16.08. 2016).

on-court-prison transfers, the client was repeatedly deprived of the right to sleep, also due to the incorrect scheduling of breaks between individual legs of his transit. Currently, the client seeks damages from the State Treasury.

IV. REMAND CENTRES AND PRISONS

1. Conditions of serving a sentence of imprisonment.

One of the key areas of the Foundation's operations is the monitoring of the conditions of deprivation of liberty in prisons and remand centres from the human rights perspective. The Foundation focuses specifically on protecting human dignity and the ensuing requirement of humanitarian treatment. For this reason, we turn our attention to the problems that we approach in cases submitted to the HFHR. In the Foundation's assessment, the following issues discussed in this report are as follows:

Legal issues:

1. Regulations on high-risk prisoners.
2. Forced labour of the inmates.
3. Regulations on receiving parcels in correctional facilities.
4. Complaints of the inmates.

Practical issues:

1. Medical care in correctional confinement – complaints of the inmates.
2. Rights of inmates with physical disabilities
3. Occurrence, prevention and treatment of infectious diseases in correctional facilities.
4. Restrictions on access to education.
5. Social resettlement of convicted persons.

It must be noted that apart from the issues described above, according to the Central Prison Service Authority's information about prison population dated 5 May 2017, currently there are 73899 inmates and 82224 available places in penitentiary facilities, which translates into the general prison population rate of 88.9%. Furthermore, pursuant to the applicable rules expressed in article 110 of the Criminal Enforcement Code (J.L. 1997 No. 90 item 557), the cell area per inmate may not be lower than 3 sq.m. Despite the fact that CPSA statistics do not indicate overcrowding, the insufficient size of living cells remains a systemic problem.

It should be further noted that after a relatively long period of decreasing population of correctional facilities and remand centres, in December 2015, the trend reversed and the number of inmates of correctional facilities and remand centres started to increase systematically.

2. Objections concerning applicable laws.

a. Regulations on high-risk prisoners.

A law enacted on 10 September 2015[17] introduced legislative changes that were intended by their drafters to enforce the judgments of the European Court of Human Rights in the cases *Piechowicz v. Poland* and *Horych v. Poland*.

Some of the new measures have been criticised by the HFHR, which submitted a legal opinion at the stage of works in the Senate. The Foundation noted that the draft was not introducing any changes that would materially overhaul then-current law, and specifically the practice of application of the rules governing the classification of high-risk inmates. The HFHR also observed that inmates should be classified as "high-risk" based on a system of dynamic protection built around an assessment of an inmate's personality and guided by risks posed by their personal traits and behavioural history in a penitentiary setting. At the same time, the Foundation argued that despite the implemented changes still prison authorities might still classify a prisoner as "high-risk" solely on the basis of the legal classification of the imputed offence.

Moreover, the newly implemented changes did not include measures that would force prison authorities to subject high-risk inmates to any special rehabilitation regime.

However, the population of inmates classified as "high-risk prisoners" systematically decreases. In March 2017, there were 114 high-risk prisoners, whereas only two years earlier this categorisation was given to 184 inmates of Polish penitentiary facilities.

b. Forced labour of the inmates.

Work is a key element of the social rehabilitation of incarcerated persons. It is crucial in preparing inmates to live outside the prison walls. When in employment, inmates are able to pay spousal or child maintenance or compensation to victims of their crimes.

2016 saw a rise in the number of employed inmates of penitentiary facilities. Whereas in 2015 the average incidence of employment among persons convicted of criminal or petty offences was 35.5%, the relevant figure for March 2017 was 46.2%. During the discussed period, the number of newly created paid and unpaid jobs was 2,613 and 1,000, respectively. The above increase was clearly a consequence of the government-sponsored programme of prisoners' employment, which comprises three pillars: the development of 40 manufacturing plants near to correctional facilities, creation of new unpaid employment opportunities for prisoners at local authorities and introduction of tax credits for businesses that employ prisoners.

The programme was implemented through, among other things, an amendment to the Criminal Enforcement Code, which changed the rules of convicted persons' employment. The most extensive modifications applied to the rules of the unpaid employment of incarcerated persons. A general rule of the previous law was that inmates could legally

17 The Act amending the Criminal Enforcement Code and certain other acts of 10 September 2015 J.L. 2015, item 1573.

work without pay in two situations: obligatorily for a correctional facility or voluntarily for a local government authority. The amendment to the CEC expanded the availability of unpaid employment. The current version of the Criminal Enforcement Code enables prisoners to be lawfully employed (for a maximum of 90 hours a month) to perform work for a good cause to the benefit of:

1. local government;
2. entities established and supervised by a municipal, district or province authority;
3. organisational units of the central or local government;
4. commercial companies wholly owned by the State Treasury or a municipality, district or province.

The amendment also modified the nature of inmates' unpaid work. Prior to the amendment, the only type of non-voluntary work that could be performed by inmates was cleaning and daily maintenance work at a correctional facility. However, according to the new wording of Article 123, the above categories of work performed for "a good cause" became obligatory for inmates. Given the above, inmates may currently be disciplined for a failure to perform unpaid work for a single-shareholder commercial company owned by the State Treasury, for instance, Katowicki Holding Węglowy (a coal mining enterprise).

Importantly, the previous regulations were already abused. In January 2015, Newsweek reported that inmates of the Correctional Facilities in Łowicz and Garbalin were used as a workforce for the A2 Motorway construction project. The inmates did not receive any remuneration for their work and were employed on the basis of the laws that allow local government units to use prisoners' unpaid labour. The media accounts prompted the resignation of General Jacek Włodarski, then-Director General of the Prison Service.

The other significant change introduced by the amendment to the Criminal Enforcement Code was the modification of rules governing deductions from inmates' work pay. Pursuant to the new rules, the deducted contribution to the Victim and Post-Penitentiary Support Fund decreased from 10% to 7%. At the same time, the contribution to the Fund of Vocational Activation of Convicted Persons and Development of Prison Work Establishments doubled and now amounts to 45% of the work pay. This led to a drastic decrease in the value of the work pay that is actually paid to inmates. The table below, prepared by the Legislation Office of the Sejm during legislative works on the new law, presents details of the new deductions framework. The figures presented in the table reflect the pay of an inmate employed full-time.

	Option I	Option II	Option III
Gross pay	PLN2,000.00	PLN 2,000.00	PLN 2,000.00
Obligatory social insurance contributions (9.76%+1.5%)	PLN 225.20	PLN 225.20	PLN 225.20
Post-Penitentiary Support Fund contribution (7%)	PLN 140.00	PLN 140.00	PLN 140.00
Vocational Activation Fund contribution (45%)	PLN 900.00	PLN 900.00	PLN 900.00
Work pay after deductions	PLN 734.80	PLN 734.80	PLN 734.80
Prepaid income tax (18%)	PLN 85.93	PLN 85.93	PLN 85.93
Net pay	PLN 648.87	PLN 648.87	PLN 648.87
Collection costs (spousal or child maintenance, fines, penalty assessments, etc.)	-	PLN 259.55	PLN 259.55
Mandatory savings deposit (max. 10% of work pay)	PLN 200.00	PLN 200.00	PLN 200.00
Disciplinary penalty	-	-	PLN 183.70
Amount actually paid to an inmate	PLN 448.87	PLN 189.32	PLN 5.62
Percentage of all deductions	77.56%	90.56%	99.72%

c. Complaints of the inmates.

The modifications of the complaint procedure for inmates, introduced in 2012[18] and applicable to, among others, persons serving custodial sentences, still remain in force. According to the amended rules, a complaint must include a justification and satisfy more stringent formal requirements. Furthermore, complaints (applications or requests) that contain abusive language or prison slang may be disregarded.

Historically, such measures have been questioned by the UN Committee Against Torture as restricting the right to a complaint, and also challenged by the Commissioner for Human Rights, who asked the Constitutional Tribunal for a constitutional review of provisions of the Criminal Enforcement Code.

In July, the Constitutional Tribunal ruled that the provisions were constitutional[19].

18 The Act amending the Criminal Enforcement Code and certain other acts of 16 September 2011, J.L. 240, item 1431.

19 Judgment of the Constitutional Tribunal dated 12 July 2016, case no. K 28/15, published in OTK ZU A/2016, item. 56.

3. Real-life issues.

a. Medical care in confinement – complaints of the inmates.

Following a great number of cases sent by the inmates, we have noticed that complaints about the condition of medical care in confinement form the bulk of issues that the inmates raise to the Foundation's attention. The HFHR is of the view that the level of medical care in correctional facilities, including in particular specialist medical care, does not guarantee that the inmates get access to the medical services as required. What is more, there is a problem obtaining consent to treatment outside the correctional facility when there is no access to the relevant medical services. Such cases are mostly due to the fact that inmates do not have access to specialists or expensive treatment.

The HFHR sent letters to the governors of correctional facilities and penitentiary courts concerning such cases, including but not limited to the cases of A.K. and A.F. in 2015. The first inmate suffered total vision loss in one eye, and partial vision loss in the other one. A.F. suffered from hemiparesis of the right side, coronary artery disease, chronic heart failure and carotid artery atherosclerosis at an advanced stage. In their letters to the Foundation, they both indicated that they had not been granted temporary release from prison despite medical documentation proving that they had needed to be treated outside the correctional facility. It needs to be pointed out that while the right to be released from prison or the right to be granted a temporary release from prison is not guaranteed under the ECHR standards, nevertheless the Court states it explicitly that in certain cases it is indispensable that inmates receive treatment outside the correctional facility.

Failure to grant temporary release from prison is not the only problem relating to medical care in correctional facilities. The inmates who sent their complaints to the Foundation also mentioned difficulties with access to medical services which should have been provided within the correctional facility. The cases of R.K. and C.Z. can be used as an illustration of such issues; they both are deaf and they received one hearing aid from the penitentiary facility which they were to share. When the device broke, the inmates lost contact with the outside world. Calling on the principle of humanity, the Foundation requested the governor of the penitentiary facility to provide R.K. and C.Z. with access to hearing aids.

In 2017, the HFHR took action in many similar cases relating to the absence of appropriate medical services for inmates. The case of D.B., an inmate suffering from paranoid schizophrenia, may serve as an example. D.B. claimed that his condition was improperly managed in a correctional facility. According to the inmate, he received medication different from those he was on during admission to psychiatric wards. The HFHR requested information concerning the conditions of medical treatment in the correctional facility. The head of the correctional facility responded to the HFHR's inquiry in the case, stating that D.B. was not a paranoid schizophrenic but only faked the condition. In the case of D.B., the HFHR prepared an application to the ECtHR.

b. Rights of inmates with physical disability

The Foundation also received complaints from individuals with physical disabilities who served their prison sentence. They mentioned problems moving around the correctional facility, non-adjustment of the cells to the needs of persons moving in wheelchairs as well as the lack of assistance in daily life activities from the correctional facilities' administration. On 12 February 2013, the European Court of Human Rights gave its judgment in the case of *D.G. v. Poland* (application no. 45705/07). The applicant who is confined to a wheelchair complained that the medical and nursing care, which he had been provided with by the Polish authorities during his detention, had been inadequate. In the judgment, the Court held that the Convention had not been violated; however, D.G. was awarded compensation in the amount of EUR 8000.

The Foundation sent letters concerning the following cases of inmates with disabilities to the authorities overseeing penitentiary facilities:

The case of a paraplegic inmate in wheelchair – in 2015.

XY is a paraplegic and, as a consequence, he is dependent on a wheelchair. He also suffers from a number of other diseases, including but not limited to post-traumatic epilepsy and diabetes. As a person with disabilities, he needs assistance in all activities, i.e. washing up, dressing, or going to the restroom. The only action taken by the correctional facility to help XY was to train a cellmate so that he could help a disabled person. However, even that help was not provided because the cellmate was in the hospital, hence XY was left without any help or care for many hours; he requires help, among other things, to ensure proper hygiene as he is suffering from the paralysis of sphincter muscles. HFHR indicated that the conditions in the prison may be considered degrading and the prison authorities may be accused of inhuman treatment which may be considered a violation of Article 3 of the European Convention on Human Rights.

An inmate with physical disability in a detention centre – in 2016.

A.K. is a person with a disability who had his leg removed. On 24 September 2015, the prison officer told him that he should get ready to collect a package with a TV set from the storeroom. Since he uses forearm crutches to move, he asked the officer for a wheelchair. The officer declined without giving any reason for such a decision. The cellmates helped A.K. to get the package. HFHR requested the governor of the detention centre to state his position on that matter and to take actions so that inmates with disabilities are able to use equipment that enables them to move around and take activities of daily life. The governor of the detention centre complied with the request. In response, he noted that the artificial limb that A.K. usually uses worked properly and there had been no medical indications for using forearm crutches or wheelchair. He also cited the Regulation of the Minister of Justice of 13 November 2003, whereby prison officers are not authorised to hand orthopaedic devices to the inmates. The manager was of the view that the conduct of the prison officer was lawful. In the opinion of the Foundation, such conduct of the detention centre administration was not compliant with the effective legal system.

c. Occurrence, prevention and treatment of infectious diseases in correctional facilities.

Between 2014 and 2016, the Helsinki Foundation for Human Rights took part in an international project on infectious diseases in penitentiary facilities. The research and discussions conducted as part of the project indicated that infectious diseases remain quite an issue in the Polish penitentiary system.

The situation reflects the problems in the Polish society which were perfectly described in the report by the Supreme Audit Office (NIK) in 2015[20]. In the report, the authors indicated the growing speed of HIV spread in Poland. NIK stated that the growing number of people who are "unaware of their infection" might be the most dangerous consequence of the lack of prevention. NIK recalled that even as many as 70% of all HIV-positive people do not know that they had been infected.

Those issues, i.e. the focus on the treatment of the infected rather than on the prevention of infections, are also visible in penitentiary facilities. During a seminar on that topic, the authorities of the Polish penitentiary system in charge of medical care in the penitentiary facilities admitted that they were not interested in expanding the catalogue of mitigating measures available to the inmates by adding condoms, for example.

Furthermore, it seems that the inmates still have insufficient knowledge on the potential sources of infections which continue to be a problem. This leads to a risk of the infectious diseases spreading and might also lead to stigmatisation of inmates who are already infected. The complaints sent by the inmates to HFHR seem to be the best proof of the latter. HFHR does receive complaints from inmates who demand being transferred from a cell which they share with an inmate who has an infectious disease.

In 2015, HFHR also recorded one complaint lodged by an HIV-positive inmate who had not been provided with proper anti-retroviral treatment. The inmate who was infected with the Human Immunodeficiency Virus (HIV) complained that he had not received proper therapy when he first entered the facility. It was only his wife who brought him the drugs he needed for his disease.

d. Restrictions on access to education.

The Foundation also came across cases where the administration of the correctional facilities made it difficult for inmates to access education. For example, the administration of the correctional facilities did not consent that inmates have computers in their cells even though the computers offered no ability to communicate with the outside. Despite such declarations, the inmates were not able to use computers in their cells; consequently, their right to education was restricted and their resettlement upon leaving the correctional facility was hindered. A complaint lodged by an inmate called R.A. was the most important case of that type. He asked the prison governor for consent to having a computer in his cell for educational purposes. Such consent was denied to him on the

20 Supreme Audit Office, Realizacja Krajowego Programu Zapobiegania Zakażeniom HIV i Zwalczania AIDS w latach 2012 - 2013 [*Roll-out of the National HIV/AIDS Prevention Programme in 2012-2013*], https://www.nik.gov.pl/plik/id,8675,vp,10792.pdf (website accessed on 25 August 2016.)

grounds that it was necessary to ensure the security of the penitentiary facility. The HFHR requested the prison governor for information on the negative consequences of having a computer in the cell for the security discipline and order in the facility. It was stated in the letter, among other things, that R.A. wanted to start his own business in transport and shipment upon completing his prison term. In his letter, the prison governor stated that having a computer in a cell (even if it had no technical solutions to enable communication) would be a threat to the security of the facility.

The HFHR also pointed out that the right to education that R.A. would like to exercise was considered a fundamental right of an individual under Article 70 of the Constitution of the Republic of Poland and under Article 26 of the Universal Declaration of Human Rights, among others; as such, the right should be respected under any circumstances, including in prison. In his response to R.A.'s letter, the prison governor emphasised that consent to having a computer in the cell was discretionary, and the internal bylaws of the units were in compliance with the statutory regulations. The refusal to grant consent was justified by the fact that the facility was a closed one, and there were also individuals there who are in pre-trial detention. Therefore, any computer hardware would need to be subject to special control similar to the control of radio and TV equipment. In addition, it was stated that a person who files such a request should provide adequate justification, including in particular but not limited to the relevant documentation. On the basis of those arguments, the prison governor resolved to uphold his refusal.

As there was no satisfactory response from the administration of the correctional facility, the HFHR sent a letter to the Director General of the Prison Service, General Jacek Kitliński. We pointed out to the international and constitutional standards concerning the right to education. The Central Prison Service Authority responded to our intervention and noted that the penitentiary facilities were overseen by the regional managers of the Prison Service, in line with the segregation of duties. Consequently, the request for intervention was forwarded to the regional director of the Prison Service; in addition, investigative proceedings were launched of which HFHR was to be informed. HFHR is still waiting for the information on the proceedings findings.

e. Social resettlement of convicted persons.

In its 2015 report, the Supreme Audit Office (SAO)[21] criticised the system of social resettlement of the convicted persons which is effective in Poland. The main flaw of the system, in SAO's opinion, was that there was no institution that would coordinate the activity of the many national- and local government administration agencies, and social organisations involved in such actions.

The SAO also observed that the number of social rehabilitation programmes encouraging social resettlement of the convicted was gradually growing (in 2012, there were around 4750 such programmes; in 2013, more than 6300 and in the first half of 2014, nearly 4400); however, their quality was not always high. For example, as regards the social resettlement, the effectiveness of nearly a half of all social rehabilitation programmes (44%) was none or doubtful. They did not rely on in-depth up-to-date specialist knowl-

21 The Supreme Audit Office, Readaptacja społeczna skazanych na wieloletnie kary pozbawienia wolności [*Social Resettlement of Persons Convicted to Long-Term Imprisonment*], https://www.nik.gov.pl/plik/id,9730,vp,12100.pdf (accessed 25 August 2016)

edge of social rehabilitation, including in particular the knowledge of the social rehabilitation methodology, such as the forms, methods and techniques of social rehabilitation procedure. It was often the case that prosaic activities, such as ping-pong or collecting plastic caps were accompanied by "forced" ideology and theoretical model. In addition, the convicted frequently did not know what rules inmates were enrolled on or what they should do to be enrolled in the programme.

What is more, the absolute majority (93%) of social rehabilitation programmes subject to the evaluation did not have properly formulated grades, methods and tools for efficiency measurement. In many cases, they were only included in the programmes to meet the formal requirements. The Prison Service did not analyse the effectiveness of the penitentiary measures applied, including the social rehabilitation programmes implemented or their impact on the readiness for social resettlement, and their usefulness in freedom.

In view of the above, the SAO called on the Minister of Justice to build a comprehensive and consistent system for supporting the social resettlement of the convicted.

V. NATIONAL CENTRE FOR THE PREVENTION OF DISSOCIAL BEHAVIOURS

1. Legal status

The Act on proceedings against mentally disturbed persons who pose a threat to life, health or sexual liberty of others of 22 November 2013 came into force early 2014. The Act regulates the court procedure in the case of individuals who completed their prison sentence and who may pose a threat due to their mental condition, and consequently, there is a concern that they will commit a crime in the future. The Act was enacted in response to certain press reports that individuals who were sentenced to death prior to 1989 and whose death sentences were changed to 25 years in prison in 1989 would leave prison early 2014.

The proceedings under the Act is initiated at the request of the governor of the prison in which the person who might pose a threat serves his/ her sentence. Such proceedings may be initiated if the person:

1. serves a legally binding custodial sentence or a sentence of 25 years in prison in a therapeutic system,
2. exhibited mental disorders, such as intellectual disability, personality disorder or aberration of sexual preferences, during the execution proceedings,
3. the mental disorders diagnosed are of such a nature or such intensity that there is at least a high likelihood that the person will commit a prohibited act involving violence or involving the use of force or the threat of its use against life and health, subject to imprisonment with an upper limit of at least 10 years.

If the court finds those premises, one of the two types of measures may be applied – preventive surveillance or placement in a special closed facility (National Centre for the Prevention of Dissocial Behaviours). The Centre is responsible for the administration of therapeutic procedure towards individuals who pose a threat and who have been placed

in the Centre. According to psychiatrists, there are no medical capabilities to conduct an effective therapeutic procedure towards such individuals.

2. Concerns regarding compliance of the new law with the human right standards

As it is impossible to achieve the assumed medical effect, there are concerns whether or not the placement in the Centre is in fact imprisonment as a penalty. For that reason, the regulation gives rise to doubts as to compliance with the ban on a double penalty for the same offence (the double jeopardy principle). It is even more important as the Act of 2013 is also applicable to individuals convicted to imprisonment prior to its effective date which would be yet another sign of law application on a retroactive basis. That is due to the fact, among other things, that the mental disorders which are the reason for placement in the National Centre were most usually also present when committing the prohibited act. Furthermore, when the Act of 2013 came into effect the Criminal Code provided for the post-penal measure which envisaged the ability to place a convicted person in a closed facility after he/she has completed his/ her sentence (for a sexual offence). However, such a penal measure could be ruled in a conviction issued by the criminal court. Furthermore, since the regulation was applied under criminal law, the court was able to apply it on the condition that the offence for which the person was sentenced (and placed in a therapeutic centre upon completion of the sentence) was committed after the effective date of the regulation allowing for the application of that penal measure. The solutions envisaged in the Act of 2013 were also implemented in the Criminal Code in 2015. A provision on the conflict of laws was also implemented, whereby the Act of 2013 became applicable to individuals sentenced for an offence committed before the effective date of the Criminal Code of 2015.

Furthermore, the individuals placed in the Centre sent complaints to the Commissioner for Human Rights who is in charge of the National Prevention Mechanism; the complaints concern the visiting principles as well as the restriction of rights of the individuals who are placed in the Centre – such restrictions derive from the Centre's internal bylaws[22].

The Constitutional Tribunal ruled in November 2016 that the Act of 2013 is compatible with the Constitution[23]. The Tribunal accepted the possibility that the treatment at the Center woukd not always be effective. On the other hand, placing at the Center constitutes, in the Court's opinion, "a form of deprivation of personal freedom combining the elements of forced psychiatric detention (...) and several preventive measures provided by the criminal code, as defined in the law as postpenal preventive measures". Despite the similarities with the custodial sentence, placement in the Center has not been classified as a criminal penalty. The Tribunal described it as a "purely preventive and safeguard measure".

Judge A. Wróbel submitted a dissenting opinion to the verdict. In his view, "the results of researches concerning treatment of particularly dangerous criminals show that the

22 Addressing the Minister of Justice on the Bylaw of the Centre – https://www.rpo.gov.pl/sites/default/files/Do_MS_%20ws._ograniczania_praw_osob_umieszczonych_w_Krajowym_Osrodku_Zapobiegania_Zachowaniom_Dyssocjalnym.pdf.

23 Case no. K 6/14. The Helsinki Foundation for Human Rights submitted an amicus curiae brief in the case which is available at: http://programy.hfhr.pl/monitoringprocesulegislacyjnego/files/2015/11/K_6_14opiniaAMICUS.pdf.

social effectiveness of preventive surveillance combined with compulsory treatment is greater than the so-called postpenal isolating means". According to judge A. Wróbel, "the mechanism of placement at the Center was not necessary for the achieving the main objectives of the Act, which was the therapy and rehabilitation of dangerous criminals, since these aims can be achieved through the improved preventive supervision mechanism provided for by Act and by the provisions of the Act on protection of mental health".

VI. PSYCHIATRIC ESTABLISHMENTS

1. Procedural safeguards

a. Social care homes

One of the most important problems in the area of protection of personal liberty of persons with mental disabilities is the lack of adequate safeguards in the proceeding regarding compulsory placement of persons under full guardianship in social care homes.

Pursuant to the Act on Social Assistance, a nursing home is a place which provides services of general interest, care, support and education at the effective standard level, within the scope and in the forms arising from the individual needs of the individuals who stay there. There are several types of nursing homes under the Act on Social Assistance, including but not limited to nursing homes for the elderly, individuals with chronic mental disorders, adults with intellectual disabilities, children and young people with intellectual disabilities. The residents of the nursing homes are under the supervision of the nursing home administration, and their personal freedom is subject to considerable restrictions (e.g. they are not free to leave the nursing home whenever they wish to). As at the end of 2014, there were around 78,000 individuals in nursing homes, according to the specification presented by the Ministry of Labour and Social Policy[24].

An individual may be placed in a nursing home of their free will or by compulsion on the basis of the Mental Health Protection Act. With compulsory placement, a person who is not incapacitated may be placed in the nursing home against his/her will, or a person who is incapacitated may be placed against the will of his/her guardian. Such a placement will generally be permissible if such a person is incapable of satisfying his/her basic life needs due to a mental illness or an intellectual disability and if that person is unable to use the care of other people which poses a threat to his/ her life. The procedure for compulsory placement in the nursing home is less controversial as it gives the person who is placed in such a home certain procedural guarantees; the person is also given the ability to request that the decision on placement in the nursing home be reversed.

Voluntary placement cannot generally be perceived as deprivation of liberty; however, when assessing the "voluntariness" in the case of individuals who have been incapacitat-

24 Ministry of Labour and Social Policy, Department of Social Assistance and Integration, Wybrane informacje o ponadgminnych oraz gminnych domach pomocy społecznej, środowiskowych domach samopomocy, mieszkaniach chronionych i placówkach całodobowej opieki prowadzonych w ramach działalności gospodarczej i statutowej [*Selected information on supramunicipal and municipal nursing homes, community self-help homes, protected housing facilities and full-time care facilities operated as part of business activity and statutory activity*],http://www.mpips.gov.pl/download/gfx/mpips/pl/defaultopisy/9477/2/1/2015%2009%2030%20MPiPS-05%20za%20rok%202014.pdf (last accessed on 15 June 2016).

ed, Polish law took into consideration the will of the legal guardian of the incapacitated person who is to be placed in the nursing home rather than the will of the party concerned. As a consequence, it was possible to place incapacitated individuals in a nursing home on a voluntary basis, at the request of their legal guardian, even if such placement was against their will. Such an assumption had a very negative impact on respecting the procedural rights of the individuals who have been deprived of liberty in that way. First of all, a request of the legal guardian was sufficient to place an individual in the nursing home. In theory, the legal guardian should obtain the consent of the guardianship court to submit such a request; however, the procedure for granting such consent did not provide the incapacitated person with even the most basic procedural rights, including the right to being heard. There were also cases where individuals were admitted to the nursing home according to that procedure without the consent of the guardianship court. Furthermore, the incapacitated person placed in the nursing home pursuant to a request of his/her guardian did not have the right to submit requests, on his/her own, for the control of the lawfulness and reasonableness of his/her detention in such a nursing home; the court did not exercise such a control ex officio either.

According to estimates that the HFHR presented to the Constitutional Tribunal on the basis of information provided by the largest nursing homes in the individual provinces, there may be more than 12,500 completely incapacitated people in nursing homes in the entire country who have been deprived of procedural rights as a result of faulty regulations and the inactivity of the legislator.

The provisions of the Mental Health Protection Act which regulate the procedure for placement of totally incapacitated persons in social care homes were found to be inconsistent with the European Convention on Human Rights (ECtHR, *Kędzior v. Poland*, 16 October 2012, app. no. 45026/07) and the Constitution of Poland (Constitutional Tribunal, 28 June 2016, ref. no. K 31/15). Unfortunately, despite the lapse of almost 4,5 years since the ECtHR judgment case and more than 10 months since the judgment of the Constitutional Tribunal, the law has not yet been amended. On 29 September 2016 the Ministry of Health presented a draft law aimed at reforming the Mental Health Protection Act. It provides, *inter alia*, that placement of incapacitated person in social care home against his/her will but with the approval of his/her guardian will be considered as involuntary commitment. As a consequence, it would require the decision of the court and moreover the person placed in the social care home will be entitled to request the court to conduct a review of legality and purposefulness of continuous stay. Moreover, the law will provide that at least every six months the incapacitated person placed in social care home against his/her will, but with the approval of his/her guardian, will be examined by doctors with the aim to establish whether his/her stay in social care home is justified. The law will also introduce certain other important solutions, such as the right to lawyer appointed by the court ex officio in any case concerning involuntary placement in psychiatric hospital or social care home. The work on the draft law is still at the inter-Governmental stage and no official draft has been submitted to the Parliament so far.

b. Psychiatric hospitals

Involuntary civil psychiatric commitment

In March 2016 the HFHR submitted an *amicus curiae* opinion in the proceedings before the ECtHR in the case of *Rydzyńska v. Poland* (app. no. 20206/11)[25]. The case revealed certain significant defects in the procedure for compulsory placement in psychiatric hospital in the so-called "emergency mode".

Pursuant to the Article 23 of the Mental Health Protection Act, if a behaviour of a mentally ill person indicates that because of the illness he or she is a threat to his or her own life or to another person's health or life, he or she may be admitted to a psychiatric hospital without his or her consent. A decision in this regard has to be made by a doctor who has personally examined the patient and consulted another psychiatrist or a psychologist where appropriate. In such situation, the director of the hospital should inform the Family and Custody Court within seventy-two hours. Within forty-eight hours of receiving such a notification, the patient should be visited and interviewed by a judge. Within fourteen days since notification the Family and Custody Court should conduct a hearing regarding the legality of placement. If it decides that there were no grounds for the involuntary admission of the patient, the hospital is obliged to release the patient immediately upon receiving the court's decision.

The problem with such procedure is that it does not provide sufficient guarantees of promptness of the proceedings. It is true that within 48 hours since the delivery of the abovementioned notification, involuntarily hospitalised person has to be heard by a visiting judge who may order his/her immediate release if he/she finds that the commitment was manifestly unjustified, however the term "manifestly unjustified" is interpreted very restrictively and in practice visiting judges order release from the hospital extremely rarely. Moreover, the law obliges the court to conduct a hearing within 14 days since notification, however it does not set any time limit for the delivery of a judgment.

As a result, there are situations where courts issue their judgments after few weeks or even months after placement. For instance, in *Rydzyńska v. Poland* case the applicant was hospitalized on 30 October 2007 and released on 10 January 2008, but the guardianship court delivered its judgment only on 5 February 2008, declaring that the deprivation of liberty was unlawful. we presented statistical data from randomly selected large psychiatric hospitals which show that such delays are not uncommon in practice. Substantial amount of the analyzed proceedings lasted longer than 14 days, what means the case were not finalized on the first hearing held in accordance with the time-limit set in Article 45(1) of the MHPA. The average time of proceedings varied between different compared courts. In District Court in Białystok more than 80% of cases were solved in 2 weeks since the initiation of the proceedings. On the other hand, in District Court in Starogard Gdański in 2013 around 35% of proceedings, in 2014 – more than 43% and in 2015 around 37% of proceedings lasted longer than one month. Particularly worrisome is relatively large number of proceedings which lasted longer than 2 months, e.g. around 20% in District Court in Warszawa-Śródmieście in 2013, around 10% in District Court for

25 In the decision of 7 March 2017 the ECtHR declared the application inadmissible on formal grounds.

Gliwice or around 23% in District Court in Starogard Gdański in 2015. Certain individual proceedings lasted exceptionally long – some of them even few months.

It is worth to underline that the proceedings which last few weeks or even few months may significantly threaten human rights of persons deprived of their liberty. In this context one have to keep in mind that according to Article 33 of the MHPA toward the person involuntary placed in psychiatric hospital may be taken indispensable health care interventions, aimed to eliminate reasons of involuntary placement. If the person prevents carrying out an intervention, measures of direct coercion may be used against him/her. Only two medical interventions cannot be carried out without consent of person concerned: electroconvulsive therapy and sub-occipital or lumbar puncture. Such interventions may be carried out also before the guardianship court issues final judgment as to the lawfulness of deprivation of liberty.

Lack of proper guarantees of promptness of the judicial proceedings regarding legality of compulsory placement may lead to violation of the Article 5 § 1 of the ECHR. In the judgment in the case of *L.M. v. Slovenia* (12 June 2014, app. no. 32863/05) the ECtHR criticized the Slovenian law, according to which the domestic courts were required to decide on the necessity of an individual's confinement "without delay, but no later than thirty days" after receiving the notification of confinement from the hospital. It held that "even assuming that the rules of domestic law were complied with, the Court considers that the legislation allowing for such an extensive amount of time to pass before a decision was made on confinement raises serious concerns under Article 5 § 1, as it implies a lack of procedural safeguards". From that perspective the Polish law has to be assessed even more negatively as it does not provide any time limit for the delivery of the court's judgment regarding the compulsory placement.

It is worth to note however, that in the draft law reforming the Mental Health Protection Act (the same which will amend the procedure for placement in social care homes), the Ministry of Health plans to introduce provision which would oblige the court to issue the judgment regarding the legality of involuntary hospitalization immediately after the hearing.

Involuntary forensic psychiatric commitment

In November 2015 the HFHR helped to prepare and submit an application to the ECtHR in a case which concerned involuntary psychiatric commitment in the criminal proceedings ordered on the basis of outdated medical opinion.

In 2014 man who suffers from serious mental disorders attacked his parents, however luckily the attack had not resulted in any serious injuries. Subsequently, the criminal proceedings were initiated and the man was subject to a psychiatric examination. The expert witnesses concluded that the applicant had been legally insane at the time his crime was committed, and his mental condition justified his placement in a psychiatric hospital. Based on that opinion, the prosecutor filed a petition with the court to discontinue the proceedings and place the man in a psychiatric hospital. Throughout the criminal proceedings, both the applicant's parents and his attorney argued that the man's condition improved significantly since the psychiatric examination. The applicant started his treatment

at a centre that applies modern therapeutic methods, and his illness had been in remission for a long time. Unfortunately, both the trial and the appeal courts disregarded those arguments and resolved to place the applicant in the psychiatric hospital.

It is worth noting that the man had not been subject to another psychiatric examination during the proceedings. Hence, a legal and binding court order was issued on the basis of a psychiatric opinion that had been prepared a year earlier during pre-trial proceedings. We believe that such situation is inconsistent with the Article 5 of the ECHR. According to the case law of the ECtHR, in order for the involuntary psychiatric hospitalization to be legal, the domestic authorities has to prove that the individual's mental disorder was "reliably shown". This includes, *inter alia*, that the decision regarding compulsory placement is based on the medical opinion which is valid for the moment of admission. In case of significant lapse of time between examination and admission or emergence of new factual circumstances which suggest that the person's mental health condition has improved, he or she should be re-examined by the doctors. However, the Polish law does not oblige the courts to order re-examination of person and usually it is hold that the opinion is valid if it was maintained by the experts at the hearing.

Involuntary psychiatric commitment of juveniles

In 2014 and 2015 the HFHR was involved in the proceedings regarding compulsory psychiatric commitment of juvenile, which also revealed certain significant defects of the Polish law and practice.

The case concerned psychiatric hospitalization of a 15-years old boy. The boy, who suffered from the Asperger's syndrome, allegedly committed many unlawful acts and so the juvenile proceedings were initiated against him. In the course of proceedings, the court ordered placement of a boy in a psychiatric hospital as a temporary therapeutic measure. The boy stayed in the hospital since 29 October 2014 to 25 February 2015 when he was released by the court of the second instance after his mother appeal.

The involuntary hospitalization of the boy seemed completely disproportionate and disregarded the fact that the Asperger's syndrome is not a psychotic disorder which requires treatment in a psychiatric hospital. Moreover, the hospital in which he was placed was located approximately 300 kilometres from the boy's family home what significantly limited his possibilities of contact with family. Also the length of appellate proceedings was unreasonably long (4 months), what is unacceptable in the cases concerning personal liberty of children.

2. Ill-treatment

Within the last few years the HFHR has not been involved in any case which would concern torture or other forms of torture or inhuman or degrading treatment in psychiatric facilities. However, we recognize certain defects of Polish law and practice which may cause that persons placed in such institutions are not effectively protected against these forms of ill-treatment.

a. Lack of effective supervision over private full-time care centres

In the judgment in the case of *Storck v. Germany* (16 June 2005, app. no. 61603/00), the ECtHR held that the state has "a duty to exercise supervision and control over private psychiatric institutions. Such institutions, in particular those where persons are held without a court order, need not only a licence, but also competent supervision on a regular basis of whether the confinement and medical treatment is justified".

HFHR believe that the supervision of Polish public authorities over private psychiatric care institutions is not sufficiently effective. Under Article 67 of the Act on Social Assistance, business activity involving full-time care for persons with disabilities, persons with chronic conditions or elderly persons may only be run pursuant to a licence granted by the province governor. The conditions and the procedure for granting such licences are set out in the Act and in the secondary regulation thereto. The Province Governor is entitled to control and impose certain sanctions on such facilities in case of any violation. However, the financial penalties are not sufficiently deterring.

A line of complaints sent to HFHR and media reports confirm that the oversight of the business operations of that type is not effective enough. For example, one of the cases in which HFHR intervened concerned a care facility run without the required licence; there was a non-incapacitated person who was placed in that institution under suspicious circumstances (most probably on the basis of an agreement entered into by the legal representative of that person who exceeded the scope of her authorisation). In April 2016, the media reported numerous cases in which patients with Alzheimer's disease who stayed in the care facility were abused by the staff. Reports about excessive use of direct coercive measures towards patients who are immobilised by safety belts and who are not provided with adequate hygiene routines are a particular concern. In October 2016 the media informed about similar situation in two other private care home. All these abuses could be qualified at least as a degrading treatment.

b. Lack of separate regulation of application of means of restraint against minors

The Mental Health Protection Act and the regulation of the Minister of Health issued on its basis provide the rules regarding application of means of restraint against patients of psychiatric hospitals and social care homes. The law contains many important safeguards against arbitrariness, however it does not distinguish the situation of adult and minor patients. As a result, theoretically children may be subjected to the same forms of restraint measures as adults (for example, seclusion or mechanical immobilisation with the use of straps or straitjackets).

Such regulation has to be assessed negatively. In the HFHR opinion, due to physical and mental vulnerability, the possibility of use of coercive measures against children should be limited and some forms of means of restraint should be even prohibited. In this context it is worth to note, for example, that the Committee against Tortures in its concluding observations regarding Serbia[26] recommended prohibition of use of seclusion against children. Also the Special Rapporteur on torture and other cruel, inhuman or degrading

26 CAT, Concluding observations on the second periodic report of Serbia, 3 June 2015, CAT/C/SRB/CO/2.

treatment or punishment underlined the risks connected to the abuse of restraint measures against children[27].

VII. CENTRES FOR FOREIGN NATIONALS

1. Placing children in guarded centres for foreign nationals

Placing minor foreign nationals in guarded centres for foreigners is one of the most important issues relating to foreigners' rights that the Helsinki Foundation for Human Rights deals with.

Under Polish law, an unaccompanied minor foreigner who applies for international protection in Poland must not be placed in a guarded centre. If there are proceedings against the foreign national regarding a compulsory return, or if a compulsory return decision has been issued and the foreign national is unaccompanied in Poland, then he or she may be placed in a guarded centre if they are 15 or older. If, however, the minor foreign national stays in Poland under the care of adult members of his/ her family, then he/ she can always be placed in a guarded centre, regardless of his/ her age and the type of proceedings against him/ her.

Under the (Polish) Foreigners Act, when the court is reviewing a motion for the placement in a guarded centre of a minor foreigner who is staying in the Republic of Poland unaccompanied, the court should act in the best interests of the minor and take into account especially the physical and mental development of the minor foreigner, his/ her personality traits, the circumstances under which he/ he was detained and personal conditions supporting his/ her placement in a guarded centre (Article 397.2). Furthermore, under the Foreigners Act (Article 401.4), when the court is reviewing a motion for the placement of a family with children in a guarded centre, the court should also act in the best interests of the children.

Those regulations were added to the Polish legal system on 1 May 2014, upon the entry into force of the Foreigners Act. Previously, the domestic law did not require courts to take into account children's welfare when deciding whether or not to place him/ her in a guarded centre. However, such a duty derived directly from the Convention on the Rights of the Child to which Poland is a party.

HFHR has observed that even though courts are required by law to consider a child's welfare, the child's welfare is not always evaluated properly. In their decisions, courts frequently state that the mere fact of placing a child at a guarded centre with his/ her parents would fulfil the principle of considering the child's welfare. Furthermore, when taking a decision on placing a child or families with children at a guarded centre, the courts issue decision on placing them in such a centre for the maximum period of time, rather than for the shortest time possible.

The Helsinki Foundation for Human Rights is of the view that Polish regulations should totally exclude the ability to place minor foreign nationals at guarded centres because

27 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 5 March 2015, A/HRC/28/68

depriving them of liberty due to their migration status, frequently in relation to decisions taken by their parents, is never in their best interest. HFHR, together with other organisations, have raised that issue on a number of cases during public speeches or when the migration laws were amended. HFHR raised the issue that depriving the minors of liberty in itself is a threat to their mental and physical development. Limited access to educational classes in guarded centres is yet another argument against the detention of the minors. Up until to date, there have been no detailed legal regulations concerning the schooling obligation for the minors who are staying in guarded centres. The minors do not take part in classes at schools and, in general, do not follow the core curriculum for general education. They are only provided with general development classes organised in guarded centres and conducted by teachers from the local schools according to their own curricula.

One of the cases run by HFHR and involving violation of the rights of minor foreign nationals subject to detention involved a family of Pakistani refugees. By a court decision, a mother with two minor children was placed at a Guarded Centre for Foreign Nationals in Przemyśl. During their stay at the centre, the mother filed a request seeking refugee status for the entire family because of the persecution they suffered in their country of origin. Even though the mother indicated in the request for the refugee status that she had been a victim of physical violence, the fact was not taken into consideration by the Border Guard in charge of the guarded centre, despite the fact that under Polish regulations such individuals must not be placed in guarded centres. When taking a decision on placing the family at a guarded centre and when taking a subsequent decision on extending their detention, the courts completely disregarded the children's welfare. During the entire stay in the guarded centre, they were in poor mental condition; they were not provided with a psychologist's care. In addition, one of the children fell victim to violence from another foreigner who was also staying in that centre and was only brought to the hospital after three days.

Eventually, the family was granted the refugee status which confirmed the mother's concerns about the persecution. A petition was filed for compensation for wrongful detention of the family in the guarded centre. The petition cited both the violence suffered by the foreign nationals and the fact that children's welfare was disregarded when taking a decision on their placement in the guarded centre. The compensation was awarded to the foreign nationals; however, a complaint in cassation was brought to the Supreme Court due to the fact that the amount of the compensation was not determined properly.

2. Failure to identify victims of torture and other forms of violence

Under Polish law, foreign nationals whose mental and physical shape implies that they were subject to violence shall not be placed in guarded centres (Article 88a.3.2 of the Act on granting protection to foreign nationals in the Republic of Poland and Article 400.2 of the Foreigners Act). The absolute ban on the detention of victims of violence applies both to foreign nationals who apply for international protection and to foreign nationals who are subject to return procedures.

However, the HFHR has observed that the Polish authorities do not have a practical mechanism enabling effective identification of foreign nationals who fell victims to violence

and enabling proper application of the above regulations. As a result, there have been cases that even foreign nationals who state it explicitly in their application seeking the refugee status that they fell victim to torture in their country of origin are placed in guarded centres. Furthermore, some courts apply the above regulations improperly in that they assume that there are no reasons against a foreigner's detention if the foreigner is provided with the care of a psychologist in the guarded centre. Such erroneous position was also included in the guidelines of the National Border Guard Headquarters, whereby foreign nationals who fell victim to violence are not to be released from guarded centres if they may be provided with adequate psychological care at the centre.

The HFHR is of the view that victims of violence should be identified as early as possible during the proceedings on the foreigner's placement in the guarded centre so as to avoid unlawful detention of such individuals. Both the Border Guard who send the applications for foreigner placement in the centre to the courts and courts who take decisions on detention cases should examine, ex officio, whether or not there are any premises that exclude detention. To achieve that goal, there should be proper mechanisms for identifying victims of torture, violence and trauma among the foreign nationals. It is also worth eliminating the incorrect practice of certain courts who followed the guidelines of the Border Guard and who decide to place foreigners diagnosed as victims of violence in a guarded centre.

Some cases run by HFHR with respect to unjust placement of a victim of violence in a guarded centre:

1. the above-mentioned case of a female refugee from Pakistan who was placed in a guarded centre together with her two minor children, even though it was established that she fell victim of violence in her country of origin
2. **the case of a foreign national from the Democratic Republic of Kongo**
   The case involved a citizen of the Democratic Republic of Kongo. He sought the refugee status and in his request, he mentioned that he had been detained in his country of origin and subject to intense torture for around two weeks. Following a psychological observation, a psychologist stated that there was a high probability that the person had been a victim of violence. Nevertheless, he was held in a guarded centre for foreign nationals in Lesznowola for a total of 78 days. The court that decided on the extension of his stay at the guarded centre stated explicitly that he was a victim of torture. Nevertheless, the court did not find any reason to release him from the centre claiming that psychological care he received there was sufficient. The decision was then revoked by the court of a higher instance. There is currently a case pending concerning compensation for an undoubtedly unfair placement of the foreign national at the guarded centre.
3. **the case of a female foreigner from the Republic of Chechnya**
   The case involved a citizen of Russia of Chechen nationality; she stayed at a guarded centre for foreign nationals together with her five minor children, even though she stated that she had been a victim of domestic violence from her husband. She cited it in her application seeking the refugee status which she filed during her stay at the guarded centre. Nevertheless, she was not released and was then deported to the Russian Federation where, as she reported, she continued to be victim of violence from her husband. HFHR filed an application in that matter with

the European Court of Human Rights; the case was communicated to the Polish government in 2014 (*Bilalova v. Poland*, application no. 23685/14).

3. Access to an attorney

Many foreigners who declare an intention to apply for international protection in Poland are deprived of such a possibility if they file applications with Border Guard officers. The officers often refuse applications. Equally often, decisions denying entry to Poland are issued. While Border Guard officers deal with formalities, the foreigners are effectively deprived of their liberty in Border Guard facilities for the period from several to ten-odd hours; they also have no chance to contact and be represented by counsel (including an attorney[28,29]). This problem appears mostly at the Brest-Terespol railway border crossing and the restricted-access building of the border railway station of the Border Guard Facility in Terespol, where the highest number of applications for international protection is filed and the majority of decisions denying entry to Poland are issued. The building of the said border crossing, where foreigners stay after their train's arrival, is not adjusted to accommodate so many people simultaneously waiting for border control (at times, over 400). None of the locations made available to foreign travellers offers adequate waiting conditions. Importantly, foreigners have no chance to leave the building before the completion of procedures (once it is done, they either wait for a return train to Belarus or are allowed to enter Poland). No proper conditions are provided in a waiting room, which houses the foreign nationals waiting for a decision denying them entry to Poland. Moreover, foreigners are detained in the Facility based on the presumption that they may potentially be a threat to the order and security at the border crossing. Often, adult men travelling alone are detained by default. Detention rooms have no chairs.

The problem has been extensively described by, among others, Human Rights Watch[30], the Commissioner for Human Rights[31], the Association for Legal Intervention[32] and the HFHR itself[33].

It follows from the HFHR's experience that foreign nationals arrested by the Border Guard and subsequently placed at a guarded centre for foreigners or remand centre for foreigners by the order of a competent district court, generally do not obtain the assistance of an

28 Border Guard, *Komunikat dotyczący sytuacji na przejściu granicznym w Terespolu* [Information on the situation at the border crossing in Terespol], https://www.strazgraniczna.pl/pl/aktualnosci/4674,Komunikat-dotyczacy-sytuacji-na-przejsciu-granicznym-w-Terespolu.html

29 The statement of the Chair of the Warsaw Bar Association related to the information of the Border Guard, http://www.ora-warszawa.com.pl/pl/8889074-stanowisko-dziekana-ora-w-warszawie-w-sprawie-komunikatu-strazy-granicznej-z-dnia-17-marca-2017-roku-dotyczacego-pomocy-udzielanej-osobom-ubiegajacym-sie-o-status-uchodzcy-przez-adwokatow-izby-adwokackiej-w-warszawie

30 Human Rights Watch, *Poland: Asylum Seekers Blocked at Border*, https://www.hrw.org/news/2017/03/01/poland-asylum-seekers-blocked-border

31 Commissioner for Human Rights, *Komunikat dotyczący wizytacji kolejowego przejścia granicznego w Terespolu* [Information on a visit to the railway border crossing in Terespol], https://www.rpo.gov.pl/pl/content/komunikat-o-wizytacji-kolejowego-przejscia-granicznego-w-terespolu

32 Association for Legal Intervention, *At the Border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport*, http://interwencjaprawna.pl/en/files/at-the-border.pdf

33 *HFHR, "Road to nowhere" – a report from the Brest-Terespol border crossing*, http://www.hfhr.pl/wp-content/uploads/2016/11/raport-droga-donikad-EN-web.pdf

attorney. Foreigners are not assisted by attorneys directly after the arrest by the Border Guard, although they are advised of such a possibility in writing. They also have no legal representation during a court hearing regarding their placement in detention, despite an interpreter's presence and the receipt of another notice of rights.

Therefore, it is an exceptional situation when an attorney is present during an arrest and a detention hearing; this is also the case with foreign nationals from vulnerable groups, persons travelling with children, including those applying for international protection. This situation may be affected, among other things, by the fact that in Poland it is practically impossible to obtain access to a court-appointed attorney directly after the arrest[34,35].

As regards court hearings on the extension of detention of foreign nationals, regional courts generally do not order the obligatory appearance of foreign nationals. However, it should be noted that foreign nationals are increasingly often represented by attorneys during proceedings on the extension of placements at guarded immigration centres or remand centres for foreigners. According to the HFHR's assessment, this is a consequence of the fact that while staying in detention, foreign nationals have the opportunity to contact both commercially practising attorneys and non-governmental organisations. Furthermore, foreign nationals may apply for a court-appointed attorney (both based on Article 79(2) CCP and Article 78(1) CCP) in interlocutory appeals filed against district courts' decisions ordering the placement at a guarded immigration centre.

4. Compulsory returns of foreign nationals

The Foreigners Act which came into effect on 1 May 2014 introduced the ability to monitor the compulsory returns of foreign nationals by representatives of non-governmental organisations. The HFHR lawyers have conducted more than 20 such observations since the introduction of the regulation. The HFHR lawyers observed the process of foreign nationals' compulsory return to their countries of origin on several occasions even before the entry into force of provisions regulating that issue.

They monitored the return of foreign nationals who were deprived of liberty in Poland in that they were placed in a guarded centre for foreign nationals or a detention centre for foreign nationals. Most of such operations were monitored by the HFHR lawyers only during the stage when the foreign nationals stayed on the premises of the Border Guard at the airport until the foreigner departed Poland. The inability to monitor all stages of the operations derives from Polish regulations; under Polish law, the participation of an observer in the entire operation will be funded only if at least five foreign nationals are deported by a ship or by a chartered aircraft. Meanwhile, most of the deportation operations from the airport are carried out by regular airlines.

After each such operation, HFHR prepared a report for the Chief Commissioner of the Border Guard. The reports were also made before the entry into force of the regulations under the current Foreigners Act. Furthermore, the HFHR drafted a semi-annual report

34 Letter of the President of the Polish Bar Association no. NRA-56/1/13, http://www.adwokatura.pl/admin/wgrane_pliki/adwokatura-tresc-7580.pdf

35 Letter of the Commissioner for Human Rights no. RPO-543260-II/06/PTa/MK, http://www.sprawy-generalne.brpo.gov.pl/pdf/2006/10/543260/1694495.pdf

on the observations carried out between 1 May 2014 until 31 December 2014; the report was sent to the following, among others, the Commissioner for Human Rights, Director of the National Prevention Mechanism, Chief Commissioner of the Border Guard, Head of the Office for Foreigners, Head of the Chancellery of the President of Poland, and the Minister of the Interior.

During their monitoring activities, the HFHR observers found certain irregularities relating to notification of the foreign nationals forced to return. Among various issues, the observers noticed failure to enlist an interpreter if the foreign nationals do not speak a language understood by the Border Guard officers who are in charge of the return operation; consequently, the foreigner returning to his/ her country of origin may have received no information regarding actions taken towards him/ her or may have had no ability to report his/ her needs. The observers also noticed that foreigners were required to sign documents in a language they did not understand.

Other issues noticed during the monitoring included the fact that foreigners were given certificates stating that they were fit to travel by air even though the foreign nationals stated that their last visit at a doctor's office took place even a few weeks before the actual compulsory return. It was also noted that the period from the day of being notified of the return until the actual return was too short; consequently, it was difficult to notify the family in reasonable advance of the intended date and time of arrival.

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