



**2018 ANNUAL REPORT OF THE OMBUDSMAN ACTING AS NATIONAL  
PREVENTIVE MECHANISM**

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## ABBREVIATIONS

- SAA – Social Assistance Agency  
DGEP – Directorate General Execution of Punishments  
SAD – Social Assistance Directorate  
SAR – State Agency for Refugees  
ICDPC – Institution for Children Deprived of Parental Care  
HMSSC – Home for Medical and Social Child Care  
SEPP – State-owned enterprise „Prisons Production“  
SPH – State Psychiatric Hospital  
ECrHR – European Court of Human Rights  
EPRCA – Execution of Punishments and Remand in Custody Act  
OA – Ombudsman Act  
CTPH – Closed-type prison hostel  
OTPH – Open-type prison hostel  
SAA – Social Assistance Act  
CPT – Committee for the Prevention of Torture  
SSC – Social Services Centre  
DLP – persons deprived of their liberty  
MoI – Ministry of Interior  
MoH – Ministry of Healthcare  
DF – detention facilities  
MoJ – Ministry of Justice  
CoMs – Council of Ministers  
HE – healthcare establishment  
NHIF – National Health Insurance Fund  
NPM – National Preventive Mechanism  
IREPRCA – Implementing Rules of the Execution of Punishments and Remand in Custody Act  
MoI RD – Regional Directorate of the Ministry of Interior  
RHI – Regional Healthcare Inspectorate  
RAC – Registration and Admission Centre  
RC – Regional Court  
RCntr – Registration Centre  
RPS – Regional Police Station  
SHATPDL – Specialised Hospital for Active Treatment of People Deprived of Their Liberty  
SCTAF – Specialised Centre for Temporary Accommodation of Foreigners  
SWCA – Social work and correctional activities (prisons)  
TC – Transit Centre  
ERP – Early release on parole  
OPCAT – Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment  
FTPC – Family Type Placement Centre  
FTPCCAD – Family Type Placement Centre for Children and Adolescents with Disabilities  
MHC – Mental Health Centre

# GENERAL INFORMATION ABOUT THE NATIONAL PREVENTIVE MECHANISM IN 2017

## Legal Framework

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

The Optional Protocol to the Convention against Torture is the first international treaty that introduces a double system – international and national – for preventing torture and other forms of cruel, inhuman or degrading treatment. The OPCAT establishes a Subcommittee on Prevention of Torture (SPT) on international level, and at the same time requires States Parties to set up NPMs on national level.

According to the OPCAT, the SPT has three primary operational functions. First, it may visit any place where persons may be deprived of their liberty. Second, it provides advice and assistance to the National Preventive Mechanisms and recommendations to the States Parties with a view to enhancing NPMs' capacity and mandate. And third, it cooperates with other UN, international and regional bodies as well as national institutions or organisations working for the protection of all people deprived of their liberty.

Article 3 OPCAT requires States Parties to “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 body or bodies are the National Preventive Mechanism.

Each State Party to the OPCAT has its own way to determine its NPM. Some have identified existing bodies to carry out the mandate of the NPM, while in others new bodies have been created to assume this role.

For an NPM to function as an independent body, Article 18 OPCAT requires States Parties to guarantee the functional and financial independence of the preventive mechanism so as to ensure that the NPM may function free from any State interference. Article 18 specifically refers to the Principles relating to the status of national institutions for the promotion and protection of human rights (“the Paris Principles”).

### 2. Ombudsman Act

The NPM's function has been delegated to the Ombudsman by the amendments and supplements to the Ombudsman Act, promulgated in State Gazette (SG), issue no. 29 of 10 April 2012.

A new chapter was included in the law, which translates the requirements of OPCAT: "a" National Preventive Mechanism (new – SG no. 29/2012, effective as of 11 May 2012)

Article 28 (a) (new – SG no. 29/2012, effective as of 11 May 2012) (1) The powers of the Ombudsman as a National Preventive Mechanism concern places where there are persons deprived of their liberty, or where persons are detained or accommodated as a result of an act or with the consent of a public authority, which places they cannot leave at their own will, in order to protect such persons from torture and other cruel, inhuman or degrading treatment or punishment.

(2) The Ombudsman shall be entitled to:

1. access at any time without prior notice to all places of detention under paragraph 1 and to their installations and facilities;

2. access to all information concerning the number of persons deprived of their liberty in places of detention as defined in paragraph 1, as well as the number of places and their location;

3. the liberty to choose the places s/he wants to visit and the persons s/he wants to interview;

4. the opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Ombudsman as a National Preventive Mechanism believes may supply relevant information;

5. access to all information referring to the treatment of the persons under paragraph 1 as well as their conditions of detention;

6. request information from the staff of the visited detention facility, hold lectures and converse personally with any person at the territory of the inspected object;

7. arrange medical examinations of individuals with their consent.

(3) Employees and officials in the facilities under paragraph 1 are obliged to assist and supply the necessary information to the Ombudsman.

Article 28 (b) (new – SG no. 29/2012, effective as of 11 May 2012) (1) A person or an official is not entitled to order, apply, permit or allow whatever sanction in respect of a person or organization that they have reported any information, whether true or not, to the Ombudsman as a National Preventive Mechanism, and no such person or organization may suffer any damage because of this.

(2) Confidential information collected by the Ombudsman as a National Preventive Mechanism may not be disclosed. Personal data may be published only after the person it refers to has expressed his or her explicit consent.

Article 28 (c) (new – SG no. 29/2012, effective as of 11 May 2012) The Ombudsman as a National Preventive Mechanism may by order delegate in whole or in part its powers under Article 28 (a) to members of her/his administration.

Article 28 (d) (new – SG no. 29/2012, effective as of 11 May 2012) (1) After each visit, the Ombudsman shall prepare a report which may contain recommendations and proposals with a view to improving the conditions in the facilities under Article 28 or treatment of the individuals placed there, as well as to preventing torture and other cruel, inhuman or degrading treatment or punishment.

(2) The report shall be presented to the relevant competent authority which shall notify the Ombudsman within one month of the action taken in implementing the recommendations.

(3) The Ombudsman shall also publish annual reports related to her/his work as a National Preventive Mechanism, subject to the requirement of Article 28 (b), para 2.

Article 28 (e) (new – SG no. 29/2012, effective as of 11 May 2012) The Ombudsman as a National Preventive Mechanism shall cooperate with relevant bodies and mechanisms of the United Nations, citizens' associations, as well as with international, regional and national organisations working to protect persons against torture and other form of cruel, inhuman or degrading treatment or punishment.

### **3. Constitution of the Republic of Bulgaria**

#### **Article 150**

(1) The Constitutional Court shall act on an initiative from not less than one-fifth of all Members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court or the Prosecutor General. A challenge

to competence pursuant to para 1 item 3 of the preceding Article may further be filed by a municipal council.

(2) Should it find a discrepancy between law and the Constitution, the Supreme Court of Cassation or the Supreme Administrative Court shall suspend the proceedings on a case and shall refer the matter to the Constitutional Court.

(3) (new, SG 27/2006) The Ombudsman may approach the Constitutional Court with a request for declaring as unconstitutional a law which infringes human rights and freedoms.

(4) (new, SG 100/2015) The Supreme Bar Council may approach the Constitutional Court with a request for declaring as unconstitutional a law which infringes human rights and freedoms.

#### **4. Administrative Procedure Code**

##### Article 100

In the cases referred to in Article 99, item 1,<sup>1</sup> administrative proceedings shall be resumed at the initiative of the administrative authority or upon a proposal of the respective prosecutor or the Ombudsman, and in the cases referred to in Article 99, items 2 to 7, upon the request of a party to the proceedings.

#### **5. Judicial System Act**

##### Article 125

The following shall be entitled to file a request seeking interpretative decision or interpretative ruling: the president of the Supreme Court of Cassation, the president of the Supreme Administrative Court, the Prosecutor General, the Minister of Justice, the Ombudsman and the chairperson of the Supreme Bar Council.

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<sup>1</sup> Article 99. Individual or general administrative acts that have come into force and that have not been challenged in court may be revoked or amended by the directly superior administrative authority, and if the acts are not subject to administrative appeal – by the authority that has issued the act, where:

1. some of the requirements for its legality have been essentially violated;

## DETENTION FACILITIES

The NPM reports a very good progress as regards improving the material conditions in the detention facilities located in South Bulgaria. Once again, the implementation of the Norwegian Financial Mechanism played an essential role. The high professionalism of the officers at the Directorate General Execution of Punishments (DGEF) should be noted in the implementation of these tasks. Repair works have been done in all prisons in South Bulgaria (with the exception of the city of Sofia). New investigation detention facilities are built in the cities of Sliven and Stara Zagora, and the transfer to the new facilities will take place in 2019. The type and volume of the construction works led to temporary overcrowdedness, which could not have been avoided despite the existing legal mechanism due to the lack of spare capacity in the closed-type detention facilities.

**At the same time, only minimum progress has been observed as regards the outstanding issues outlined in the 2017 Annual Report of the Ombudsman Acting as NPM.<sup>2</sup>**

Our findings in 2017 are as follows:

- Partnership between the Council of Ministers and representatives of the trade unions in the Ministries of Defence, Foreign Affairs and Justice is required.
- The order of the Minister of Justice regarding the initial distribution of persons deprived of their liberty and the allowed items to be inscribed in the Implementing Rules of the Execution of Punishments Act.
- Unresolved problem with overcrowdedness.
- The compensation model to avoid overcrowdedness is ineffective.
- Article 46, para 2 of the Execution of Punishments and Remand in Custody Act is systemically not applied.
- There are no statutory minimal standards about daylight in place.
- Barred visits as a rule.
- Violations of the secret of correspondence.
- Useless constitutional prohibition that restricts the persons' deprived of their liberty right to vote.
- Transfer to another prison as an unregulated sanction upon a contact with the media.
- Lack of enough social workers and sufficient budget funding for meaningful activities.

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<sup>2</sup> The information contained in the 2018 Annual Report of the Ombudsman Acting as National Preventive Mechanism is premised on the reports of the conducted inspections, which are publicly accessible on the internet site of the Ombudsman of the Republic of Bulgaria.

- Failure to pay full size wages.
- Violated rights to social insurance.
- Violated rights to education as regards higher education.
- Monopoly prices in the prison shops.
- Unreformed prison healthcare system.
- Torture under the disguise of search and seizure during night hours.
- Lack of adequate judicial defence in case of disciplinary sanctions.
- Improper use of handcuffs in the investigation detention facilities in Sofia, as well as in healthcare establishments.
- Possibility to use automatic firearms in prisons, even where those are located in cities.
- Violation of the right to defence of the persons deprived of their liberty by the field operatives of the Ministry of Interior in prisons.

Partial action has been taken only in relation to two of our findings, concerning the use of instruments of restraint and use of firearms.

We report a good dialogue with the Minister of Justice; however, there has been no official position on the recommendations made by the NPM for 2018.

In those cases where the NPM recommendations have been endorsed, we usually find out from the media. We are not aware of the arguments for discarding our findings or endorsing them in principle and taking action on them. This circumstance has geared the NPM work to conducting thematic inspections that establish findings valid for the whole system. The purpose of the inspections is develop further the arguments in relation to the outstanding issues of 2017 and to trigger a wider public discussion with a view to possibly improving the legislation.

The basic topics were the use of instruments of restraint and firearms, as well as administrative legislative and judicial measures for compliance with the constitutional rights of the persons deprived of their liberty.

## **1. Use of firearms and instruments of restraint**

On 6 August 2018 the Ombudsman of the Republic of Bulgaria made a public statement urging the Minister of Justice to take immediate effective administrative action to cease torture or cruel, inhuman and degrading treatment or punishment in the healthcare establishments, during convoy, when taking inmates out from sleeping quarters and bringing them outdoor, and during visits to internal or external medical facilities. This is a major focus in the recommendations made in the report of the National Preventive Mechanism (NPM) (*note*: the specialized directorate in the institution of the Ombudsman that monitors detention facilities) following the inspections made in the period from 19 to 22 June 2018 in the investigation detention facilities (IDV) at G. M. Dimitrov Boulevard and Major G. Vekilski Street, as well as in the Sofia prison, upon an order of the Ombudsman of 18 June 2018.



The report expressly points out to a systematic violation of the **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**, which stipulates in Article 2(2) that “[N]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

**The NPM is unequivocal that the instructions issued by the prison heads regulating the use of force and instruments of restraint (handcuffs, leg-irons etc.) during internal or external convoy run contrary to Article 114 of the Execution of Punishments and Remand in Custody Act (EPRCA). Paragraph 1 specifies that their use is admissible only in exhaustively listed extreme cases, e.g. to free hostages or stop violence or other aggressive behaviour.**

In its report to the Minister of Justice and the head of the Sofia prison, the NPM expressly points out that despite the insistent recommendations made in 2016 and 2017 to stop any unjustified use of instruments of restraint, which is considered as subjecting a person to torture, cruel, inhuman or degrading treatment, **no action has been taken whatsoever.**

On a daily basis, in the two IDFs, more than 300 people are handcuffed when taken outdoor. In the one-year period as from the previous recommendation of the NPM, this accounts to more than 100,000 cases of degrading treatment.

Recommendations from the report:

1. To supplement Order No. ЧП-05-11 of 30 May 2015 of the Minister of Justice to ensure that at least once a month time within working hours will be earmarked for training prison staff in handling unruly detainees.
2. To take effective administrative measures, in accordance with Article 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to stop torture in medical facilities, during convoys and when taking inmates out from sleeping quarters in the IDFs at G. M. Dimitrov Boulevard and Major G. Vekilski Street, including by introducing an express provision to that end in the instructions, in accordance with Article 10(2) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
3. To revise the error made in the Sofia prison instruction as regards the use of 30 mm reactive cartridges.
4. To render the two Sofia prison instructions for conveying and for prison medical facilities in line with Article 114 EPRCA, Article 51 of the Code of Ethics and Professional Conduct for Medical Doctors in Bulgaria, and Article 321 of the EPRCA Implementing Rules.

Action taken by the Ministry of Justice:

1. During the talks held with officials from the two trade unions in the Ministry of Justice, they expressed their willingness for cooperation, including by involving well prepared members of the unions as trainers if such opportunity occurred. The Minister of Justice also committed herself, despite shortage of prison staff, to study the possibilities to amend the order in question. We have no information on any follow up.
2. The deputy Minister of Justice issued an order thereby setting up a working group, which elaborated a draft Conveying Instruction for DGEP servants. Article 250a, para 2 EPRCA was amended to allow that the act be a bylaw, issued by the Minister of Justice. The instruction is published for public discussion, following which it will be issued. A servant of

the Ombudsman was involved in the working group and the elaboration of the draft instruction, thus the NPM has no comments as regards the adoption of this act.

3. Life threatening ammunitions have been removed from prison towers.

4. The use of handcuffs during the so-called internal convoy in the two IDFs in Sofia has been terminated only in November 2018, after a servant of the NPM exercised additional pressure on the DGEP and declared that an additional specialized inspection personally by the Ombudsman would be required, with the possibility to propose disciplinary liability and make a new public statement.

## **2. Unresolved problem with overcrowdedness, failing mechanism under Article 46(2) EPRCA and no statutory standards as regards daylight**

Specific problems were identified during the visits to Pazardzhik and Plovdiv and were described in the report of the inspection. The major problems concern the following: 1. the main building of the Pazardzhik prison, despite the declared capacity of 335 places, hosted as of 26 September 2018 258 persons. Due to the ongoing repair works, at some places the available accommodation area was found out to be 2.2 sq. m. per person, which is half of the area required by law.

The main building of the Plovdiv prison, with a capacity of 358 people, as of 26 September 2018 hosted 414 persons.

The main building of the Stara Zagora prison, with a capacity of 406 people, as of 26 September 2018 hosted 386 persons. The closed-type prison hostel “Cherna gora”, with a capacity of 120 people, hosted 52 persons; however, repair works were going on, thus the spare capacity of the building would be assimilated.

In the Bobov dol prison, which has a capacity of 549 people, as of 26 September 2018 a total of 311 persons were placed. Due to ongoing repair works, 21 people were found to be placed in a room for 12, that is to say with almost half of the required by law accommodation area.

The main building of the Burgas prison, with a capacity of 300 people, hosted as of 26 September 2018 211 persons. The closed-type prison hostel in Debelt, with a capacity of 294 people, as of the same date hosted 260 persons.

In the main building of the Sofia prison, which has a capacity of 670 people, hosted as of 26 September 2018 731 persons. The closed-type prison hostel with capacity of 403 people hosted as of the same date 341 persons.

It is evident that there is no spare capacity in the closed-type places of detention, due to ongoing repair works, thus the legal options under Article 62, para 1, item 5 EPRCA are not applicable at this stage.

On 29 November 2018 the Ombudsman of the Republic of Bulgaria made a second public statement in relation to the NPM as follows.

„Following a signal to the Ombudsman Mrs Maya Manolova from the former mayor of Sofia City Mladost region Mrs Desislava Ivancheva and her deputy Mrs Bilyana Petrova, a team from the NPM (*Note: directorate at the institution of the Ombudsman that monitors places of detention*) conducted a fourth inspection of the specialized detention facility).

The inspection has established that the complaint of the detained persons as regards poor sanitation and material conditions, poor quality of the repair works in the sleeping quarters as well as the lack of sufficient daylight and fresh air is justified.

The NPM team established on the spot wet walls and spots due to leakage from the sewer system on the upper floor, muddy and falling plaster, not enough daylight and fresh air.

The Ombudsman noted in a letter to the Minister of Justice that the access to daylight is additionally limited by the non-transparent armed glass placed on the windows, and recommended that the sleeping quarter be repaired once again and the barrier separating the toilette be built in full.

In view of the required minimum of four sq. m., the Ombudsman recommended that the cell capacity be reduced to three persons and one of the beds be removed. In addition, access to daylight and fresh air to the sleeping quarters should be ensured.

On the basis of these findings, and pursuant to Article 46 EPRCA, the Ombudsman made yet another recommendation to the Minister of Justice to close down or transfer the Sofia prison.

In response to this statement, a meeting was scheduled for 4 December 2018 of the Prosecutor General, Minister of Justice, Minister of Interior, President of the Supreme Court of Cassation and the Ombudsman to discuss the conditions in the investigation detention facilities. Unfortunately, the meeting was postponed and subsequently not rescheduled.

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

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. The lack of financial resources may not serve as an excuse for violating the requirements of the Convention.

Thus, the Minister of Justice should deposit the recommendation made pursuant to Article 46 EPRCA to the Council of Ministers within one month. The Council of Ministers notifies the action taken to resolve the problems within three months. The language used in the 2017 report about systematic violation of Article 46 EPRCA is too soft. **This provision has never been applied ever since its adoption, regardless of the numerous recommendations made by the Ombudsman.**

Specifically as regards the Sofia prison, the recommendation is not new and will be maintained for the following reasons.

Account is being taken of the intention of the Ministry of Justice and DGEP to build a new prison building in Kremikovtsi neighbourhood with a capacity of 400 people. The deadline for implementing Activity No. 1 under the Norwegian Financial Mechanism “Building a pilot prison connected to a staff training centre and building a half-way house” is set for month 65 for entry into exploitation, i.e. in more than five years. The Bulgarian State will fund 15 pct. of the project cost.

The statement in the project information that by building the new prison facility the prison population in the Sofia prison will be reduced and conditions in line with the European standards, recommendations and good practices will be ensured is not accurate. Currently Kremikovtsi closed-type prison hostel has a capacity of 403 people. The available facilities comprise one main building and many one-floor barracks. The new building will replace the

existing barracks, thus the capacity will increase insignificantly. The main building of the Sofia prison is traditionally overcrowded beyond its capacity, which is wrongly declared to be for 670 people.

In its report from its visit in 2016 the NPM noted down finding no. 65 of the CPT that “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“. ... In its report the CPT voiced its concern 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 its response in 2015 the Bulgarian authorities indicate a prison capacity of 745 by 2015, and 951 inmates after the new measurement. As of 10 July 2016, a total of 739 inmates have been accommodated in the main building, of whom 30 accused persons, 148 defendants, 561 indicted persons, and 22 serving life sentences.

**The NPM shares the CPT concern in relation to its last visit and unless it is a technical error, would like to obtain access to the methodology and the break-down of the corrections made in the measurements and the increase of the capacity of the Sofia Prison main building.“**

Despite the lack of response, apparently this was a mistake and as of the present date the capacity is reportedly 670 people. Whether the capacity is actual or not, this prison, due to its small windows and the fact that the building is a cultural object, cannot provide the required daylight.

There are extra-budgetary possibilities as well. The market price of the land where the Sofia Prison is built is higher compared to the required costs for building a new prison for 1,500 inmates, including the necessary technical equipment. If the state-owned enterprise “Prisons Production” (SEPP) could not possibly carry out this activity, by adding the land to its capital and subsequently returning the borrowed funds through a sale under the State Property Act, then there are possibilities to avoid the use of budgetary funds by means of public-private partnerships under the Concessions Act.

**Waiting solely for and relying on international financing cannot resolve the problems related to the material conditions in the places of detention over a long period of time.**

The material conditions in the Belene prison and all IDFs in the country (with the exception of those in Shumen and Plovdiv) keep raising concerns.

In conclusion, according to the NPM, in the case at hand it appears that the Ministry of Justice and DGEP respectively will not have this problem resolved in Sofia in the coming five years due to lack of financial resources and vision for the overall penitentiary system. No action has been taken for years now to put the problem on the agenda of the Council of Ministers and look for reasonable solutions in the near future by making recourse to the mechanism under Article 46 EPRCA.

### **3. Infringement of the rights of defence of the persons deprived of their liberty by field operatives of the Ministry of Interior in prisons**

In its report on the inspection of the Pazardzhik and Plovdiv prisons the NPM has noted as follows:

According to Order No. Д-390 of 1 September 2017 of the head of the Pazardzhik prison, a person deprived of his liberty has been sanctioned due to his refusal to see a field

operative in the prison. The work of field operatives in prisons is not statutory regulated. Their orders are irrelevant to the prison administration, let alone seeking inmates' disciplinary liability. The procedure for summoning is set forth in Article 69, paras 2 and 3 of the Ministry of Interior Act. However, there is no evidence in the case file that this procedure has been followed. The inmate's refusal to show up before the field operative is justified and legitimate.

Improper action of police officers has been established in the Sofia Prison. It resulted in wrongly transferring an inmate from the Sofia Prison to the Pazardzhik prison.

The transfer procedure started with a letter of Directorate General National Police with outgoing correspondence no. 328600-32442 of 2 May 2018, which was registered by DGEP under no. 6141 of 4 May 2018. According to this letter, the inmate in question allegedly traded in cigarettes with other inmates. It was established that on 27 April 2018 numerous bags full of cigarette boxes that had to be brought outside the prison were seized. Subsequently it was clarified that the number of boxes was more than 500. Free distribution of drugs to drug addicted inmates was further established. The purpose was to organise protests and notify journalists about these afterwards. The conclusion was that the person in question "had on many occasions influenced negatively the other inmates, which created conditions threatening the security and internal order in the Sofia Prison." The prisoner had no disciplinary violations, respectively no sanctions had been imposed by the Sofia Prison administration. Thus, instead of checking the operative data concerning drug trade and identifying possible offenders, the suspect was transferred instead and probably the file had been closed. This justifies NPM assessment of the operative work as poor and vicious as the data was manifestly unfounded, and the transfer was annulled by the court.

The findings of inefficient work are further supported by the existing data about prison escape involving a firearm that was brought in the Sofia Prison, although the social worker had reported it. Unfortunately, these findings of inefficient work are shared by the heads of some local police departments who propose that these field operatives report directly to them.

During the visit to the prisons and the regional MoI directorates in the cities of Pleven and Lovech in 2017, the NPM noted as follows: „The grounds for actual concerns are to be found in the operative work performed by the police officers in the places of detention. They have free access everywhere, including to offices, and may interview the inmates. An instruction has been issued under Article 79(2) of the Implementing Rules of the Ministry of Interior Act (amendments SG issue no. 5 of 19 January 2010). Pursuant to it, "the interaction between DG National Police and DG Execution of Punishments with the Ministry of Justice as regards operative work in the places of detention is determined by an instruction issued jointly by the Minister of Interior and Minister of Justice in coordination with the Prosecutor General of the Republic of Bulgaria." (incoming correspondence no. 11399 of 13 July 2010 of DGEP).

Pursuant to this instruction, the field operatives have access to prisons during working hours, and with the consent of the head of the detention facility – "during other periods of the day or night". To this end they are issued special clearance by the DGEP following a procedure set forth by the Minister of Justice.

The NPM has established that this activity has not been performed under the supervision of the prison administrations in the detention facilities.

**A recommendation of the Committee for the Prevention of Torture (CPT) concerning the same issue has not been acted upon.**

Despite the good intentions for the protection of public order and the related prevention, detection and investigation of terrorist acts and other criminal offences, there are no legal guarantees for the protection of prisoners' rights, including their right to legal aid if they would like to use such. Thus, as a result of this unregulated by the law activity, police officers, supervised by the prosecutor's office, perform checks and searches in the sleeping quarters for non-authorised objects, which is in violation of Article 146 of the Judicial System Act. For

example, by an order of the Prosecutor General of 2 June 2015, the district prosecutors of Varna, Burgas, Pleven and Kyustendil were tasked with organising inspections in the prisons and prison hostels in the respective regions. The inspections fall under one of the major powers of the prosecutor's office, namely supervision of legality in the execution of the punishment deprivation of liberty. The inspections were conducted jointly with police officers. According to the NPM, such searches and seizures by the prosecutor's office, assisted by the police bodies, are legally admissible only if performed following the procedure set forth in the Criminal Procedure Code. The Execution of Punishments and Remand in Custody Act provides for two hypotheses where police officers may carry out inspections or use force or instruments of restraint, namely Article 119(3) and Article 278 EPRCA. In all other cases police officers may perform their checks but they do not enjoy free access to the places of detention but have to follow the procedure for getting access that is in place for lawyers."

This is why the NPM has voiced its opinion, which in essence repeats the CPT recommendation that field operatives should perform their activity under the supervision of the prison administration, and the clearance they have been granted should be revoked.

The specific recommendation to the Minister of Interior then was to incorporate Directive 2012/13/EU on the right to information in criminal proceedings, which essentially treats persons deprived of their freedom as detained persons.

In a subsequent report from the inspection of the Varna prison conducted the same year, the NPM once again reminded that "field operatives of the Ministry of Interior remain in prisons without legal grounds as the agreement concluded with the DGEP no is longer applicable". The NPM has recommended to the Minister of Interior that MoI officers vacate their offices in prisons and, if they so wish, get authorised access by the Director General of the DGEP, having every visit registered at the entrance like everyone else, and perform their activity under the supervision of the prison administration.

The NPM has received many signals containing data about the use of force during detention in police departments, where the detained persons do not want an inspection carried out due to threats for continuing repressions by MoI officers. The NPM has not established these complaints to be well-founded. However, the powers granted to these field operatives in the places of detention, in particular giving their opinion for early conditional release; suspension of serving time in prison; job placement of prisoners under Instruction No. 13 – 1351 of 18 June 2010 of the MoI, incoming correspondence no. 11399 of 13 July 2010 of the DGEP, justify crediting and thoroughly examining such signals in the future. The NPM has reminded repeatedly that this instruction, which has been issued pursuant to Article 79(2) of the Implementing Rules of the Ministry of Interior Act has no longer have a legal basis and may not be applied.

Thirdly, these field operatives carry out an inquiry pursuant to Article 180(3) EPRCA Implementing Rules in the course of SEPP concluding agreements for work by prisoners. This inquiry essentially concerns whether there are criminals in the companies' management bodies or rather whether there is a police registration under Article 68 of the Ministry of Interior Act. A Regulation on the Terms and Procedure for Making and Removing a Police Registration (in force as of 17 November 2014, adopted by a Decree No. 336 of 24 October 2014 of the Council of Ministers, promulgated SG issue no. 90 of 31 October 2014, amended SG issue no. 57 of 28 July 2015).

By letter registered under no. 328600-39224 of 12 June 2018, the Directorate General National Police notified the head of the Pazardzhik Prison (incoming correspondence no. 2648 of 14 June 2018) that there were data about two such persons: exceeding of competence under Article 282 of the Criminal Code in 1999 in relation to one of the persons, and false accounting in relation of the other person, a criminal offence under Article 256 of the Criminal Code, where the police check had been terminated by a decree of the regional prosecutor's office.

Apparently in relation to the second person the prosecutor's office had established that there were not sufficient data about a publicly actionable criminal offence. As regards the first person, Article 282 of the Criminal Code (SG issue no. 75 of 12 September 2006) envisaged at the material time, i.e. when the offence was committed, deprivation of liberty for five, eight and 10 years respectively. Even if the criminal offence was committed, pursuant to Article 80 of the Criminal Code, if the person has not been convicted, a period of limitation is in force; if the person has been convicted, probably he has applied for rehabilitation and such has been granted. Even if the person has been convicted and has not applied for rehabilitation, he will have a criminal record for an offence committed before 19 years. It is very probable that if these two persons had requested to have their police registration removed, it would have been granted. It is even more probable that these persons are unaware that their personal data has been registered and this would impede the business of their companies.

The request concerns job placement of two to five prisoners. The procedure implies that the prison administration shall determine who these prisoners will be, thus it is impossible that these persons are criminally related to the company that requests labour force. Regular inspections at the work site implies that the work is actually performed. Even if the owners of the company are criminals or convicted persons, the conviction could not possibly affect negotiations for concluding commercial contracts, including such with a state-owned enterprise for job placement of prisoners.

The NPM noted as early as 2012 in its report from the inspection of the Sofia Prison as follows: „The provision of Article 180 of the EPRCA Implementing Rules creates a legislative problem, in particular paragraph 2, item 1 and paragraph 3 which stipulate that the business object of the enterprise, the person representing it and whether s/he conceals another employer, namely a former prisoner or a criminal, shall be additionally assessed in the course of the negotiations. Negotiations shall be carried out with the active involvement of the field operatives of the Ministry of Interior serving in the places of detention.

The notions “former prisoner” and “criminal” apparently do not correspond to the provision of Article 85(1) of the Criminal Code. The punishment shall be imposed, pursuant to Article 36(1) of the Criminal Code, for the purpose of correcting and re-educating the convict to comply with the laws and rules of morality, exerting warning impact on him and depriving him of the possibility to commit other crimes, and producing an educative and deterring effect on the other members of society. The punishment may not have as purpose the causing of physical suffering or humiliating the human dignity.

The provision of Article 180, para 2, item 1, and in particular the section about “former prisoner”, renders the logical conclusion that the punishment has been imposed for the purpose of “humiliating the human dignity”, moreover in the context of a system that is directly committed to “correcting and re-educating the convict to comply with the laws and rules of morality“. Secondly, the term “criminal” contradicts Article 31(3) of the Bulgarian Constitution: “A defendant shall be considered innocent until proven otherwise by a final verdict“. The circumstance that a criminal may not necessarily be a defendant has not been considered. There are further contradictions as regards the presumption of innocence under Article 48 of the Charter of Fundamental Rights of the European Union.

Then the NPM recommended to the Minister of Justice to consider revoking Article 180 of the EPRCA Implementing Rules.

The Article has been revised but its content remains similar. Pursuant to Article 108(3) of the Constitution, members of the Council of Ministers shall head a ministry, except when the National Assembly resolves other-wise. Thus, it is inadmissible that by an act of the Minister of Justice functions are attributed to officers of the Ministry of Interior. This may be done only by force of a law. This is why Article 180(3) of the EPRCA Implementing Rules

contradicts Article 108(3) of the Constitution, and the NPM recommends to the Minister of Justice to propose that the provision be revoked.

**Due to lack of any response as regards the issue of MoI field operatives in the places of detention, the NPM further develops its recommendation to the Minister of Interior and Minister of Justice to transfer the posts of MoI field operatives in prisons to the Ministry of Justice or DGEP, and to set up Internal Security Service in the places of detention.**

#### **4. Some constitutional rights related to serving the punishment deprivation of liberty**

##### **4. 1. Right to work** (Articles 16 and 48 of the Constitution of Republic of Bulgaria)

###### **4.1.1. Legal regulation**

Article 75 EPRCA stipulates that prisoners may benefit from their rights, except for those rights:

1. of which they have been deprived by means of the conviction;
2. which have been forfeited or expressly limited by law;
3. the exercise of which is incompatible with the effect of the conviction and execution of punishment.

Labour shall be guaranteed and protected by law, pursuant to Article 16 of the Bulgarian Constitution. Paragraphs 3 to 5 of Article 48 of the basic law stipulate that:

- (3) Everyone shall be free to choose an occupation and place of work.
- (4) No one shall be compelled to do forced labour.
- (5) Workers and employees shall be entitled to healthy and non-hazardous working conditions, to guaranteed minimum pay and remuneration for the actual work performed, and to rest and leave, in accordance with conditions and procedures established by law.

Articles 172 to 175 of the Execution of Punishments and Remand in Custody Act regulate work in the places of detention. Article 175(2) EPRCA refers to the labour law only as regards the working conditions. The regulation is further developed in Article 52 et seq. of the EPRCA Implementing Rules.

Directions for regulating these issues are contained in Rule 26.7 et seq. of the European Prison Rules, namely: “26.7 The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in the community in order to prepare prisoners for the conditions of normal occupational life”.

###### **4.1.2. Type of the relationship**

The Labour Code stipulates that “relationships for the provision of labour force shall be regulated only as labour relationships,”

Labour in the places of detention may be either paid or voluntary, i.e. free.

Paid labour relationships occur in case of concluding a labour contract, selection, or competition. In the legal theory, for prisoners these relationships are considered to be identical to the labour relationships. However, the analysis of the legal regulation indicates that they have nothing to do with the so-called labour relationships, nor could be assimilated to them.

Paid labour relationships in places of detention occur on the basis of a protocol of the allocation commission under Article 35 of the EPRCA Implementing Rules. Thus, terminating such relationships is done once again by means of an administrative act, which has no legal



basis either. The initiative for such relationships to occur or be terminated may come from a social worker, head of a workshop (i.e. a representative of the employer) where work is performed. Pursuant to Article 172 EPRCA, the prison administration determines the work that prisoners must perform taking into account the existing possibilities, prisoners' age, gender, health condition and capacity to work, safety requirements, professional qualifications and preferences. Article 186 of the EPRCA Implementing Rules further specifies that prisoners are allocated to work sites by the commission referred to in Article 35 EPRCA.

Efforts are made to take into consideration the prisoners' professional qualification (if any) when appointments are made for social reasons, however the leading criterion seems to be the prisoners' proper conduct. Attempts have been made to determine criteria, including through prohibitions to appoint persons convicted for certain criminal offences at external work sites issued by the Minister of Justice or heads of prisons, which practice has been terminated. These attempts have fully rested on the understanding that the occurrence and termination of relationships regarding paid labour is done by means of an administrative act. This understanding that is based on Article 172 EPRCA transforms these labour relationships into administrative ones and continues to lead to the imposition of disciplinary sanctions under the EPRCA in case of rejections to perform specific work. **This practice results in forced labour, and not to exercising one's right to work.**

The conclusion is that Article 172 EPRCA, respectively Article 165 read in combination with Article 35 of the EPRCA Implementing Rules, makes it impossible for prisoners to choose a specific worksite, they may only choose the enterprise, workshop or other manufacturing entity, which violates the right of every citizen to choose an occupation and place of work provided for in Article 48(3) of the Bulgarian Constitution. The administrative allocation rules out direct bargaining for the price of labour, which will be additionally discussed.

As far as the provision of Article 48(3) of the Constitution has direct effect, and every citizen is free to choose his or her place of work, the content of the sanction deprivation of liberty determines that prisoners' place of work should be understood to be limited within the territory of the closed-type penitentiary institution. Better choice is possible for those prisoners who serve their time in open-type prison hostels and work outside their territory. Since every work appointment is done by means of an administrative act upon a request filed by the prisoner, the choice of a specific place of work is not realised in practice. The EPRCA provides for the possibility, in Article 62, para 1, item 1 that a prisoner is transferred to another prison in relation to performing a specific work. This possibility is made recourse to mostly upon an initiative of the prison administration, for example for carrying out construction works in a prison. Due to lack of information, prisoners cannot take the initiative themselves, e.g. on the basis of specific professional qualification, to offer their labour force in another prison or prison hostel, that is to say in another location.

Voluntary labour under Article 80 EPRCA with the prisoner's consent is possible in the following cases:

1. improvement of public facilities, maintenance and hygiene of the premises and the prison area outside duty hours for maintenance and hygiene;
2. improvement of public facilities, maintenance and preservation of cultural, historical and architectural monuments and state or municipal sites;
3. restoration of damages caused by fires and natural disasters, or prevention of accidents;
4. organisation and holding literacy trainings, creative, cultural, sports or other activities by prisoners who have the required qualification and skills;
5. other activities.

In those cases, the relationship is undoubtedly an administrative one. Labour is free but performed for the benefit of society. Abuse is possible under the very broad notion of "other

activities” as this may include activities for the benefit of traders or natural persons, thus the phrasing should be revised to be more specific.

Labour related to the maintenance of the places of detention such as maintenance of hygiene, for example, is a typical administrative relationship. This is not forced labour, according to § 3 (a) of the Convention for the Protection of Human Rights and Fundamental Freedoms. Failure to perform these tasks or poor performance is therefore a disciplinary violation within the meaning of Article 100, para 2, item 2, first proposition.

A “worker” is every person who is hired by an employer, as well as every self-employed person, including trainees and interns for the duration of the training or internship within the meaning of §1, item 2a of the Health and Safety at Work Act. Writers, poets, artists and other persons deprived of their liberty fall within this group (Article 88 EPRCA). In this case they may perform their activity in the places of detention, but the major problem concerns the need to be provided with stuff falling outside the authorised items determined by the Minister of Justice. Owners of the capital of companies who have been convicted to imprisonment would also fall in this category. In this case the legal relationship would be of a civil law nature and hence the mediation of the prison administration would not be necessary for the purpose of carrying out the activity. In those cases, the prisoner would only be interested in finding a form of labour that would allow to have three days of labour be considered for two days imprisonment, as the rule set forth in Article 41(3) Criminal Code stipulates.

**The quality of prisoners performing labour in places of detention should be clearly set forth in the EPRCA to ensure their right under Article 48 of the Constitution of the Republic of Bulgaria – working under labour legal relationship or self-employed persons.**

#### **4.1.3. Employer in case of labour performed in places of detention**

The commission under Article 35 of the EPRCA Implementing Rules is the employer in the places of detention.

“Employer” within the meaning of §1, item 1 of the Labour Code is every natural person, legal person or its subsidiary, as well as any other organizationally and economically individualized entity (enterprise, establishment, organization, cooperative, farm, place of entertainment, household, company etc.), which individually hires workers or employees under labour law relationship, including for homework or telework, or transfers work to a user company.

In theory, a prisoner may at the same time be an employer. The Commerce Act does not require termination of the powers of an executive member, procurator or commercial agent. Such commercial activity may be performed also by a sole trader through an authorised person.

The head of the prison should also act as an employer as regards prisoners appointed at prison posts, on the basis of authorization by the DGEP director general.

In case of prisoners serving time in open-type prison hostels, who are appointed at external companies that perform work at the territory of the place of detention or outside it, the head of the prison acts as SEPP representative, in his capacity of manager of its regional unit (Article 15, para 1, item 7 EPRCA). In general SEPP manages work related to improving the conditions for the execution of punishments, pursuant to Article 37 EPRCA. Organising the work performed by prisoners is determined as “other activities” under Article 38, para 1, item 1 EPRCA and is further developed in Article 175 of the same law, specifying that legal and natural persons pay due remuneration for the work performed, in accordance with the existing wage systems, together with all due levies.

Article 4 of SEPP Rules of Procedure (in force as of 12 October 2010, adopted by Decree No. 225 of the Council of Ministers of 5 October 2010) stipulates that SEPP activities shall aim at enhancing prisoners’ employment and professional qualification. The enterprise

carries out its activities as regards prisoners' right to work in accordance with the EPRCA and labour law.

Apparently, according to Article 179 EPRCA Implementing Rules, these are work contracts. The respective provision was promulgated in SG issue no. 9 of 2 February 2010. Prior to that, there had been no regulation of the so-called "triangle" labour law relationships. By the adoption and promulgation of Articles 107p – Article. 107ч of the Labour Code in SG issue 9 of 2 February 2010, a detailed legal regulation was set in place. The labour contract with an enterprise that offers temporary work specifies that the worker or employee will be seconded to a temporary job placement in a user enterprise under its management and supervision. There is a limit as to the number of persons that may be seconded in this way, namely up to 30 pct. of the total number of workers and employees.

On the other hand, Article 7, para 2, item 2 of the Regulation No. 5/2006 of the Ministry of Labour and Social Policy (SG issue no. 43/2006) indicates that the enterprises that hire workers and employees seconded by companies offering temporary work shall in advance:

1. determine the type of work and the number of temporary job placements;
2. notify the company offering temporary work about the specific characteristics of the work place, occupational risks and required professional qualification.

The company offering temporary work shall:

1. provide information about the working conditions to interested workers and employees;
2. include in the labour contract the conditions set forth in paragraph 1.

**All of the above justifies a conclusion that the provision of Article 179 EPRCA Implementing Rules does not meet the requirements of Article 107p of the Labour Code. The Minister is authorized to issue Implementing Rules, however it is doubtful whether s/he has the competence to establish a new form of commercial contracts by the Implementing Rules, if it is not envisaged in the EPRCA, which is *lex specialis*.**

The major conclusion is that this enterprise is an employer. If we endorse this closest legal form of activity, then the SEPP is in essence "an enterprise which offers temporary work" and within the meaning of §1, item 17 of the Labour Code it is a legal person, which conducts business activity and concludes contracts with workers or employees for the purpose of seconding them to temporary job placements in use companies under their management and supervision following a registration at the Employment Agency.

**This requires amendments in the EPRCA to regulate SEPP contracts with other companies in a manner different from the one regulated in the Labour Code.**

**The NPM reiterates that Article 180, para 3 of the EPRCA Implementing Rules, which stipulates that negotiations for concluding such contracts shall be carried out in parallel to checks performed by the MoI field operatives at the places of detention runs contrary to Article 108(3) of the Constitution. It further reiterates that the activity of MoI field operatives in prisons under Instruction with incoming registration no. 11399 of 13 July 2010 does not have a legal basis due to the revocation of the Implementing Rules of the MoI Act, including its Article 79(2).** This activity is not justified if we endorse that a former prisoner, criminal or a rehabilitated person may also be an employer, since s/he has not been deprived of this right. Besides, it is easy to bypass this requirement by establishing a new company whose representatives have no convictions and have not been criminally registered.

In those cases where the state-owned enterprise hires work force in its own production, it is undoubtedly an employer.

SEPP concludes two types of work contracts. In case of hiring prisoners serving time in the open-type place of detention, SEPP own facilities are used; in case of prisoners serving time in closed-type places of detention – facilities of an external company are used.

The State Property Act and its Implementing Rules, which are binding for SEPP pursuant to Article 6 of its Rules of Procedure, require conducting a tender. An exception to this rule applies to healthcare, educational or humanitarian activities to meet respective social needs of the population or of not-for-profit entities in accordance with Article 14 of the Implementing Rules of the State Property Act.

The contract under Article 179 of EPRCA Implementing Rules is not a ground for prisoners using the state-owned enterprise property for work in external companies. The only way to do this is SEPP to organize the work activity in closed-type places of detention on the basis of commercial contracts with external companies (the so-called tolling agreements). Then SEPP will again be an employer. In this way voluntary work may be performed for the benefit of this enterprise for a period required for acquiring professional qualification or probating the respective worker. At the same time, this will allow for reasonable and achievable labour standards for the purpose of applying the two-for-three rule (two working days are counted for three days of imprisonment).

When external companies hire prisoners in open-type places of detention, it is possible for the prison administration or SEPP to do this directly. In both cases the respective external company will be the employer.

In this sense, employer in the open-type places of detention may be either the prison administration or SEPP, and in closed-type places of detention – the external commercial company or natural person.

Regardless who acts as the employer, the EPRCA must provide for special legal grounds for concluding and terminating these labour contracts with a view to promoting employment.

#### **4.2. Right to minimum pay and remuneration commensurate to the work performed (Article 48(5) of the Constitution of the Republic of Bulgaria)**

Article 48, para 5 of the Bulgarian Constitution guarantees the right of every worker or employee to receive minimum pay and remuneration commensurate to the actual work performed.

In addition, Article 78, paras 1 and 2 EPRCA stipulates that for every work performed outside the voluntary unpaid labour and duty shifts for the maintenance of the order and hygiene, the prisoners shall receive a particular share, but not less than 30 pct. of the remuneration due for the work performed. The share shall be determined by an order of the Minister of Justice. The remaining part of the remuneration due shall be go as revenue to state-owned enterprise pursuant to Article 38, para 1, item 3 EPRCA.

This statutory nationalisation of part of the remuneration is at first sight to the detriment only of the prisoners. However, the state budget is also at a disadvantage due to failure to collect the costs incurred in the criminal proceedings. The Crime Victim Assistance and Financial Compensation Fund is also at a disadvantage if financial compensation has been paid to the crime victims. So are the victims themselves since part of the perpetrator's remuneration subsidises the work of the state-owned enterprise, if the perpetrator avails of no property and the income from the labour activity is the sole revenue. The prisoner's family and in particular his or her children are also wronged if child allowance for minors is due.

This is why the NPM holds that Article 78, paras 1 and 2 and Article 38, para 1, item 3 EPRCA run contrary to Article 48, para 5 of the Constitution.

#### **4.3. Right to social security (Article 51 Constitution)**

Citizens are entitled to social security, and so are the persons deprived of their liberty, pursuant to Article 6 of the Constitution. They are not divested of this right pursuant to a conviction or a law, and it is not incompatible with the execution of the punishment. In this relation it should be noted that one of the principles of the state social security enshrined in Article 3 of the Social Security Code is its obligatory and universal character. Article 4, item 1 of the Code further specifies that workers and employees, regardless of the nature of their work, manner of payment and source of funding, shall be subject to mandatory social security, with the exception of exhaustively enumerated groups of persons. There is no express legal provision concerning the social security of prisoners in the event of sickness, maternity, disability, old age, death, accidents at work, occupational diseases and unemployment; however, there is no express provision that excludes them either.

Pursuant to Article 84, para 1, item 4 EPRCA, the health insurance runs from the moment of detention, where the health care contributions are charged to the state budget and are transferred through the Ministry of Justice. This normative decision is correct but not in the exceptional cases when prisoners perform paid work.

**The NPM finds it necessary to recommend to the Minister of Justice, Minister of Labour and Social Policy and Minister of Health to submit a proposal for legislative amendments with a view to expressly regulating prisoners' right to social security paid by the employer, as well as the cases where prisoners' health care contributions are not charged to the state budget if they perform paid work.**

#### **4. 4. Right to education (Article 53 of the Constitution)**

Everyone shall have the right to education. Article 153 EPRCA refers to education and vocational training as part of the social and correctional work carried out in places of detention. Article 159 *et seq.* further regulates the operation of schools in prisons, curricula etc.

Article 162, para 4 EPRCA stipulates that mandatory education for minors may be organised in any of the following forms: day schooling; night schooling; part-time schooling; individual curriculum; tailor-made curriculum. Apparently, all these forms are compatible with the execution of the punishment. However, this is not legislatively stated in relation to adult prisoners. This exception is regulated by Article 133, para 3 of the EPRCA Implementing Rules, which stipulates that "Persons deprived of their liberty shall take part in the educational and vocational activities organised in the respective place of detention where they serve their time, with the exception of those cases where the school does not offer the respective educational degree or professional qualification". Article 139(2) of the EPRCA Implementing Rules stipulates that the head of Social Activities and Correctional Work sector shall organise vocational training courses in prisons, prison hostels and correctional homes, in accordance with the material conditions and the possibilities for the acquisition of the respective vocations.

Adult prisoners may acquire education degrees only in prisons, with the exception of those serving time in open-type places of detention who may attend schools in the area where the hostels are located, pursuant to Article 72, para 3, item 3 EPRCA. At the same time, Article 51, item 5 of the EPRCA Implementing Rules stipulates that prisoners serving time under lighter regime may work outside the prisons unguarded. There is no requirement for these working sites to be in the area of the hostel. Therefore, they could acquire educational degrees in schools outside the penitentiary system 3.

**The NPM finds the extramural and individual forms of training compatible and recommends to the Minister of Justice and Minister of Education to provide for these forms of training through the respective legislative amendments.**

Secondly, Article 74, para 2, item 3 of the Higher Education Act stipulates that a student or a post-graduate student shall be removed from the higher school for a certain period of time

if convicted for an intentional publicly prosecuted offence. It is possible that students are sentenced to imprisonment for recklessly committed offences.

Pursuant to Article 42, para 10 of the Higher Education Act, training in higher schools shall be organised under any of the following forms: regular, extramural, evening and distance. Regardless of the form of guilt and the type of place of detention (open or closed type), the distance form of training is applicable. PhD studies within the meaning of Article 46, para 5 of the Higher Education Act, which may be carried out by means of individual preparation, is also applicable during serving time in prison.

Attempts have been made in this direction since 2015 by the Thracian University and the management of the Stara Zagora Prison. The NPM welcomes and supports such attempts. There is specific action to that end as well, where the provision of the Constitution is directly applied in places of detention.

**The NPM, acknowledging that Article 74, para 2, item 3 of the Higher Education Act runs contrary to Article 53 of the Constitution, proposes to the Minister of Education and Science to revise this provision.**

Rules of Procedure for the education and vocational training of prisoners, accused persons, defendants, and persons in places of detention have been adopted by Order No. JI-2619/2 of 29 June 2016 issued by DGEP director general relying on Articles 13(2), 159 and 257(2) EPRCA as legal basis. In essence the Rules are a general administrative act within the meaning of Article 65 of the Administrative Procedure Code. According to item 21, in case of three or more undue absences and/or disciplinary violations, the days of work performed during the respective week shall not be counted.

Article 178 of EPRCA Implementing Rules specifies how days of work count. The principle is that counting days of work may be ordered by the court, and Articles 443 and 444 of the Criminal Procedure Code provide for the procedure to this end. It is correct not to count days of absence as days of work; however, not counting the other days of the week is not correct.

Articles 34 and 35 of these Rules provide for rights and duties, and Article 36 - sanctions envisaged by the repealed Implementing Rules of the Public Education Act. Item 57 of these Rules expressly takes account of the repealed Public Education Act, however repealed sanctions have been kept. Furthermore, even though Article 53(2) of the Constitution stipulates that education shall be mandatory for persons up to 16 years of age, the Rules provide for “the exclusion from the education activity of persons below the age of 16” under certain circumstances.

Item 51 envisages the possibility that education in places of detention is refused by the prison administration “in accordance with the legislation currently in force in the Republic of Bulgaria”. Such a refusal is issued by a non-competent authority that has no powers to refuse access to education or issue a refusal that may not be challenged.

The NPM does not deny the need of clear rules and procedure concerning access to education in places of detention; however, these rules and procedure must be public and set forth in a legislative act. **In this connection the NPM recommends to the DGEP director general to present his proposals to the Minister of Justice, and the Minister of Education and Science if required, with a view to effecting legislative amendments regarding the access to education. In the meanwhile, he must take action to guarantee the right to education to persons below the age of 16.**

#### **4. 5. Freedom and confidentiality of correspondence (Article 34 Constitution)**

Freedom and confidentiality of correspondence and other communications shall be inviolable. Exceptions to this provision shall be allowed only with the permission of the judicial authorities for the purpose of detecting or preventing a grave crime.

Article 75(2) of EPRCA Implementing Rules specifies that “[T]he correspondence sent and received by prisoners shall be controlled for sake of security for the purpose of preventing crime and import of unauthorised stuff, objects and substances. The correspondence in writing shall not be subject to inspection.”

The declaratory “not subject to inspection” is contradicted by Article 75(4) of the Implementing Rules that specifies that “[I]n the event of data that justify a reasonable likelihood that the letter contents may deter the detection of a crime or lead to the commitment of a crime, the letter shall be stopped by an order of the prison head and the prosecutor exercising legality supervision in the respective place of detention shall be notified. “

Social workers in the penitentiary system rightly assume confidentiality of correspondence in general and do not supervise letters’ contents; however, in some cases (rather by exception) they perceive it as a tedious duty. Rules about documents, records and archives are in force in the DGEP and its territorial units since 2010. Article 12, item 1, lettera “b” of these Rules envisages a book of complaints, signals and proposals. This makes sense when letters are sent through the prison administration and prisoners themselves ask for registration numbers to make sure their letter reach the addressee. We find responses we have sent enclosed to the prisoners’ personal files. The DGEP practice in such cases is not to respond directly to the prisoners’ complaints but to give instructions that the prisoners are notified of the response, certified by a signature. Pursuant to Article 26(3) of the Rules in question, a copy of the response shall be enclosed to the prisoner’s personal file.

The NPM has recommended to the Minister of Justice to resolve this misunderstanding in Article 75(4) of the EPRCA Implementing Rules, going as far as seeking interpretation by the Minister of Justice. The NPM has received no reply. However, legislative amendments of Article 86(3) EPRCA were proposed and adopted (SG no. 13/2017, in force as of 7 February 2017). Prisoners’ correspondence shall not be subject to supervision as regards its written content, unless this is required for detecting or preventing grave crimes.

**Thus, there is some progress in legislative terms.** For example, Article 132(3) of the repealed Execution of Punishments Act stipulated that the correspondence of accused persons and defendants was subject to inspection by the prison administration. However, by decision no. 4 of 18 April 2006 in constitutional case no. 11/2005 (promulgated SG no. 36 of 2 May 2006), the Constitutional Court has held that in order to be in conformity with the Constitution, disclosing the secrecy of correspondence must fully meet the requirements for restricting that right as set forth in Article 34(2) of the basic law of the Republic of Bulgaria. Derogations to the secrecy of correspondence are admissible only by an act of a judicial authority.

The legal regulation as regards telephone conversations is not substantially better. Article 76(2) EPRCA regulates prisoners’ right to telephone communication with a lawyer. Pursuant to Article 86(2), the head of the prison may prohibit for a period up to six months visitations, correspondence or telephone communication with persons who influence negatively the prisoners, save for relatives by direct ascending or descending line, spouses, siblings, attorneys or non-marital partners. Article 256(3) EPRCA further stipulates that visitations, telephone communication and correspondence of accused persons and defendants with particular persons may be prohibited by a written order of the respective prosecutor or the court when this is required for detecting or preventing grave criminal offences. These restrictions of visitations, telephone communication and correspondence do not apply to attorneys, relatives by direct ascending or descending line, spouses, and siblings.

A specific procedure for telephone conversations has been introduced by two orders of the DGEP director general. The first is Order No. JI-4102 of 6 October 2016 with legal basis

Article 256 EPRCA Implementing Rules (cf. paragraph 2). The act concerns the internal order in the investigation detention facilities. Section 59 of that order delegates the director general's powers to the head of the Investigation Detention Facilities Sector. For example, by regulation No. 2081 of 6 February 2018 the head of Investigation Detention Facilities Sector in Sofia has established such a procedure.

Pursuant to Article 13(3) EPRCA, DGEP director general may delegate by an order some of his powers to his deputies, or to the heads of the detention facilities, or to the Regional Execution of Punishments Units. The act of the head of the Investigation Detention Facilities Sector issued following section 59 of the director general order, is null and void as it has no legal basis. Hence an authorisation procedure for persons with whom detainees may communicate. Uncharacteristic functions have been entrusted to a junior security instructor to approve such lists and a register has been introduced for the telephone conversations held.

Section 59.6 of the order of the director general specifies that "the nature and content of telephone conversations may not put at risk or violate security and order in the investigation detention facility". Another rule requires to interrupt the telephone conversation if the specific procedure has not been complied with.

This diversity includes an old order no. JI 2049 of 25 May 2004 for telephone communication in the outdoor area in the investigation detention facility at M. Vekilski Str., which has been apparently repealed. For example, the last order of the Director General repeals previous order no. JI 6399/2010 about the internal order in the investigation detention facilities. This is a logical result of the administrative chaos as regards order in the investigation detention facilities which is regulated by numerous acts issued by different authorities, which in turn leads to infringement of the detainees' rights. For example, for no particular reason, telephone conversations must be held in the outdoor area in the investigation detention facility at M. Vekilski Str., unless the head of the facility orders otherwise, despite the fact that there are telephones in the corridors inside. Limiting the number of persons to 10 does not relate in any way to the freedom of correspondence. Interrupting telephone conversations due to violating the order for telephone communication has no legal basis either.

There are similar provisions in order no. JI-4051/2 of 3 October 2016 as regards prisoners' telephone communication. For example, item 5 of this order specifies that the nature and content of prisoners' telephone conversations shall not be subject to control by the prison administration but may not put at risk or violate security and order in the prison, correctional facility or prison hostel. Use of obscene and harmful language is prohibited, as well making any threats. In case of violation, the telephone conversation is interrupted and a report is drawn up.

**The order is impractical in the way it is at present, and according to data of the prison guards, they interrupt telephone conversations only in case the prisoner is shouting very loudly. In most of the cases telephone conversations are interrupted due to missing prison guards and attempts to get access to telephones within the authorised timeslot.**

In practice prisoners enjoy full freedom and secrecy of telephone communication, in our opinion. However, this is not the case as regards accused persons and defendants.

**This is why the NPM recommends to regulate the order and procedure for telephone communication in legal act, and not in general administrative acts.**

#### **4. 6. Right to privacy (Article 32 of the Constitution of the Republic of Bulgaria)**

The privacy of citizens shall be inviolable. Everyone shall be entitled to protection against any unlawful interference in his private or family affairs and against encroachments on his honour, dignity and reputation.



Stalking, photography making, filming, recording or any similar actions are prohibited without the person's express consent or despite their express consent unless provided for by law.

The content of the legal notion "private life" is difficult to determine. In her publication from 2006 Iskra Alexandrova, attorney-at-law at the Bulgarian Lawyers for Human Rights, points out that the case-law has established the term of art "right to respect for private life" as a collective notion comprising the rights enshrined in Article 8 ECHR. However, the notion comprises other rights as well in addition to those under Article 8 ECHR.

In its Resolution 428/1970 the Parliamentary Assembly of the Council of Europe determines the right to privacy as consisting essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection against misuse of private communications, protection from disclosure of information given or received by the individual confidentially.

#### **4. 6. 1. Access to the collected information in the prisoner's personal file**

Pursuant to Article 54 EPRCA, a personal file shall be opened for every new prisoner. The DGEF director general may designate only officials to have access to the file. The Ombudsman's officials also have access to these files, but not the prisoners or their lawyers. In addition, it must be considered whether the initial and subsequent risk assessments should be the only criterion, or additional criteria should be introduced in case of change of the regime of imprisonment, transfer to prison hostels and early conditional release. The NPM shares the social workers' assessment that the methodology is outdated and recommends exchange of experience with the probation service in England, including as regards the administrative procedure for early parole. The group should involve officers from the prisons in Sliven, Stara Zagora and Pleven. Secondly, social work and correctional activity inspectors and probation officers must improve their qualification through specialised trainings.

Pursuant to Article 6 EPRCA, prisoners have the right to seek information concerning:

1. Issues related to the execution of the sentence;
2. The part of the punishment that has been served;
3. Possibilities to mitigate the conditions of imprisonment and for early conditional release.

The case law concerning annulment of implied decisions for rejection under Article 76 EPRCA is consistent, as is the one regarding refusals to provide access to personal files. Nevertheless, this provision is not effective as upon a request to present the file in court, the prisoner and his or her attorney have full access to all materials in the prisoner's file.

In those cases social workers submit opinions that are an element of the procedure for issuing an individual administrative act. For their better part these opinions contain negative findings that become known to the prisoners and often lead to undue tensions and difficulties in the social work.

**All interviewed social workers unanimously state that these documents should be defined as service information that may not be revealed under statutory prohibition.** The NPM takes account that the required information from these personal files is contained in the issued individual acts, hence the prisoners' rights are not violated. The NPM joins the social workers' position and recommends to have this prohibition stipulated expressly in the law.

At the same time rejections for access to the personal files, even when upheld by the national courts, deserve criticism. The European Court of Human Rights has had the occasion

to conclude in its case-law that storing and providing information concerning an individual is an interference in that person's private life, and that refusing that person access to the information collected about him or her is a violation of that person's right to privacy (*case of Leander v. Sweden*).

Suffice is to say that Article 54(2) EPRCA is not effective. **Prisoners' and their lawyers' access to the prisoners' personal file have to be regulated by amendments and supplements to Tariff No. 1 to the Stamp Duties Act.**

#### **4. 6. 2. Another aspect of the right to privacy is the right to enter in a relationship.**

In its judgment in the case of *Niemietz v. Germany* (application no. 13710/88, judgment of 16 December 1992), the European Court of Human Rights considers that "[R]espect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings":

"The Court does not consider it possible or necessary to attempt an exhaustive definition of the notion of "private life". However, it would be too restrictive to limit the notion to an "inner circle" in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings".

In its judgment in this case the Court substantially expands the notion of "private life" endorsing that in some cases commercial sites may be subject to the protection under Article 8 ECHR:

"There appears, furthermore, to be no reason of principle why this understanding of the notion of "private life" should be taken to exclude activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world. This view is supported by the fact that ... it is not always possible to distinguish clearly which of an individual's activities form part of his professional or business life and which do not".

A number of issues regarding imprisonment are relevant here such as visitations, their duration and manner of conducting them, and appearances (attire, hair, beard etc.), which we shall review in two sections.

#### **4. 6. 3. Visitations (right to family life)**

The European Prison Rules specify that the arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible. In addition, prisoners shall be allowed to communicate with as often as they wish through letters, telephone conversations and other forms of communication, as well as meet their families, other persons and representatives of outside organisations.

**The numerous recommendations made by the CPT to terminate the practice of barred visits as a rule and extend the duration of the visits have not been followed. The**

**Bulgarian authorities responded by expressly regulating barred visits (cf. Article 73, paras 12 and 17 EPRCA Implementing Rules).**

The NPM has pointed out in its reports that the newly built visitation areas are publicly unjustified cost. In addition, the law establishes gender discrimination between men and women serving time in closed-type facilities (cf. Article 73(13) EPRCA Implementing Rules). Thus, a woman serving time under a special regime may have non-barred visits, but a man serving time under a general regime may not.

Places of detention with equipped rooms for meetings of prisoners with lawyers, and in particular the investigation detention facilities, are an exception.

The duration of monthly visits is set up to 40 minutes, without however specifying the number of visits – Article 98(4) EPRCA and respectively Article 73 EPRCA Implementing Rules. **The established practice is to have two visits per month.** If an extra visit is required, the prison administration in general allows it, though there a few complaints regarding refusals.

Since the prison head has the power to determine the duration and number of visits, both DGEP political and administrative management reports progress in this regard, within the existing possibilities, which are limited not by the capacity of the visitation areas but by the insufficient number of guards. **Limitations are often introduced for particular days in the investigation detention facilities precisely due to lack of enough guards.** Food brought during visits also creates certain problems because of the required human resources to conduct checks. **This problem may be resolved by justifying increase of the number of guards, providing the necessary equipment or alternatively strongly reducing the list of authorised stuff and eliminating the monopoly prices in the prison shops.**

The manner of conducting the extended visitation (Article 98, para 1, item 5 EPRCA) does not differ from the monthly visitation save for the lack of bars; nevertheless, this is a reward for the prisoners with good conduct.

The Ministry of Justice and DGEP in particular, on the one hand, and the Ombudsman, on the other hand, have established a dialogue since 2013 that has gone through the following major milestones.

In 2006 Article 99 of the repealed Implementing Rules of the Execution of Punishments Act was amended to provide for the opportunity that the reward under Article 74, lettera “c” of the repealed Execution of Punishments Act be of a duration from three to 24 hours. The visit was initially of a duration up to 24 hours, the idea being that it was held in an environment as close as possible to the family one. This reward was the single possibility for a prisoner to enjoy physical contact with his family members, i.e. the single form of private life as regards prisoners serving time under the two gravest prison regimes. The minimum requirements were set forth by Order No. JI-5593 of 10 October 2006 of DGEP director general. Subsequently, following spoken instructions and public statements of the deputy Minister of Justice, the equipment in the visitation areas in places of detention was brought down to just one table and a few chairs. A subsequent inspection by the Inspectorate with the Ministry of Justice found out that there was no established procedure for equipping these areas, although such existed, which is why the Inspectorate recommended to regulate the procedure. In follow up to this recommendation, and in relation to the established differences in the equipment in the extended visitation areas, DGEP director general issued Order No. JI-721 of 29 February 2016, introducing a new notion, namely “specifically designated areas”, and where possible – video surveillance system and the presence of prison guards in those areas. By Order No. JI-2577 of 28 June 2016 the director general amended the former order making the video surveillance mandatory.

The NPM is consistent in its findings and recommendations made in its public reports, that the right to private life under Article 32 of the Constitution of the Republic of Bulgaria is being violated. It has recommended to the director general and Minister of Justice to repeal Order No. JI-2577 of 28 August 2016 and item 2 of Order No. JI-721 of 29 February 2016.

These recommendations have not been followed up. However, Article 73, para 18 of the EPRCA Implementing Rules was amended, thus expressly regulating that extended visitation areas must be equipped with video surveillance equipment and visits be conducted under supervision by the prison guards. This demonstrates the Ministry of Justice disagreement with the recommendations made by the NPM.

**A series of legal proceedings followed. The case law demonstrates that the court complies with the national legal regulation.**

This justifies the NPM conclusion that there are no effective administrative and judicial measures to guarantee the right to private life. We have been informed that a group of prisoners and their relatives intend to seize the ECtHR with the matter.

#### **4. 6. 4. Appearance as right to personal choice or administrative requirement**

The problems caused by the definition of prisoners' decent hair or beard have grown less (*Todor Yankov v. Bulgaria* as regards forced shaving of the head). Complaints regarding this problem, including shaving as a punishment, are now rare.

A new problem has arisen, however. In 2016 we established an act of the Stara Zagora Prison Governor requiring decent appearance in the outdoor area, namely long trousers. Order No. 178 of 2 November 2016 of the Pazardzhik Prison Governor about improving the access control procedure set forth criteria for non-admittance of outside persons such as persons without clothes, or with very short skirts, or shorts, or flip flops etc. A very short skirt, according to the explanations we received, was a skirt the length of a span above the knee. There are no similar requirements for prison staff appearance, or DGEP or the Ministry of Justice; if there are, they are not complied with. The situation in the Burgas Prison is similar. A prisoner was punished by Order No. 1132 of 18 September 2018 for "tidy trousers and showing up in shorts" on his way to the prison shop, which was located in the outdoor area; by Order No. 1131 of 18 September 2018 for "being in long trousers that have not been washed"; by Order No. 392 of 7 September 2018 of the governor of the Debelts Prison Hostel for "walking out in shorts and waist-length naked. The prisoner came back [in the outdoor area] in long trousers, but with his T-shirt on his shoulders"; by Order No. 387 of 31 August 2018 of the Governor of the same detention facility for "appearing waist-line naked and in boxers".

The opinion of the administration of the places of detention is that prisoners are in fact in a public institution and ethical norms regarding decent attire do apply to them.

The NPM does not refute this requirement; however, this concerns a **universally applicable rule and proportionate requirements laid therein**. Such proportionality is demonstrated in the Director General Order as regards taking prisoners to court sessions, and it is deemed to be undoubtedly right. **We deny the right to every prison governor to impose his own aesthetic vision as regards decency of attire in secretive general administrative acts that are not even public or known to their addressees.** Let alone that a guard could not possibly have the power to issue a legitimate order concerning rendering oneself decent.

## 5. Health services in places of detention

The inspections held in 2018 shows that the penitentiary healthcare system remains ill reformed and the healthcare provided to prisoners does not improve.

The Strategy for Penitentiary Healthcare Reform and the 2018-2020 Action Plan that have been elaborated within the framework of the project “Support for the implementation of the European Court of Human Rights Judgements and European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment Standards and Recommendations in Bulgaria (Prison Reform)” have not yielded any results in the audited year.

**The NPM is of the opinion that a structured reform of the penitentiary healthcare system is required, with a focus to securing external healthcare service.** Some prisons and investigation detention facilities manage to secure outside professionals for ad hoc consultations such as the Sofia Prison and IDFs, and the prisons in Pazardzhik and Bobov Dol. In some prisons the primary healthcare is provided by a GP working under a contract with the National Health Insurance Fund (NHIF).

Pursuant to Article 128(2) EPRCA, all prisoners are health insured as of the moment of their detention when they acquire full health insurance rights. The contributions are made on behalf of the state budget and are transferred through the Ministry of Justice. Prisoners are entitled to the healthcare services covered by the NHIF under the terms and procedure set forth in the National Tax Register. At the same time the Ministry of Justice does provide healthcare service to prisoners in medical centres and specialized hospitals with the prisons and investigation detention facilities under the term and procedure set forth in Article 5 of the Healthcare Establishments Act. This leads to overlap of medical activities and double funding for healthcare service for prisoners.

The DGEP reports annually shortage of specialists in the penitentiary medical centres and specialized hospitals, which is a poor healthcare quality indicator. This is due mostly to the shortage of specialists in the healthcare system in general, and to MoJ reluctance to improve the working conditions in the penitentiary healthcare system. Currently there is an available part-time psychiatrist working in the medical centre with the Sofia Prison, provided such is envisaged to be operating in every prison medical centre.

The NPM is of the opinion that the penitentiary healthcare reform is interlinked to improving the material conditions in prisons and enhancing prisoners’ social involvement.

**The NPM finds the legal regulation currently in force as regards healthcare service in places of detention to be outdated and not regulating the possibilities for providing healthcare service to prisoners.**

### Burgas Prison

A medical auxiliary and a nurse are working in the medical centre with the Burgas Prison. A GP is also available, under a contract with the NHIF, every Tuesday and Thursday from 8 a.m. to 10 a.m., which the NPM finds not to be sufficient.

The register of traumatic injuries kept with the medical centre shows that most of the prisoners’ examinations have been attended by prison guards. Physical force was exerted by prison guards during three of the examinations held in 2018. Prisoner S. R. K. was assigned X-ray examination by the prison medical specialists; however, he was not taken out for

examinations. Another prisoner's request for (paid) forensic examination was denied. Yet another prisoner was transferred to the Stara Zagora Prison. These cases have been reported.

A register is kept at the medical centre of the issued referrals for consultations/treatment to external specialists, for diagnostics and treatment. Our inspection showed that some of the referrals issued had not been entered (no taking out prisoners for healthcare service has been registered). The NPM recommends that prisoners who have been referred to specialists are take out in due course, which must be noted own in the documents by the prison guards.

It has been established, by prisoners' ambulatory files and talks with the medical auxiliary, that no HIV/AIDS examination is offered upon admittance to the detention facility. Fifteen prisoners were screened in 2018 by the Burgas Regional Health Inspectorate. The NPM recommends that every inmate be proposed an AIDS/HIV examination upon admittance.

The NPM has received complaints from prisoners about maltreatment by the medical auxiliaries. Prisoner B. M. informed us that he had been suspended as a laundry man for medical reasons, upon an assessment of the medical auxiliary, provided that he used to do the same work in the Plovdiv Prison. The prison doctor was not aware thereof. The NPM is of the opinion that provided that a prison medical doctor and a GP operate at the detention place, they should conduct prisoners' health assessment. Prisoner G. S. informed us that he was prevented from undergoing a medical intervention due to the wrong document issued by the medical auxiliary. The inspection showed that the prosecutor's office instructed the prison administration to study the case. Another prisoner showed us the painkillers he was administered, provided that he was suffering hepatitis C-type and was expecting hepatoprotective treatment. Prisoner T., a former healthcare assistant, having filed a series of complaints and signals about abuse and violations on the part of a medical specialist at a medical centre, provided documents in support of his statements. Subsequently, the NPM established that the prisoners who complained the most about T. and B. M. were transferred from the Burgas Prison to the Debelt Prison Hostel. The NPM determines these actions of the administration as administrative repression in disguise and insists that this practice be terminated. The prisoner B. M. attempted suicide in the Debelt Prison Hostel in protest against this.

In the course of the inspection of the hospital unit of the medical centre we found a prisoner with oncological pathology, amputated legs, in a wheelchair, although there were no conditions in place for people with disabilities. Another prisoner was left without rehabilitation after having survived a stroke. Prisoners have been placed in the hospital unit of the medical centre upon an order of the prison guards, which runs contrary to the statutory requirements.

The NPM made a recommendation to the prison governor to place prisoners in the hospital unit of the medical centre only for medical reasons and upon a prescription of the prison medical doctor.

The hygiene and material conditions in the hospital unit are not satisfactory and even degrading. The rooms have four beds, the mattresses (where available) are dirty and without bed linen. There are cockroaches. Prisoners have to use buckets as a substitute for toilette during the night.

A dental practitioner works in the medical centre under a civil contract. There were no complaints about the dental assistance during the interviews we held.

**The NPM recommended that the medical service with DGEP renders methodological support and enhances the supervision over the work of the Burgas Prison medical centre.**

### **Debelt Prison Hostel**

Medical service in the Debelt Prison Hostel is rendered by a medical auxiliary. He may refer prisoners to the Burgas Prison GP once a week. At the time of the inspection there were no prisoners waiting to see a GP. There was a waiting list of prisoners to see a dental practitioner in Burgas.

Examination of the prisoner A. H. Ch. Was entered in the register of traumatic injuries, and respectively use of force by the prison guards. The prisoner filed an application to be brought to a forensic medical doctor.

In the course of the interviews made it became clear that one prisoner was referred to the medical auxiliary with instructions to see a GP and have an X-ray examination; other prisoners received clarifications about their diagnoses. There were no complaints about the medical service of the medical auxiliary.

### **Zhitarovo Prison Hostel**

Prisoners are visited once a week by a medical auxiliary at the Burgas Prison Medical Centre where prisoners may see a GP once a week.

In the course of the interviews with prisoners the NPM received complaints about the suspended hospitalization of a prisoner with a mental disorder, about different prices of medications delivered from outside pharmacies, difficult access to the GP.

### **Pazardzhik Prison and Investigation Detention Facility**

The investigation detention facility is located in the prison and receives medical service from the prison medical centre.

The material conditions in the medical centre are obsolete, the ceiling in the surgery room is falling down and may cause incidents during examinations. The NPM recommended to the prison governor to carry out repairs of the medical centre. As regards human resources, the medical centre has specialists. There are no difficulties in referring prisoners for treatment to outside healthcare establishments. The director of the medical centre has managed to arrange for external specialists (endocrinologist, psychiatrist, and cardiologist) to visit the prison once a month and to consult prisoners on the spot. Prisoners' major demands shared during the interviews we held concern suspension of the execution of punishment under the term and procedure set forth in Article 447 Criminal Code. A prisoner complained that he could not see a dermatologist to consult skin rashes on his face and body, which was confirmed in the course of the inspection.

Representatives of the Regional Health Inspectorate have not visited the Pazardzhik Prison and IDF in the course of the year to make screening examinations for HIV/AIDS. The medical centre is not equipped to ensure implementation of Article 140(2) EPRCA, which provides for voluntary, anonymous or confidential counselling and examination for HIV/AIDS.

Consulting the register of traumatic injuries, the NPM established as follows: nine prisoners (D. Y. T., Y. K. D., I. I. Y., V. A. V., P. S. A., R. M. L., T. A. T., V. K. A., and S. H. S.) were examined for injuries after use of force by MoI officers during detention. The cases were reported to the prosecutor's office.

### **Plovdiv Prison and Investigation Detention Facility**

The IDF is secured with medical specialists, a doctor and a medical auxiliary. They raised the issue once again about not being allowed to study the forensic expert opinions of the prisoners made following instructions of the prosecutor's office, thus not being able to make corrections in the prisoners' treatment.

The NPM established that the regular insect removal and rat extermination had not been carried out in the last month by DDD-1 Ltd. Company, according to the schedule established by DGEP. The head of the IDF undertook to inform DGEP about that.

Four prisoners were registered in the Register of Traumatic Injuries for use of force by MoI officers during their detention (T. R., I. K., D. S., and R. S.), and one prisoner for use of force by a prison guard.

The prison medical centre has good material conditions and equipment, and is well staffed with specialists.

Representatives of the Regional Health Inspectorate have not visited the Plovdiv Prison and IDF to make screening examinations for HIV/AIDS. The medical centre is not equipped to ensure implementation of Article 140(2) EPRCA, which provides for voluntary, anonymous or confidential counselling and examination for HIV/AIDS.

In this relation the NPM made a recommendation to DGEP to organize and supervise the implementation of Article 140 EPRCA.

### **Investigation Detention Facilities in Sofia**

Detainees receive medical service in the medical centre, which is equipped with a physician's and dental practitioner's offices at the IDF at G. M. Dimitrov and a physician's office at the specialized IDF at M. Vekilski Str. Physicians' offices are adequately equipped. The dental equipment is old and poorly working, which hampers the work. The dental practitioner has made reports to the DGEP two successive years that a new equipment must be purchased, which the NPM supports.

The medical centre is well staffed: two physicians, one of which serves as the director of the medical centre, a medical auxiliary, a nurse and a dental practitioner. The recommendation that NPM made to appoint a physician as a director of the medical centre has been implemented.

There is a practice going on for years in the IDFs to postpone re-examinations of detainees by the territorial medical expert commissions while they are in the IDFs. This practice violates the detainees' health rights and deprives them from social pension while in detention. This is precisely the case of E. P. G. who is detained in the IDF at G. M. Dimitrov. The NPM made a recommendation to bring in due course detainees in IDFs who must undergo examination for establishing disabilities to the territorial medical expert commission.

The medical specialists in the IDF reported very difficult collaboration with the prosecutor's office when detainees needed to be taken out for treatment. A suicidal person with a mental disorder has been detained for months in the IDF at G. M. Dimitrov. He has been consulted by a psychiatrist and referred to hospital treatment; however, the prosecutor's office has not replied in any way.

IDFs follow Dr. Kanchelov's methadone programme. Currently there are six detainees who undergo the therapy. The programme should be monitored by the Ministry of Health.



The inspection of the medical documentation in the Register of Traumatic Injuries at the IDF at G. M. Dimitrov established four detainees (A. G. K., B. Y. Y., Y. A. Y., and E. P. G.) who sustained injuries due to use of force by MoI officers. The prosecutor's office has been notified. No entries have been made since the beginning of the year in the Register of Traumatic Injuries in the IDF at M. Vekilski Str. The NPM recommended to examine detainees and enter in the Register those with injuries and complaints about use of force.

### **The Sofia Prison**

There is no change in the organisation of the medical centre.

**The recommendations made by the NPM to improve the material conditions and technical equipment as well as the working conditions for the medical specialists remains outstanding for yet another year.** The director of the medical centre has managed to arrange for external specialists (neurologist, psychiatrist, and cardiologist) to visit the prison once a month and to consult prisoners on the spot. The medical specialists report about great difficulties in admitting/counselling prisoners in outside healthcare establishments – prisoners are not wanted because of the security guard during the treatment. The NPM established the same problem in relation to the healthcare establishments in Sofia. That is why the NPM is of the opinion that the Ministry of Health should designate several healthcare establishments where prisoners will be admitted for inpatient treatment.

Article 140(2) EPRCA remains inapplicable in relation to the medical centres. The Ministry of Health has not carried out HIV/AIDS tests in the prisons for two years now. In many cases retroviral infections are diagnosed when prisoners are tested during treatment in outside healthcare establishments. A prisoner reports that upon his admittance in prison he informed the medical doctor that he had HIV and leukaemia (he did not present any medical documents) and requested several times to be tested and treated as well as have his prison regime changed. He was diagnosed with retroviral infection and a treatment was assigned only after the NPM made a recommendation to that end.

A recommendation has been made to DGEP to ensure, seeking cooperation from the Ministry of Health, regular tests for HIV/AIDS in the prisons.

In conclusion, the penitentiary healthcare reform requires legislative amendments, taking into account the state of play and resources of the general healthcare system.

## PROTECTION OF ASYLUM-SEEKERS

- The capacity of the Specialised Centres for Temporary Accommodation of Foreigners shall be set providing for four sq. m. area per person.

- The procedure for providing medical assistance in the closed-type facilities of the State Agency for Refugees should be regulated.

- The action required under the Child Protection Act should be taken in all cases of unaccompanied minors accommodated in the Specialised Centres for Temporary Accommodation of Foreigners with the Migration Directorate of the Ministry of Interior and in the centres with the State Agency for Refugees with the Council of Ministers.

- The Medical Institute of the Ministry of Interior should supervise on a regular basis the work of the medical centres in the Specialised Centres for Temporary Accommodation of Foreigners.

### **1. Places for temporary accommodation of foreigners with the Ministry of Interior**

During the visits to the two Specialised Centres for Temporary Accommodation of Foreigners (SCTAF) Busmantsi, Sofia and Lyubimets respectively, the NPM experts established that the centres were not full. At the time of the inspection 186 of all 400 places were occupied in Sofia and 151 of a total of 300 places in Lyubimets.

The foreigners accommodated in the two centres shared during the interviews their dissatisfaction with the quality and quantity of the food served there. In both centres shops have been opened where the people accommodated there may buy extra food.

The places designated for watching TV are in a poor material condition (dewatered plaster, broken chairs) and need to be repaired. There are football, basketball and volleyball playgrounds in the yards of the centres, however they are used following a schedule. The NPM is of the opinion that despite the efforts of the management to ensure opportunities for sports and recreational activities, the accommodated persons should be allowed more time to use the available facilities as they are bored most of the time during the day. In this connection it should be noted that an outdoor playground for children will be built in the centre in Lyubimets.

There is no specially designated place in either of the centres for families with children. They are separated in designated corridors, but they are still placed in dormitories according to their nationality and religion. A play room and a study room for children have been made, however they are used only by representatives of Caritas Bulgaria. Psychologists from the MoI Institute on Psychology who are commissioned in the centres visit regularly to draw up individual case maps and follow the condition of adults and children.

Officers of the centres undergo language training in English and Arabic, with a view to improving the communication with the foreigners, which is positively assessed.

The accommodated vulnerable foreigners (omen, children, and families) are brought out of the SCTAF as soon as possible. Pursuant to Article 44(9) of the Foreigners in the Republic of Bulgaria Act, by exception, accompanied minors are compulsory accommodated following an order in a specialised centre for a period up to three months. Rooms are designated in the SCTAFs for the accommodation of minor foreigners taking into account their age and specific needs. The compulsory accommodation is not applied in relation to unaccompanied minors. The authority that has issued the order thereby imposing a compulsory administrative

measure transfers the minor to an officer of the respective Social Assistance Directorate for taking a protection measure in accordance with the Child Protection Act.

In practice, when a group of illegally staying third-country nationals is caught in the country, MoI officers enter on the spot in the reports the family relations between the persons and children in the group. This initial registration is made solely according to the data provided by the foreigners and in some cases it gives rise to reasonable doubt whether there is any family relation between children and adults. Once the families are admitted to the SCTAF and interviewed, the relations between them may be determined more precisely.

In case after the interview it is established that there is no family relation between a child and an adult who has been entered as the accompanying person, the children's data are submitted to the regional Social Assistance Directorate for taking action under the Child Protection Act. According to data provided by officers of the two SCTAFs, the practice of the social workers is very diverse.

SCTAF Lyubimets has submitted 80 cases to the regional Social Assistance Directorate from the start of 2018 until the time of the inspection. They have been identified as unaccompanied minors in the course of the interviews. A social worker comes to the centre within 24 hours from receiving the signal to study the case and take protection measures.

SCTAF Busmantsi has submitted 21 cases of unaccompanied minors as identified during the interviews to the regional Social Assistance Directorate from the start of 2018 until the time of the inspection. A social worker from the regional Social Assistance Directorate arrived in due course only in relation to one of the reported minors and placed the child in an appropriate social service. In the rest of the cases, according to the head of the SCTAF, the social workers react after more than a week, when the child has already been brought out and placed in a centre of the State Agency for Refugees (SAR).

In the SCTAF in Busmantsi the medical service is provided by a medical doctor who is also the head of the medical centre, and by three medical auxiliaries, provided that there are six positions for medical specialists. The understaffing hampers the 24-hour medical service, especially during holidays.

In the course of an interview with the head of the centre in relation to the medical service, he shared that the medical doctor had a negative attitude towards the foreigners, sometimes underestimated their complaints, postponed treatment and took action only when the patient's condition deteriorated. For these reasons alternatives for counselling were sought with the help of the psychologist. The head of the centre had reported the problem to the deputy-director of MoI Medical Institute who is in charge of the medical services in the SCTAFs.

**The NPM finds absurd the situation with the medical assistance provided to foreigners and calls for its immediate resolution.**

The inspection established once again insufficient number of interpreters, which is a major obstacle for conducting a thorough and accurate medical examination. The medical doctor had drawn up a list with the basic questions in all languages used in the centre. He shared that for him the lack of medical specialists was a problem.

The medical service in SCTAF Lyubimets is rendered by six medical specialists (all positions are occupied): a doctor, four medical auxiliaries and a nurse. Medical assistance is provided 24/7. No ECG equipment has been ensured yet. The NPM recommendation to ensure consultations with a paediatrician once a week remains outstanding.

In case foreigners need specialised medical assistance, they are transferred within two days to the multi-profile active treatment hospitals in Haskovo, Svilengrad or Harmanli with which the MoI has concluded agreements. A total of 70 consultations with external specialists were conducted in 2018, six of which of pregnant women and three hospitalisations. Dental medical assistance to foreigners is provided in Lyubimets. Diet food is provided only to people

suffering from diabetes. There are no problems as regards medication for children as was previously established.

## **2. Closed-type facilities with the State Agency for Refugees – Busmantsi, Sofia; Pastrogor; and Harmanli**

There were only five people (capacity 75) accommodated in the centre in Busmantsi neighbourhood, Sofia during the inspection. They were all accommodated in one dormitory, the area of which is not enough, in the opinion of the inspecting team.

By Order No. ПД05-688 of 10 September 2018 SAR chairperson approved Rules for the accommodation and internal order in the closed-type facilities of the State Agency for Refugees with the Council of Minister.

### **The NPM wants to make the following suggestions as regards these Rules:**

1. The Rules should provide for a minimum area per person (not including the space for a sanitary unit), which in the view of the NPM should not be less than four sq. m. This should be the basis for determining the capacity of the centres. In addition, minimal and maximum temperatures should be ensured, as well as certain levels of daylight and artificial light so as to rule out any inhuman or degrading treatment or torture.

2. By the time sanitary units are built in the sleeping areas, the locking of the doors envisaged under Article 15(3) should be reconsidered, and use of sanitary units must be ensured with the help of police guards and locking of corridors.

3. The fact that the centre is a closed-type one requires to ensure the right to outdoor walks for at least an hour daily as the daily regime is set up by the director of the territorial unit according to Article 14 of the Rules.

4. The procedure for visitation must be regulated in Article 17 – barred or not barred, in accordance with the individual risk assessment, with or without video surveillance. The provision of Article 17(2) as regards prior request should be repealed. This is a right that must be exercised without a prior request. In this sense the requirement under Article 21(8) that a police officer attends all visitations would appear inappropriate.

5. The prior request to hold a meeting with a lawyer in Article 18 must be repealed as well, and meetings should not be restricted to working days or specific timeslots only but any time, else the right to defence would be violated. The provision of Article 34 of the Bar Act should be transposed, too.

6. The independent supervision under Article 19 may not be limited to working hours only or made conditional on the detained person's consent. Such limitations are feasible for visits and meetings with media representatives. **In addition, the right of the Ombudsman acting as an NPM as stipulated in Article 28a of the Ombudsman Act must be expressly added due to the fact that the security guard at the entrance and the head of the Registration and Admission Centre require a prior notification and agreement for admittance, apparently due to poor knowledge of the powers of the NPM.** In this connection it is desirable to specify the authorised objects under Article 30(3) of the Rules of Procedure of the Ombudsman, namely a camera, sound and video recording devices, noise meters, other instruments for measuring temperature, humidity etc. as required for the purpose of the inspection.

7. Article 31 exhaustively lists the disciplinary violations but not the disciplinary sanctions. According to Article 33, paras 3 and 4, disciplinary rooms for individual accommodation are envisaged, but the duration of the period for which persons will be accommodated, the sanctioning authority and the possibility to appeal the sanction have not been specified. It should further be specified how these individual rooms will be equipped. The

Law on Asylum and Refugees (LAR) provides for administrative liability in case material damage has been inflicted. However, other sanctions may be introduced in the Rules such as not being allowed to receive parcels and/or bring in authorised objects for a certain number of visits. In this connection a list of authorised objects must be published in a public legal act, and administrative liability must be provided for in the LAR for bringing in unauthorised objects by visitors.

8. Use of force and instruments of restraint must be expressly regulated. The instruments of restraint must be exhaustively enumerated as well as the cases when they may be lawfully used. Every incident where instruments of restraint have been used must be entered in a register. Medical examination must be guaranteed to establish any inflicted injuries.

9. Article 35 must be supplemented by a new item “remand in custody measure or enforcement of a final sentence of imprisonment” in relation to Article 31(3) of the Rules.

Alternatives to this type of detention may have to be considered in the future, including termination of the application for a residence status.

As regards the Transit Centre in Pastrogor, a decision of the Council of Ministers has been taken as evidenced in protocol no. 24 of 20 June 2018 in relation to a report for the implementation of measure no. 168 “Transforming Pastrogor Transit Centre from a Closed-Type to an Open-Type Facility”. According to this decision, the Centre will continue to operate as an open-type facility. However, it is possible to designate individual closed-type areas, pursuant to Article 47(4) LAR. No such areas have been designated at the time of the visit. Twelve persons were accommodated given the capacity of 320.

The team of the NPM has no recommendations and is satisfied to report the excellent work of the officers in this transit centre.

Only the building prepared to host closed-type areas was visited in Harmanli. According to data provided by the officers there, the capacity is for 248 people. The centre is ready to start operating but no act for its opening has been issued yet. No sanitary units have been built in the rooms and its capacity does not meet the requirements for living area per person.

One of the main findings of the NPM as regards the above-mentioned facility is that the required act of the Council of Ministers under Article 47(3) LAR is not available for the facility in Harmanli. No such act for rendering the premises available for use by the SAR has been identified in relation to the MoI premises in Busmantsi either.

**In this connection the NPM has extended specific recommendations to SAR chairperson.**

## PROTECTION OF PEOPLE WITH MENTAL ILLNESSES

- The 2018 NPM inspections once again repeat the findings from previous years that the state psychiatric hospitals are unreformed and the quality of the healthcare they provide is not improving.

- Most state psychiatric hospitals are isolated, with obsolete facilities and poor living conditions, a chronic shortage of staff and impossibility to provide complex medical service and social rehabilitation.

- The insufficient social services in the community for people with mental illnesses slow down the deinstitutionalization of psychiatric help.

- An overall policy is needed in the area of mental health to allow for an integrated approach with respect to mental illnesses and the development of the system of care and support for people suffering from mental disorders and their relatives.

**The 2018 NPM inspections once again repeat the findings from previous years that the state psychiatric hospitals (SSH) are unreformed and the quality of the healthcare they provide is not improving.**

At present, functioning in the country there are 12 SSHs; 12 Mental Health Centres (MHC); 5 psychiatric clinics at university hospitals and 17 psychiatric wards at multi-profile hospitals. Their beds make up 10% of all hospital beds in the country.

Extended hospital treatment is provided at SSH. According to information of the National Centre of Public Health and Analyses, in 2016 a patient's average stay in a psychiatric hospital was 56.7 days and in SSH – 20.7 days. The comparison between the economic indicators of SSH and MHC shows that, in 2016, the average cost of food per day at MCH stood at BGN 3.12 and at SSH – BGN 2.56. The average cost of medicine per day at MCH was BGN 2.04 and at SSH – BGN 1.76. A conclusion can be reached that although the SSHs provide more extended treatment, the funding for their activities is less than the funding for MHC. The overall costs for psychiatric health per year stand below 3% of the budget of the Ministry of Health (MoH).

### 1. Funding and human resources

The different manner of funding SSH and MHC results in a difference in the payment to medical specialists for the same work and in different costs for the maintenance of medical institutions.

A change was made in 2018 in the Methodology for providing subsidies to medical institutions and an additional criterion for the treatment of sick people was introduced for the funding for MCH – level of MHC competence: for a stay per day in a III level competence structure – BGN 38.50; II level competence – BGN 35.00; I level competence – BGN 28.00. When a medical institution has not been assigned a competence level, it receives payment for II level competence. The price of stay per day when held at a high degree of dependency on care but not more than 7 days per hospitalization or when it concerns the treatment of children is increased by 50%.

As regards the “historical” funding of SSH by MoH, there is an increase in the Work Salary item in all hospitals and this NPM recommendation is deemed to have been fulfilled.

On the other hand, the financial means in the Maintenance Fund and the capital expenditure of hospitals remain unchanged and, in some cases, they are even reduced.

For example, in Tsarev Brod SSH, Shumen Region, the budget of the Maintenance Fund was reduced from 2015 to BGN 657,349; in 2018, it was again BGN 657,349. According

to the Analysis of the Work of Tsarev Brod SSH, throughout 2017 the food expenditure stood at BGN 125,939, medication – BGN 86,954, bed linen and patient clothes – BGN 848. No funds were spend on major renovation works. The food per day per patient was a little over BGN 2 and the funds allocated to bed linen and clothes to a patient for their entire stay stood at BGN 0.95. In this regard, the NPM believes that the budget for the Maintenance Fund of SSH should be increased.

Another problem is the **chronic shortage of medical and non-medical specialists at the medical institutions for hospital psychiatric help**. In some hospitals, patients work as attendants. This decreases the quality of the medical and diagnostic process and the patients' psycho-social rehabilitation.

For example, at Novi Iskar SSH there are currently 6 vacancies for doctors and 9 vacancies for nurses; this is why, the director of the medical institution acts also as a practicing doctor.

## **2. Location and facilities**

In most cases, SSH are located away from towns and villages, with a poor road and communication infrastructure (Karvuna SSH, Balchik Municipality) which further decreases the quality of the care provided and hampers the access to specialists. Moreover, the Psychiatry medical standard sets out: “a psychiatric clinic or ward need to offer the ability to use an X-Ray, EEG and a clinical laboratory, all with an access for the hospital within 24 hours a days and an ability to organise medical consultation with other medical specialists – all this on the territory of the town/village, as well as ECG and an oxygen installation on the territory of the hospital.”

In isolated cases, SSHs are located in towns allowing them to provide complex health and social services (Pazardzhik SSH).

**At most SSH, the facilities are obsolete and worn-out.** For example, in almost all patient rooms at Tsarev Brod SSH there is mould, no appropriate flooring, some walls are not whitewashed. The sanitary units and bathrooms in all wards do not meet the hygienic requirements and need overall renovation. Furthermore, the hospital rooms are overcrowded. There are on average five patients per room, but the area of the rooms cannot accommodate such a number of patients and their personal space is restricted. During the inspection, the NPM team found that a large part of the patients do not have personal belongings. In this regard, the NPM recommended to the MoH to **carry out an overall renovation of the hospital rooms and sanitary units at Tsarev Brod SSH**.

Similar conditions were found at Radnevo SSH during previous inspections. During the repeated inspections, the NPM found that the recommendation to the MoH to assign funds for numerous renovation works at Radnevo SSH had not been implemented.

The NPM recommendations to improve the facilities at Novi Iskar SSH and move the Sofia Region MHC to another building were not implemented either.

## **3. Healthcare. Protection and security for patients**

Approximately 30% of the patients at SSHs in the country are placed for obligatory or involuntary treatment. Ill persons are placed at medical institutions for hospital psychiatric help under Article 153 of the Healthcare Act and Article 89 of the Criminal Code. They are treated with their informed consent.

Most SSHs are unable to cover the Psychiatry medical standard approved by virtue of Order No. 24/2004 of the Ministry of Healthcare which regulates the provision of quality medical help at medical institutions.

**The NPM inspections found that, in certain cases, statutory documents guaranteeing the rights of patients are not observed.**

For example, the NPM team examined the Registry of measures for temporary physical restraint at the First Active Treatment Ward – Male at Tsarev Brod SSH, Shumen Region. Omissions were found in relation to the lack of the date when patients are immobilised. In addition, there is an excessive number of instances of securing. The NPM team met with a patient who was discharged from the hospital during the interview. According to him, he was at the isolation unit of the Female Ward a whole day and not six hours as laid down by the Ordinance on the Procedure to Apply Measures of Temporary Physical Restraint for Patients with Established Mental Disorders. The NPM recommended that the Ordinance provisions be observed.

At Tsarev Brod SSH, the NPM held interviews with patients. According to them, the hospital staff rarely take them out for walks in the yard of the medical institution. The NPM team also saw no patients outside for walks and found that insufficient care was provided for them. The staff do not provide enough clothes and means for the patients' personal hygiene. According to the patients, some of the staff members are rude to them. The NPM recommended that the patients be taken outside for walks regularly and that the healthcare provided be improved.

Furthermore, the NPM found that when a sick person is placed under interdiction and their guardian is a relative or kin who is unable to provide community-based care for them, the preference is for the SSH treatment to be extended. In such cases, the NPM found that, despite the numerous recommendations issued, the mayors of municipalities do not fulfil their obligations laid down in the Family Code (FC), namely:

Pursuant to Article 154 FC, the guardianship or trusteeship authority is the mayor of the municipality or an official designated by them.

Pursuant to Article 170 FC, the guardianship or trusteeship authority supervises the activities of the guardian. The authority may suspend their actions and order actions after consulting with the guardianship council. The same holds true for a trustee.

Pursuant to Article 171 FC, every year by the end of February the guardian provides a report on their activities to the guardianship council and presents it to the guardianship or trusteeship authority. The guardianship or trusteeship authority gives it opinion on the guardian's report and the trustee's explanation and, if irregularities are found, requires that they be remedied.

When the guardian does not appear or fails to provide the report without good reasons to do so, the guardianship or trusteeship authority imposes a fine of BGN 50 to 500 on them. The authority requires the report of the deputy guardian.

Pursuant to Article 173 FC, the guardianship or trusteeship authority dismisses the guardian and trustee when the interests of the person under interdiction so require. In such cases, a guardianship council or trustee and deputy trustee are appointed in line with the general procedure.

The NPM believes that, in the cases when the guardian/trustee maintains the extended stay (exceeding 1 year) of a person with a mental illnesses at a medical institution for hospital psychiatric help, the interest of the person under interdiction is breached and the mayor of the municipality or the official designated by them needs to take immediate action to remove the person from the hospital and provide social and health care in the community.



#### 4. Continuity of care and deinstitutionalization of psychiatric help

Another important problem of psychiatric care in the country is the **lack of continuity among medical institutions, both with respect to care and therapy as well as the information about a patient.** There is no practice to follow the a patient's case after discharge from the medical institution or psychiatric hospital, to refer the patient to monitoring, supporting therapy or another type of psychosocial help with a view to including the patient back in the community. Such actions are performed randomly, depending on the patient's situation and desire or upon the initiative of their relatives.

To resolve the matter, an amendment to the Health Act of 2009 to Article 147a provides that the MoH needs to create and maintain an Official National Register of people with mental disorders. The procedure and terms for maintaining and using data from the register are to be laid down in an ordinance of the Minister of Health; one has not been issued thus far.

Pursuant to Article 148 of the Health Act, the main principles of treatment of people with mental disorders include the reduction of institutional dependence on extended hospital treatment and priority of care in the family and the social environment.

Still, the inspections found a large number of people permanently placed for treatment (more than 1 year). For example, at Novi Iskar SSH, which has a capacity of 130 beds, almost 25 reside there for more than one year. In one case, the patient has been at the hospital for 23 years. The NPM believes that the extended stay of people with mental disorders at hospital institutions is, in essence, involuntary institutionalization and violates fundamental human rights.

Pursuant to Article 19, para 6 of the Regulations on the Structure and Activities of Medical Institutions for Hospital Psychiatric Help under Article 5, para 1 of the Medical Institutions Act, a patient is discharged from the psychiatric help institution by the Head of Ward upon the proposal of the personal therapist. When a patient whose condition necessitates a person to accompany them, the patient is handed over to their relatives.

Experience shows that, in some cases, the patients' relatives do not want to provide care for them and refuse to pick up the sick person from SSH; hence, the person cannot be discharged and the treatment term needs to be extended. In such cases, the SSH does not treat a person with an acute mental disorder but, practically, provides a social service. **The NPM believes that it is essential to work towards taking this group of patients out of their isolation and providing them with health and social care in the community.**

Instead, a 2010 amendment to Article 5, para 4 of the Medical Institution Act sets out that the medical institutions for hospital psychiatric help may provide social services under the Social Assistance Act. In practice, this change allows for the opening of day care centres and protected homes on the territory of the medical institutions.

The NPM believes that the state policy for mental health needs to prioritise the need for a successful deinstitutionalization of people with mental illnesses and their socialisation. The opening of protected homes and other social services at SSH which are remote from towns and villages further deepens the patients' isolation. The need for deinstitutionalization of the system for providing hospital psychiatric help is also enshrined in the 2020 National Health Strategy adopted by the Council of Ministers in 2013.

The Action Plan to implement the 2020 National Health Strategy adopted by the MoH, Policy 1.5 Safeguarding and improving mental health envisages Measure 1.5.2 Ensuring a strategic framework and financial mechanisms to plan and implement the mental health policy. The Measure includes Activity 1.5.2.2 Development of a concept and action plan to deinstitutionalize patients with mental illnesses at SSH by 2016.

Still, this and other activities to implement Strategy measures by 2016 have not been completed.

The National Centre of Public Health and Analyses has developed a National Programme of Mental Health for the Citizens of the Republic of Bulgaria 2017 – 2023. The funding for this programme is envisaged to come mainly from the republican budget totalling approximately BGN 7 million. It was discussed at a National Meeting of experts in the area of mental health, administrators of psycho-health programmes and services and NGOs but there is no information that it was tabled before the Council of Ministers for discussion.

**The inspections carried out by the NPM may lead to the conclusion that the psychiatric help in the country is still unreformed despite the availability of all necessary statutory documents.**

## **5. Information campaigns**

It is of special significance to apply the provision of Article 145, para 1, item 8 of the Health Act and take action to inform the public about the issues of mental health, including through information campaigns which will reduce the stigma for people with mental illnesses. The society and relatives of people who are ill need to accept that they need treatment and specialized care and that the isolation they find themselves in at the moment leads to a deterioration of their condition and is a direct violation of their rights.

A person who is ill also needs to be made familiar in detail with all options for support and social services in the community – day hospital centres at medical institutions for psychiatric help, day care centre, protected homes, etc. – and the circumstance that, to use the social services, they need to submit an application to the Social Assistance Directorate as per their current address.

## SOCIAL INSTITUTIONS FOR CHILDREN AND ADULTS

- Placing children and adults from a family environment in an institution should be a last resort protection measure.
- The state institutions should support the family and relatives of the children or adults at risk of being abandoned so as to prevent their placement in an institution.
- It is necessary to increase the remuneration of the staff in the field of social services for children and adults.
- The competent institutions need to exercise regular and effective control over the providers of social services for children and adults.
- Conditions need to be created for the children and adults placed in institutions to use social services in the community.

The NPM needs to note for yet another year that the Social Assistance Directorates with the Social Assistance Agency continue to place children and adults in residential social services taking them out of their family environment. The opinion voiced by the NPM on numerous occasions is that the placement of children and adults in an institution should be a last resort protection measure. The process of deinstitutionalization that started in 2010 is going on slowly and there is not yet a sufficient number of community social services for children and adults.

It is of utmost importance that state institutions support the family and relatives of the children and adults at risk of being abandoned. This process should also involve actively the municipalities, the non-governmental sector, civil society organisations and others.

A major problem found in the course of NPM inspections at social institutions for children and adults is the **lack of qualified staff to provide adequate care for those placed in the institutions**. The reasons can be found in the low salaries, insufficient training, lack of educational eligibility criteria, and remoteness from the municipal centres, which inevitably lead to the lack of motivation and staff turnover.

Even though action has been taken for 2019 to increase the unified spending standards of all social services, the social workers' salaries are close to the minimum work salary for the country (for 2019, the minimum work salary is BGN 560). **The NPM finds that this results in a great staff turnover at the institutions located in large municipalities.**

In such cases, the difference between the salary of the social workers at institutions and the average work salary is 100%.

The main factor determining the provision of quality social services is the human one. Providing care for children and adults placed in institutions and services in the community is a hard and responsible task entrusted to the staff who work with them every day. **This is why these staff members need to be supported by the State and the municipalities.**

### 1. Social institutions for children

In 2018, the NPM inspections of institutions for children focused primarily on family-type accommodation centres for children and adolescents with disabilities (FTACCAYD). Visits were paid to 4 institutions – family-type accommodation centres for children with disabilities and 1 home for medical-social care for children (HMSSC). The main NPM finding is that the institutions are plagued by systemic problems in providing care for the children, the

most serious one being the lack of specialised staff such as psychologists, social workers, kinesiologists and others.

### **Family-type accommodation centres for children and adolescents with disabilities – Hristo Botev, Vasil Levski, Ekzarh Yosif and Patriarch Evtimii in Sofia**

The main NPM finding after the inspections at the family-type accommodation centres for children and adolescents with disabilities in Sofia is the lack of staff.

The family-type accommodation centres for children and adolescents with disabilities are residential-type social services in the community which provide an environment close to the family one to children and adolescents aged from 3 to 29. The buildings of the centres were built in 2015 and they fully meet the children's needs. The premises are large, with modern furniture. The social service has a capacity of 14 children. As of the inspection date, the capacity was used to the fullest. As of the inspection date, Hristo Botev FTACCAYD housed 12 children and adolescents, Vasil Levski FTACCAYD – 11 children, Ekzarh Yosif FTACCAYD – 11 children and Patriarch Evtimii FTACCAYD – 13 children and adolescents. Twelve children attend a school for children with special needs. In addition, they all use social services in the community – day care centre for children with disabilities, day care centre for adults with disabilities, centre for social rehabilitation and integration – Sofia. The users of the social services undergo annual medical and dental examinations. In necessary, a psychiatrist conducts examinations. The NPM team became familiar with the detailed job descriptions at the centres and found out that there were five vacancies for children attendants at Vasil Levski FTACCAYD and a total of six vacancies for children attendants at Patriarch Evtimii and Ekzarh Yosif. A major problem found during the NPM inspections at these social institutions for children was the lack of qualified staff to provide adequate care for those placed in them and the ongoing staff turnover due to the low level of remuneration and the lack of training.

In this regard, the Ombudsman as the NPM issued a recommendation to the Minister of Labour and Social Policy **for measures to be taken to increase the remuneration of all staff members at the family-time accommodation centres for children and to organise regular training and qualification courses for staff of the family-type accommodation centres for children.** After the Ombudsman's recommendations, the Ministry of Labour and Social Policy took action to increase the FTACCAYD budget and the staff's work remuneration. Furthermore, training is planned for 6,000 people working at the social services in 2019. Activities of supervision and crisis intervention of the social workers will also be carried out.

### **St. Ivan Rilski Home for Medical-Social Care for Children – Sofia**

In 2018, an NPM team carried out a repeated inspection of St. Ivan Rilski HMSSC – Sofia. The home has a capacity of 70 children; as of the time of the inspection, 36 children were accommodated there.

The facilities of the home are obsolete, the sleeping rooms are overcrowded, the bathrooms and toilets are insufficient. The Fifth Section may be used as an example. It has one sleeping room for 12 children and one bathroom and toilet.

The NPM team became familiar with the weekly menu from 19 November 2018 till 25 November 2018 and found that the children's menu was **pure and repetitive, not in line with the requirements of Standard 9 at Appendix No. 3 to Article 48 of the Ordinance on the Criteria and Standards for Social Services for Children.** As an example, the desert for the children throughout the week was yoghurt, the main course at dinner throughout the week was vegetarian, the lunch was chicken twice and meat balls once. Over seven days, there was no fish, veal or another dish appropriate for the children's age.

According to the list of staff members provided to the NPM team, St. Ivan Rilski HMSCC – Sofia has 70 staff members, 19 of them pensioners, with 16 vacancies.

Of all children accommodated, only eight are included in the adoption registers. Some children spend more than four years at the home. The NPM team has repeatedly emphasized that the extended stay of children at institutions is a direct violation of their rights. This causes not only psychological trauma to the children but it also deprives them of the possibility to be in a family environment. In this regard, the NPM team turned to the Child Protection Department at the Lozenets Social Assistance Directorate to prepare and provide reference information about each child accommodated at St. Ivan Rilski HMSCC – Sofia: measures taken so far and measures to be taken to reduce the children's stay at the home.

After the inspection, the Ombudsman as the NPM issued a recommendation to the Minister of Health – **to provide the NPM team with the vision for the deinstitutionalisation of the home, reduce the capacity in a staged-in way, allocate funds for interior renovation works, give the children quality food in view of their age.**

In addition, the NPM issued a recommendation to the Director of the Lozenets Social Assistance Directorate to prepare and provide the Ombudsman with reference information about each child accommodated at St. Ivan Rilski HMSCC – Sofia: measures taken so far and measures to be taken to reduce the children's stay at the home. So far, the Ombudsman, as the NPM, has not received a response from the Ministry of Health.

## **2. Social institutions for adults**

In 2018, the NPM carried out repeated inspections at 5 homes for adults with mental disabilities, 3 homes for adults with mental disorders and the protected accommodation for adults with mental disabilities and mental disorders opened in the respective regions.

The inspections repeated the findings from previous years that the system of providing institutional social care is still unreformed and that the quality of the social service has not been improved. One of the major issues is that the homes are often located outside towns and villages, with a poor road and communication infrastructure which hampers the access of specialists. In isolated cases, the homes and the newly built protected accommodation are located in cities with the possibility to provide complex social and health services. At most of the institutions inspected, the facilities are old and obsolete.

In this regard, the NPM recommended to the Minister of Labour and Social Policy **to take timely action to increase the budget standards for all residential social services for adults in order to improve the quality of the service provided.**

An Analytical Report on the social services for adults which are State delegated as of 31 May 2017 to the Social Assistance Agency with respect to certain of the homes for adults with mental disabilities and mental disorders (Banya Home for Adults with Mental Disabilities, Karlovo Municipality; Plovdiv Home for Adults with Mental Disabilities; Village of Petkovo Home for Adults with Mental Disorders, Smolyan Municipality) proposes that the capacity be reduced in a staged-in way with the first step being to stop accommodating individuals at the institution. At the time of the NPM inspection, accommodation has been terminated solely at the ten specialised institutions planned to be closed down.

The recommendation from previous NPM visits is **to take action of deinstitutionalisation committing to specific actions and deadlines for their implementation.** According to the Ministry of Labour and Social Policy, this matter will be resolved through the National Long-Term Care Strategy (NLTC) and the Action Plan 2018 – 2021 to implement the NLTC, after the building up of social services of a new type, located in the community.

**The NPM has repeatedly emphasized that the accommodation of children and adults at institutions is a direct violation of their rights.**

The placement of an individual from a family environment in an institution should be a last resort protection measure. The main NPM recommendation is for the Social Assistance Directorates at the Social Assistance Agency to stop placing individuals in old-type residential social services and speed up the process of building new residential social services and services in the community.

The NPM finding is that, at present, a small percentage of the individuals placed in residential social institutions use services in the community which is a prerequisite for potential difficulties for transferring them to new social services and an obstacle to their successful inclusion in the society in the future. This circumstance is contrary to the Common European Guidelines on the Transition from Institutional to Community-Based Care.

The following examples may be highlighted from the inspections carried out:

1. Home for Adults with Mental Disabilities – village of Samuil, Samuil Municipality: the facilities seem good overall, the sleeping rooms and sanitary units take into account the number of people accommodated. Still, the inspection found a heavy smell of mould which is a prerequisite for respiratory and other diseases. The NPM found that a person accommodated there was suffering from a pulmonary tuberculosis and was placed for treatment at SSH – village of Karvuna, Dobrich Region. With regard to almost 40 other persons, deviations were found in the Mantoux test and medicinal therapy was assigned. According to information provided by the Director of the home, there are no persons with an active form of TB at the HAMD. Still, the NPM team finds that, in view of the large number of persons with deviations in the Mantoux test and the heavy smell of mould at the home, an overall inspection should be carried out by the Regional Health Inspection.

The official position of the Mayor of Samuil Municipality is that, “there has never been a smell due to mould or dampness at the institution.”

Of the 15 people accommodated at the home, 15 are legally capable, 71 are under interdiction and the guardian for 69 of them is the Director of the home and for 2 – the nurse. In this regard, the NPM again emphasizes the opinion that action needs to be taken to change the practice where an official at a specialized institution is the guardian and/or trustee of a large number of users. This is a prerequisite for conflicts of interest and raises the question if one person who performs their official duties in parallel is able to manage, in an optimum way, the property of such a large number of persons under interdiction.

As of the time of the inspection, the adults do not use social services in the community which deepens their isolation. After an NPM recommendation, action was taken to submit applications for the use of the services of a pedagogue, social worker and kinesiologist at the Social Rehabilitation and Integration Centre – village of Vladimirovtsi, Samuil Municipality.

2. Home for Adults with Mental Disorders – village of Cherni Vrah, Smyadovo Municipality: it is located in a mountainous area which is hard to reach during winter. As of the time of the inspection, the adults do not use social services in the community. An NPM recommendation was issued to prepare notices and documents to the guardians of the users in order to use the services of the Day Care Centre for Adults with Disabilities in the town of Smyadovo.

3. Home for Adults with Mental Disabilities – village of Medovina, Popovo Municipality, and Home for Adults with Mental Disorders – village of Rovina, Smolyan Municipality: They can be indicated as a positive example; respectively in them, 7 people use the services of a speech therapist and psychologist at the Social Rehabilitation and Integration Centre in Popovo and 9 people use the services of a Day Care Centre in Smolyan. Applications have also been submitted for transfer to appropriate residential social services in the community.

4. The Home for Minors with Mental Disabilities in Plovdiv needs minor renovations in the common and sleeping rooms as well as changing in flooring. The people accommodated there use common sanitary units which are quite insufficient in view of the number of users in breach of Article 40e, items 3 and 5 of the Implementing Regulations to the Social Assistance Act. In response to the NPM recommendations, the Mayor of Plovdiv Municipality allocated funds for major renovations works of the roof and the sleeping rooms and further financing will be provided to build additional sanitary units.

Medical care for the users of Plovdiv HMMD is provided by 4 nurses, given that 6 staff positions are envisaged, and 7 attendants, given that 9 are envisaged. The available nurses are unable to ensure 24-hour medical care for the users and their daily schedule is covered by the social workers. The home services users with somatic disabilities, people in wheelchairs, which necessitates more care. The shortage of staff is felt especially when a user needs to be admitted to a hospital because the medical institutions require a person to accompany the patient during the treatment.

5. The capacity of the Home for Adults with Mental Disorders in the village of Petkovo, Smolyan Municipality, is 100 people; the profile is men aged above 18. At the time of the inspection, 99 people were accommodated. The NPM team found that the home, including the ward for bed-confined patients, does not have an access ramp for people with disabilities; as a result, they stay mainly in the sleeping rooms. Yet again in the reports, the NPM needs to indicate that the failure to provide an accessible environment breaches a number of statutory requirements. Following the NPM recommendation, such an access ramp was installed.

The people accommodated at this home also do not use social services in the community because no supporting social services have been launched in the community.

6. During the NPM visit to the Protected Homes for Adults with Mental Disabilities 3 and 4 – Bansko, the team also found that despite the profile of the social service and the circumstance that the protected homes are located on the second and the third floors, there is no access elevator for people with disabilities in the building.

7. During an inspection at HAMD – village Kachulka, Sliven Municipality, the NPM team received a signal from a person using the social service concerning violence against her committed by a staff member. In this regard and pursuant to Article 19, para 1, item 13 of the Ombudsman Act, the information was provided to the Prosecutor General of the Republic of Bulgaria to assign an inspection of the case.

**The NPM's opinion is that the remoteness of the specialized institution, the poor facilities, the large number of users and the insufficient specialised staff hamper the provision of quality social services. This inevitably leads to a deterioration of the psycho-social climate and lack of trust among the staff and users of the social service.**

The NPM believes that the competent authorities need to take urgent measures in the short-term to reduce the capacity of the institution and, in this regard, the NPM has turned to the Executive Director of the Social Assistance Agency with a proposal to prepare a plan for the urgent transitioning of some users out of the home providing them with quality and appropriate social service taking into account their individual needs.