

2016 ANNUAL REPORT OF THE OFFICE OF THE OMBUDSMAN AS NATIONAL PREVENTIVE MECHANISM

TABLE OF CONTENTS

EXECUTIVE SUMMARY	5
GENERAL INFORMATION ON THE ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM IN 2016.....	9
Legal Framework	9
Statistics on the Inspections Carried Out by the National Preventive Mechanism in 2016.....	11
PROTECTION OF ASYLUM SEEKERS AND MIGRANTS. MONITORING FORCED RETURNS OF MIGRANTS	11
1. Reception and Accommodation of Foreigners at the Distribution Centre in the town of Elhovo and at the Special Homes for Temporary Accommodation of Foreigners Run by the Migration Directorate of the Ministry of Interior	11
2. Accommodation and Registration of Asylum Seekers at the Centres Run by the State Agency for Refugees with the Council of Ministers	14
Monitoring Forced Returns of Illegally Staying Third-Country Nationals	17
PLACES OF DETENTION	19
Preliminary Remarks.....	19
Provision of Telephone Services	23
Supply and Pricing of Food and Non Food Products in Penitentiary Commissaries.....	25
Medical Care in the Penitentiary System.....	27
Prisons.....	28
The Prison in the City of Sofia	28
The Prison in the City of Sliven	30
The Prison in the City of Burgas	31
The Prison in the Town of Bobov Dol	37
The Prison in the City of Pazardzhik	41
The Prison in the City of Stara Zagora	42
The Prison in the City of Plovdiv	43
Remand Centres	46
Remand Centre in the City of Sliven.....	46
Remand Centre in the City of Burgas.....	47
Remand Centre in the Town of Dupnitsa	47
Remand Centre in the City of Blagoevgrad	48
Remand Centre in the Town of Razlog	48
Remand Centre in the City of Pazardzhik	49
Remand Centre in the City of Stara Zagora	49
Remand Centre in the City of Plovdiv	50
Detention facilities within the System of the Ministry of Interior	50

PROTECTION OF MENTALLY ILL PERSONS	54
SOCIAL AND MEDICO-SOCIAL CHILDCARE INSTITUTIONS	55
Family-type Placement Centres for Children Nos. 1 and 2 in the Village of Dren, Province of Pernik	57
Crisis Centre for Children, Victims of Violence at the ‘ <i>Olga Skobeleva</i> ’ Social Services Complex in the City of Plovdiv	58
SOCIAL INSTITUTIONS FOR THE ELDERLY	59
INTERACTION OF THE NATIONAL PREVENTIVE MECHANISM WITH INTERNATIONAL AND NATIONAL AUTHORITIES AND ORGANISATONS.....	62

LIST OF ACRONYMS

BHC – Bulgarian Helsinki Committee
CCD – Centre for Children with Disabilities
CoMs – Council of Ministers
CP – Closed Prison
CPT – Committee for the Prevention of Torture
DC – District Court ('RS')
DGEP – Directorate General 'Execution of Punishments' ('GDIN')
DPD – District Police Department ('RUP')
ECtHR – European Court of Human Rights
EPRCA – Execution of Punishments and Remand in Custody Act (ZINZS)
ERP – Early Conditional Release (Parole) ('UPO')
FTAC – Family-Type Accommodation Centre
HA – Healthcare Act (ZZ)
HCD – Home for Children with Disabilities
HCDPC – Home for Children Deprived of Parental Care
HE – Healthcare Establishment
HEA – Healthcare Establishments Act (ZLZ)
HMSCC – Home for Medical and Social Child Care
MC – Medical Centre
MHC – Mental Health Centre
MLSP – Ministry of Labour and Social Policy
MoH – Ministry of Health ('MZ')
MoI – Ministry of Interior ('MVR')
MoJ – Ministry of Justice ('MP')
NHIF – National Health Insurance Fund ('NZOK')
NPM – National Preventive Mechanism
OA – Ombudsman Act (ZO)
OP – Open prison
OPCAT – Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PD of MoI – Provincial Directorate of the Ministry of Interior ('OD MVR')
PE – Penitentiary Establishments
RC – Registration Centre
RHI – Regional Health Inspectorate ('RZI')
RIEPRCA – Rules for the Implementation of the Execution of Punishments and Remand in Custody Act (PPZINZS)
RRC – Registration and Reception Centre ('RPC')
SAA – Social Assistance Act (ZSP)
SAA – Social Assistance Agency ('ASP')
SACP – State Agency for Child Protection ('DAZD')
SAD – Social Assistance Directorate ('DSP')
SANS – State Agency for National Security ('DANS')

SAR – State Agency for Refugees ('DAB')
SEPIF – State-owned Enterprise 'Prison Industries Fund' ('DPFZD')
SHATP – Specialised Hospital for Active Treatment of Prisoners ('SBALLS')
SHTAF – Special Home for Temporary Accommodation of Foreigners
SPH – State-run Psychiatric Hospital ('DPB')
SSC – Social Services Complex ('KSU')
SWCA – Social Work and Correctional Activities (in prisons) ('SDVR')
TC – Transit Centre
TEMC – Territorial Expert Medical Commission ('TELK')

EXECUTIVE SUMMARY

I. Protecting Migrants and Asylum-Seekers. Monitoring Forced Returns of Migrants

Following the dynamics of migration processes countrywide and the level of protection of asylum-seekers' and migrants' fundamental human rights while within the territory of the Republic of Bulgaria was again among the top priorities on the Ombudsman's agenda as designated NPM. Analyses of migration flows in 2016 indicated changes in the profiles and nationalities of migrants and asylum-seekers (mostly nationals of Afghanistan, Pakistan, and Iraq), which has raised additional challenges for the competent government institutions with regard to their accommodation and the registration of their applications for international protection. Due to staffing deficiencies and lack of interpreters, applicants for international protection are held at the special homes for temporary accommodation of foreigners (SHTAF) for unjustifiably long periods of time instead of being released and housed at the centres run by the State Agency for Refugees.

For yet another year, no solution has been found to the problem of accommodating families with children in the SHTAFs. Meeting their basic needs at these special homes is not possible, as they do not provide sufficient personal space. The NPM strongly insists again that a possibility should be considered to apply alternatives to immigration detention with respect to this vulnerable group and to end placing asylum-seeker children in SHTAF detention.

The NPM notes that medical care in the special homes for temporary accommodation of foreigners continues to be a challenge due to overcrowding and the large number of children placed there, who require specific health care, and due also to the language barrier.

The NPM visited the first detached closed facilities run by the regional branches of the State Agency for Refugees where asylum seekers are to be housed. Despite the recent renovations and the agreeable physical environment created for the foreigners held there, the Ombudsman, in her capacity as designated NPM, reiterates her concerns as to the established detention regime in respect of persons seeking international protection (including minor children), which is likely to result in serious infringement of their rights. The Ombudsman, in her capacity as NPM, insists that detention of asylum seekers be applied as a measure of last resort. It is essential also to ensure sufficient legal guarantees for their protection, as well as judicial control over their detention.

In August 2016, the Ombudsman, in her capacity as NPM, published a special thematic report on the rights of unaccompanied and separated asylum-seeker children. A main finding of the Ombudsman was that Bulgaria, being an EU member state and a country, which has ratified the UN Convention on the Rights of the Child, should improve the asylum, reception, and care system covering unaccompanied minor children, thus guaranteeing their life, health, safety, and interests as a particularly vulnerable group of children.

An essential part of the Ombudsman's activities as designated NPM relate to monitoring the enforcement of coercive administrative measures under Article 39a(1)(2) and (3) of the *Foreigners in the Republic of Bulgaria Act* (return to the country of origin, to a country of transit, or to a third country, and expulsion). Unfortunately, several cases gained notoriety in 2016 where serious violations of Bulgarian and international humanitarian law were committed while forcibly removing third-country nationals.

II. Protection of Detainees

In 2016, the NPM noted considerable progress on the part of the executive and legislative branches of power with regard to the places of detention *vis-à-vis* previous years. The NPM's observations indicate that the team at the Ministry of Justice focused its efforts entirely on

prisons. On the other hand, progress with regard to remand centres was only observable where it was possible to have them relocated to the grounds of a prison. Overall, what is lacking primarily is a vision for the development of remand centres. There is a general feeling, though, that unless a new prison is built in the city of Sofia and another one in the geographical area between the cities of Pleven, Varna, and Ruse, it would not be possible to meet the common minimum standards required in the penitentiary system.

Upon analysis of penitentiary policies in 2016, the NPM found that the statutory mechanism laid down in the latest *Act to Amend the Execution of Punishments and Remand in Custody Act*, aimed at addressing issues of prison overcrowding by moving inmates from one prison to another, could prove totally deficient or only modestly effective due to the existing equivalence between the prisons' general capacity and the number of inmates held in them. There are no alternative approaches to ensuring reinforced public control through the introduction of new society-based measures in the application of the early release on parole mechanism. There exist no clear and objective criteria for the implementation of the early-release mechanism by the courts, either. Such mechanism is inapplicable in remand centres since there are no statutory alternatives to the use of remand in custody.

With reference to the abovementioned *Act to Amend the Execution of Punishments and Remand in Custody Act*, the Ombudsman submitted to the National Assembly her opinion on the draft law in accordance with Article 19(1)(8) of the *Ombudsman Act*. Regrettably, the 34-page-long opinion containing a large number of recommendations (over 45) on the provisions of the draft law was not deliberated or taken into account. Overall, the Act was adopted in compliance with the requirement to respect the time limit for making available a domestic compensatory remedy, as set out in the *Neshkov and Others v. Bulgaria* pilot judgment of the European Court of Human Rights, which was about to expire on 1 December 2016. The absence of discussion in Parliament and the hastiness with which the provisions of the draft law were brought to a vote and adopted, resulted also in changing the definition of torture in Article 3 of the *Execution of Punishments and Remand in Custody Act*, which imposes the burden of proof on the prison administration to prove the absence of torture. In the opinion of the NPM, this will frustrate and unreasonably delay the administrative process and will result in ineffective legal protection against torture.

Another significant problem relates to the State-owned Enterprise 'Prison Industries Fund'. The problem emerged when the state-run enterprise established a monopoly over prison commissaries resulting in an abnormal increase in the prices of items sold there. The *European Prison Rules* recommend that prisoners should be entitled to purchase or otherwise obtain goods, including food and drink for their personal use, at prices that are not abnormally higher than those in free society. Failure to accept the Ombudsman's previous recommendations to change this model leads to reasonable assumptions of existing corruption practices and causes unnecessary tension between inmates and custodial staff.

As regards health care in 2016, the NPM established that two of its recommendations had not been implemented: (a) that inmates should not be used as prisoner-orderlies, and (b) that medicines be dispensed solely by healthcare staff and not by prison guards. This was explained by the existing shortage of healthcare professionals.

A positive finding made by the NPM was that by order of the Minister of Justice a register of traumatic injuries had been introduced in all penitentiary establishments and forms had been drawn up to register traumatic injuries sustained by a prisoner in accordance with the recommendation of the Committee for the Prevention of Torture (CPT) to have all cases of violence suffered at the hands of prison staff duly registered. It should be noted here that in its recommendation the CPT required that all cases of violence be reported by the health

professionals to a competent person outside the penitentiary system (e.g., a prosecutor). Currently, however, the established procedure is to have any case of violence reported to the respective prison warden.

The NPM found that its recommendation to reform the prison healthcare system and start using the civilian healthcare system had not been implemented. Some progress was observed in terms of actions taken by the Directorate General 'Execution of Punishments' ('GDIN'). The Directorate's medical service had elaborated a Restructuring Plan and it had been submitted to the Ministry of Justice. The plan had not, however, been deliberated or acted upon yet. Following a recommendation from the NPM, some prison wardens had taken action and there were general practitioners providing primary medical care in their prisons.

It can be said that prisoners' insufficient social involvement impacts the patient loads of health offices. Furthermore, the deficiency of prison guards impedes or delays escorting prisoners out of prison to receive specialised medical care. All of these factors impact directly the quality of health care in prisons.

The NPM notes further the existence of a long-standing systemic problem in Bulgaria relating to the unlawful handcuffing of life-sentenced prisoners in higher security zones, as well as of all hospitalised prisoners.

The NPM regards the incessant handcuffing of prisoner patients to their hospital beds without individual risk assessment and assessment of the hospital room setting as tantamount to torture. The NPM does not accept such practice with respect to inmates convicted and sentenced for breaking out of prison, whose state of health obviously precludes escape attempts. The NPM therefore made a recommendation that the practice be immediately discontinued.

III. Protection of Persons with Mental Illness

The inspections conducted by the NPM in 2016, identified, once again, the unsatisfactory condition of the state-run inpatient mental health treatment services and the need for comprehensive system reform. The NPM's repeated recommendations have not been addressed by the competent institutions and the rights of the mentally ill are not protected.

Almost all state-run psychiatric hospitals in the country do not comply with the established levels of competence under the Psychiatry Medical Standard, which is a basic requirement for the operation of the healthcare establishments and a guarantee for the quality of the medical services provided by them.

The differences and the imbalance in funding the state-run psychiatric hospitals and the mental health centres remain. The mental health centres are funded in accordance with the methodology for subsidising healthcare establishments per patient treated, while the psychiatric hospitals are funded based on historical budget and as a result they remain chronically underfunded to carry out their activities.

IV. Social and Medico-Social Childcare Institutions

In 2016, the focus of NPM's inspections in childcare institutions was placed on specific warnings about direct violations of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this context, the Ombudsman in her capacity as designated National Preventive Mechanism took formal positions and issued specific opinions.

Two main conclusions can be drawn based on the NPM's activities from its designation until 2016:

The first one relates to the NPM's recognisability and role as an independent monitoring body performing its functions to carry out inspections of places where children are lodged. A growing number of non-governmental organisations, media, and community representatives, active in the field of human rights protection, apply to the Ombudsman as NPM in cases where the rights of institutionalised children are violated. The Ombudsman's important role as NPM was evidenced by the fact that in 2016, for the first time ever, a judicial body requested the Ombudsman's opinion concerning a case of unlawful institutionalisation of children.

The second conclusion relates to the established mechanism of interinstitutional cooperation between the Ombudsman as designated NPM and representatives of the executive branch of power. The Ombudsman, in her capacity as NPM, has issued numerous recommendations and formal opinions addressed at the executive branch of power in cases where the rights of children were violated and the relevant government institutions have always considered with the Ombudsman's position and have adjusted their policies accordingly. The significance of such interaction has been repeatedly underscored in the Ombudsman's statements to the media.

V. Social Institutions for the Elderly

The reform in the field of social services for the elderly and the introduction of deinstitutionalisation as a main priority of Bulgaria's social policy started in consequence of the undeniable conclusion that the high level of institutionalisation leads to persistent social exclusion of the elderly persons with disabilities.

The NPM is of the opinion that a truly successful implementation of this process requires the establishment of a network of various types of community-based services as an alternative to placing the elderly in specialised institutions.

In this context, the Ombudsman as NPM has continued her activities including both visits to institutions and inspections of new service facilities with a view to ensuring that they all provide social and medical care specifically suited and aimed at enhancing the quality of life of the elderly, while at all times observing the principle of independent life in a family-like environment.

GENERAL INFORMATION ON THE ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM IN 2016

Legal Framework

1. Optional Protocol to the Convention against Torture (OPCAT)

The Optional Protocol to the Convention against Torture is the first international treaty establishing a dual system – both at the international and at the domestic level, for the prevention of torture and other forms of cruel, inhuman or degrading treatment. At the international level the OPCAT established the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (referred to as the Subcommittee on Prevention), and at the domestic level the Protocol requires that each State Party should set up a national preventive mechanism (NPM).

The OPCAT sets forth three main functions of the Subcommittee on Prevention. First, it is required to visit any place where persons are or may be deprived of their liberty. Second, the Subcommittee is required to advise and assist the national preventive mechanisms and to make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the NPMs. And third, the Subcommittee is required to cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms, as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons deprived of their liberty.

Article 3 of the OPCAT requires that the State Parties “set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.” This national body or these national bodies are referred to as the National Preventive Mechanism.

Any State, which has signed the OPCAT, is required to set up or designate in its own way its NPM. Some states have designated already existing bodies to fulfil the NPM mandate, while other states have set up new bodies to assume this role.

In order for the NPM to function as an independent body, Article 18 of the OPCAT laid down an obligation for the States Parties to ensure the functional and financial independence of the national preventive mechanisms, thus guaranteeing that the NPM can function free of any government intervention. Article 18 makes a specific reference to the Principles relating to the status of national institutions for the promotion and protection of human rights (The Paris Principles).

2. Ombudsman Act (OA)

The NPM functions were delegated to the Ombudsman by amendments to the *Ombudsman Act*, promulgated in the *State Gazette*, issue 29 of 10 April 2012.

A new Chapter Four (a) was added to the Act to reflect the OPCAT requirements.

Chapter Four (a)

(New, SG No. 29 of 2012, in force as of 11 May 2012)

NATIONAL PREVENTIVE MECHANISM

Article 28a. (New, SG No. 29 of 2012, in force as of 11 May 2012) (1) The powers of the Ombudsman as National Preventive Mechanism shall apply to any place where persons are deprived of their liberty, or where persons are detained or placed as a result of an act or as sanctioned by a government authority, which places the detainees are not free to leave, with a view to protecting such persons from torture or other cruel, inhuman or degrading treatment or punishment.

(2) The Ombudsman shall have the power:

1. to access, without prior notice and at all times, all places of detention referred to in paragraph 1, as well as their facilities and sites;
2. to access all information on the number of persons deprived of their liberty kept at the places of detention referred to in paragraph 1, as well as on the number and location of such places;
3. to choose the places referred to in paragraph 1 that he/she wishes to visit and the persons with whom he/she wishes to converse;
4. to converse in private without witnesses with the persons deprived of their liberty, either in person or through an interpreter, if necessary, as well as with any other person believed by the Ombudsman in his/her capacity as National Preventive Mechanism to be able to provide the relevant information;
5. to access any and all information pertaining to the treatment of the persons referred to in paragraph 1 and to the conditions at the places of detention;
6. to require information from the staff of the place of detention being visited and converse with them, as well as to converse in person with any other persons within the site being inspected;
7. to arrange medical examinations of the persons, subject to their consent.

(3) The staff and officials at the places referred to in paragraph 1 shall be under the obligation to assist the Ombudsman and provide the necessary information to him/her.

Article 28b. (New, SG No. 29 of 2012, in force as of 11 May 2012) (1) No authority or official may order, apply, authorise, or allow any sanction with respect to a person or organisation on account of such person or organisation having communicated any information, either true or not, to the Ombudsman as National Preventive Mechanism, and no such person or organisation may suffer any damage on that account.

(2) No confidential information collected by the Ombudsman as National Preventive Mechanism may be disclosed. Personal data may only be published after the person to whom such data relates has expressed his/her explicit consent.

Article 28c. (New, SG No. 29 of 2012, in force as of 11 May 2012) In her or his capacity as National Preventive Mechanism, the Ombudsman may, by way of an order, delegate, in full or in part, his/her powers referred to in Article 28a to employees of his/her administration.

Article 28d. (New, SG No. 29 of 2012, in force as of 11 May 2012) Following each visit, the Ombudsman shall draw up a report, which may contain recommendations and suggestions aimed at improving the conditions in the places referred to in Article 28a or the treatment of the persons placed therein, and at preventing torture and other cruel, inhuman or degrading treatment or punishment.

(2) Such report shall be submitted to the relevant competent authority, which shall be under the obligation to inform, within one month, the Ombudsman of the actions taken to implement the recommendations.

(3) The Ombudsman shall also publish annual reports on his/her activities as National Preventive Mechanism, subject to the requirements of Article 28b(2).

Article 28e. (New, SG No. 29 of 2012, in force as of 11 May 2012) The Ombudsman, in her or his capacity as National Preventive Mechanism, shall engage in cooperation with the relevant United Nations organs and mechanisms, citizens' associations, as well as with the international, regional, and national organisations working towards ensuring the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment.

Statistics on the Inspections Carried Out by the National Preventive Mechanism in 2016

In 2016, the NPM inspected a total of 56 facilities, including 24 closed and open prisons, and remand centres; 7 detention cells at District Police Departments of the Ministry of Interior; 3 homes for medical and social child care and Mother and Baby Units; 8 family-type accommodation centres for children; 3 special homes for temporary accommodation of foreigners and the distribution centre operated by the Migration Directorate of the MoI; 6 centres operated by the State Agency for Refugees with the Council of Ministers; 3 state-run psychiatric hospitals and mental health centres; and 2 social care institutions for elderly persons.

PROTECTION OF ASYLUM SEEKERS AND MIGRANTS. MONITORING FORCED RETURNS OF MIGRANTS

- The NPM concluded that there existed difficulties in the interaction between the responsible government institution as regards asylum seekers' accommodation and the registration of their applications for international protection.
- In its activities, the NPM placed a special emphasis on the situation of unaccompanied and separated asylum-seeker children's rights.
- The NPM revealed cases of serious violations of Bulgarian and international humanitarian law related to the enforcement of coercive administrative measures against third-country nationals.

In 2016, the European institutions continued their efforts aimed at finding a consolidated solution to the refugee crisis, which caused serious challenges to the asylum systems in all individual EU member states, including in Bulgaria. For this reason, following the dynamics of migration processes countrywide and the level of protection of asylum-seekers' and migrants' fundamental human rights while within the territory of the Republic of Bulgaria was again among the top priorities on the Ombudsman's agenda as designated NPM. In the course of the annual monitoring process, teams assigned by the Ombudsman, visited all accommodation places for asylum seekers and migrants and put forward specific recommendations to the competent authorities as to how to rectify the shortcomings and irregularities identified. The total number of visits made in 2016 was 11. 9 of those were unannounced planned visits and 2 visits were made following specific alerts from citizen, or as a result of an ex-officio procedure initiated by the Office of the Ombudsman.

1. Reception and Accommodation of Foreigners at the Distribution Centre in the town of Elhovo and at the Special Homes for Temporary Accommodation of Foreigners Run by the Migration Directorate of the Ministry of Interior

The limited channels for legitimate entry into the territory of the Republic of Bulgaria have forced asylum seekers to cross mostly the so called 'green border' along with the flow of economic migrants. The largest migrant influx is observed at the Bulgarian-Turkish border. The detained illegal migrants are housed primarily at the Distribution Centre in the town of Elhovo. Analyses of migration flows in 2016 indicated changes in the profiles and nationalities of migrants and asylum-seekers (mostly nationals of Afghanistan, Pakistan, and Iraq), which has raised additional challenges for the competent government institutions with regard to their accommodation and the registration of their applications for international protection.

Last year, the NPM team identified, once again, overcrowding as a major problem at detention centres for foreigners. Migrants held at those facilities were still housed in overcrowded rooms. The Elhovo Distribution Centre, whose capacity is 240 persons, accommodated 327 foreigners: 181 from Afghanistan, 29 from Iraq, 24 from Iran, 38 from Pakistan, 54 from Syria, and 1 from Ghana. Likewise, the Special Home for Temporary Accommodation of Foreigners (SHTAF) in the town of Lyubimets, whose capacity is 300 people, accommodated 363 foreigners. 226

persons were kept at the SHTAF in the capital city of Sofia in the period from June to August 2016. However, one of the floors in the sleeping quarters there was still out of use due to ongoing renovations. The physical environment remained unsatisfactory. Despite some facelift renovations, the facilities at the Elhovo Distribution Centre and at the SHTAFs were found to be worn-out and in a poor state of repair. The state of hygiene and sanitation was poor, the sleeping quarters and the sanitary facilities were insufficient. Conditions of considerable overcrowding preclude compliance with the requirement of Article 14 of *Ordinance No. 13-1201 of 1 June 2010 on the Procedures for Temporary Accommodation of Foreigners and on the Set Up, Organization and Activities of the Special Homes for Temporary Accommodation of Foreigners*, according to which families must be accommodated in separate rooms. The situation is especially worrying at the Elhovo Distribution Centre since the facility is unable to ensure outdoor time in the daily routine of the foreigners held there.

It should be noted that the NPM's repeated recommendation that the operation of the Elhovo Distribution Centre be regulated was implemented as a result of amendments to Article 4(1) of the said Ordinance and the Centre is currently functioning as a unit of the Special Home for Temporary Accommodation of Foreigners in the town of Lyubimets.

The NPM identified also difficulties in the interaction between the responsible government institution as regards asylum seekers' accommodation and the registration of their applications for international protection. Due to staffing deficiencies and lack of interpreters, applicants for international protection are held at special homes for temporary accommodation of foreigners for unjustifiably long periods of time instead of being timely released and housed at the centres run by the State Agency for Refugees (SAR). The preferential release of foreigners from certain countries earlier than all others was also found to be an issue causing serious tensions. The Ombudsman, in her capacity as NPM, is of the opinion that there is an impending need to optimise the interaction between the Migration Directorate of the MoI and the SAR, as well as to speed up the procedure for releasing applicants for international protection to open-type facilities for hosting asylum seekers.

Yet another problem, identified in all visits made by the NPM inspection teams that is still outstanding, relates to the continued practice of holding families with children at SHTAFs. Most alarming is the NPM's finding that a large number of families with children were hosted at the homes run by the Migration Directorate of the MoI. The inspection teams identified also lack of baby foods for infants and young children, as well as no supply of baby consumables. Children represent a large share of the total flow of migrants into the country. This imposes high requirements on the country to ensure appropriate child-friendly conditions, which currently cannot be satisfied. At the SHTAF in the town of Lyubimets, for instance, out of 363 persons housed at the time of the inspection, 204 were children, while 128 children were held at the Elhovo Distribution Centre. The Ombudsman, acting as NPM, has pointed out repeatedly in previous reports that the special homes for temporary accommodation were unfavourable places for hosting children. The special homes do not provide sufficient personal space and there are no conditions there for meeting children's basic needs. In this context, the NPM strongly insists, once again, that a possibility should be considered to apply alternatives to immigration detention with respect to this vulnerable group and that placing asylum-seeker children in SHTAF detention should be discontinued.

The NPM inspection teams once again identified cases where minor children were included in orders to enforce coercive administrative measures with respect to adults as per the *Foreigners in the Republic of Bulgaria Act* with no acquaintance or kinship relation established between them. This constitutes a violation of Article 44(9) of the *Foreigners in the Republic of Bulgaria Act*, according to which "compulsory placement in special homes for temporary accommodation of foreigners run by the MoI's Migration Directorate shall not be applied with

respect to unaccompanied minor children and underage persons”. This finding was corroborated by the fact that in subsequent inspections the NPM teams met some of those children at the centres run by the State Agency for Refugees, where they had been identified as unaccompanied minor children and underage persons. The NPM is of the opinion that the government institutions must make every effort to avoid such cases and must carry out detailed checks to verify the relationship between such children and the persons seemingly accompanying them. In any case of justified doubts about the existence of family ties or kinship between them, the bodies of the Ministry of Interior should immediately discontinue the enforcement of the coercive administrative measure and should refer the children to the relevant Child Protection Department of the respective Social Assistance Directorate to ensure that appropriate protection measures are taken in respect of them.

The NPM did not observe any change in 2016 as to the feeding arrangements for foreigners. Meals for all three structural units of the Migration Directorate are provided by a catering company under a contract with the MoI. Meals are served in detached canteens. The recommendation put forward during the NPM’s previous inspection to include fruit in the foreigners’ diet at the Elhovo Distribution Centre had remained unfulfilled and therefore the NPM once again recommends that timely action be taken to correct this omission.

Health services at the SHTAF in the village of Busmantsi, at the SHTAF in the town of Lyubimets, and at the Distribution Centre in the town of Elhovo are organised and administered by the Medical Institute of the Ministry of Interior. Medical assistance is provided at the health offices within the detention facilities and hospital care is provided under an agreement with healthcare establishments in the towns of Elhovo, Harmanli, Yambol, and Haskovo, respectively, as well as at the Medical Institute of the MoI. The health offices are staffed by healthcare professionals – one physician at each facility and medical auxiliaries. Thus, medical help is guaranteed round-the-clock.

The health offices at the detention facilities are supplied with medications and medical supplies on demand by the Medical Institute of the MoI. The healthcare professionals shared that they provided medicines for the chronically ill foreigners as well, if their illness was made known at the time of reception. The health office at the Distribution Centre in the town of Elhovo, where medications are stored, is located on the top floor of the building at temperatures way above the acceptable temperature for storing medicines and medical devices. The NPM found the conditions unfavourable both for the medicines and for the normal operation of the medical staff. The health offices, with the exception of the one within the Elhovo Distribution Centre, have inpatient care units for placing in isolation sick persons or persons with unclear health status. Those rooms, however, were not used for the purpose intended. At the SHTAF in the village of Busmantsi they were used to accommodate mothers with children, while at the SHTAF in the town of Lyubimets they were used for initial reception of foreigners.

The NPM team concluded during its inspections in 2016, that the provision of health services was aggravated as a result of the overcrowding and the large number of children held at the detention centres, who require specific healthcare, and was further complicated by the language barrier. It was concluded also that placing sick persons in common rooms poses an increased risk of infectious disease outbreaks.

In the course of the inspection at the SHTAF in the village of Busmantsi, the NPM team was alerted by a foreigner to an incident of police violence against another foreigner, which occurred on 12 June 2016. A thorough fact-finding investigation into the allegations was carried out by reviewing the recorded security camera footage and interviewing the victim. The investigation conducted by the NPM team found out that while the foreigner was being escorted from the prisoner accommodation building to the administrative building, a blow with the foot

was delivered upon him. The warden of the detention centre was immediately informed of the incident and a recommendation was put forward that urgent action be taken to launch disciplinary proceedings. The senior management of the Migration Directorate immediately launched an investigation into the case and initiated disciplinary proceedings which resulted in the imposition of disciplinary penalty upon the officer found culpable of misconduct.

2. Accommodation and Registration of Asylum Seekers at the Centres Run by the State Agency for Refugees with the Council of Ministers

At the time of carrying out the NPM inspections (June and August 2016), none of the centres run by the SAR was filled beyond capacity. What should be clearly noted, however, is the difference between the number of persons accommodated there in the first half of 2016 and in the period from July to August 2016. In the first six months of the year, the SAR centres were filled to only 20 to 25 percent of their capacity, while in September, in result of the increased migration flow, the percentage rose to 100 percent according to official data from the competent institutions. This presented further challenges to the asylum system in Bulgaria.

2016 saw the continued downward trend in the overall condition of the facilities and the physical environment at the places of detention (e.g., the Transit Centre in the village of Pastrogor, the Accommodation Centre in the Sofia neighbourhood of Voenna Rampa, and the Accommodation Centre in the Sofia neighbourhood of Ovcha Kupel). At the same time, the NPM team acknowledges the efforts undertaken and the improvements made in other centres (such as the Registration and Reception Centre in the village of Banya and the Accommodation Centre in the Sofia neighbourhood of Vrazhdebna).

The NPM welcomes the fact that the SAR has implemented the recommendation put forward in the NPM's previous report that the premises of the Registration and Reception Centre (RRC) in the village of Banya be overhauled and upgraded. All renovation works were financed out of the European Refugee Fund. There are four beds in each room where asylum seekers are lodged and adequate supply of hot water is provided in the bathrooms on a regular basis. The NPM finds it regrettable that the 10 additional buildings erected within the RRC in the village of Banya in 2015 remain unused due to the poor quality of construction works.

At the time of the inspection, the physical environment at the RRC in the town of Harmanli and at the Accommodation Centre in the Sofia neighbourhood of Vrazhdebna was found to be in good overall condition. The ownership of the premises of the RRC in the town of Harmanli has been transferred from the Ministry of Defence to the SAR to facilitate their maintenance. A separate site has been set up with new mobile construction-site containers on it to accommodate unaccompanied minor children. All buildings at the centre were renovated in early 2016. A new registration and reception centre with a capacity of 40 persons and a detached sanitary facility was built with funding from the Asylum, Migration and Integration Fund (AMIF). Its purpose is to provide reception and accommodation to asylum seekers outside of standard working hours. A new grocery store has also been built to facilitate the procurement of food staples and other goods by the asylum seekers housed there.

The NPM ascertained that, with the exception of the Accommodation Centre in the Sofia neighbourhood of Ovcha Kupel, in all other regional facilities run by the SAR there was no accessible environment for persons with disabilities. Attention should also be drawn to the fact that failure to provide accessible environment constitutes an infringement of the requirements enshrined in the applicable international and national law (the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; the *United Nations Convention on the Rights of Persons with Disabilities*; the *Integration of Persons with Disabilities Act*; the *Territorial Development Act*; *Ordinance No. 4 of 1 July 2009 of the Ministry of Regional Development and Public Works on the design, execution of works, and*

maintenance of buildings in accordance with the requirements for accessible environments for the public, including for persons with disabilities.

The NPM emphasises that the current practice of keeping unaccompanied minor refugee boys in the same rooms with adult males should be discontinued. The view of the NPM is that this poses serious risk to a child's life and health due to the possibility of exploitation and human trafficking. The NPM reiterates its recommendation that in order to ensure compliance with the principle that the child's best interests must be a primary consideration, it is necessary to designate separate rooms or even set up a separate centre run by the SAR to accommodate this vulnerable group. The NPM welcomes the opportunity provided with the latest amendments to the *Organisational Rules of the State Agency for Refugees with the Council of Ministers* (promulgated in the *State Gazette*, issue 70 of 9 September 2016), allowing the SAR President to designate separate rooms at the regional centres run by the State Agency for Refugees for the purpose of accommodating unaccompanied minor applicants for international protection.

The Ombudsman, in her capacity as designated NPM, visited the first closed centre for housing asylum seekers right after it was opened. Recent amendments to the *Organisational Rules of the State Agency for Refugees with the Council of Ministers* (promulgated in the *State Gazette*, issue 70 of 9 September 2016) specifically empowered the SAR President to designate closed facilities at the regional centres run by the State Agency for Refugees. The quarters can accommodate 75 persons and are located in the former individual security-measure rooms on the grounds of the SHTAF in the village of Busmantsi. During the visit, there were two persons accommodated at the closed centre. One of them was a minor child. Despite the recent renovations and the agreeable physical environment created for the foreigners held there, the Ombudsman, in her capacity as designated NPM, reiterates her concerns as to the established detention regime in respect of persons seeking international protection (including minor children), which is likely to result in serious infringement of their rights. The Ombudsman, in her capacity as NPM, insists that detention of asylum seekers be applied as a measure of last resort. It is essential also to ensure sufficient legal guarantees for their protection, as well as judicial control over their detention.

The NPM recommends that the management of the refugee centres should devote greater attention to their security. Security services are currently provided by a private security company which won a public procurement tender. It was ascertained in the course of the inspection at the RRC in the town of Harmanli, that Hall No. 10 had been split into two separate parts. One section accommodated families with children, while the other one was inhabited by young males. The NPM team received complaints regarding ongoing conflicts between the two groups and the inability of the security personnel to handle the recurrent hostilities. This problem raises also the question as to the correct accommodation of asylum seekers in the sleeping quarters. The NPM found out that the municipal ordinance on the preservation of public order was frequently violated in the areas adjacent to the centre. The property and assets of the centre itself were not adequately safeguarded, either. The ensuing conflicts within the grounds of the centre indicated the need for daily police presence both on the grounds of the centre and in the adjacent areas.

Another problem that the NPM inspection teams identified relates to the food provided to asylum seekers. After reviewing the weekly meal plans, the NPM found, once again, that the meals offered little nutritional value and the menus were unvaried. Staff members asserted that varied meal plans had been prepared in some of the facilities. During the NPM's inspection, though, none of the asylum seekers knew anything about them.

All regional facilities of the SAR have their own health offices which are now legally regulated following the 2015 amendments to the *Asylum and Refugees Act* adopted on the

recommendation from the Ombudsman. The amended act provides that outpatient services at the health offices are to be provided by a physician, a nurse or a medical auxiliary. Some centres, however (such as the RRC in the Sofia neighbourhood of Vrazhdebna and the Transit Centre in the village of Pastrogor), have appointed lab technicians as well. Under the Bulgarian law, asylum seekers are entitled, from the moment their application for protection is registered, to the same health coverage rights and benefits as Bulgarian citizens. It should be noted, though, that despite their equal health-related benefits, foreigners seek and receive medical assistance and medicines primarily at the health offices within the refugee centres. The inspections identified shortage of medications and medical supplies which are procured with assistance from non-governmental organisations.

With the exception of the RRC in the town of Harmanli, all persons whose applications for international protection are pending approval have been assigned a general practitioner under the procedure laid down in the National Framework Agreement. In this context and with a view to finding a solution to this long-standing problem, the Ombudsman, in her capacity as NPM, forwarded a recommendation to the Director of the National Health Insurance Fund that a general practitioner be assigned to the foreigners held at the RRC in the town of Harmanli. In the course of a subsequent inspection, a NPM team established that the refugees had been assigned a general practitioner.

In November 2016, the Ombudsman was seized by a citizen of the town of Harmanli of persons accommodated at the local refugee centre suspected of having tropical diseases. A NPM team immediately visited the Harmanli RRC and examined the premises, conversed with asylum seekers, the medical staff and representatives of the Regional Health Inspectorate in the city of Haskovo. Most of the complaints concerned health issues resulting from poor hygiene and unsanitary living conditions. The Ombudsman, acting as NPM, recommended to the SAR to set up and deploy, as a matter of urgency and together with the Ministry of Health, a team of experts tasked with performing physical examinations and tests of the asylum seekers held at the RRC in the town of Harmanli. It was recommended also that provisions be made for the treatment of sick persons and that asylum seekers be medically examined periodically. A letter was sent to the Head of the Military Medical Academy requesting assistance with the deployment of a team of medical professionals to perform examinations and lab tests at the registration and reception centre. In her recommendations, the Ombudsman emphasised also the need to hire additional medical practitioners to work at the centre's health office in view of its large capacity, as well as the need for stricter preventive anti-epidemic measures at the time of initial reception of asylum seekers. The competent authorities implemented in a timely fashion the Ombudsman's recommendations.

In August 2016, the NPM published a special thematic report on the rights of unaccompanied and separated asylum-seeker children.¹ During all inspections, the emphasis was placed on the quality of care that is provided, the representation of unaccompanied children, their access to health and educational services, safe and secure environment, and social support. Notwithstanding the absence of a register of unaccompanied refugee children, the NPM established that their share of the total number of refugees has grown. A main finding of the Ombudsman as NPM was that **Bulgaria, being an EU member state and a country, which has ratified the UN Convention on the Rights of the Child, should improve the asylum, reception, and care system covering unaccompanied minor children, thus guaranteeing their life, health, safety, and interests as a particularly vulnerable group of children.** The government has not ensured that unaccompanied refugee children are sufficiently provided with protection space and access to education. Furthermore, they are not informed in an appropriate

¹ Available at: <http://www.ombudsman.bg/news/4170>

manner as to the procedure for granting international protection. Another problem relates to the representation of unaccompanied minors, either seeking or granted protection. According to Article 25 of the *Asylum and Refugees Act*, a guardian or custodian has to be appointed for any unaccompanied alien child, who is within the territory of the Republic of Bulgaria and is either seeking or has been granted international protection. The guardian has to be an official of the municipal administration, designated by the mayor of the respective municipality or by another official duly authorised by the mayor. The actual situation, however, as ascertained during the inspections, indicated that in some of the refugee centres no such representative had been appointed to safeguard the interests of the unaccompanied refugee children, and in other centres the existing representatives only formally performed their functions because of the large number of children they were in charge of. The NPM emphasises the impending need to establish a model whereunder the functions of child representatives would be assigned to the non-governmental sector. It is necessary also to develop professional legal representation, as well as to develop and establish a mechanism for monitoring the activities of child representatives. It was recommended to the competent institutions to take urgent action towards adopting the *Draft Coordination Mechanism for Interaction between Institutions and Organisations to Guarantee the Rights of Unaccompanied Alien Children Residing in the Republic of Bulgaria, Including Those Seeking or Granted International Protection*, which has been drafted by a working group.

A large number of asylum-seekers continue to leave the SAR centres of their own accord and there is no any further information as to their whereabouts. This is a continuing tendency, observed also in last year's NPM inspection. Even though the number of vanishing aliens is smaller than in 2015, this phenomenon is extremely worrying.

The issue of integrating persons granted international protection in the Republic of Bulgaria continues to be on the agenda of the Ombudsman in her capacity as designated NPM. The prevailing perception of Bulgaria as a transit country and the absence of a functional integration programme in 2014 and 2015, have been acting as a disincentive for such persons when making their decision whether to remain in this country and have impeded also their access to the labour market, to the social-care and education systems, etc. The Council of Ministers issued Decree No. 208 of 12 August 2016 (promulgated in the *State Gazette*, issue 65 of 19 August 2016) to adopt *Regulation on the Terms and Procedures for Concluding, Implementing, and Terminating Integration Agreements with Foreigners Granted Asylum or International Protection*. All activities related to the integration of refugees are delegated to the municipal mayors with whom the persons granted asylum or international protection in Bulgaria are to enter into integration agreements. The NPM will keep track of the number of municipalities that have indicated their interest in being involved in the integration process, how prepared they are, and the number of agreements actually concluded.

Monitoring Forced Returns of Illegally Staying Third-Country Nationals

An essential part of the Ombudsman's activities as designated NPM relate to monitoring the enforcement of coercive administrative measures under Article 39a(1)(2) and (3) of the *Foreigners in the Republic of Bulgaria Act* (return to the country of origin, to a country of transit, or to a third country, and expulsion). The obligation to provide for an effective forced-return monitoring system in all EU Member States is laid down also in Article 8(6) of *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals*. Monitoring by the Ombudsman's institution provides independent control over the compliance with legal procedures guaranteeing due respect for the dignity, physical integrity, and fundamental human rights of the third-country nationals to be forcibly removed, transparency of removal procedures, as well as possibility to identify and correct possible irregularities in the actions of the competent administrative bodies.

Unfortunately, several cases gained notoriety in 2016 where serious violations of Bulgarian and international humanitarian law were committed while forcibly removing third-country nationals. Particularly disturbing from a human rights perspective was the expulsion in August 2016 of the Turkish national Abdullah Buyuk. As a result of an ex-officio procedure initiated in response to media publications, the Ombudsman took a clear formal **position that the enforcement of the coercive measure ran counter to the provisions of both Bulgarian and international law**. The Ombudsman, in her capacity as designated NPM, pointed out that **the case at issue constituted a violation of Article 2 and Article 3 of the European Convention on Human Rights, as well as of Article 28 and Article 29 of Bulgaria's Constitution**, which provide that everyone's right to life shall be protected by law and that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Mr. Buyuk's expulsion constituted also a violation of Article 44a of the *Foreigners in the Republic of Bulgaria Act*, which provides that "no foreigner on whom a coercive administrative measure of expulsion has been imposed shall be expelled to a country where her or his life and freedom are endangered and she or he is at risk of persecution, torture, or inhuman or degrading treatment". According to the Ombudsman's statement, the person removed was not given a chance to appeal against the expulsion order and to arrange for his defence before a court of justice.

Another omission identified by the Ombudsman involved the Ministry of Interior's failure to comply with its obligation to notify the Ombudsman's institution of Mr. Buyuk's impending forced removal. In order to find a satisfactory and timely solution to this problem, the Ombudsman held several meetings with the Head of the Migration Directorate. At those meetings a mechanism was agreed for exchange of data and information in relation to future forced removals scheduled by the Migration Directorate.

Despite the NPM's lack of capacity to carry out such activities, its teams were involved in 2016 in monitoring two forced returns of third-country nationals. The monitoring exercise covered all forced return stages (i.e., the return and pre-trip preparation, the procedure during the flight or trip by other mode of transportation, possible transit, the returnees' arrival and transfer in their country or countries of origin). The forced return operations monitored by NPM teams included the return of a third-country national to the Islamic Republic of Pakistan in September, which was coordinated with and financed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union² (Frontex) and a forced-return operation conducted at the national level to the Republic of Macedonia in November 2016. The NPM's main recommendations concerned the manner of conducting conversations with the returnees prior to their removal, the absence of a licensed interpreter during those conversations, and the preparation of the returnees' documents.

² TN: Replaced in September 2016 by the European Border and Coast Guard Agency (Frontex) by Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.09. 2016, p. 1).

PLACES OF DETENTION

- The NPM noted considerable progress in 2016 *vis-à-vis* previous years as to the implementation by the executive and legislative branches of power of recommendations put forward by the Committee for the Prevention of Torture (CPT) and by the NPM.
- In 2016, capital expenditure was increased for the first time in prisons' history.
- The NPM's observations indicate that in 2016 the team at the Ministry of Justice focused its efforts entirely on prisons.
- Overall, what is lacking primarily is a vision for the development of remand centres among the government institutions within the executive branch of power.
- Regrettably, the Ombudsman's opinion on the *Bill to Amend the Execution of Punishments and Remand in Custody Act*, submitted to the National Assembly, which contained a large number of recommendations, was not deliberated or taken into account.
- In late 2016, the Ministry of Justice and the Council of Ministers took positive steps to increase prison staff remuneration.
- The monopoly position of the State-owned Enterprise 'Prison Industries Fund' in prison commissaries has turned into a long-standing and systemic problem in prisons.
- The NPM notes the unfulfilled recommendation made by the CPT requiring that the dialogue between the Ministry of Justice and the Ministry of Health as to the administrative subordination of the penitentiary healthcare establishments and their methodological guidance be stepped up.

Preliminary Remarks

It was the NPM's objective in 2016 to track the actions taken by Bulgaria's government not only in connection with the pilot judgment of the European Court of Human Rights (ECtHR) in the *Neshkov and Others v. Bulgaria* case, but also with regard to recommendations made by the Committee for the Prevention of Torture (CPT) and by the NPM that are still outstanding. Overall, **the NPM noted considerable progress in this context on the part of the executive and legislative branches of power in 2016 *vis-à-vis* previous years.** There were certainly errors and shortcomings, which the NPM cannot but point out in the hope that they will be corrected in 2017.

The government failed to fulfil its investment intentions set forth in the programme presented in the Bulgarian authorities' response to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to Bulgaria from 13 to 25 February 2015. This was the fourth consecutive government programme unfulfilled due to lack of financing. Some of the planned activities were not expedient and the NPM put forward a recommendation that they be dropped.

For the first time in prisons' history, there was a manifold increase in capital expenditure.

An allocation of a further BGN 4,450,500 was made for 2017. The budgetary expenditure for the places of detention authorised for 2017 is nearly BGN 15 million more *vis-à-vis* 2016. An allocation of a further BGN 10 million was made by Council of Ministers' Decree No. 11 of 2017. Of those, a little over BGN 6 million were earmarked for personnel costs and BGN 1 million for improving the material maintenance of the places of detention. Bearing in mind that, for the first time since the NPM was set up, its recommendation to increase capital expenditure and staff remuneration was implemented, a concern should also be pointed out that capital expenditure will once again prove insufficient to address the extremely poor material conditions

in prisons and to provide funding for the necessary meaningful activities inside the places of detention.

The NPM's general finding is that closed and open prisons in Southern Bulgaria (with the exception of the Cherna Gora open prison, the Kremikovtsi open prison, and the prison in the city of Sofia) meet the minimum standards³. The areas of concern in the two open prisons are the outdated building stock and the lack of sanitary facilities. Unlike the remand centre located at G.M. Dimitrov Blvd. in Sofia, where access to daylight could be improved, Sofia Prison could not possibly meet the minimum standards in the future, either.

The NPM's observations indicate that in 2016 the team at the Ministry of Justice focused its efforts entirely on prisons. Progress with regard to remand centres was only observable where it was possible to have them relocated to the grounds of a prison. Therefore, the areas of concern in Southern Bulgaria remain remand centres in the area of Dupnitsa, Blagoevgrad, Simitli, and Petrich.

Overall, what is lacking primarily is a vision for the development of remand centres among the government bodies within the executive branch of power. There is a general feeling, though, that unless a new prison is built in the city of Sofia and another one in the geographical area between the cities of Pleven, Varna, and Ruse, it would not be possible to meet the common minimum standards required in the penitentiary system.

The NPM has repeatedly suggested that the construction of a new prison should be undertaken without committing budgetary resources. It should be done instead with the own financial resources of the State-owned Enterprise 'Prison Industries Fund' ('DPFZD'). The investment could be subsequently recouped by including the vacant old prisons in the capital of the state-run enterprise and then selling them under the procedure laid down in the *State Property Act*.

The statutory mechanism laid down in the latest *Act to Amend the Execution of Punishments and Remand in Custody Act*, aimed at addressing issues of prison overcrowding by moving inmates from one prison to another, could prove totally deficient or only modestly effective due to the existing equivalence between the prisons' general capacity and the number of inmates held in them. There exist no alternative approaches to ensuring reinforced public control through the introduction of new society-based measures in the application of the early release on parole mechanism. There exist no clear and objective criteria for the implementation of the early-release mechanism by the courts, either. Such mechanism is inapplicable in remand centres since there are no statutory alternatives to the use of remand in custody.

The NPM expresses its concern over the ineffective spending of budgetary resources during prison overhauls. The problem is caused by the poor Terms of Reference for the public procurement contract for the renovations. The overhauls do not allow for changes in the organisation of prison operations that would lead to individual execution of sentences (instead of execution by inmate detachments) and to efficient use of prison guards. The overhauled prisons have preserved the old work organisation patterns and do not need less prison staff. Telling examples of the foregoing include the absence of a common central command centre equipped with the required video surveillance, the construction of visiting rooms for non-contact (telephone) visits as a rule, the remote location of the newly constructed commissaries from the prison gates, and the difficult approach to them, which makes them hard to use as possible contact-visit facilities.

³ Prisons in Northern Bulgaria will be subject to examination in 2017.

An extremely painful observation made by the NPM relates to the lack of coordination which has resulted in the fact that the renovated and ready to use open prison in the village of Debelts remains empty, while the prison in the city of Burgas is overcrowded. This was the result of the redundancies made at the Directorate General 'Execution of Punishments' ('GDIN') in 2015, which has led to staff shortages. The government has corrected its error by adding 182 new posts to the GDIN's establishment plan. **The NPM's unoptimistic prediction that the open prison would remain unoccupied in 2016 unfortunately came true despite the repeated recommendations put forward not just by the NPM, but by the CPT as well.**

The NPM further identified a serious problem with the use of means of electronic surveillance. Instead of expanding the alternative custodial measures and the accompanying community sanctions and measures pertaining to early conditional release on parole, in early 2016, the possibility for practical implementation of electronic surveillance in Bulgaria was completely discontinued. The funds allocated for the purchase of the requisite technology were incorrectly reallocated to the prison in the town of Belene following the public tender failure. The NPM expects that the electronic surveillance project will be restarted in late 2017.

At the time of its 2012 visit, the CPT called upon the Bulgarian authorities "to redouble their efforts to combat prison overcrowding by implementing policies designed to limit or modulate the number of persons sent to prison. In so doing, the Bulgarian authorities should be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody and the provision of safeguards against abuse, and Recommendation Rec(2010)1 on the Council of Europe Probation Rules."

Failure to pass an *Act to Amend the Execution of Punishments and Remand in Custody Act* in 2016 resulted in missing the statutory opportunity to adopt community sanctions and measures as an alternative to the use of remand in custody, which would have been applicable also to the administrative sanctions meted out under the *Foreigners in the Republic of Bulgaria Act*, the *Protection Against Domestic Violence Act*, the *Combating Football Hooliganism Act*, etc.

In connection with the drafting of an *Act to Amend the Execution of Punishments and Remand in Custody Act*, the Ombudsman submitted to the National Assembly her opinion on the draft law in accordance with Article 19(1)(8) of the *Ombudsman Act*. **Regrettably, though, the 34-page-long opinion of the Ombudsman, containing a large number of recommendations (over 45) on the provisions of the draft law, was not deliberated or taken into account.** Overall, the Act was adopted in compliance with the requirement to respect the time limit for making available a domestic compensatory remedy, as set out in the *Neshkov and Others v. Bulgaria*⁴ pilot judgment of the European Court of Human Rights, which was about to expire on 1 December 2016. The absence of discussion in Parliament and the hastiness with which the provisions of the draft law were brought to a vote and adopted, resulted also in changing the definition of torture in Article 3 of the *Execution of Punishments and Remand in Custody Act*, which imposes the burden of proof on the prison administration to prove the absence of torture. This will frustrate and unreasonably delay the administrative process and will result in ineffective legal protection against torture.

Furthermore, the amendments created a legal opportunity to violate the confidentiality of prisoners' correspondence. Procedural norms were created, which violate the right to a fair trial

⁴ Case of *Neshkov and Others v. Bulgaria* (Applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13) [http://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-150771\"\]}](http://hudoc.echr.coe.int/eng#{\)

by requiring a judgement by only one court. Other provisions of the *Execution of Punishments and Remand in Custody Act*, which run counter to the Constitution (concerning, for instance, the confidentiality of correspondence), were not repealed. This might naturally lead to the Ombudsman seizing the Constitutional Court requiring that they be revoked.

At the time of its 2012 visit, the CPT called upon the Bulgarian authorities “to redouble their efforts to combat prison overcrowding by implementing policies designed to limit or modulate the number of persons sent to prison. In so doing, the Bulgarian authorities should be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody and the provision of safeguards against abuse, and Recommendation Rec(2010)1 on the Council of Europe Probation Rules.” Despite the Bulgarian authorities’ efforts in this regard, the recommendations remain only partially implemented.

In 2016, the NPM analysed some court decisions on the use of assistive means. The analyses ascertained the existence of an inefficient interdepartmental regulation regarding the unlawful use of assistive means relating to the term ‘internal escorts’ within the higher security zones, which has been mechanically adopted by the courts.

The problem of prison guard shortage, which leads not only to violations of prisoners’ rights but also to violations of staff employment rights, remained unsolved in 2016.

There exist differences in the salaries, as determined by the Council of Ministers, for relatively equal jobs within the security sector. It should be noted, however, that **in late 2016, the Ministry of Justice and the Council of Ministers took positive steps to solve this problem by increasing prison staff salaries, which is to take effect in 2017.**

Another problem that remained unsolved relates to the extra compensation paid to prison staff for specific working conditions, meals, and clothing. These allowances vary as they are determined by the Minister of Interior, the Minister of Justice, and the Minister of Defence in accordance with the respective ministry’s budget. There is an impending need for common guidance on this issue by the Council of Ministers in accordance with Article 105(2) of the Constitution of the Republic of Bulgaria, as well as a need for relevant amendments to legislation. The absence of a consistent and uniform approach to these issues on the part of the government administration will inevitably continue to cause social problems in the future.

Prison guards have not yet been equipped with collapsible batons and therefore in some places the custodial staff still use the old straight batons (truncheons) while inmates are escorted to walking areas (cf. 69(2) of the *European Prison Rules*). Prison staff lack training to restrain aggressive inmates, with the result that the prison administrators currently feel unprotected. The public has become aware of several cases where prisoners inflicted bodily injuries upon prison guards in the performance of their duties. This justifies the need for adequate measures to be taken by the Ministry of Justice and the Directorate General ‘Execution of Punishments’ (‘GDIN’).

The *State Gazette* published in its issue 71 of 1 September 2006 amendments to the now repealed *Rules for the Implementation of the Execution of Punishments and Remand in Custody Act* (PPZINZS). Annex No. 1 and Annex No. 2 contain the manner of assigning prisoners and the list of allowable items. With the promulgation of the new *Rules for the Implementation of the Execution of Punishments and Remand in Custody Act* (State Gazette, issue 25 of 3 April 2009) such publicity was ended. The issue is currently regulated by way of orders, which are in

essence general administrative acts within the meaning of Article 65 of the *Administrative Procedure Code* (APK). The list of allowable items, for instance, is an integral part of Order No. LS-04-602 of 4 April 2014. A legal opportunity is provided for the warden of either a prison or an open prison for females and for juvenile offenders to authorise the possession of other items and personal articles. According to Article 122 of the *Execution of Punishments and Remand in Custody Act* the explicit competence to do so is vested in the Minister of Justice. Neither Article 122 nor Article 11 of the said act authorise the Minister of Justice to delegate her or his powers directly to any closed or open prison wardens. Even though they have a positive effect, the individual authorisations to possess personal articles issued by these administrative bodies are null and void. Amendments to legislation are required. If the delegation of powers becomes provided for by law, it should only be allowed in exceptional cases and they should be listed exhaustively. It is striking that the delegation of powers to a Deputy Minister is elaborated on exhaustively in the law, while the delegation of powers to the GDIN's General Director is unlimited.

Another problem identified by the NPM is that refusals to move prisoners have been issued consistently and for many years in the form of letters and not in the form of orders. Information provided orally by GDIN employees that such cases were not infrequent was corroborated by the findings of the NPM's on-site inspections. The said refusals are not handed to the inmates but are attached instead to their personal files. Finding such refusals in the GDIN registries and in the inmates' files proved problematic. Accordingly, it has also prevented inmates from using legal assistance.

The *European Prison Rules* recommend that prisoners should be entitled to purchase or otherwise obtain goods, including food and drink for their personal use, at prices that are not abnormally higher than those in free society.

Achieving market clearing prices has been a long-standing and systemic problem in prisons since the State-owned Enterprise 'Prison Industries Fund' ('DPFZD') established its monopoly over prison commissaries. Failure to accept the Ombudsman's previous recommendations to change this model leads to reasonable assumptions of existing corruption practices and causes unnecessary tension between inmates and custodial staff.

The introduction of a new phone service provider has solved a good many of the previous problems regarding the price of calls. It has created, though, some new problems, such as the use of prepaid phone cards and the way these are priced. This necessitated conducting an analysis of the contracts concluded in 2016 by both the GDIN and the DPFZD.

The NPM concluded that the two foregoing problem areas were important for prisoners and it was therefore necessary to elaborate on them in more detail.

Provision of Telephone Services

Article 5.1.1 of Contract 1-1602.10 of 22 December 2016 between the State-owned Enterprise 'Prison Industries Fund' ('DPFZD') and the Bulgarian Telecommunications Company Ltd. (BTC AD) specified the amount of BGN 1,198,800, including VAT, for 300,000 phone cards. The average supply cost per card amounts to BGN 3.996. Article 5.3 of the contract provides for a trade discount of 5.5% for the term of the contract. The retail selling price at the prison commissaries is BGN 4.00. The sales revenues amount to BGN 699,300, excluding VAT, and there is a possibility for additional sales revenues of BGN 299,700, excluding VAT.

The phone cards at issue are not on the list of allowable items. There have been no complaints of inmates having been denied receipt of such phone cards during visits. The problem is that there is an increased demand for and insufficient supply of phone cards on the market. The service provider informed the Ombudsman in a letter sent in response to complaint 343/2017 that all necessary steps had been taken to satisfy the increased demand.

The supply of the phone cards in question is inextricably linked to the previous contract No. 8899 of 14 September 2016 with effect from 20 September 2016 between the GDIN and BTC AD whereunder 220 pay phones were supplied in different penitentiary establishments.

The number of pay phones proved insufficient and therefore a new order was placed to supply 400 more pay phones for estimated BGN 70,000.

According to the draft contract for the said order “the CONTRACTOR agrees to perform additional supply, installation, and maintenance of additional up to 400 pay phones to be used in penitentiary establishments of the same type and model as the ones already installed under contract No. 8899 of 14 September 2016, which shall meet the awarding authority’s requirements as set forth in the technical specifications in Annex 1, which shall be an integral part of this contract.”

It should be noted that there exist no pay phone requirements. The GDIN could, without any problem, let any and all universal service providers install pay phones in prisons without paying a penny out of its budgetary resources. Purchasing pay phones from only one supplier under these terms **creates in essence a monopoly in favour of one supplier**. The service at issue is to be used not by GDIN staff but by prisoners and detainees and it is therefore unclear why the GDIN made this budgetary expenditure and what exactly was paid for.

Article 182(1) through (6) of the *Electronic Communications Act* (ECA) provides a clear definition of universal service. The undertakings obligated to provide universal service as per Article 184 of the ECA are required to ensure the provision of a specified number of public pay telephones and/or other public voice telephony access points, in terms of geographical coverage, in order to meet the reasonable needs of end-users. The pricing mechanism for the universal service and the price bundles are specified in a methodology developed by the Communications Regulation Commission and approved by the Council of Ministers.

None of the contracts contain provisions allowing for call barring on outgoing calls to pre-selected phone numbers.

No contractual provision exists for non-cash payments by means of a barcode scanner requiring the payment to be made by phone card. The NPM reiterates that the phone cards at issue are not on the list of allowable items and personal articles, and once included, they create conditions for unregulated exchange of a civil law character between inmates, which the prison administration could not efficiently control.

There exists Contract 1-83-12 of 17 March 2016 between the State-owned Enterprise ‘Prison Industries Fund’ (‘DPFZD’) and TM Solutions Ltd. whereunder the DPFZD is authorised to use on a permanent basis a computer program processing non-cash payments by inmates in closed-prison commissaries. This would allow non-cash payments and subsequent control in cases of telephone scams. The NPM is in no doubt that any universal service supplier would equip their pay phones with such technology and would install their devices free of charge in order to have access to a market of nearly 9,000 users.

Based on the legal and factual situation as established above, the following conclusions can be drawn:

- Phone services provided inside the penitentiary establishments are not different from the universal phone service referred to as an obligation in the *Electronic Communications Act*, including the supply of the necessary pay phones.
- The selling price for the services used by sentenced prisoners and prisoners on remand held in penitentiary establishments is determined in accordance with a contract concluded by the State-owned Enterprise ‘Prison Industries Fund’ (‘DPFZD’) on the basis of an existing contract with the General Directorate Execution of Punishments (‘GDIN’). This may result in

unsuitable market prices and a possible distortion of competition.

- The contract for supply of pay phones, concluded by the GDIN, may be interpreted as restricting the rights of legal entities to provide the universal service referred to in the *Electronic Communications Act* under equal legal conditions for conducting economic activities, thus creating conditions for the development of monopoly situations and possible violations of consumer rights. (See Article 19(2) of the Constitution.)
- The contracts at issue do not provide a possibility to effectively restrict the freedom and confidentiality of correspondence in exceptional cases where this is authorised by the judiciary and is required for the specific purposes of the detection and prevention of serious criminal offences as per Article 34(2) of the Constitution, as well as for the prevention of phone scams.
- The contracts create conditions for using items (phone cards) that are not yet on the list of allowable personal articles, whose unregulated exchange between inmates exceeds the actual possibilities of exercising efficient control by the penitentiary establishments' administration.
- The current phone service prices are not abnormally higher than those in free society given the price of a phone card with 25 impulses as per the contracts at issue. There exists the practical but not legal possibility of smuggling phone cards with more impulses purchased on the market into the penitentiary establishments to be used by inmates. Within the term of the contract, free-society however, the price might actually prove to be a monopoly price above market prices owing to the fact that the pay phones were supplied by just one company and the phone cards purchased by the DPFZD are usable solely in that company's pay phones. The company in question, though, cannot deliver its phone cards directly to prison commissaries as this can only be done through the DPFZD. After the expiry of the contract, the inventory of unsold phone cards purchased by the DPFZD will prove unusable and will have to be accounted as losses incurred by the state-owned enterprise unless the supplier company buys them back or another distributor agrees to buy them. To prevent this from happening, the DPFZD will be economically motivated to sell its inventory of phone cards thus running the risk of causing a shortage at the penitentiary establishments.

Supply and Pricing of Food and Non Food Products in Penitentiary Commissaries

The problem of high commissary prices arose upon the termination of rental agreements with retailers selling goods to inmates from commissaries on the grounds of penitentiary establishments. There have been serious irregularities in the selection of suppliers and in the implementation of public procurement procedures.

As a follow-up to previous NPM inspections, the Ombudsman recommended to the Managing Board of the State-owned Enterprise 'Prison Industries Fund' ('DPFZD') to allow their retail establishments within the prisons to purchase goods directly from producers and manufacturers or from wholesalers with a view to avoiding high transportation costs and nonmarket pricing resulting from the implementation of the *Public Procurement Act* (ZOP). The recommendation was based on the opinion of the Public Procurement Agency delivered in a letter⁵ and clearly stating that "if revenue exceeds spending, that means that the business activity is self-financing without resorting to budgetary allocations and hence it falls outside the scope of the Public Procurement Act (ZOP)". NPM staff members held talks with the state-owned enterprise's former director and were informed that the DPFZD management were waiting for the current supply contracts to expire to avoid having to pay penalty for early termination and after that would switch to the model recommended by the Ombudsman.

⁵ Ref. No. 47-00-30 of 11 April 2011

In her relevant media appearances and official statements, the Ombudsman of the Republic of Bulgaria has repeatedly pointed out that she would monitor the problem of high prices in prison commissaries in 2016 and in the years thereafter.

In 2016, the State-owned Enterprise ‘Prison Industries Fund’ (‘DPFZD’) failed to implement the Ombudsman’s recommendation. In a letter⁶ to the Public Procurement Agency the DPFZD’s executive director inquired about the rules and the practical arrangements for supplying food and non-food products to prison commissaries without explaining clearly that the inquiry concerned the procurement of goods for the purposes of profit-generating retail operations. The Public Procurement Agency replied in a letter⁷ and referred only to the legal grounds set forth in § 1(21) of the Supplementary Provisions of the *Public Procurement Act*. The provision at issue, though, provides actually a definition of the term ‘public-law body’. Hence, the Public Procurement Agency provided no clear reply on the substance of the inquiry. The Legal Affairs Directorate of the Ministry of Justice also failed to provide guidance⁸ on the question whether it was possible to procure merchandise for retail purposes without going through the procedure laid down in the *Public Procurement Act*. The Deputy Minister of Justice alone made a public statement that according to the experts at the Ministry of Justice, the *Public Procurement Act* procedure was mandatory.

In the context of the entry into force of the new *Public Procurement Act*, an inquiry was re-sent to the Public Procurement Agency’s executive director as to the application of the *Public Procurement Act* to the process of selecting a supplier for prison commissaries. The renewed inquiry once again failed to specify that the goods would be purchased for retail purposes. The letter referred to the existence of two contracts amounting to BGN 10 million, excluding VAT, concluded without following the procedure laid down in the *Public Procurement Act*. The two supply contracts at issue were concluded in 2014 – the first one with Kiltex Ltd. for an estimated amount of BGN 12,698,459 and the second one with Stelit 1 Ltd. for an estimated amount of BGN 1,551,179. The duration of the contracts spanned the period from 1 October 2014 until 31 August 2016. It has been found that the performance of both contracts was marred by violations associated with excessive pricing and non-compliance with agreed delivery times.

As a consequence, new contracts were concluded following the restricted procedure provided for in Article 75 of the *Public Procurement Act*. Tenders were submitted solely by tenderers preselected and invited by the contracting authority.

Thus, a total of 10 contracts were concluded with companies for supply of food products to each individual closed or open prison. They were not, as a rule, concluded at the lowest offer price.

The NPM has no particular objections as concerns the contracts themselves because of the presence of other criteria justifying the conclusion that the winning tenderers were selected despite their higher price offers. Even if one was to accept that this is a market price, despite its distortion, given the 7-percent retail mark-up that the State-owned Enterprise ‘Prison Industries Fund’ (‘DPFZD’) adds to the cost as per its Managing Board’s decision of 30 March 2016, there are actually two mark-ups determining the selling price. Under this model, however, prison commissary prices will never compare favourably with those on the free-society market.

The NPM sees such commercial practice as abuse of rights and abuse of monopoly that has been ongoing for over three years now and insists that it be discontinued. If the equity holder in the person of the Ministry of Justice and the DPFZD’s Managing Board are unable to find an appropriate lawful manner of procuring goods directly from producers and manufacturers or of

⁶ Reg. No. 001-P-1293 of 19 November 2015

⁷ Ref. No. 47-00-228 of 30 November 2015

⁸ As evident from the director’s opinion in a letter Ref. No. 92-27-9 of March 2016

having them supplied directly by regional units without cost increases due to transportation costs and without commercial intermediaries, and if they are unable to conduct normal commercial activity, then the DPFZD should go out of business and the prison commissaries should be rented out to retail companies in order to ensure normal selling prices.

Medical Care in the Penitentiary System

During their inspections focused on healthcare in the penitentiary system, the NPM teams put a renewed emphasis on the implementation of recommendations made by the CPT and the NPM in the course of previous inspections. It was found that the CPT's recommendation that prison officers should not be present inside the health offices during medical examinations of inmates unless the doctor concerned expressly requested otherwise in a particular case, had been implemented.

The recommendation that inmates should not be used as prisoner-orderlies, and that medicines be dispensed solely by healthcare staff and not by prison officers had not yet been implemented. This was explained by the existing shortage of healthcare professionals.

A register of traumatic injuries was introduced in all penitentiary establishments as per Order No. LS-04-1416 of 13 October 2015 issued by the Minister of Justice, and forms were drawn up to register traumatic injuries sustained by a prisoner in keeping with the CPT recommendation to have all cases of violence suffered at the hands of prison officers duly registered. It was found that such registers were kept at all medical centres, with the exception of the medical centre at Burgas Prison, and cases of prison guard brutality had been recorded therein.

It should be noted here that in its recommendation the CPT required that all cases of violence be reported by the health professionals to a competent person outside the penitentiary system (e.g., a prosecutor). Currently, however, the established procedure is to have any case of violence reported to the respective prison warden.

The NPM found that its recommendation to reform the penitentiary healthcare system and start using the civilian healthcare system had not been implemented. Some progress was observed in terms of actions taken by the Directorate General 'Execution of Punishments' ('GDIN'). The Directorate's medical service had elaborated a Restructuring Plan and it had been submitted to the Ministry of Justice. The plan had not, however, been deliberated or acted upon yet. Following a recommendation from the NPM, some prison wardens had taken action and general practitioners had been assigned to their prisons by the National Health Insurance Fund.

Overall, the prison medical centres experience shortage of medical specialists and dissatisfaction with health care in penitentiary establishments is a never ending issue. The most common complaints are related to access to medical care; disruption in supply of medicines; failure to escort or delays in escorting inmates to an outside healthcare establishment; the practice of fixation of prisoners with handcuffs to a bed in an outside hospital; requests for interruption of punishment or for assistance with applying for a pardon for health reasons; ill-treatment by medical staff; inadequate quality of dental care; poor hygiene and unsanitary living conditions, etc. The NPM finds that some of the complaints are justified, while others warrant the conclusion that the inmates are unaware of their health coverage rights and obligations. What needs to be noted is the heavy patient load of health offices – an average of 30 to 40 patients a day, as well as the dubious reasons for visiting the health offices. According to information from healthcare professionals, some 50 percent of all visits are made “for the purpose of leaving the prison cells and social interaction”. It can be said that prisoners' insufficient social involvement impacts the patient loads of medical offices. Furthermore, the shortage of prison guards impedes or delays escorting prisoners out of prison to receive

specialised medical care.

There are two specialised hospitals for active treatment of prisoners ('SBALLS') within the penitentiary system – one in the city of Sofia and another one at the prison in the city of Lovech. The penitentiary hospital in Sofia has been in decline for a number of years now and the NPM has put forward a recommendation that it be restructured, which has not been implemented. The penitentiary hospital in Lovech is a specialised cure centre for the treatment of lung diseases and mental health disorders. It has been facing long standing staffing deficiencies.

The NPM notes the unfulfilled recommendation made by the CPT requiring that the dialogue between the Ministry of Justice and the Ministry of Health as to the administrative subordination of the penitentiary healthcare establishments and their methodological guidance be stepped up.

Prisons

- A number of recommendations made by the NPM and addressed to the Minister of Justice back in 2012 are still outstanding.
- The Ombudsman, in her capacity as NPM, observed that in 2016 Sofia Prison was still grossly overcrowded. She therefore reiterates and stands by her recommendation that a new penitentiary establishment be built in the capital city of Sofia.
- In early 2016, the Ombudsman Ms. Maya Manolova personally visited the prison in the city of Sliven. Her recommendations, given in person to the prison administration, regarding the short supply of hot water and the shortage of hygiene products have been implemented by the administration.
- The recommendation made by the NPM that the Minister of Finance in collaboration with the Minister of Justice should take all necessary measures to provide adequate custodial staff complement for the open prison facility in the village of Debelt in the following budget year has been accepted and implemented.
- An extremely positive finding made by the NPM is the fact that since the new warden of Sofia Prison took office, the use of unwarranted physical force has been discontinued.
- The NPM notes the existence of a long-standing problem in Bulgaria relating to the unlawful handcuffing of life-sentenced prisoners in higher security zones, as well as of all hospitalised prisoners in outside hospitals.

The Prison in the City of Sofia

The NPM's first visit to Sofia Prison took place on the 5th and 6th of June 2012. The findings made by the inspection team back then read: "The cells were too old and worn out. The number of inmates per cell exceeded by far the allowable number according to the standards. A cell for two with a sanitary annexe, including a toilet and a shower, was shared by 6 to 8 sentenced prisoners, while 8 to 18 prisoners on remand shared large dormitories. All cells were furnished with double and even triple bunk beds. At the time of the inspection, the total number of prisoners accommodated at Sofia Prison was approximately 1,700. 927 of those were held in the closed section whose capacity was approximately 600 inmates".

In the course of its visit to Bulgaria in 2014, the CPT ascertained that: "65. With an official capacity of 676, the closed section of Sofia Prison accommodated 885 prisoners at the time of the 2014 visit, including 21 inmates serving life sentences and 181 foreign prisoners." (...) The CPT is very concerned by the fact that the material conditions found in 2014 were in many

respects similar to (and sometimes even worse than) those observed at the time of the previous visit to the establishment, in 2008. Overall, the whole prison was grossly overcrowded.”

In their 2015 response to the CPT report, the Bulgarian authorities pointed out that the prison’s capacity was 745 inmates until 2015 and according to latest floor area measurements taken in 2015 the capacity had been set at 951 inmates. As of 10 July 2016, the prison’s closed section accommodated a total of 739 prisoners, including 30 pre-trial detainees, 148 criminal defendants remanded to detention, 561 sentenced prisoners, and 22 life-sentenced prisoners.

The NPM voices its concern that the prison is noticeably overcrowded and has requested additional information with a view to re-calculating its nominal capacity.

The unfulfilled recommendations put forward by the NPM to the Minister of Justice back in 2012 include:

- Given the high overcrowding, poor hygiene and unsanitary living conditions, the impossibility of exerting corrective influence, and the existing risk of causing harm to prisoners’ physical and mental health, the Kremikovtsi open prison should be closed on the grounds of Article 46 of the *Execution of Punishments and Remand in Custody Act*.
- Actions should be taken towards constructing a new prison with a capacity of 1,500 to 2,000 inmates.
- The NPM was informed in a response letter Ref. No. 66-00-132 of 15 August 2012 that the closure of the Kremikovtsi open prison was “impractical given the absence of an alternative option for accommodating some 550 sentenced prisoners”. As regards the second recommendation, it was pointed out in the closing remarks of the abovementioned response of the Bulgarian authorities to the CPT’s 2014 report that “the General Director of the General Directorate Execution of Punishments (‘GDIN’) should, by the end of March 2015, systematize all tenders received from the private sector and from foreign partners and present them for deliberation to the senior leadership team of the Ministry of Justice with a view to assessing the possibilities for launching a procedure under the *Public Procurement Act* (ZOP) or the *Public-Private Partnership Act* (ZPChP) for the construction of new penitentiaries”. A call for tenders, though, can only be issued after the necessary financing has been secured. However, no such financing was allocated in 2016, either.

Therefore, the Ombudsman of the Republic of Bulgaria, in her capacity as designated NPM, having observed that in 2016 Sofia Prison was still overcrowded even with the latest floor area measurements and the alleged larger nominal capacity, reiterates and stands by her recommendation that a new penitentiary establishment be built in the capital city of Sofia, which would make possible the subsequent closure of both the open prison in Kremikovtsi and the closed prison in Sofia.

At the same time, the NPM acknowledges that closing down the Kremikovtsi open prison is unthinkable unless a new penitentiary establishment has been built.

This was why the two recommendations were put forward simultaneously. The open prison accommodates just over 400 prisoners to date and this is precisely why the NPM hopes that the procedure under Article 46 of the *Execution of Punishments and Remand in Custody Act* regarding the opening of a new penitentiary establishment will be finalised.

The NPM reiterates that the State-owned Enterprise ‘Prison Industries Fund’ should fulfil its historic role, justify its re-establishment, and reinforce its past accomplishments.

Corrective influence, i.e., meaningful activities involving prisoners, is impossible to occur with the required scope and intensity at Sofia Prison not only because of the existing architecture, the lack of adequate rooms and the shortage of social workers. All of these conditions make it

impossible to achieve individual execution of sentences. The current standards set by the ECtHR and the CPT call for over 6 m² per life-sentenced prisoner. And if the European Prison Rules are to be followed, prisoners should be held in individual cells to eliminate the causes of intra-inmate violence. The allocation of BGN 2,070,000 in 2015 for the prison's closed section and for the Kremikovtsi open prison will not solve the overcrowding problem and will not create the requisite working conditions for the prison administration. These projects were obviously not secured with funding from the budget (BGN 15 million were needed for 2015 but only BGN 4.5 million were allocated), which is why they remained unfulfilled. The NPM expressed its view that these undertakings should be removed from the program not just because they are financially unsecured, but also because they are inexpedient.

The Prison in the City of Sliven

In its report CPT/Inf(2008) 11, the CPT pointed out that during its visit to the Sliven Prison in September 2006 none of the living quarters was equipped with a sanitary annexe.

The NPM visited the prison in the city of Sliven in the period from the 10th to the 14th of September 2012 and found that: "The prison's closed section has 142 living quarters situated along 6 corridors as follows: a reception unit; remand prisoners (pre-trial detainees and criminal defendants); 2 corridors accommodating first-time offenders and 2 corridors accommodating repeat offenders. There is also an isolation unit (higher security zone). As at 1 September 2012 the prison accommodated 294 inmates. This number has remained relatively constant over the last five years with insignificant fluctuations. The number of inmates peaked in 2007 when the prison accommodated 350 sentenced prisoners and 28 remand prisoners." (...) "The prison's total accommodation space is 1,907 m². At the standard 4 m² per prisoner, the prison's capacity would be 476 inmates. According to the prison's passport, the capacity is set at 400 inmates based on the existing number of beds. This makes 4.76 m² per prisoner. The prison's capacity includes the open prison housing 30 adult males (housekeeping staff); the 'Sliven' open prison housing 35 inmates and the reformatory for female juveniles housing 35 underage girls. There are additional 54 beds at the 'Ramanusha' open prison located some 10 kilometres away from the city of Sliven. The available accommodation space, interior furnishings, access to natural and artificial light, the level of hygiene, the accommodation of 2 to 4 prisoners per cell, and the absence of bunk beds warrant the conclusion that the material conditions of the prison's closed section, the open prisons and the reformatory are among the best in Bulgaria's penitentiary system."

The sanitary annexes remain an unsolved problem. "The presence of a plastic bucket under each prisoner's bed is an indication that the issue of normal access to a toilet facility at night still exists in 2012. Guard shortage is still a problem, too. One prison officer on duty is in charge of two corridors, i.e., of approximately 60 inmates. Interviewed prisoners shared that taking them from their cells to use the toilet facilities at night was never denied but often was, for understandable reasons, delayed."

"The finding made by the CPT that hot water was supplied for only 20 minutes in the evenings was corroborated by finding made by the NPM team that hot water time had been cut down to 10 or 15 minutes only, and supply of hot water on weekends lasted an hour."

In early 2016, the prison was visited by the Ombudsman of the Republic of Bulgaria Ms. Maya Manolova accompanied by a NPM team. Her recommendations, given in person to the prison administration, regarding the short supply of hot water (30 minutes a day) and the shortage of soap and hygiene products have been implemented by the administration. Each inmate is supplied now with two bars of soap and hot water time has been doubled. Complaints regarding the quality of toilet soap, prices and shortages of fruit in the commissaries continue.

The inspection found that there was no cold storage unit for sub-zero temperatures. Supply of a new one in 2016 was not planned.

Currently, the number of inmates accommodated at the prison is significantly lower – just 168. Of those 16 are remand prisoners, 152 are sentenced prisoners, and 5 are prisoners serving a life sentence with the possibility of parole.

BGN 1.5 million has been allocated for the construction of sanitary annexes and roof repairs. The prison management intends also to have solar panels installed on the roof which will provide a solution to the hot water problem.

The Prison in the City of Burgas

During its visit to the prison back in 2013, the NPM team observed that “the conditions at the Burgas Prison are completely unacceptable and should be considered inhuman and degrading. This is Bulgaria’s most crowded prison and the conditions are the worst. The average floor area per prisoner is less than 2 m², and in some sections it is even less than 1 m². At the time of the NPM’s inspection at the Burgas Prison, the closed section accommodated 883 prisoners and the average floor area per inmate was approximately 1.5 m². Given the total floor area of 1,483 m², the closed section’s maximum possible capacity is 370 inmates.”

In 2016 the prison accommodated 531 prisoners. In their 2015 response to the CPT report, the Bulgarian authorities indicated that the prison’s previous nominal capacity was 371 inmates, and following the latest floor area measurements it had been set at 244 inmates.

The condition of the buildings has deteriorated. The newly built kitchen is indeed of high quality but experiences shortage of equipment. The entire sewerage network obviously needs repairs given the leakages detected in the storage room of the old kitchen and in the new premises (changing rooms) of the remand centre. An overhaul of the prison’s closed section is planned and financing in the amount BGN 1.2 million is allocated. The plans include the construction of accommodation spaces designed to sleep 4 inmates with a sanitary annexe in each cell, new water and sewerage network. The overhaul plans do not provide for using solar panels to heat water and there will be no central ventilation or air-conditioning system. The contractor has been selected and overhaul works are ongoing. The failure to commission the open prison in the village of Debelt, the ongoing construction works have resulted in extreme overcrowding. The cells are once again furnished with triple bunk beds because of the ongoing overhaul works inside the prison. The overhaul plans include the construction of a courtroom inside the prison for conducting remote court hearings.

The findings of the CPT regarding overcrowding and the living conditions are reflected in its reports on both visits to Burgas Prison (in 2012 and in 2014) and are publicly available. The NPM also visited Burgas Prison from 23 to 25 October 2013. The NPM team found that: “The prison is not included in the Program for the period 2009-2015, adopted by Decision of the Council of Ministers No. 767 of 2008 pursuant to Article 13(3)(5) of the Rules of Procedure of the Council of Ministers and its administration. The issue of overcrowding at Burgas Prison should have been resolved by constructing the new open prison in the village of Debelt. According to the Government’s Program of 2008, the new open prison was due to open in 2009. The State-owned Enterprise ‘Prison Industries Fund’ has spent some BGN 300,000 of its own funds. Roof repairs have been carried out, some door and window frames have been replaced, the cells have been partially partitioned, and a fence has been erected around the prison grounds. Construction works have been discontinued, though, due to lack of additional funding (some BGN 800,000).

According to the Government’s Program of 2011, the construction of the open prison was to be completed in 2012. Therefore, an allocation of approximately BGN 1 million from the state budget was made. No construction works were carried out due to shortage of capital expenditure.”

Funding for the overhaul was secured from the Norwegian Financial Mechanism Programme. The facility's total capacity as initially planned should be 450 prisoners. The entire building stock will not be overhauled, though, and therefore when the new facility is open its capacity will be 375 inmates with guaranteed 4 m² of living space per prisoner.

The Ministry of Justice is faced with a serious problem related to obtaining personnel for the new open prison. The problem stems from the so called 'optimisation' carried out in 2015 in result of which 459 prison officers were laid off. The 'optimisation' was carried out as per a decree issued by the Council of Ministers on a proposal by the Minister of Finance which required all ministries and agencies to cut 10% of their staff. According to expert estimates, this has led to the custodial staff complement being short of 450 to 750 prison guards, thus making it hard to ensure the protection of both prisoners' rights and prison staff's employment rights. The downsizing of staff ran counter to the repeated recommendations made by the CPT and by the NPM regarding the inadequate staffing levels in prisons. The CPT has repeatedly pointed out that such inadequate staffing levels in prisons pose safety risks for the prisoners and for society, as well as for the custodial staff. During its visit to Burgas Prison back in 2012, the CPT reiterated its recommendation "that the Bulgarian authorities take urgent steps to increase staffing levels in prisoner accommodation areas at Burgas and Varna Prisons." (Paragraph 52)

During its visit back in 2013, the NPM team noted in its report: "The downsizing of prison staff in 2008 resulted in laying off some 600 staff across the penitentiary system. Since then the system has been relatively stable but there has been a steady reduction in staffing levels. The approximate ratio between custodial staff and prisoners in Bulgaria's penitentiary system is 1 to 2. The ongoing downsizing is part of the budget savings in the public administration. It would be difficult to obtain the necessary personnel for the prospective penitentiary establishment in the village of Debelt, if it is of the closed-prison type. Therefore, even though the penitentiary system has some potential to reallocate prison staff, it is necessary to strive at increasing the custodial staff complement and to hire more social workers for the prison accommodation areas.

During its visits, the NPM observed also that the custodial staff, the social works, and the medical staff experienced substantial workloads."

The NPM acknowledges that the political leadership of the Ministry of Justice, and that of the Directorate General 'Execution of Punishments' ('GDIN') are unable to open the prison facility in the village of Debelt by the end of 2016 due to lack of staff complement and due to the fact that approximately 6 months will be needed to hire new prison officers.

The recommendation made by the NPM that the Minister of Finance in collaboration with the Minister of Justice should take all necessary measures to ensure that in the following budget year the open prison facility in the village of Debelt will be provided with the necessary custodial staff complement and a vehicle fleet that is adequate for its operational needs has been accepted and implemented.

Capital allocation in the budget year 2016 for maintenance and repairs of penitentiary establishments should be acknowledged as a positive trend. Previously, capital allocations varied from BGN 1.5 to 3 million. For the first time in decades, GDIN's capital expenditure exceeded BGN 4.5 million and for the first time there were no outstanding utility bills and unfunded liabilities for medicines which previously used to range from BGN 50,000 for remand centres and BGN 300,000 for prisons. In their response to the CPT report on its 2015 visit, the Bulgarian authorities included Annex No. 2, stating that "With a view to improving the conditions of detention and ensuring the penitentiary system's compliance with the Convention requirements, the following preliminary plan of activities has been drawn up, which should be implemented by the end of 2016 (provided that the necessary financial resources amounting to approximately BGN 15,030,000 are secured)".

The NPM has not received any alerts or complains concerning the conduct of official visits from lawyers. It has found, though, that such visits are often conducted in rooms with partitions and intercom phones. These are non-contact visits and any exchange of documents between a lawyer and a prisoner occurs with the assistance of prison officers. Article 254 of the *Execution of Punishments and Remand in Custody Act* (ZINZS) and Article 34 of the *Bar Act* (ZA) are identical. According to both statutory provisions official visits may be subject to monitoring. Article 30(5) of the Constitution provides that “Everyone shall have the right to meet their defence counsel in private. The confidentiality of such communication shall be inviolable.” If official visits may be subject to monitoring, that means that they are not conducted in private and the confidentiality of communication is not inviolable.

The NPM believes that the existing statutory opportunity for custodial staff to monitor lawyer visits is unacceptable and runs counter to the provisions of the Constitution. The European Prison Rules provide for an exception to the rule and state that communication and visits may be subject to restrictions and monitoring where ordered by a judicial authority for the purpose of preventing serious criminal offences or serious violations of safety and security in prisons.

Despite this statutory opportunity allowing the penitentiary administration to restrict communication, official visits from lawyers at Sliven and Burgas Prisons are contact visits with no divider. According to information provided by prison officers, initially there were no dividers at Sofia Prison, either. The dividers were installed later at the direction of inspectors from the GDIN. In this context, the NPM recommended that the Sofia Prison warden should provide an opportunity for immediate exchange of written materials between prisoners and their lawyers during official visits without the intervention of the custodial staff.

As regards the regular biweekly visits for both prisoners on remand and sentenced prisoners, there exist explicit statutory provisions in the *Execution of Punishments and Remand in Custody Act* (ZINZS) and in the *Rules for the Implementation of the Execution of Punishments and Remand in Custody Act* (PPZINZS). Article 73 of the PPZINZS was amended in 2014 and the new provisions require partition walls and physically present guards. This fact runs counter to the recommendations made by the NPM for open contact visits (without partitions). Penitentiary establishments employ different practices to comply with the amendments to the PPZINZS. The refurbished visiting facility at Sofia Prison is equipped with partitions, while Sliven Prison has an established good practice of contact visits. The NPM therefore believes that if the said statutory provision is to be implemented in all prisons that would require inexpedient and unnecessary government expenditure.

The available living space, the furnishings, and the visitation rules at Burgas Prison are considered inhuman and the worst in the country.

The CPT’s recommendation that the Bulgarian authorities increase the visit entitlement for all prisoners to at least one visit per week has remained unfulfilled. The CPT’s second recommendation is related to paragraph 24.2 of the European Prison Rules: “Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact”, as well as paragraph 24.2 “The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.”

“The CPT recommends that steps be taken to improve the visiting facilities at Burgas and Varna Prisons in the light of the above remarks. As stressed by the Committee in the past, the aim should be to enable all prisoners, including those on remand, to receive visits under reasonably open conditions; the use of closed visiting facilities should be the exception rather than the rule.”

In 2013, the NPM built upon this recommendation and suggested the possibility of locating all newly constructed commissaries in proximity to the prison's entrance and using them for open visits, as well as increasing the range of the products sold there with a view to curbing the inflow of items into prisons. The commissaries constructed by the State-owned Enterprise 'Prison Industries Fund' since then are not in compliance with the said recommendation. The differentiation of commissaries into commissaries for prison staff and separate commissaries for prisoners makes it impossible for prison officers to buy anything where a staff commissary is not available, e.g., at the '*Keramichna Fabrika*' open prison.

The visiting facility at the future open prison in the village of Debelt has 16 or 17 cubicles with partitions and intercom phones, 6 to 8 areas for contact visits without partitions, and two areas for official visits from lawyers. There is no area for extended 4-hour visits and therefore they will probably be conducted in the areas for contact visits without partitions. The design does not provide for visits with a possibility of accessing the commissary as well.

The CPT has repeatedly recommended that prisoners should be entitled to at least one extended visit per week. The law does not prevent prison wardens to increase the visit entitlement. However, the shortage of custodial staff forces them to restrain from fulfilling the recommendation. In the second place, laws regulate lasting public relations and therefore **visit frequency and all visitation rules should be determined by legislation**. The capacity of the visiting facilities allows for such visits. Last but not least, how the visiting facilities should be furnished and equipped for the different types of visits should also be determined by legislation, e.g., regular visits for high-risk detainees and prisoners (80 or 100 points) should be conducted in partitioned facilities, while visits for all other detainees and prisoners in closed penitentiary establishments should be conducted in visiting facilities furnished with tables and chairs with access to a commissary. This would make possible also curbing the inflow of items purchased outside the prisons. In that case sufficient time should be allowed to bring the visiting facilities in conformity with the legal requirements and to prepare estimates for their construction or refurbishment, respectively, as well as to make arrangements for accessing them. It is possible and probably expedient also to introduce video surveillance to replace the presence of custodial staff during visits. To this end, the monitoring of prison visits, whether by custodial staff or by way of video surveillance, should be regulated by legislation as provided for in Article 32(2) of the Constitution.

According to publicly available information, the refurbishment of the visiting facilities in all penitentiary establishments does not result in changes to the way visits are conducted because of the lack of regulatory changes. The NPM considers this a worrying trend and voices its concern over the inexpedient spending of budgetary funds that are insufficient anyway.

The door to the area for extended visits at Sofia Prison is transparent and the area is equipped with a video surveillance camera as well. Extended visits last 4 hours and are granted as a reward. Extended visits used to be granted initially for a period of up to 24 hours and the intention was to provide an environment as close to the family environment as possible. Such rewards used to be the only chance for detainees and prisoners to have physical contact with their near and dear ones, i.e., the only form of personal life as regards the two harshest regimes within prisons. The minimum requirements were laid down in an order issued by the then General Director of the General Directorate Execution of Punishments ('GDIN')⁹. After the extended visit facilities had been used for nearly 6 years, their furnishings and equipment were gradually downscaled to just a table and chairs and the areas were equipped with video surveillance cameras in flagrant violation of the aforementioned order at the direction of a Deputy Minister of Justice, given verbally. During its inspection at the prison in the city of Stara

⁹ No. L-5593 of 10 October 2006

Zagora, the NPM found that the visiting facility was equipped with a CCTV camera and recommended that it be removed as its presence violated the prisoners' right to privacy. Article 91 of the *Rules for the Implementation of the Execution of Punishments and Remand in Custody Act* (PPZINZS) provides that "extended prison visits shall be conducted in appropriately furnished separate rooms", while the wording in Article 73 of the PPZINZS is "specially equipped". The term "appropriately furnished" is used also in Article 85(1) of the *Execution of Punishments and Remand in Custody Act* (ZINZS) in relation to rooms for pregnant and breastfeeding women. However, the wording in Article 98(4) of the same ZINZS is also "specially equipped rooms".

Prompted by the above problem, the Inspectorate of the Ministry of Justice carried out an inspection and found out that there were no established rules for furnishing and equipping the extended visit facilities. The Inspectorate then recommended that the issue be regulated. In fulfilment of the said recommendation, the Acting General Director of the General Directorate Execution of Punishments ('GDIN') issued Order No. L-721 of 29 February 2016 in connection with the Inspectorate's finding of different equipment in the extended visit facilities. Paragraph 2 of the said order introduced a new term – "specially dedicated rooms" – and the requirement that such areas should be monitored, where possible, by a video surveillance system and by attending custodial staff. On 28 June 2016 the General Director issued a new Order No. L-2557 to amend the previous order, thus making video surveillance mandatory.

The result is that when prisoners are granted privileged visits earned in an incentive scheme or as a reward for good behaviour, they are monitored simultaneously by guards and by video surveillance. Discounting the shortage of custodial staff and assuming that one guard will be assigned to this duty, the negative financial impact on the budget will amount to some BGN 13,000 a month for the closed prisons alone, excluding open prisons. The budget drain will increase even further in the future from payments ordered by ECtHR decisions on applications about imposition of excessive social isolation and unlawful interference with the private and family life of both prisoners and their visitors.

The NPM therefore stands by its previous opinion that there this constitutes a violation of Article 32(2) of the Constitution. If the Minister of Justice is convinced that such monitoring and surveillance should exist, it has to be provided for in the *Execution of Punishments and Remand in Custody Act*.

In the light of the foregoing, the NPM recommended that the General Director of the General Directorate Execution of Punishments ('GDIN') or the Minister of Justice should either repeal Order No. L-2557 of 28 June 2016 and paragraph 2 of Order No. L-721 of 29 February 2016 as being contrary to Article 32(2) of the Constitution, or take steps towards enacting the necessary amendments to the *Execution of Punishments and Remand in Custody Act* to legalise the video monitoring, surveillance, and recording of extended prison visits.

The Ministry of Justice and the GDIN have not taken this recommendation into consideration as is evident from the draft amendments to the *Rules for the Implementation of the Execution of Punishments and Remand in Custody Act* (PPZINZS), publicised on the website of the Ministry of Justice.

The NPM has identified at the prison in the town of Bobov Dol customary cases of unlawful handcuffing of sentenced prisoners when escorting them out of the higher security zone. Handcuffing of prisoner patients to their hospital beds in outside healthcare facilities is also customary albeit unlawful. The NPM teams identified a case where a guard cuffed a prisoner while using the toilet in a hospital setting in violation of the instructions. The reason once again is linked to the shortage of custodial staff. For the same reason, i.e., shortage of custodial staff, prison guards are not guaranteed the rest periods provided for in Article 16e(5) of the *Rules for the Implementation of the Execution of Punishments and Remand in Custody Act* (PPZINZS).

Prompted by the foregoing, the NPM recommended that the Minister of Justice and the Minister of Finance, when drafting the budget of the General Directorate Execution of Punishments ('GDIN'), should take the necessary measures to increase significantly the custodial staff complement in order to bring the instructions for the staff on duty in compliance with the provisions of Article 114 of the *Execution of Punishments and Remand in Custody Act* (ZINZS) concerning the use of assistive means.

A register of traumatic injuries was introduced in all penitentiary establishments as per Order No. LS-04-1416 of 13 October 2015 issued by the Minister of Justice. All cases of use of force are also duly registered.

An extremely positive finding made by the NPM is the fact that since the new warden of Sofia Prison took office, the use of unwarranted physical force has been discontinued. The finding was corroborated by a number of prisoner interviewees.

Violation of the Confidentiality of Correspondence

In 2016, the NPM identified cases of violation of the confidentiality of correspondence which the penitentiary administration justified with the provisions of Article 75(1) through (4) of the *Rules for the Implementation of the Execution of Punishments and Remand in Custody Act* (PPZINZS) and Article 37 of the *Execution of Punishments and Remand in Custody Act* (ZINZS) on the right to correspondence. According to the inspecting experts, the provisions at issue run counter to provisions of the Constitution, specifically Article 34(1), Article 34(2), and Article 37.

The NPM would point out that Decision No. 4 of 18 April 2006 in constitutional case No. 11 of 2005¹⁰ reads: "The Constitutional Court does not share the view that by prohibiting prison administrations to inspect the contents of some correspondence addressed to the National Assembly, the President of the Republic of Bulgaria, the Council of Ministers, the Ministry of Justice, the Ministry to Interior, the prosecution, the courts, the investigation authorities, the United Nations human rights bodies and the Council of Europe human rights bodies, the *Execution of Punishments Act* (ZIN) has created a sufficient and reliable guarantee for the inviolability of correspondence and communication.

The fact that letters to the public authorities are not subject to inspection does not warrant a conclusive presumption that the correspondence sent to all other addressees is necessarily aimed in its content at preparing or committing a grave crime or is meant to prevent the detection and investigation of previously committed criminal offences."

In this context, the NPM recommended to the Minister of Justice to bring the provision of Article 75 of the *Rules for the Implementation of the Execution of Punishments and Remand in Custody Act* (PPZINZS) in conformity with Article 34 of the Constitution and also with the provision of Article 256(2) of the *Execution of Punishments and Remand in Custody Act* (ZINZS) regarding prisoners on remand (accused persons and criminal defendants).

Regrettably, the latest amendments to the ZINZS, adopted by the National Assembly, provide in Article 87(3) that: "The correspondence of prisoners shall not be subject to control of its written contents except where this is necessary for the prevention and detection of serious criminal offences". As a result of this, the penitentiary establishments' administration is now empowered to control prisoners' correspondence without judicial authorization.

¹⁰ Promulgated in the State Gazette, issue 36 of 2 May 2006

The Prison in the Town of Bobov Dol

Following the floor area measurements taken in 2015, the capacity of the prison's closed section was set at 810 prisoners compared to its previous capacity of 665 inmates. According to the website of the General Directorate Execution of Punishments ('GDIN') the prison's capacity is 550 prisoners. As at 1 July 2016 the prison accommodated 477 inmates, including 34 prisoners on remand (accused persons and criminal defendants) and 443 sentenced prisoners. 26 of those were sentenced to imprisonment in an open prison, 167 were sentenced to imprisonment in a closed prison, 245 were repeat offenders, and 5 were life-sentenced prisoners. Two of the life-sentenced prisoners were serving life sentences with the possibility of parole and three were repeat offenders serving life sentences without the possibility of parole.

A main problem identified by the prisoners was the lack of water except at night from midnight until 6 a.m. despite the existing water-supply schedule. **The prison has always experienced problems with the water quality but currently the lack of water supply is a chronic problem.** The NPM therefore decided to request additional information from the water supply company ('Kyustendilska Voda' Ltd.) as to the measures it was taking to remedy the problem.

During interviews with prisoners, they pointed primarily to the following issues: impossibility to use shared items (e.g., hot plates), shortage of hot water supply and insufficient heat supply in winter, violation of the confidentiality of correspondence, cockroaches (despite monthly cockroach control treatments), harsh disciplinary practices (e.g., ban on taking more than two slices of bread away from the refectory to prevent unauthorised transactions even though bread is on sale at the commissary), shortage of utensils (spoons), insufficient meal time owing to the shortage of custodial staff and the shared refectory.

The prison in the town of Bobov Dol is one of the few prisons in Bulgaria which has not been overcrowded. Therefore the inconsistency in the data regarding its capacity is insignificant. Occasional overcrowding does occur, though, for instance in Group 7, due to the failure to use the entire floor space (unused corridor of cells whose furnishings are assessed by the inmates as luxurious). The same finding was made by the NPM back in 2012 and there is no justification for the situation to continue. Despite the fact that the prison has traditionally been underpopulated, its architecture does not allow for individual execution of the sentences and reduction of the necessary custodial staff complement. The latest substantial repair works (amounting to some BGN 15,000) were carried out to fix the prison fence because of the risk of a partial collapse. The cinema hall is in need of an overhaul since it was damaged by the latest earthquake. There are rooms for social activities linked by a drying room and lacking the necessary furnishings and equipment for conducting meaningful activities. The shower room on the floor features four shared showers without partitions. It is not accessible for persons with disabilities.

Renovations of the administrative building have been planned, as well repairs of the sanitary annexes, amounting to a total of BGN 200,000, which most probably will not be carried out. According to the Bulgarian authorities' intentions shared with the CPT back in 2015, the prison might assume functions of the remand centre in the town of Kyustendil. The NPM, however, is of the opinion that the emphasis should be placed on the individual execution of sentences by creating spaces for social activities and furnishing them appropriately, as well as by reducing, accordingly, the need for custodial staff both for the prison and for the remand facility.

The visiting facilities for biweekly visits have the capacity to accommodate 9 prisoners and 18 visitors. All visits are non-contact with a partition despite the risk assessment for the prisoners and their prison regime. These include the area for official visits from lawyers which is also partitioned by a liftable wire netting divided. It was ascertained based on interviews conducted with prisoners and lawyers that the said partition was never lifted and the exchange of materials

was conducted with the involvement of the custodial staff. There were no complaints that the contents of such materials were examined, but the NPM considers that such practice does not guarantee the protection of lawyer confidentiality and attorney-client privilege.

There is a room for extended visits equipped with a CCTV camera, 3 tables and 6 benches. Thus, the privileged visits granted as a reward are conducted without partitions, but are conducted in groups, i.e., not in a family-like environment. The setting resembles a catering establishment and is appropriate for normal contact visits, but not for extended visits granted as a reward.

A number of complaints were received by the inspecting team during the interviews about the continued practice of handcuffing life-sentenced prisoners while escorting them out of their cells. The NPM inspection team checked the instructions concerning the use of assistive means while escorting prisoners accommodated in the 'higher security zone' (HSZ). It was established that the instructions were issued by the prison warden on 11 December 2014 and they explicitly provide that: 1. Inside the HPC building, while prisoners are being taken out of their cells or are out in the open air, or are being taken to a medical examination, etc., no assistive means are to be used. 2. While prisoners are being taken outside the HPC building (to the commissary, to the dentist's office) only the upper limbs are to be restrained using rigid handcuffs. 3. When prisoners are being escorted outside the HPC building in the direction of guard post No. 1 (the prison's exit and entrance) for a visit, delegation, visit from a lawyer, etc., both the upper and lower limbs are to be shackled. Such measures are to be applied to life-sentenced prisoners, to prisoners on remand accommodated pursuant to Article 248 of the *Execution of Punishments and Remand in Custody Act* (ZINZS), and to prisoners placed in isolation under a special regime pursuant to Article 120 of the ZINZS.

The NPM is of the opinion that the said instructions run counter to Article 114(1) of the ZINZS and recommended to the warden of the prison in the town of Bobov Dol that they be immediately rescinded in their part concerning the use of shackles while escorting prisoners.

When drafting the new instructions, the prison administration should take into consideration Article 118 of the ZINZS and paragraph 68(2)(b) of the European Prison Rules in cases where handcuffs and other body restraints are used by order of the warden, "if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority."

The NPM notes the existence of a long-standing systemic problem in Bulgaria relating to the unlawful handcuffing of life-sentenced prisoners in higher security zones. The legislative, executive and judicial authorities need to take complex actions to prevent torture by use of assistive means in higher security zones.

Article 2(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction".

In its 11th General Report (CPT/Inf (2001) 16), published on 3 September 2001, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment presented the following finding concerning the situation of life-sentenced and other long-term prisoners: "Further, many such prisoners were subject to special restrictions likely to exacerbate the deleterious effects inherent in long-term imprisonment; examples of such restrictions are permanent separation from the rest of the prison population, handcuffing whenever the prisoner is taken out of his cell, prohibition of communication with other

prisoners, and limited visit entitlements. The CPT can see no justification for indiscriminately applying restrictions to all prisoners subject to a specific type of sentence, without giving due consideration to the individual risk they may (or may not) present.”

In its Report to the Bulgarian Government on the visit to Bulgaria in 2006, the CPT noted that in the CPT’s opinion, there can be no justification for handcuffing a prisoner in a secure environment, provided there is proper staff supervision. The Committee recommended that the Bulgarian authorities review their policy as regards the handcuffing of the life-sentenced prisoners whenever they are outside their cells.

The European Court of Human Rights has ruled in a number of its decisions that the systemic handcuffing of prisoners when they are taken out of their cells, provided they remain in a secure environment, is a violation of Article 3 of the Convention, unless it is based on specific security considerations. The CPT allows for such need if a prisoner has behaved aggressively, has tried to escape or there was reason to believe that they might cause danger to other prisoners or prison staff.

The NPM team had the opportunity to discuss this issue with a representative of the Prison Officers’ Union in trying to uncover the reasons behind the fact that this practice is outdated in the other Bulgarian prisons as a whole but continues to be in place at this particular prison. The shortage of custodial staff was once again pointed out as a proper justification. A number of cases were mentioned where the two HSZ guards on duty assumed risks exceeding by far the requirements vis-à-vis their personal safety, the prisoners’ safety, and the safety of the prison as a whole, in order to fulfil their duties without violating prisoners’ rights. In the second place, a number of examples were presented of clearly aggressively persons who could have indeed put at risk the safety of prison staff. **The NM therefore considers that a procedure needs to be in place to identify specific individual cases where handcuffs could be used.**

The NPM acknowledges that all prisoners accommodated in the higher security zone are considered high risk. However, the indiscriminate handcuffing of all prisoners, without giving due consideration to the individual risk, is clearly unacceptable. It was ascertained that in some penitentiary establishments the CPT’s recommendation that prison officers should not carry unconcealed truncheons had been fulfilled, but the finding was not valid for all prisons. Prison staff lack proper training in technical skills for restraining such aggressive prisoners which increases considerably the risk within the HSZs. Cutting the number of guards in HSZs to just two per shift is a worrying trend. The situation is probably the same in all prisons following the “optimisation” carried out in 2015.

In view of the foregoing and in connection with the need to take effective administrative measures as provided for in Article 2 of the Convention, the NPM recommended that the General Director of the General Directorate Execution of Punishments (‘GDIN’) should increase the minimum number of guards on duty in the prisons’ higher security zones to no less than three per shift and to provide the necessary number of collapsible batons at least for the prison officers working within the higher security zones.

The term ‘internal escort’ was not coined by the prison administration in the town of Bobov Dol. It was invented in 2010 by the former General Director of the GDIN. It is obvious that as a result of the numerous recommendations given by the CPT, the numerous applications submitted to and the large number of decisions rendered by the ECtHR, the term in issue has become obsolete in a number of prisons and the practice has been partially discontinued. Thus, during its previous inspections at the prisons in the cities of Sofia, Sliven, Burgas, and Pazardzhik, the NPM did not observe any handcuffing during the so called ‘internal escorts’.

Regrettably, though, the term has become commonly used in the case law of the administrative courts as well and this has led to ineffective legal protection against torture. Notwithstanding the lawfulness or unlawfulness of the term ‘internal escort’, the existing diversity of prison practices two years after the ECtHR handed down its decisions is indicative of the GDIN’s failure to perform its control functions as per Article 12(1) of the *Execution of Punishments and Remand in Custody Act* (ZINZS). It is necessary also to strengthen the administrative capacity for analytical activities and consequent corrections to the administrative activities in connection with the CPT’s recommendations and the decisions of the ECtHR. All instances of use of assistive means are recorded in the Use of Force and Assistive Means Register as per the order issued by the Deputy Minister of Justice Mr. Yankulov. Thus, this prison administration’s long established practice of using assistive means in the higher security zone is considered lawful as regards the term ‘internal escorts’ imposed in the past by the leadership of the GDIN, as was noted above.

Article 114(1) of the *Execution of Punishments and Remand in Custody Act* (ZINZS) provides an exhaustive list of all cases where the use assistive means is acceptable: 1. for the purpose of freeing hostages; 2. for the purpose of retaking seized premises and buildings, facilities and vehicles; 3. for the purpose of countering group attacks, barricading, or for ending violence or other types of aggressive behaviour; 4. while escorting or detaining a prisoner; 5. where in result of a psychiatric disorder or depression there is a danger that a prisoner might make an attempt on his or her own life or on another person’s life or health. According to Article 291 of the *Rules for the Implementation of the Execution of Punishments and Remand in Custody Act* (PPZINZS), the custodial staff at the penitentiary establishments may escort prisoners only to and from open prisons, work sites, and healthcare establishments by order of the warden of the respective closed prison, reformatory, open prison, or of the head of the remand centres in the respective territorial department.

Such activities are incidental and not regular as is evident from the provision of Article 307(5) of the PPZINZS: “When escorting activities are carried out, the escorting officers shall be instructed in each separate case by the chief warden on duty, by the detachment commander or by the remand officer on duty.” Escorting activities are carried out, as a rule, by the Directorate General ‘Security’ and this is laid down in Article 39 of the PPZINZS. Typical escorting activities outside the prison grounds are permissible only in the cases referred to in Article 135 of the *Execution of Punishments and Remand in Custody Act* (ZINZS) with respect to sentenced prisoners and in Article 250 of the ZINZS with respect to prisoners on remand (accused persons and criminal defendants) where the provision of emergency medical assistance is required. The NPM was made aware, *ex officio*, of a case where a prisoner was moved from one prison to another by order of the General Director for the purpose of changing jurisdiction. The NPM has commented previously in its inspection reports on the efficiency of expanding such escorting activities as per Article 291 of the PPZINZS, particularly as regards escorting prisoners to and from open prison facilities. The NPM notes, though, its expectation that the efficiency will improve in result of enhanced coordination between the two directorates general within the Ministry of Justice.

The Need to Take Effective Judicial Measures to Prevent Acts of Torture

The NPM is not aware of any decisions rendered by an administrative court in Bulgaria to uphold an action against the unlawful use of assistive means. This is contrary, in principle, to the case law of the ECtHR. The courts allow, as a rule, actions related to overcrowding and lack of sanitary facilities. A valid reason for this is the fact that most actions are brought under Article 1 of the *State and Municipal Liability for Damages Act* (ZODOV) and not under Article 3 of the *Execution of Punishments and Remand in Custody Act* (ZINZS) in conjunction with Article 203(2) of the *Administrative Procedure Code* (APK), which provides that the

ZODOV shall apply to any matter not covered by the APK. Thus, the claimants are instructed by the courts that the burden of proof lies with them and also that they are required to call witnesses to prove publicly known facts from the reports of both the CPT and the NPM. Damages are always sought as well as a sufficient causal link with the action or inaction, even though in some of the hypotheses of Article 3 of the ZINZS such damages are either lacking or might occur as a legal possibility.

At the time of the inspection at the Bobov Dol Prison, there were instructions in effect on taking prisoners out of the higher security zone to the doctor's surgery and the commissary. During external escorts, HSZ prisoners are shackled up with hand shackles and foot shackles. It should be noted, regrettably, that the term 'internal escort' has become commonly used and has been uncontested in the courts' case law as the courts never assess the lawfulness of the instructions issued by the prison warden. There are no statutory minimum requirements for air change rate, temperature, and ambient lighting conditions and therefore the courts will inevitably continue to dismiss any such actions in the future as ungrounded.

Sentenced Prisoners or Remand Prisoners (Accused Persons and Criminal Defendants) in Hospitals

During interviews with prisoners, the NPM team was alerted of a 2015 case where a prisoner spent 4 days in a hospital with a leg shackled to the bed. His visit entitlement was restricted as well. A second case was also identified where a prisoner was also shackled to his hospital bed for 4 or 5 days in 2015. In both cases there was just one warder on duty. It was ascertained during the inspection in 2016 that two guards were assigned to each hospital and, accordingly, the reasons for unlawful cuffing due to custodial staff shortage had been eliminated. The use of handcuffs continues, though, because of the lack of rooms that could be properly secured notwithstanding the proper instructions for hospital guard posts and the absence of proper statutory regulation.

The Prison in the City of Pazardzhik

The main cellhouse of the Pazardzhik penitentiary is three storeys high and has the capacity to accommodate 483 prisoners. On the day of the inspection, the prison accommodated 460 prisoners. (Back in 2012 the number of inmates was 417.) The reason for the increase is the reallocation of the Province of Kardzhali from the Plovdiv Prison's catchment area to the Pazardzhik Prison's catchment area. Despite the prison's sufficient overall capacity, there are occasional incidents of overcrowding. Examples include accommodation of 18 prisoners in two cells measuring some 30 to 40 m² in total. Dormitory No. 506, in particular, measuring 6 m. x 3.8 m., sanitary annexe included, accommodated 10 prisoners. Dormitory No. 507, measuring 4 m. x 3.8 m., accommodated 6 prisoners. The situation has improved considerably since the return of over 200 prisoners to the prison in the city of Stara Zagora following the completion of the renovations there. There are no sanitary annexes in the higher security zone. The reception unit is undergoing renovations, which include the construction of a visiting facility for extended visits. Currently there are five cubicles for non-contact visits.

The main concerns shared by the inmates included poor living conditions, bedbug infestation, insufficient amount and/or poor quality of prison food, no 'extended visit' award, handcuffing during the so called 'internal escorts', violation of the confidentiality of correspondence, high commissary prices.

The reason for the bedbug infestation is the failure to disinfect the mattresses in the storage room.

The energy value of the meals served to prisoners ranges between 2,400 and 2,829 kilocalories per day. Inmates who work jobs while incarcerated get additional 634 kcal per day. The bread

allowance is 400 grams (14.11 ounces) a day. It is split into 100 grams (3.53 oz) at breakfast, 150 grams (5.3 oz) at lunch and 100 grams at supper. A loaf of bread weighs 400 grams but there are numerous complaints about its quality. The problem, obviously, does not involve the prison food's calorific value, but its quality. Meal time length seems to be the main issue stemming from the shared refectory and the shortage of custodial staff. Meal time length is often less than 20 minutes (5 to 10 minutes for breakfast and for supper) so that all detachments could be served their meals within the working day. The problem could be solved either by setting up a separate refectory on each floor, or by increasing the custodial staff complement and the refectory's capacity.

The provision of paragraph 11 of the Instructions for the guards performing sentry duties at post No. 1 allows for unlawful handcuffing. It reads: "To carry out internal escorting of prisoners while taking them to and from doctor's appointments, social, educational, and other events."

The Instructions for the guards performing sentry duties at the elevated sentry platforms at the prison's corners require them "to prevent escape attempts and the commission of other offences by prisoners, officers, and citizens and to use, if need be, their weapons in the cases provided for in Article 116 of the *Execution of Punishments and Remand in Custody Act (ZINZS)*, while striving to protect, where possible, human health and life. In the foregoing situations the guards performing sentry duties shall fire three warning shots in the air."

The Instructions for the guards performing sentry duties at external posts (hospitals, healthcare establishments, etc., i.e., post No. 18) correctly limit the possibility of using assistive means (handcuffs) to just the following cases: escape attempts, violence and attempts at assaulting the sentry or any other persons. Paragraph 8, however, incorrectly requires that lawyers should present a power of attorney in addition to their ID. It would be expedient to introduce a requirement that the sticker on a lawyer's ID card be checked to verify its validity. The requirement that lawyers should present both an ID and a power of attorney is not valid anymore, but has remained included in the Instructions.

The NPM has found that the problem with the instructions is valid for the entire penitentiary system. The guidelines concerning the use of weapons in cases of escape attempts need to be regulated statutorily. The NPM therefore recommends that the prison management should abolish the term 'internal escort' and the use of handcuffs without giving due consideration to the individual risk. The requirement that lawyers should present a power of attorney should be eliminated as well.

The Prison in the City of Stara Zagora

The penitentiary's main cellhouse has the capacity to accommodate 495 prisoners. As at 10 July 2016 it accommodated 739 inmates. During the NPM's visit, the administration confirmed the existence of approximately 20 percent overcrowding. The NPM's previous visits to Stara Zagora Prison occurred in the period from 2012 to 2015. In 2012, the prison accommodated 683 inmates in 125 dormitories. The renovation plans for 2016, including the construction of sanitary annexes in the dormitories, had been implemented. The penitentiary's main cellhouse had been overhauled and refurbished. New areas for social activities had been set up on each floor but had not been furnished with the necessary chairs yet. Particular care had been taken for the higher security zone. The existing 4 disciplinary cells measured 6.6 m² and each had a window measuring 78 cm x 100 cm. Life-sentenced prisoners were accommodated in separate cells measuring over 6 m², sanitary annexe included.

The cells in the reception unit measured 4.30 m x 3.10 m, including a sanitary annexe measuring 1.20 m x 2 m. The dimensions of the cells along the remaining corridors were relatively the same. There was an apparent shortage of tables and chairs. The prison administration assured the inspection team that the problem was being gradually solved.

In the course of the inspection, the NPM team found out that the prison warden had issued an order that prisoner should spend time in the open air dressed in long trousers or tracksuits. The inspection team received a complaint from a low-income prisoner who shared that he did not possess such clothing items. The prison administration's explanation for the said order was that the inmates had to maintain a tidy appearance in view of the fact that they were accommodated in a government institution. **Any restrictions imposed on prisoners should not exceed the minimum requirements and should be consistent with the legitimate objective for which they were imposed.** Citizens have the unimpeded right to choose their sportswear, including the right to wear it on their way to sports venues and facilities or to play sport dressed in such sportswear in the parks and in the streets of the municipality.

The requirement at issue was seen by the NPM as an act beyond the legal power and authority of the prison warden (*ultra vires*) as it set dissimilar prison rules. In that specific case there was a violation of the prisoners' right to private life, as well as a violation of privacy and of rights relating to personality. It was therefore recommended that the order in issue be rescinded.

The visiting facilities are partitioned cubicles. There is a site adjacent to the commissary and it would be possible in the future to set up a facility for contact visits there.

The NPM recalls the recommendation made by the CPT in 2014: "The CPT calls upon the Bulgarian authorities to take steps to improve the visiting facilities in the penitentiary establishments visited, in the light of the above remarks; if necessary, the relevant legislation should be amended. As stressed by the Committee many times in the past, the aim should be to enable all prisoners, including those on remand, to receive visits under reasonably open conditions; the use of closed visiting facilities should be the exception rather than the rule."

Official visits from lawyers are conducted without partitions. Extended visits are conducted in the employee cafeteria equipped with tables and chairs. The only difference between extended privileged visits and regular visits is the visit length and the absence of partitions.

Under the established practice, probably introduced by an order issued verbally, visitors are allowed to bring to the visit only vacuum-packed salami. Such requirement is pointless since the sausages are cut open for inspection anyway. (There is no security screening equipment available and there are no explosives and narcotics sniffer dogs. This is true of all other penitentiary establishments.) Preserved foods in tin cans are not allowed even though they are not banned. There is a ban on preserved foods in glass jars only.) The NPM therefore recommends that the prison administration should discontinue this practice.

The practice of fixation of prisoners with handcuffs to a bed in outside hospitals was identified in this prison as well. Three cases were investigated and in all of them the prisoners had been permanently handcuffed to their beds for a period of 2 to 5 days. One of the prisoners requested to be discharged from the hospital so that his fixation would end. In one of the cases the prisoner had an arm and a leg shackled to the bed. This is a long-standing practice at this prison as well. This use of assistive means is not recorded in the registry as it is provided for in paragraphs 12 and 16 the Instructions for the hospital guard posts approved by the prison warden in 2013. **The NPM is of the opinion that this is tantamount to torture within the meaning of Article 3 of the *Execution of Punishments and Remand in Custody Act (ZINZS)* with respect to prisoners in need of treatment resulting from an unlawful act of the prison warden.**

The Prison in the City of Plovdiv

The prison in the city of Plovdiv is obviously overcrowded. In detachment 5, for instance, in dormitory 57, twelve prisoners were accommodated in a room measuring 30 m², including a sanitary annexe measuring 3.6 m². That makes on average 2.28 m² per prisoner. Access to

daylight was poor because the artificial lighting was on at all times. The location of the room prevents putting more window openings into the walls. The room was designed for social activities but was being used as a dormitory because of the overcrowding. Two other dormitories also experienced shortage of fresh air – dormitory 58 of detachment 1 accommodated 12 prisoners, and dormitory 82 of detachment 2 accommodated 23 prisoners. The latter dormitory had only two windows and one of them shone light onto the sanitary annexe. There was no need for additional floor area measurements to ascertain that the prison was overcrowded. The prison's nominal capacity was increased from 405 to 505 prisoners following the latest floor area measurements taken in 2015. At the time of the visit, the prison's cellhouse accommodated 460 inmates.

The Ministry of Justice has taken measures and prisoners from the Province of Kardzhali are being sent now to the prison in the city of Pazardzhik so that the required minimum standard of 4 m² per prisoner could be met.

Notwithstanding the foregoing, the NPM has doubts as to the prison's current nominal capacity of 505 prisoners and has requested additional information and a breakdown of the floor area measurements.

The NPM acknowledges that the prison's administration has been doing a very good and professional job in a situation of clearly considerable overcrowding. It is certainly one of the best male prison administrations in Southern Bulgaria. It is a very good practice that the prison warden keeps in close touch with the inmates and every week meets with one of the detachments in his office. All renovations and upgrades are carried out after consultations with the prisoners and their opinion is taken into account. Some makeshift gyms have been set up by the prisoners within the corridor spaces and a schedule is organised for their use. All of this has yielded results and the inherent tensions between inmates and custodial staff observed in other penitentiary establishments is not a fact of life in this prison. The efforts aimed at carrying out repairs with own resources so that the prison conditions could meet the European requirements are noteworthy. The prison entrance has been overhauled and the security measures have been upgraded. The doors are equipped with blast and bullet proof glass. 13 new visiting facilities (cubicles) have been set up that meet the requirements of the *Rules for the Implementation of the Execution of Punishments and Remand in Custody Act (PPZINZS)*. Unfortunately, though, no areas for contact visits with no partitions have been set up that would be in compliance with the recommendations given by the CPT, since that requires statutory amendments. The prison kitchen and both refectories have been overhauled. The Plovdiv Bar Association has launched an initiative to provide funding for two rooms for official lawyer visits even though the existing room meets the requirements. The visiting facility for privileged extended visits is equipped with a CCTV camera and the visits are monitored also by custodial staff in attendance as per the order issued by the General Director of the General Directorate Execution of Punishments ('GDIN'). The NPM reiterates that this constitutes interference in citizens' private lives that affects not just the prisoners but their visitors as well. A positive finding was the fact that this was the only all-male prison (in addition to the women's prison in the city of Sliven) where the furnishings and equipment installed by an earlier order of the former General Director of the GDIN Mr. Petar Vasssilev have been preserved and the visiting facility provides family-like environment.

The NPM team found that a previous order issued by the former prison warden requiring life-sentenced prisoners to submit their letters in open envelopes was still in effect even though it had been clearly forgotten and was not being enforced. It was established from interviews with prisoners that no such practice existed. The recommendation that the current prison warden should immediately revoke the obsolete order was taken into consideration and implemented. The prison administration had been trying to involve life-sentenced prisoners in common

activities with other sentenced prisoners (non-lifers). The NPM identified two cases where lifers refused to associate with other prisoners so much so that they were willing to be disciplined just to be able to go back to their habitual segregation. Both life-sentenced prisoners were calm and balanced, and did not need any psychiatric care because of their segregation. Their resocialisation back into the community of other sentenced prisoners creates a serious problem. It is obvious that there exists an extent of isolation that has lasted many years and that surpasses what was necessary both in terms of degree and duration. Clearly, this will create even more challenges for social workers and for the prison administrations as a whole vis-à-vis the management of those higher security zones. This is a new observation in the NPM's findings.

Over 65 percent of all sentenced prisoners were employed. This impressive employment rate probably ranks the prison first among penitentiary establishments in this country.

An allocation of BGN 5,000 has been made for the purchase of construction materials, which allows the prison administration to continue construction works designed to improve prison conditions. The prison is included in a grant scheme within the second phase of financing under the Norwegian Financial Mechanisms (EEA and Norway Grants).

The collaboration between the prison administration and the Provincial Directorate of the Ministry of Interior ('OD MVR') is exceptionally good. Security around the prison is organised by District Police Department ('RUP') No. 1. The police are working hard to prevent hurling prohibited items (such as drugs, phones, and alcohol) over the prison fence. Two persons were caught on the day of the inspection trying to convey prohibited items into the prison. 65 cases of illegal conveyance of prohibited items have been detected since the beginning of the year. One perpetrator has already been sentenced and is serving his sentence in Plovdiv Prison. 38 litres of alcohol hurled over the fence has been seized and destroyed.

The NPM deemed it necessary to recommend to the mayor of the municipality of Plovdiv that a security zone around Plovdiv Prison be set up, in particular on the side of the remand centre, with a view to reducing the risks of criminal trespassing and illegal conveyance of prohibited items. This would ease the work of the custodial staff and the police and would prevent also terrorist attacks.

The NPM observed that prisoner escorting practices were in full compliance with the law. On the day of the inspection a prosecutor from the provincial prosecutor's office in the city of Kardzhali made an unlawful request that the prison administration should provide escort services instead of the Directorate General 'Security'. The request was declined.

Surprisingly, the NPM team did not receive any complaints about commissary prices which was unprecedented. The fact was that the lease agreements with the retailers were about to expire and the prices had obviously been lowered. Unlike the prison in the city of Stara Zagora, the commissaries at Plovdiv Prison were well stocked with food products, coffee, and cigarettes, so no problems were expected in connection with the lease expiry and the delivery logistics.

The registered incidents of use of force and assistive means were related mostly to cases of self-harm. One omission in the register involved an incident that occurred on 14 March 2016 but the officer failed to specify for how long the prisoner had remained handcuffed. No other irregularities were identified.

The practice of taking life-sentenced prisoners out of their cells shackled during the so called 'internal escorts' had been discontinued for five years. The NPM team identified cases of fixation of prisoners with handcuffs to a hospital bed by the guards performing sentry duties in outside hospitals. In two of the cases the fixation lasted for 10 days. In a similar case the prisoner was permanently cuffed for two days, however he had a wrist and an ankle shackled to the bed at the same time. In all cases the shackles were taken off briefly at the prisoners'

request. In all cases there were two guards performing sentry duties at all times, and a third guard was dispatched from the prison while those two were taking their breaks. The explanation for shackling prisoner patients in hospitals had to do with the need to ensure the safety of the other patients and to prevent escape attempts. The NPM found that the instructions for the guards performing sentry duties in hospitals were in compliance with the provisions of the *Execution of Punishments and Remand in Custody Act* (ZINZS). The practice of incessant fixation of prisoners with handcuffs to a hospital bed without assessing the individual risk a prisoner may or may not present, is identical across the penitentiary system (i.e., in all prisons and remand centres).

The NPM regards the incessant handcuffing of prisoner patients to their hospital beds without individual risk assessment and assessment of the hospital room setting as tantamount to torture. The NPM does not accept such practice with respect to inmates convicted and sentenced for breaking out of prison, whose state of health obviously precludes escape attempts. The NPM therefore made a recommendation that the practice be immediately discontinued.

Remand Centres

Remand Centre in the City of Sliven

Back in 2012, the NPM found and reported: “The remand centre has 11 accommodation areas measuring 7 m² each or a total of 77 m². On 12 September 2012 the remand centre accommodated 44 detainees. At peak moments in 2012, the number of detainees reached 56. Given the impossibility to fit more than four double bunk beds in any cell, two mattresses were placed additionally on the floor of each cell. The NPM notes that it has never in all of its previous visits observed more overcrowding at a remand centre.” (...) “Another negative finding is the fact that no cell has access to direct daylight. There are no sanitary annexes; there is no running water and no space for spending time outdoors. Corridors are used for makeshift office spaces for the administrative staff and the visiting area is a makeshift box measuring no more than 2 m² made of wood panels just above the staircase. The only room is that of the warden which is in need of renovation. The remand centre’s archives are kept at the probation office and all firearms are kept in rooms used by the judicial security officers.”

In that context, a recommendation was made to have the remand centre either expanded or relocated to the closed section of the local prison. An allocation of BGN 1 million was made for 2016 and there are plans to have the remand centre relocated. The NPM has no information about a procurement notice or contractor selection. The recommendation given by the District Prosecutor’s Office in the city of Sliven as to the compliance with Article 251 of the *Execution of Punishments and Remand in Custody Act* (ZINZS) has been fulfilled and no detainees have been moved without a valid reason.

At the time of the NPM’s visit in 2016, the remand centre had a vacant cell. However, the condition of all accommodation areas had deteriorated and the overcrowding problem had not been solved. On 18 June 2016, at around 9 p.m., two accused detainees went into a violent fit of temper along the remand centre’s corridor. Two windows and all light fixtures were broken. The two perpetrators were interviewed by the NPM team at Burgas Prison. They corroborated the initial information that no physical force or assistive means had been used to subdue them.

The CPT’s recommendation that the custodial staff complement be increased is not new, has been publicly known, and has remained unfulfilled due to lack of financial resources. The matter is clearly within the remit of the Council of Ministers and the Ministry of Finance, and solving the problem depends on the *State Budget Act* (ZDB). The NPM only notes that the penitentiary administration’s efficiency should be measured by the reduction in the number of

repeat offenses. Given the material conditions experienced not just by detainees but by penitentiary officers as well, the shortage of custodial staff and social workers is felt even more sorely. **Budgetary savings from this area cost much more to society in terms of increased government expenditure in result of increased recidivism rates.**

Remand Centre in the City of Burgas

A new remand centre has been built within Burgas Prison. The relocation of the old centre was a matter of the utmost importance and urgency. Therefore, the efforts of the Ministry of Justice and the Directorate General 'Execution of Punishments' ('GDIN') are truly commendable. At the start, the remand centre had a capacity to accommodate 40 persons, but that soon proved insufficient at peak moments. 17 additional beds were installed subsequently, which resulted in overcrowding. In the opinion of the custodial staff, their housing conditions worsened. There were no original plans to expand the relocated centre. One of the rooms is unusable since the ventilation ducts for the old kitchen run through it. There is no available space for potential expansion, either. According to the erstwhile establishment plan, the remand centre's administration was to be accommodated in two offices within the centre. The GDIN has already drafted a new establishment plan according to which the remand centre's administration will be merged with the prison's administration. That provides a solution to the issue of the poor housing conditions for the staff. In case of overcrowding, detainees could be easily transferred to the group of prisoners on remand (accused persons and criminal defendants). Apart from the insufficient capacity, it was evident as early as when the remand centre had just opened that there was shortage of daylight both in the dormitories, and in the administrative offices. The rooms have two windows each measuring 53 cm. x 110 cm. In both type of rooms, artificial lighting is required at midday in addition to daylight. Artificial lighting in the dormitories is poor. Turning off the artificial lighting in the offices makes reading impossible. There is a sewage leak in the changing room adjacent to the shower room and the room is in need of repair, including bricking up a window in the wall. There are broken tiles in the sanitary facilities and the need for repairs is obvious. Sharing a common walking area (exercise yard) with the prison creates conditions for mixing sentenced prisoners with detainees from the remand centre and causes tensions when managing its use. The prison management has an idea to solve the problem by building a separate walking area for use by the remand centre only. The plan was presented to the NPM team during its visit and the team therefore believes that the idea should be supported.

The NPM recommends that the windows in both the dormitories and the administrative offices of the remand centre be replaced with larger ones once the open penitentiary establishment in the village of Debelt becomes operational. The damaged tiles in the sanitary facilities should be repaired as well.

Remand Centre in the Town of Dupnitsa

The remand centre in the town of Dupnitsa is in poor condition. It has eight dormitories, each measuring 3.52 m², with no access to daylight and no sanitary annexes. At the time of the visit in 2016 the centre accommodated 4 detainees. The only space available for spending time outdoors is in front of the entrance to the remand centre. There is one shared sanitary annexe. Detainees do not have access to a toilet facility at night. The remand centre is not up for refurbishment which is why there were plans back in 2008 to have it relocated to the 'Samoranovo' penitentiary establishment, an open section of the prison in the town of Bobov Dol. The refurbishment of the existing building stock was carried out in two stages. Construction works worth BGN 200,000 were first carried out in 2009 and then works worth BGN 500,000 were carried out in 2010. Another allocation of BGN 200,000 was planned for 2016, but the funding is clearly unavailable. The project remains unfulfilled. **The NPM is of the**

opinion that in the period from 2013 to date, all detainees have been subjected to cruel and inhuman treatment by being deprived of daylight, of sufficient living space, of normal access to a sanitary facility, and of running water. The NPM reiterates that this remand centre is the worst in the area and recommends that the General Director of the Directorate General 'Execution of Punishments' ('GDIN') should take urgent steps towards its relocation to the the 'Samoranovo' open prison facility.

Remand Centre in the City of Blagoevgrad

The remand centre is located within the building of the Provincial Directorate of the Ministry of Interior ('OD MVR'). It has 10 dormitories with a total of 32 beds. 4 of the dormitories have 2 bed each, 1 dormitory has 3 beds, and 5 dormitories have 5 beds each. The remand center has a capacity to accommodate 32 detainees but its floor space certainly does not meet the requirement of 4 m² per detainee.

There is no direct access to daylight. There are no sanitary annexes in the rooms. The area for spending time outdoors is indoors. The sanitary facility – a toilet and a shower – is shared by all detainees. It is not possible to conduct visits or to take the detainees out for walks. The NPM identified, once again, the absence of custodial staff, particularly on weekends. The 2008 government programme for this remand centre has not been implemented not just because of lack of funding, but also because of the fact that the Ministry of Finance failed to acquire the rooms used previously by the investigative service. They are currently used by police officers (including an identity parade or lineup room) and by units of the provincial prosecutor's office. Even if any efforts to acquire the rooms were made, they remained unknown. The findings of the NPM inspection team back in 2012 were analogous. No actions were taken in 2016 towards the construction of a new remand centre in the town of Petrich (there is an existing building there) or towards a possible relocation to the remand centre in the town of Sandanski. Even if the necessary financial resources for 2016 (BGN 900,000) were secured, they could not be used up due to the lack of available space at the remand centre. In 2012, the NPM recommended to the General Director of the Directorate General 'Execution of Punishments' ('GDIN') to put forward a proposal, pursuant to Article 45(2) of the *Execution of Punishments and Remand in Custody Act* (ZINZS), to the Minister of Justice to set up a committee tasked with assessing the possibilities of relocating the Blagoevgrad remand centre should its refurbishment prove unfeasible.

The NPM is of the opinion that if an efficient preventive mechanism is introduced as a statutory measure for the prevention of torture, the operation of this remand centre must be discontinued. The NPM therefore requested additional information from the Minister of Justice as to the timeframe and the ways to solve the issues affecting the remand centres in the cities of Blagoevgrad and Sandanski. The response sent to the NPM was vague but, in general terms, measures will be taken at some point depending on the availability of financing.

Remand Centre in the Town of Razlog

The remand centre is located within the building of the police department. Nothing has changed in the last three years. The centre has three dormitories measuring 7.4 m² each with two beds and 1 dormitory measuring 8.7 m² with four beds. At the time of the visit there were eight detainees held at the remand centre. The corridor is in front of the dormitories and hence they do not have direct access to daylight. The remand centre does not have sanitary annexes but has an area for spending time outdoors next to the entrance. The administrative office is in a pass-through room that is 1.10 m. wide, meaning that the working conditions for the staff are not safe and healthy. The planned construction of sanitary annexes and repairs to the ventilation and air-conditioning system until 2015 has not occurred. The remand centre is relative far from the city of Blagoevgrad and probably that is why it has been kept on hold. Apart from the need to solve

the overcrowding issue, if the plans include also construction of rooms for social activities, the Razlog remand centre will face the same problems as the one in Blagoevgrad, given that the rooms of the former investigative service will have to be acquired first.

The NPM acknowledges that the refurbishment or the closure of this remand centre cannot be approached in a fragmentary way and has to be part of an overall vision for the development of remand centres in Bulgaria, which the Directorate General 'Execution of Punishments' ('GDIN') should elaborate and publicise.

Remand Centre in the City of Pazardzhik

The remand centre is located within the building of the Provincial Directorate of the Ministry of Interior ('OD MVR') at 2, Saedinenie Street in the city of Pazardzhik. It has 14 dormitories and a total of 42 beds – 5 rooms with 2 beds in each; 6 rooms with 3 beds in each; 2 rooms with 4 beds in each and 1 room with 6 beds. At the time of the visit there were 14 detainees. At peak moments the number of detainees has reached 35. Some of the dormitories do not have access to daylight as the building is on a sloping site. If the centre were filled to capacity, there would be 3 m² of floor space per person. There are no sanitary annexes in the cells and no walking area outdoors. A larger-sized room with no access to daylight and ventilation is used as a walking area. There is indoor mould throughout the remand centre as it is located in an underground garage and there is not enough fresh air for both the detainees and the staff. The remand centre was visited also by the CPT in 1995 and in 2006. The current findings are no different from the ones made 10 years ago. A number of programmes have remained unimplemented since 2008. An allocation of BGN 2 million was made in 2015 for refurbishing the Pazardzhik Prison and relocating the remand centre there. In late 2016 the remand centre was finally relocated to the prison.

Remand Centre in the City of Stara Zagora

The NPM visited the remand centre in 2012 and reported its findings: "The premises of the remand centre are located inside the Police Provincial Directorate. There is a separate administrative section detached from the detainee dormitories. There are 16 cells measuring 9.57 m² each. Hence, the remand centre's capacity should not exceed 32 beds. However, the number of beds in it is 49. On the day of the visit, the remand centre accommodated 26 detainees. That number reportedly peaked at 56 earlier in the year (during the winter).

The dormitories do not have direct access to daylight as it is blocked by safety corridors leading to the front of the building. There are no sanitary annexes inside the dormitories, either. The shortage of custodial staff impedes toilet access even during the day. There is no access to the area for spending time outdoors on weekends due to the same reason. The mattresses are worn out and dirtied. There are damp and mould patches on the walls.

The area for spending time outdoors and the visiting room are located in the administrative section. Because the traffic flows to and from the visiting room and the area for spending time outdoors cross, they cannot be conducted simultaneously. This results in restricting the detainees' rights and diminishes both the time for being outdoors and the visitation time which is restricted at times to just 10 minutes."

Overall, there is no significant difference between the findings made in 2012 and in 2016. The position of the Directorate General 'Execution of Punishments' ('GDIN') is that the remand centres should be moved within the prisons where possible. The same approach will probably be applied to this remand centre as well. The NPM recommends that this be done in 2017.

Most complaints concerned medical care. The detainees were examined the same day by the medical auxiliary providing healthcare services at the remand centre. The medical auxiliary had

a busy schedule and had to travel also to a number of other healthcare establishments. The GDIN does not cover the medical practitioners' travel costs so they have to pay their travel expenses out of their pocket.

The NPM recommends that the medical practitioners employed at the remand centre be provided with a transit pass or paid the cash equivalent of the bus fare for a certain number of trips if the remand centre is unable to provide them with transportation.

Remand Centre in the City of Plovdiv

This is one of the most modern remand centres in Bulgaria meeting entirely the European requirements. A problem area is the lack of full partitions to the ceiling in all in-cell toilets. This was among the recommendations made by the CPT and it has been implemented. No violations and irregularities were identified. Unfortunately, the shortage of staff has made it impossible to utilise the full potential of the existing spaces and have detainees engage in meaningful activities. Such activities are not financed in prisons. This has emerged as a new problem area for all new remand centres which have areas for conducting meaningful activities but face shortages of staff and funding.

The NPM identified four cases of excessive use of police force in the city of Pleven and at District Police Department No. 4 in the city of Plovdiv. The traumatic injuries inflicted to the detainees were identified at the time of their booking at the remand centre and corresponded to the explanation they gave about the way the injuries had been sustained, i.e., handcuffing and subsequent blows with the foot. In addition, the handcuffs had been too tight. The NPM started an ex-officio procedure and conducted an unannounced *ad hoc* inspection at District Police Departments No. 4 and No. 5 in the city of Plovdiv. The NPM did find reasons to report excessive use of police force during detention and lack of medical examination (the detainees had declined to be examined in writing). The detainees were reported in good physical condition at the time of their booking at the detention facilities in both police departments. The length of detention exceeded the statutory 24-hour time limit. The cuffing occurred anywhere between 6:00 and 6:30 a.m. The detention orders stated the time as 3:40 p.m. The refusal of the investigating police officer to allow a lawyer from the Plovdiv Bar Association to meet with the detainee was unacceptable. All acts were performed by officers of the Countering High Risk Crime unit of the Provincial Directorate of the Ministry of Interior ('OD MVR') in the city of Plovdiv. The NPM did not come across any information about an official police investigation into the case.

The other two cases occurred in the territory of the Provincial Directorate of the Ministry of Interior in the city of Pleven. Three citizens were detained and one of them was released 24 hours later as he was not involved in the commission of the crime. All three were first handcuffed and then assaulted. According to the detainees, they were delivered blows with elbows and with a piece of wood. One of them sustained moderate bodily injury (a broken tooth).

Detention facilities within the System of the Ministry of Interior

In 2016, an NPM team inspected seven Regional Provincial Directorates (Police) of the Ministry of Interior in: the town of Bobov Dol, the city of Dupnitsa, the city of Blagoevgrad, the town of Razlog, the town of Velingrad, the city of Pazardzhik, and the town of Panagyurishte.

During the inspections, the team kept in mind that in 2014 and 2015, during its visit to Bulgaria, the Committee for the Prevention of Torture (CPT) highlighted problems related to ill-treatment and the use of legal defence at the start of police detention and during medical examinations.

During NPM's inspections in 2016, interviews with detainees in prisons' reception units and remand centres begun with questions about the abuse of force and the use of assistive means by police officers during detention or on the premises of police buildings; however, no such information was received. The NPM reports progress in that area with the adoption of new Instructions starting in 2015. Article 8 of said Instructions contains a general prohibition on the use of physical force, which refers to Article 85 of the *Ministry of Interior Act* (ZMVR). Possible hypotheses for the use of force and assistive means at the detention facilities are envisaged in par. 1, par. 5, par. 6, and par. 8. In that context, the use of handcuffs, but also of physical force, is admissible in cases of resistance or refusal to comply with a lawful order, assaults on citizens and police officers, hostages' release, and assaults on buildings, premises or facilities.

The Instructions do not address the use of handcuffs in cases of aggressive behaviour towards officers. The Act, however, allows for it. The NPM deems this hypothesis necessary and applicable in everyday practice. The observations to date from detention facilities show that the provision on abuse of power is in the section concerning the use of force and assistive means in cases of refusal to comply with a lawful order. Therefore, given that it involves a detained person, a superior officer should evaluate the lawfulness of such an order, as well as an order to use force and/or assistive means in those cases, unless the circumstance are urgent.

The Instructions do not envisage the introduction of a register for the use of force and assistive means, nor does it call for recording the duration of time spent in handcuffs. There is no mention of circumstances when the handcuffs may be removed or the use of force terminated. The *Ministry of Interior Act* (ZMVR) does not distinguish between alternative use of force and assistive means. Such differentiation is necessary with respect to detainees. Where a lawful goal cannot be achieved with the use of force, handcuffs should be used. This also raises the obvious question about officer training in technical skills for restraining aggressive detainees in view of sustaining minimum physical damages due to the use of force. There should also be an exhaustive discussion of the types of admissible assistive means and of the kinds of tougher, critical situations in which they are allowed.

NPM believes that due to the aforementioned considerations, Instructions No 8121h-78 of 2015 should be updated with an addendum that requires the mandatory introduction of a register of the instances of use of force and assistive means against detainees. The register should be kept on the premises of the respective police department.

In its report of 2014, the Committee for the Prevention of Torture (CPT) recalls its visit in 2010, when the Bulgarian authorities were called upon to introduce a single national system for gathering statistical information on complaints, disciplinary and penal proceedings, and sanctions against police officers in relation to ill-treatment. In 2015, the CPT reiterated that they have "repeatedly called upon the Bulgarian authorities to establish a national system for gathering statistics on complaints, judicial persecution, and disciplinary and penal sanctions imposed on law enforcement officers because of ill-treatment. The CPT believes that if such data is gathered and analysed properly, that will help in charting proper courses of action and facilitate the undertaking of adequate measures. Furthermore, undertaking steps toward providing information to the public about the outcomes of investigations of complaints about police abuse could be helpful in counteracting the sense of impunity. Unfortunately, the 2015 visit showed that such a system had not yet been introduced, and therefore the authorities could not provide the delegation with any clear information about the situation in the country."

In their response, the Bulgarian authorities pointed out that, "Rules for streamlining the way in which proposals and signals are processed by the Ministry of Interior are being drafted, and they envisage improvements in the gathering of statistics." This issue is to be resolved by the MoI;

however, it requires collaboration with judicial authorities or a clear position statement specifying motivations for rejecting this recommendation.

The NPM is interested in receiving some additional information from the MoI concerning on-going problems in this area, the necessary support of the Ombudsman of the Republic of Bulgaria, and the technical capacities and procedures for accessing that large body of data by NPM's employees.

The second main point in the CPT's report is the recommendation regarding efficient procedures for reviewing complaints and other relevant information in connection to allegations about ill-treatment by the police. Such activity is performed by the Inspectorate, while some additional control is also carried out by the Standing Committee on Human Rights and Police Ethics at the MoI.

An ostensible change resulting in a more efficient use of police officers is the replacement of security guards at the entrance of police departments with employees recruited using procedures outlined in the Labour Code. A general flaw is ascertained in the instructions to those new employees concerning NPM's power of authority for access to all detention facilities without preliminary notice under Article 28a(2)(2) of the Ombudsman Act and Article 53(3) of Instructions No. 8121h-78 of 2015 of the Minister of Interior. In 2016, the NPM's teams visited all such facilities in the country during official working hours, and in each location, the teams had to wait 20 minutes for a representative of the management to receive the visitors or for permission to access the premises to be granted. Exceptions to that pattern were the District Police Directorates, where police officers guarded the entrance or where no clearance procedure for entry existed .

The NPM received information that detention was not allowed in all areas inside police departments. One of the reasons for that was that not all areas met the requirements; in such cases, the detainees should be taken to the closest facility meeting detention requirements. The legislative acts regulating that procedure are not known to the general public. They are not available on the website of the Ministry either. The 2015 Instructions do not indicate which authority is supposed to open and close detention facilities. This uncertainty, as well as the very existence of such places, requires inspections by the NPM. According to the NPM, an exhaustive list of the detention facilities within the structures of the MoI should be publicised. If possible, those facilities that fail to meet the requirements should be closed not only via an explicit administrative act, but also in reality.

Noteworthy is the absence of specialised spaces where detainees can meet with lawyers in some of the visited police departments, including newly-constructed ones, as per the requirements of Article 76 of the Instructions: sound-proof rooms, chairs affixed to the floor, tables, and other items therein, as well as the ability to administer visual control through a window in the door.

Pursuant to Article 37(2) of the Instructions of 2005, "The persons accommodated on the detention premises should be observed permanently – directly or through a video surveillance system, about which they should be informed in advance according to the Regulations for internal order on the premises of detention institutions." Article 37(2) of the Constitution reads, "No one may be followed, photographed, filmed, recorded, or subjected to any other similar activities without their knowledge, or in spite of their explicit disagreement, except for the cases envisaged by law." The *Ministry of Interior Act* does not contain such provisions. The Instructions do not require the detainee's consent, nor do they indicate what the administration should do in case of expressed disagreement.

Accidental inspection by the NPM in connection with social tension at the Registration and Reception Centre and the District Police Directorate in the town of Harmanli

On 25 November 2016, the Ombudsman of the Republic of Bulgaria and the NPM team visited the RRC in the town of Harmanli (run by the State Agency for Refugees) in relation to ongoing social tension. The riot by individuals accommodated at the centre was appropriately quelled using rubber bullets and water cannons. According to the data obtained on site, a maximum of 100 refugees took part in this riot before midnight, and the law enforcement authorities detained 24 persons. According to media reports, between 4 and 6 police officers were injured. According to NPM data, no Syrians or Iraqis took part in the unrest. There were no visible property damages in their quarters. The riot was entirely the work of Afghans. Women (Afghani) formed as a protective wall in order to help centre employees leave the area.

Arrests were also made in the first hours after midnight, which was confirmed by an interview with Mol's Chief Secretary indicating that the number of detainees reached 200 persons and was still growing. This corresponds to the statement about detentions carried out in the dormitories too. By the morning, the number of arrested people was already 456. According to the documents, they were all detained at 5:00 a.m. (with very few exceptions). Obviously, the stated hour does not coincide with the time of detention, but it is the time when people were brought to the premises of the District Police Directorate in Harmanli. The number of injured police officers rose to 14.

At 4:00 p.m., NPM found out that the detainees had not received any food or water between the time of their detention and the time of the inspection. Nobody had explained to the detainees their rights because of the absence of an interpreter; this also applied to the persons detained in the official detention centre in the DPD building in Harmanli. There were three interpreters; however, two of them left for the city of Sofia, and the third one was occupied entirely with the procedural activities of the investigation. The stress level of the staff, including the management of the DPD in Harmanli, was evidently above normal; nevertheless, the regular officers refused to comment on the planning of the operation. It is evident from media report that the operation was not carried out by competent DPD and did not involve higher authorities due to the high level of tensions in the municipality. Because there were no detention facilities, a substantial portion of the detained persons was redirected towards the neighbouring DPD. About 200 people were detained in the Fire Department in the town of Harmanli. They were divided into three groups, and all of them were required to assume a squatting position.

It was also established that the incurred property damages to the three quarters inhabited by Afghans were made prior to the accident. This clearly demonstrates not only the subpar lifestyle of this community, but also the security company's helplessness in efficiently performing the task of securing order in the centre. This is obviously due also to the absence of proper relationship with the police authorities, or to the lack of efficient reaction in holding perpetrators liable for property damage. The refugees point out that some of the damages were caused by the police night raid of the detention facilities holding persons involved in hooligan acts on the territory of the centre.

NPM established that there was no torture and made its recommendation in the inspection logs at the DPD in Harmanli.

Maybe NPM assumes the extreme position that the torture that was allowed and carried out was not due to incompetent performance by police officers but due to poor planning and execution of the operation in the refugee centre by the police management in the town of Harmanli, which was manifest in the following observations:

- The unnecessary detention of 456 persons, where charges were subsequently pressed against fewer than 20. NPM has information that some of the people who were detained were actually helping in restoring order in the Centre and assisting the police.

- The unnecessary overnight raid and detentions in the dormitories of the three units inhabited by Afghans, including the entry of premises inhabited by women and children.
- The lack of administrative capacity for working with so many detainees, shortage of places for their detention, the lack of financial provision for their food (above 1200 BGN), and the absence of an interpreter.

PROTECTION OF MENTALLY ILL PERSONS

- A major part of the NPM's recommendations to the Ministry of Health involving changes to the funding of the state psychiatric care, meeting medical standards, and the restructuring of those institutions remain unfulfilled as of 2016.
- The institutions in charge cannot find solutions to the serious problems related to the poor condition of mental health facilities and staff shortages. These problems directly concern and violate the rights of both the patients treated in those facilities and the employees working in them.
- Some of the patients have a low social status, which forces state-run psychiatric hospitals to perform social functions as well. In this respect, the recommendation sent to the Ministry of Labour and Social Policy for launching additional social services remains unfulfilled.
- The district courts allow patients from distant regions to be treated at the state-run psychiatric hospitals, thereby limiting contact between the patients and their relatives (guardians/custodians) and obstructing the functioning of the medical institutions.
- There is a need for meaningful interaction among all mental health institutions and on all levels in order to find a comprehensive solution to problems facing the mental health system, as well as a personalized, all-around socio-medical approach to each person with mental problems.

In 2016, NPM conducted three inspections at medical institutions providing psychiatric care: the State Psychiatric Hospitals (SPH) in the town of Radnevo, the Mental Health Centre (MHC) in the city of Plovdiv, and the Mental Health Centre (MHC) in the city of Stara Zagora.

The inspections in 2016 also revealed the unsatisfactory state of the public hospital psychiatric care and the need to reform the system. The NPM's repeated recommendations were left unheeded by the institutions in charge, and the rights of mentally ill people are not protected.

Almost all of the SPHs in this country fail to meet certain degrees of competency required by the 'Psychiatry' medical standard, which is a core requirement for the functioning of medical institutions and a guarantee for the quality of the medical services provided therein.

The 2015 amendments to the *Healthcare Establishments Act* (ZLZ), regulating how levels of competency of the structural units of the MHC are evaluated, have not actually been implemented. There is only one MHC that meets the defined level of competency in the Ministry of Health's electronic register of healthcare establishments.

The difference and imbalance in funding between SPHs and MHCs persist. MHCs are funded using the method of subsidising healthcare establishments on the basis of how many patients they admit, while SPHs are funded on the basis of their previous budget, thus remaining chronically underfunded in their work.

It should be noted that the main burden of treating mentally ill patients admitted by virtue of a judicial ruling is borne by the SPH. About 30 per cent of the patients in SPHs are held for compulsory treatment.

Many MHC's facilities have been renovated and well supplied for their activities. The MHC in the city of Stara Zagora is the only identified facility that failed to follow an instruction by the Regional Health Inspectorate (RHI) concerning repair work to the sanitation facilities in the in-patient department. In the SPH in the town of Radnevo, the facilities are of the trailer type, old and obsolete, with 510 beds put in place. During the current year, there have been partial repairs made to the in-patient unit and to the kitchen unit, which the NPM regards as a step in the right direction; however, it is insufficient for the needs of the hospital. The living conditions of the patients in the 1st and 2nd male wards can be described as miserable and humiliating: the hospital rooms are heated with an space-heater placed in the corridors of the wards; the sanitation facilities and the bathrooms are in poor condition; the hospital rooms are shabby; the inventory stock of the hospital, if there is any, is obsolete. During the inspection at the 1st male ward, a patient in a wheelchair was identified, even though there were no accommodations for wheelchairs in the environment.

During the inspection, the NPM team also established that the persisting negative tendency of the district courts to allow individuals to be treated at SPHs in far-away regions, thus curtailing contact between the patients and their relatives (guardians/custodians) and obstructing the functioning of the medical institution. The SPH in the town of Radnevo housed patients who were sent there on the orders of the District Court in the town of Pernik, the District Court in the town of Kyustendil, and the District Court in the town of Blagoevgrad. Some of the patients were treated for a period of six months. The physicians explained that they found it difficult to contact these patients' relatives (guardians/custodians), and most often failed to do so, for the purpose of providing updates on their treatment or for discharging the patients.

When it comes to adequate staffing at the SPH in the town of Radnevo, the trend is that the number of medical and non-medical specialists is declining. Discharged patients work as hospital orderlies. Work shifts are carried out by minimal staff, which creates risks both for the staff and for the patients. The medical treatment and diagnostic process at the SPH in the town of Radnevo is guided by the "Psychiatry" medical standard, according to the material base and staff complement of the healthcare establishment. Social rehabilitation and psychological care are not fully developed at this hospital. Most often, the patients undergo medication therapy and take outdoor walks as part of their prescribed treatment regimen.

There was no observed shortage of medical and non-medical staff at the MHC, which enabled the execution of medical treatment-and-diagnostic and rehabilitation activities according to the "Psychiatry" medical standard.

It should be noted again that the government institutions have not yet regulated the labour conditions for mentally ill people, pursuant to Article 151 of the *Healthcare Act* (ZZ).

This year, the NPM once again noted that patients of disadvantaged social status (homeless, rejected by their families or guardians/custodians) tend to endure lengthy and repeated hospitalizations. The Directorate of Social Assistance does not – or is unable to – provide any support to such patients upon their discharge due to insufficient space in the social assistance facilities in the community.

SOCIAL AND MEDICO-SOCIAL CHILDCARE INSTITUTIONS

- An increasing number of non-governmental organisations, media, and community representatives involved in the protection of human rights identify NPM as an independent monitoring body.
- The NPM's recommendations are accepted by the government authorities.

In 2016, the focus of NPM's inspections at childcare institutions was on specific complaints related to direct violations of the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. In regards to this, the Ombudsman, in her capacity as a National Preventive Mechanism, officially announced concrete conclusions and positions.

The first position refers to children with severe forms of disabilities who are accommodated in a Home for Medical and Social Child Care (HMSCC) in the town of Pleven. The Ombudsman, together with her team, performed an inspection in this institution for children. During the inspection, the team discovered that in light of a proposal by the Child Protection Department at the Social Assistance Directorate in the town of Pleven, there was a planned relocation of 14 children to a Family-Type Accommodation Centre (FTAC) for children in the town of Pleven. The Ombudsman got personally acquainted with the health status of the children, establishing that they have severe forms of disabilities and concomitant diseases. Some of the diagnoses are epilepsy, background retinopathy, internal and external hydrocephalus, cerebral atrophy, spastic quadriparesis, symptomatic epilepsy with severe tonic-clonic seizures, neurogenous bladder with recurrent urological infections, hydrocephalus permagna with anencephaly, hypoxic-ischemic encephalopathy, occlusive internal hydrocephalus, congenital anomaly of the central nervous system (microcephaly, brachycephaly), congenital cardiac malformation (hypertrophic cardiomyopathy), congenital infection with cytomegalovirus and herpes simplex, congenital anomaly of the central nervous system, etc.

It is evident from the aforesaid that those children suffer particularly severe pathologies and are bed-ridden, requiring permanent, intensive, and specialized medical care.

In this respect, the Ombudsman, as NPM, expressed an official position, whereby "The relocation of those children to a Family-Type Accommodation Centre represents an immediate threat to their lives." The Ombudsman, as NPM, has previously also expressed the position that the medical care provided to children with severe disabilities at the FTAC does not meet the needs of the children; thus, their health and lives are immediately threatened. There is no medical staff at the FTAC overnight, and the children, who undergo permanent therapy, receive their medications from the child carers. It is important to note that the FTAC staff is insufficiently trained to work with disabled children, which violates Standard 5 of the Methodological Guidance for the Family-Type Accommodation Centre for children and youths and makes it impossible to react adequately in a crisis situation, and even to identify such a situation.

The observed tendency is to bring children with severe forms of disabilities from the FTAC back to the care homes from where they were taken originally. **The Ombudsman considers it necessary to have clearly set criteria and approach in relocating children to alternative services.** Of particular importance, is the performance of an adequate assessment of the needs of the children and their psychosomatic condition prior to relocating them, the excellent training of the staff that will be working with them, and the establishment of auxiliary services (roads, hospitals, rehabilitation centres, schools, centres for labour and speech therapy, etc.). In view of those circumstances, the relocation of those children to inappropriate social service providers **is a violation of Article 16(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, and namely the stipulation that, *"Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."*

The Ombudsman of the Republic of Bulgaria, in fulfilling her functions of a National Preventive Mechanism, in the spirit of and in compliance with the Optional Protocol accompanying the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002, expressed the official position that such treatment of children and people with disabilities by government institutions can be qualified as cruel, inhuman and degrading within the meaning of the Convention. With regard to this, the preparation of the relocation of the children with severe forms of disabilities to Family-Type Accommodation Centres for children should be stopped.

Following the official position of the Ombudsman as NPM, all the government institutions directly involved in the accommodation of children with disabilities at FTAC – the Ministry of Health, the Ministry of Labour and Social Policy, and the State Agency for Child Protection – undertook activities to stop the relocation of those children to inappropriate social service providers. Also, the Ministry of Health formed an ad hoc health committee to carry out expert evaluation of the children's health status and need for permanent medical care.

Family-type Placement Centres for Children Nos. 1 and 2 in the Village of Dren, Province of Pernik

The Ombudsman, in her capacity of NPM, was mentioned by representatives of the Bulgarian Orthodox Church and the national media – “Nova Television” – in relation to psychological and physical harassment against children placed in Family-Type Accommodation Centres for children Nos. 1 and 2 in the village of Dren. The complaint noted that some of the children were deliberately kept at the FTAC in the village of Dren so that the centre was filled to capacity. Consequently, the Ombudsman personally performed an inspection at FTAC Nos. 1 and 2 in the village of Dren, as well as at the Child Protection Department in the Social Assistance Directorate in the town of Radomir. In the course of the inspections and conversations with the children housed in those institutions, the Ombudsman as NPM established that some of them suffered systematic violence in 2015. Violence was exercised during the term of office of the former Director of the care home.

Some of the children were victims and/or witnesses of physical violence on the part of the Director, as well as by employees of the company that provided security to the institution.

In their accounts of the situation, the children shared that on various occasions related mostly to committing disciplinary infractions or being late when returning to the institution, either the Director or other members of the care home staff used a panic button to alert the security company, whose employees reacted and exercised physical violence. Upon evaluating the children's behaviour during the inspection, it was established that did not trust the representatives of social service institutions and were afraid to share such sensitive information.

Concerning the work of the Child Protection Department at the Social Assistance Directorate in the town of Radomir, the NPM found that there is deliberate avoidance of working toward the reintegration of the children (sending them back to their natal family). The team got acquainted with the action plans concerning the children V. S. G. and E. S. G. Although the parents of the two children had repeatedly submitted applications for reintegration, the long-term goal of the action plan was that they should be brought up in a foster family.

At the same time, the Social Assistance Directorate in the town of Radomir issued an order to extend the children's residence at the FTAC by five years. The children's mother appealed the order. However, the District Social Assistance Directorate in the city of Pernik accepted the arguments of the Social Assistance Directorate in the town of Radomir that the hygienic and living conditions at their original home were very poor and unsuitable for raising children.

With regard to this, the Ombudsman and NPM's representatives visited the parents' home and established that the living conditions were normal for bringing up children. They talked to the parents, who informed them that the number of their visits with the children had been reduced from eight to two per month. Also, the fact that the Child Protection Department allowed the children to visit their parents during the holidays contradicts the claims that the mother has no parental capability to bring up children. The parents received directions aimed to enhance their parental capability, but the Child Protection Department had never set reintegration in the biological family as its goal.

Another very disturbing fact is that the social report drawn up by a social worker states that, "the mother of the children should take the necessary steps to get certified by the Territorial Expert Medical Commission; however, she denies having any health-related problems." **Exercising such pressure on parents by employees of the Child Protection Department is absolutely inadmissible, and it is in violation of Article 23 of the *Convention for the Rights of the People with Disabilities*.** These findings also apply in the cases of other children whose parents have submitted applications for reintegration.

After the inspection, the Ombudsman as NPM expressed the firm position that all the actions of the employees at the Child Protection Department in the town of Radomir, at the Social Assistance Directorate in the town of Radomir, at the District Social Assistance Directorate in the town of Pernik, as well as of the employees of FTAC Nos. 1 and 2 in the village of Dren, directly violate the rights of the children and the *Child Protection Act*.

Pursuant to Article 20(1)(2) of the *Ombudsman Act*, the Ombudsman as NPM addressed the Minister of Labour and Social Policy with a **recommendation to carry out urgently-needed inspections of the overall activities of the Child Protection Department in the town of Radomir, the Social Assistance Directorate in the town of Radomir, the District Social Assistance Directorate in the town of Pernik, as well as FTAC Nos. 1 and 2, in relation to their work on the reintegration of the children in their biological family and their tolerance of violence against children.**

Also, on the basis of testimonies about harassment and physical violence endured by the children, and pursuant to Article 19(1)(11) of the *Ombudsman Act*, the Ombudsman, in her capacity as NPM, approached the Chief Prosecutor to give orders for an inspection of this case.

It is important to note that the Ombudsman and the NPM's Director, together with the media, made the public aware of the point that the deliberate confinement of children in institutions and the exercise of violence against them directly violates their rights and that such actions on the part of government institutions contradict the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and the *Convention for the Protection of Human Rights and Fundamental Freedoms*.

Also, it is of critical importance that for the first time since the founding of the NPM, a judicial authority has requested the Ombudsman's position concerning the placement of two children – V. S. G. and E. S. G. – in the FTAC in the village of Dren. Upon presenting the Ombudsman's position as NPM, the Provincial Court in the town of Pernik ruled in favour of the mother. So, as of now, the children live in a family environment.

Crisis Centre for Children, Victims of Violence at the 'Olga Skobeleva' Social Services Complex in the City of Plovdiv

The Ombudsman, in her capacity as designated NPM, was alerted by the manager of the *Olga Skobeleva Social Services Complex* (SSC) in the city of Plovdiv about the unlawful placement of a child at the Crisis Centre for Children, Victims of Violence at the *Olga Skobeleva SSC*. A

team of NPM employees conducted an inspection and discovered that following the proposal of the Child Protection Department at the Social Assistance Directorate in the town of Asenovgrad, the child – N. I. P. – was placed in the Crisis Centre on 28.04.2016. According to the Director of *Olga Skobeleva Social Services Complex*, the placement of the child in the Centre is not an appropriate protection measure, given that the child has had two suicide attempts within a period of several days and was diagnosed with a mental illness.

Consequently, the NPM's team contacted the mother of the child, who claimed that she had not been acquainted with the decision of the Child Protection Department in the town of Asenovgrad to place her child in a Crisis Centre, and that a report was drawn during a meeting between her and the Department suggesting that the mother was incapable to cope with the aggressive behaviour of the child. The mother of the child wished that the child were with her in order to receive adequate medical care.

The Ombudsman as NPM appealed to the Ministry of Labour and Social Policy, as well as the State Agency for Child Protection, to inspect this case, since, according to NPM, the applied protection measure did not take into account the child's seriously impaired health status and the issued referral for the child's hospitalization.

Meanwhile, the mother of the child filed a lawsuit at the Administrative Court in the city of Plovdiv, requesting the repeal of the order to place her child in the Crisis Centre. The court ruling concurred with the position of the Ombudsman as NPM that, taking into account the evidence gathered for the lawsuit, the placement of the child in a Crisis Centre for young victims of violence does not protect the child's interest to the full extent possible. Following the court's ruling, the child was reunited with the mother.

SOCIAL INSTITUTIONS FOR THE ELDERLY

- The auxiliary services in the community are not developed to the sufficient extent.
- Insufficient number of positions for specialised and non-specialised staff.
- The successful deinstitutionalisation and socialisation of the users of social services for the elderly should be combined with awareness campaigns.

During the inspections carried out in 2016, NPM established that there was still a persisting large number of users of the services in the nursing homes for mentally retarded elderly people, the nursing homes for elderly people with mental disorders and the nursing homes for elderly people with dementia, irrespective of the vision for deinstitutionalization of those services. This leads to the conclusion that there is no alternative to the institutional care, yet. The auxiliary services in the community are not developed to the sufficient extent (sheltered, transitional homes and family-type accommodation centres).

This type of social services tend to be located in places that are distant from the big cities, which together with the lack of transportation links hinders the access of qualified specialists and the provision of adequate healthcare services to the people mental retardation, mental disorders and dementia.

As negative findings also can be pointed the absence in some of the nursing homes of an access ramp for the people with mobility impairments, the insufficient sanitary and dormitory premises for the users, the absence of installed call systems, equipped with an easily accessible alarm signal button.

During the inspections, it was established in almost all of the nursing homes that there was a shortage in the number of positions for specialized and non-specialized staff. The envisaged number of personnel is utterly insufficient in respect to the number of users. Particularly

disturbing is the fact that there are vacancies for a number of currently existing positions for specialists (speech therapist, psychologist, Kinesiotherapist, occupational therapist), which casts doubt on the provision of a high-quality care for the accommodated people.

After the inspections carried out in 2016, a well-grounded conclusion can be drawn respect to many nursing homes that the medical service is performed under lowered criteria – both in the quantitative and in the qualitative aspect. It is neglected and reduced to routine activities without actual involvement of the staff with the health condition of the users. There is also a lack of coordination between the different specialists at the nursing homes in respect to the healthcare.

In some of the individual healthcare plans there are even diagnoses that are not comprehensively reflected when they were determined by the medical specialists and written in the individual patient's record cards. Those are mentioned as "concomitant diseases", while there have been no targeted tests or consultations done with specialists in view of prescribing adequate treatment, i.e. no adequate diagnostic and therapeutic measures have been undertaken according to the good medical practice rules.

During the conducted inspections, NPM did not find out any cases restricting patients' rights through medications.

By contrast, NPM found out again that quite often the common practice in the nursing homes was that in case of a death of a user, the death notification was drawn up by the general practitioner and no pathoanatomical expert examination of the deceased was performed. **NPM deems it necessary to emphasize once more the importance of performing pathoanatomical expert examination in any case of a death of a user of the respective social service.** This would make sure at the same time that any doubts about neglecting users' health would be discarded, as well as that any possible medical errors could be identified.

In the same line of thought are the findings from NPM's inspections conducted in 2016 in respect to the social service for the elderly in Sofia Capital Municipality.

In the Nursing home for mentally retarded elderly people in the village of Podgumer, NPM established that the diseases do not correspond to the social service profile of all the users. The medical care is provided by a general practitioner, who visits the nursing home once a week together with a cardiologist. Four of the users preferred their former general practitioners, where the visits to them are organized by their relatives.

There are 0,5 staff positions opened at the nursing home – for a psychiatrist, psychologist and a speech therapist, who, at the time of carrying out the inspection were vacant. The director of the nursing home is a physician, who can get involved in the treatment process if necessary.

Healthcare is provided by 1 senior nurse and 8 staff positions for nurses, 6,5 of which are occupied. The incomplete staff provision hampers the organization of the 24-hour medical monitoring, particularly in the period when the employees are on holiday or on a sick leave, and it has a negative impact on the quality of the healthcare for the users.

Dental care is provided by a dentist on half a staff position with an equipped dentist's surgery at home. Almost all of the users have had their annual stomatological check-up examinations. Notably, a tooth extraction seems to be the most preferred treatment.

Due to the general condition of the users and keeping in mind that extraction is offered instead of dental treatment, the menu generally consists of soft foods. NPM defines such a practice as threatening users' health and considers that the emphasis should be on their treatment.

There is a special room in the social institution intended for conducting occupational therapy and training, which is not suitably equipped for carrying out rehabilitation activities. There is no position envisaged either for a Kinesiotherapist/ rehabilitator.

While conducting the inspection, NPM established substantially deteriorated sanitary-and-living conditions – a strong smell, stuffy air, inadequate number of dormitory premises in respect to the number of the social service users. The installed alarm call system does not work since the buttons in the dormitory premises have been removed.

There is a Sheltered Home for people with mental disorders specially accommodated in the administrative building of the nursing home.

In the Nursing home for elderly people with dementia in the city of Sofia, NPM established that the people accommodated meet the social institution profile. The guardians/ custodians of all the users are their relatives.

The users have their general practitioner and dentist allocated for them. There is a physician employed on a ½ staff position, who, at the time of the inspection, was absent on leave. The social institution has concluded a civil contract for part-time employment with a doctor – psychiatrist, who visits the accommodated people once a week. The medical specialists for the people with mobility impairments are called on site.

There is 24-hour medical monitoring of the users provided at the institution. There is 1 senior nurse and 7 nurses with well-proven professional qualities employed at the nursing home.

During the visits of the dormitory premises, there were ascertained very good sanitary-and-living conditions for the users. The people in wheelchairs have the possibility to go out into the yard.

The social institution carries out rehabilitation activities – mostly group and individual kinesitherapy, games. The procedures are prescribed by the physician at the nursing home according to the status and the rehabilitation potential of the user. Occupational therapy is focused on practicing activities from everyday life.

The food offered is varied and meets the requirements of Article 41 of the *Rules for the Implementation of the Social Assistance Act*.

There is a signalization system with panic buttons installed and functioning.

With regard to the aforementioned, NPM again considers it necessary to outline as a priority the need of successful deinstitutionalization and socialization of the social services for the elderly.

It is important to take into consideration the inevitable attachment, which the people feel towards the nursing home in which they have been accommodated, sometimes for their entire conscious life. In this respect, their inclusion into the society should be done after taking into account the individual needs and difficulties of each user, so that the latter could comprehend and accept the process of deinstitutionalization as a positive change for him/herself.

Also of critical importance is carrying out awareness campaigns whereby reducing the stigma on the people with mental retardation, mental disorders and dementia. The society has to accept that the mentioned groups of people need treatment and specialized care, while the isolation that they currently experience makes them particularly vulnerable and directly breaches their rights.

A National Long-term Care Strategy (hereinafter referred to as the Strategy) was adopted in the early 2014 in view of the development of the long-term care for the elderly people and the improvement of their quality of living. Among the main priorities of the Strategy is also the

establishment of a more efficient mechanism for financing the long-term care and achieving sustainable increase in the funds designated for services in the community and in home environment. NPM will follow with due attention the implementation of this Strategy with regard to observing the rights of all the participants.

As main priorities in the field of the social services for the elderly, NPM has outlined the following:

- the physical conditions in the nursing homes should be brought in compliance with the requirements of Article 40f of the *Rules for the Implementation of the Social Assistance Act*, including in respect to the creation of an accessible environment.
- the competent institutions should exercise regular efficient control over the service providers of residential care for elderly people in view of meeting the requirements of the medical standards, the *Social Assistance Act* and the *Rules* for its implementation;
- actions should be undertaken for updating the approved Methodology by the Ministry of Labour and Social Policy for determining the staff positions in the specialized institutions and the social services in the community;
- detailed information should be provided to NPM concerning the updated Action Plan to the National Long-term Care Strategy.

INTERACTION OF THE NATIONAL PREVENTIVE MECHANISM WITH INTERNATIONAL AND NATIONAL AUTHORITIES AND ORGANISATIONS

NPM's traditional active collaboration with its national and international partners continued in 2016 with government institutions, non-governmental organisations, as well as with international bodies and organisations. A small part of them are: the Subcommittee on Prevention of Torture; the South-East Europe National Preventive Mechanism Network; the Council of Europe; the International Centre for Migration Policy Development; the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union; the European Union Agency for Fundamental Rights; the United Nations High Commissioner for Human Rights; Amnesty International, and many others.

The conferences, seminars, workshops and meetings, as well as the discussions with the participation of NPM's experts are listed below in a chronological order:

- 15-16 February 2016 – Workshop ‘The Rights of Migrants and Asylum Seekers’ organised by the Council of Europe and the European Union Agency for Fundamental Rights (FRA) (Vienna, Austria);
- 01 March 2016 – Discussion at the presentation of the study “Women Prisoners“, organised by the Bulgarian Helsinki Committee (BHC);
- 18 May 2016 –National Conference “The Reform of Bulgaria’s Penitentiary System in the Light of the Council of Europe’s Recommendations“, organised by the BHC;
- 27-30 June 2016 – Workshop “Strengthening the Capacity of Observers of Forced Returns of Third Country Nationals“, organised by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) in collaboration with the European Union Agency for Fundamental Rights (Warsaw, Poland);
- 26 July 2016 – Meeting of the Deputy Ombudsman with representatives of the UN High Commissioner for Human Rights;
- 10 September 2016 – Meeting of the Ombudsman with an Amnesty International team;

- 27 September 2016 – Seminar on detained migrants’ right to hearing, organised by the Foundation for Access to Rights (FAR);
- 28 September 2016 – Conference “Additional Alternative Measures on the Detention of Third Country Nationals“, organised by the BHC and the ‘Migration’ Directorate of the MoI;
- 03-04 November 2016 – Participation in a conference “The Right to Protection“, organised by the Ombudsman of the Republic of Macedonia together with the UN High Commissioner for Refugees (Ohrid, Macedonia);
- 16-17 November 2016 – Conference “Enhancing the Application of European Law on Criminal Matters through Collaboration between the Judiciary and the National Preventive Mechanisms“ (Vienna, Austria);
- 29-30 November 2016 – Conference of the Network of National Preventive Mechanisms in Zagreb, the Republic of Croatia;
- 05-06 December 2016 – Participation in a working group “Creating and Applying by Frontex of an Individual Complaints Mechanism together with the Member States and the Schengen Area Countries“, organized by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) in collaboration with the European Union Agency for Fundamental Rights and the European Ombudsman (Brussels, Belgium);
- 13-14 December 2016 – Meeting of the Network of National Preventive Mechanisms from South-East Europe concerning the protection of refugees and migrants’ rights, organised by the Ombudsman of the Republic of Serbia together with the UN (Belgrade, Serbia);
- 14-15 December 2016 – Conference “The Rights of Refugee and Migrant Children“, organised by the Ombudsman of the Republic of Macedonia together with “Save the Children“ (Skopje, Macedonia);
- 16-17 November 2016 – Participation in a conference on forced returns organised by the International Centre for Migration Policy Development (Vienna, Austria).